



# National Health Service Act 2006

## 2006 CHAPTER 41

### PART 2 **E+W**

#### HEALTH SERVICE BODIES

### [<sup>F1</sup>CHAPTER A1 **E+W**

#### THE NATIONAL HEALTH SERVICE COMMISSIONING BOARD

##### Textual Amendments

- F1** Pt. 2 Ch. A1 inserted (27.3.2012 for specified purposes, 1.10.2012 for specified purposes, 1.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012](#) (c. 7), ss. **23(1)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2) (with art. 4); S.I. 2012/2657, art. 2(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

#### *Secretary of State's mandate to the Board*

### **13A** Mandate to Board **E+W**

- (1) Before the start of each financial year, the Secretary of State must publish and lay before Parliament a document to be known as “the mandate”.
- (2) The Secretary of State must specify in the mandate—
  - (a) the objectives that the Secretary of State considers the Board should seek to achieve in the exercise of its functions during that financial year and such subsequent financial years as the Secretary of State considers appropriate, and
  - (b) any requirements that the Secretary of State considers it necessary to impose on the Board for the purpose of ensuring that it achieves those objectives.

*Status: Point in time view as at 01/04/2013.*

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- (3) The Secretary of State must also specify in the mandate the amounts that the Secretary of State has decided to specify in relation to the financial year for the purposes of section 223D(2) and (3) (limits on capital and revenue resource use).
- (4) The Secretary of State may specify in the mandate any proposals that the Secretary of State has as to the amounts that the Secretary of State will specify in relation to subsequent financial years for the purposes of section 223D(2) and (3).
- (5) The Secretary of State may also specify in the mandate the matters by reference to which the Secretary of State proposes to assess the Board's performance in relation to the first financial year to which the mandate relates.
- (6) The Secretary of State may not specify in the mandate an objective or requirement about the exercise of the Board's functions in relation to only one clinical commissioning group.
- (7) The Board must—
  - (a) seek to achieve the objectives specified in the mandate, and
  - (b) comply with any requirements so specified.
- (8) Before specifying any objectives or requirements in the mandate, the Secretary of State must consult—
  - (a) the Board,
  - (b) the Healthwatch England committee of the Care Quality Commission, and
  - (c) such other persons as the Secretary of State considers appropriate.
- (9) Requirements included in the mandate have effect only if regulations so provide.

### **13B The mandate: supplemental provision E+W**

- (1) The Secretary of State must keep the Board's performance in achieving any objectives or requirements specified in the mandate under review.
- (2) If the Secretary of State varies the amount specified for the purposes of section 223D(2) or (3), the Secretary of State must revise the mandate accordingly.
- (3) The Secretary of State may make any other revision to the mandate only if—
  - (a) the Board agrees to the revision,
  - (b) a parliamentary general election takes place, or
  - (c) the Secretary of State considers that there are exceptional circumstances that make the revision necessary.
- (4) Revisions to the mandate which consist of adding, omitting or modifying requirements have effect only if regulations so provide.
- (5) If the Secretary of State revises the mandate, the Secretary of State must—
  - (a) publish the mandate (as so revised), and
  - (b) lay it before Parliament, together with an explanation of the reasons for making the revision.

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### *General duties of the Board*

#### **13C Duty to promote NHS Constitution** **E+W**

- (1) The Board must, in the exercise of its functions—
  - (a) act with a view to securing that health services are provided in a way which promotes the NHS Constitution, and
  - (b) promote awareness of the NHS Constitution among patients, staff and members of the public.
- (2) In this section, “patients” and “staff” have the same meaning as in Chapter 1 of Part 1 of the Health Act 2009 (see section 3(7) of that Act).

#### **13D Duty as to effectiveness, efficiency etc.** **E+W**

The Board must exercise its functions effectively, efficiently and economically.

#### **13E Duty as to improvement in quality of services** **E+W**

- (1) The Board must exercise its functions with a view to securing continuous improvement in the quality of services provided to individuals for or in connection with—
  - (a) the prevention, diagnosis or treatment of illness, or
  - (b) the protection or improvement of public health.
- (2) In discharging its duty under subsection (1), the Board must, in particular, act with a view to securing continuous improvement in the outcomes that are achieved from the provision of the services.
- (3) The outcomes relevant for the purposes of subsection (2) include, in particular, outcomes which show—
  - (a) the effectiveness of the services,
  - (b) the safety of the services, and
  - (c) the quality of the experience undergone by patients.
- (4) In discharging its duty under subsection (1), the Board must have regard to—
  - (a) any document published by the Secretary of State for the purposes of this section, and
  - (b) the quality standards prepared by NICE under section 234 of the Health and Social Care Act 2012.

#### **13F Duty as to promoting autonomy** **E+W**

- (1) In exercising its functions, the Board must have regard to the desirability of securing, so far as consistent with the interests of the health service—
  - (a) that any other person exercising functions in relation to the health service or providing services for its purposes is free to exercise those functions or provide those services in the manner it considers most appropriate, and
  - (b) that unnecessary burdens are not imposed on any such person.
- (2) If, in the case of any exercise of functions, the Board considers that there is a conflict between the matters mentioned in subsection (1) and the discharge by the Board of its duties under sections 1(1) and 1H(3)(b), the Board must give priority to those duties.

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**13G Duty as to reducing inequalities** **E+W**

The Board must, in the exercise of its functions, have regard to the need to—

- (a) reduce inequalities between patients with respect to their ability to access health services, and
- (b) reduce inequalities between patients with respect to the outcomes achieved for them by the provision of health services.

**13H Duty to promote involvement of each patient** **E+W**

The Board must, in the exercise of its functions, promote the involvement of patients, and their carers and representatives (if any), in decisions which relate to—

- (a) the prevention or diagnosis of illness in the patients, or
- (b) their care or treatment.

**13I Duty as to patient choice** **E+W**

The Board must, in the exercise of its functions, act with a view to enabling patients to make choices with respect to aspects of health services provided to them.

**13J Duty to obtain appropriate advice** **E+W**

The Board must obtain advice appropriate for enabling it effectively to discharge its functions from persons who (taken together) have a broad range of professional expertise in—

- (a) the prevention, diagnosis or treatment of illness, and
- (b) the protection or improvement of public health.

**13K Duty to promote innovation** **E+W**

- (1) The Board must, in the exercise of its functions, promote innovation in the provision of health services (including innovation in the arrangements made for their provision).
- (2) The Board may make payments as prizes to promote innovation in the provision of health services.
- (3) A prize may relate to—
  - (a) work at any stage of innovation (including research);
  - (b) work done at any time (including work before the commencement of section 23 of the Health and Social Care Act 2012).

**13L Duty in respect of research** **E+W**

The Board must, in the exercise of its functions, promote—

- (a) research on matters relevant to the health service, and
- (b) the use in the health service of evidence obtained from research.

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### **13M Duty as to promoting education and training** **E+W**

The Board must, in exercising its functions, have regard to the need to promote education and training for the persons mentioned in section 1F(1) so as to assist the Secretary of State in the discharge of the duty under that section.

### **13N Duty as to promoting integration** **E+W**

- (1) The Board must exercise its functions with a view to securing that health services are provided in an integrated way where it considers that this would—
  - (a) improve the quality of those services (including the outcomes that are achieved from their provision),
  - (b) reduce inequalities between persons with respect to their ability to access those services, or
  - (c) reduce inequalities between persons with respect to the outcomes achieved for them by the provision of those services.
- (2) The Board must exercise its functions with a view to securing that the provision of health services is integrated with the provision of health-related services or social care services where it considers that this would—
  - (a) improve the quality of the health services (including the outcomes that are achieved from the provision of those services),
  - (b) reduce inequalities between persons with respect to their ability to access those services, or
  - (c) reduce inequalities between persons with respect to the outcomes achieved for them by the provision of those services.
- (3) The Board must encourage clinical commissioning groups to enter into arrangements with local authorities in pursuance of regulations under section 75 where it considers that this would secure—
  - (a) that health services are provided in an integrated way and that this would have any of the effects mentioned in subsection (1)(a) to (c), or
  - (b) that the provision of health services is integrated with the provision of health-related services or social care services and that this would have any of the effects mentioned in subsection (2)(a) to (c).
- (4) In this section—

“health-related services” means services that may have an effect on the health of individuals but are not health services or social care services;

“social care services” means services that are provided in pursuance of the social services functions of local authorities (within the meaning of the Local Authority Social Services Act 1970).

### **13O Duty to have regard to impact on services in certain areas** **E+W**

- (1) In making commissioning decisions, the Board must have regard to the likely impact of those decisions on the provision of health services to persons who reside in an area of Wales or Scotland that is close to the border with England.
- (2) In this section, “commissioning decisions”, in relation to the Board, means decisions about the carrying out of its functions in arranging for the provision of health services.

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**13P Duty as respects variation in provision of health services** E+W

The Board must not exercise its functions for the purpose of causing a variation in the proportion of services provided as part of the health service that is provided by persons of a particular description if that description is by reference to—

- (a) whether the persons in question are in the public or (as the case may be) private sector, or
- (b) some other aspect of their status.

*Public involvement*

**13Q Public involvement and consultation by the Board** E+W

- (1) This section applies in relation to any health services which are, or are to be, provided pursuant to arrangements made by the Board in the exercise of its functions (“commissioning arrangements”).
- (2) The Board must make arrangements to secure that individuals to whom the services are being or may be provided are involved (whether by being consulted or provided with information or in other ways)—
  - (a) in the planning of the commissioning arrangements by the Board,
  - (b) in the development and consideration of proposals by the Board for changes in the commissioning arrangements where the implementation of the proposals would have an impact on the manner in which the services are delivered to the individuals or the range of health services available to them, and
  - (c) in decisions of the Board affecting the operation of the commissioning arrangements where the implementation of the decisions would (if made) have such an impact.
- (3) The reference in subsection (2)(b) to the delivery of services is a reference to their delivery at the point when they are received by users.

*Functions in relation to information*

**13R Information on safety of services provided by the health service** E+W

- (1) The Board must establish and operate systems for collecting and analysing information relating to the safety of the services provided by the health service.
- (2) The Board must make information collected by virtue of subsection (1), and any other information obtained by analysing it, available to such persons as the Board considers appropriate.
- (3) The Board may impose charges, calculated on such basis as it considers appropriate, in respect of information made available by it under subsection (2).
- (4) The Board must give advice and guidance, to such persons as it considers appropriate, for the purpose of maintaining and improving the safety of the services provided by the health service.
- (5) The Board must monitor the effectiveness of the advice and guidance given by it under subsection (4).

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- (6) A clinical commissioning group must have regard to any advice or guidance given to it under subsection (4).
- (7) The Board may arrange for any other person (including another NHS body) to exercise any of the Board's functions under this section.
- (8) Arrangements made under subsection (7) do not affect the liability of the Board for the exercise of any of its functions.

### **13S Guidance in relation to processing of information** **E+W**

- (1) The Board must publish guidance for registered persons on the practice to be followed by them in relation to the processing of—
  - (a) patient information, and
  - (b) any other information obtained or generated in the course of the provision of the health service.
- (2) Registered persons who carry on an activity which involves, or is connected with, the provision of health care must have regard to any guidance published under this section.
- (3) In this section, “patient information”, “processing” and “registered person” have the same meaning as in section 20A of the Health and Social Care Act 2008.

#### *Business plan and report*

### **13T Business plan** **E+W**

- (1) Before the start of each financial year, the Board must publish a business plan setting out how it proposes to exercise its functions in that year and each of the next two financial years.
- (2) The business plan must, in particular, explain how the Board proposes to discharge its duties under—
  - (a) sections 13E, 13G and 13Q, and
  - (b) sections 223C to 223E.
- (3) The business plan must, in particular, explain how the Board proposes to achieve the objectives, and comply with the requirements, specified in the mandate for the first financial year to which the plan relates.
- (4) The Board may revise the plan.
- (5) The Board must publish any revised plan.

### **13U Annual report** **E+W**

- (1) As soon as practicable after the end of each financial year, the Board must publish an annual report on how it has exercised its functions during the year.
- (2) The annual report must, in particular, contain an assessment of—
  - (a) the extent to which it met any objectives or requirements specified in the mandate for that year,



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- (b) the extent to which it gave effect to the proposals for that year in its business plan, and
  - (c) how effectively it discharged its duties under sections 13E, 13G and 13Q.
- (3) The Board must—
- (a) lay the annual report before Parliament, and
  - (b) once it has done so, send a copy of it to the Secretary of State.
- (4) The Secretary of State must, having considered the annual report, set out in a letter to the Board the Secretary of State's assessment of the Board's performance of its functions in the financial year in question.
- (5) The letter must, in particular, contain the Secretary of State's assessment of the matters mentioned in subsection (2)(a) to (c).
- (6) The Secretary of State must—
- (a) publish the letter to the Board, and
  - (b) lay it before Parliament.

#### *Additional powers*

### **13V Establishment of pooled funds** E+W

- (1) The Board and one or more clinical commissioning groups may establish and maintain a pooled fund.
- (2) A pooled fund is a fund—
- (a) which is made up of contributions by the bodies which established it, and
  - (b) out of which payments may be made, with the agreement of those bodies, towards expenditure incurred in the discharge of any of their commissioning functions.
- (3) In this section, “commissioning functions” means functions in arranging for the provision of services as part of the health service.

### **13W Board's power to generate income, etc.** E+W

- (1) The Board has power to do anything specified in section 7(2) of the Health and Medicines Act 1988 (provision of goods, services, etc.) for the purpose of making additional income available for improving the health service.
- (2) The Board may exercise a power conferred by subsection (1) only to the extent that its exercise does not to any significant extent interfere with the performance by the Board of its functions.

### **13X Power to make grants etc.** E+W

- (1) The Board may make payments by way of grant or loan to a voluntary organisation which provides or arranges for the provision of services which are similar to the services in respect of which the Board has functions.
- (2) The payments may be made subject to such terms and conditions as the Board considers appropriate.



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### **13Y Board's incidental powers: further provision** **E+W**

The power conferred on the Board by section 2 includes, in particular, power to—

- (a) enter into agreements,
- (b) acquire and dispose of property, and
- (c) accept gifts (including property to be held on trust for the purposes of the Board).

#### *Exercise of functions of Board*

### **13Z Exercise of functions** **E+W**

- (1) This section applies to functions exercisable by the Board under or by virtue of this Act or any prescribed provision of any other Act.
- (2) The Board may arrange for any such function to be exercised by or jointly with—
  - (a) a Special Health Authority,
  - (b) a clinical commissioning group, or
  - (c) such other body as may be prescribed.
- (3) Regulations may provide that the power in subsection (2) does not apply in relation to a function of a prescribed description.
- (4) Where any functions are (by virtue of subsection (2)) exercisable jointly by the Board and another body, they may be exercised by a joint committee of the Board and the other body.
- (5) Arrangements under this section may be on such terms and conditions (including terms as to payment) as may be agreed between the Board and the other party to the arrangements.
- (6) Arrangements made under this section do not affect the liability of the Board for the exercise of any of its functions.

#### *Power to confer additional functions*

### **13Z1 Power to confer additional functions on the Board** **E+W**

- (1) Regulations may provide that the Board is to have such additional functions in relation to the health service as may be specified in the regulations.
- (2) A function may be specified in regulations under subsection (1) only if the function is connected to another function of the Board.

#### *Intervention powers*

### **13Z2 Failure by the Board to discharge any of its functions** **E+W**

- (1) The Secretary of State may give a direction to the Board if the Secretary of State considers that—
  - (a) the Board—
    - (i) is failing or has failed to discharge any of its functions, or

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- (ii) is failing or has failed properly to discharge any of its functions, and
  - (b) the failure is significant.
- (2) A direction under subsection (1) may direct the Board to discharge such of those functions, and in such manner and within such period or periods, as may be specified in the direction.
  - (3) If the Board fails to comply with a direction under subsection (1), the Secretary of State may—
    - (a) discharge the functions to which it relates, or
    - (b) make arrangements for any other person to discharge them on the Secretary of State's behalf.
  - (4) Where the Secretary of State exercises a power under subsection (1) or (3), the Secretary of State must publish the reasons for doing so.
  - (5) For the purposes of this section a failure to discharge a function properly includes a failure to discharge it consistently with what the Secretary of State considers to be the interests of the health service.

#### *Disclosure of information*

### **13Z3 Permitted disclosures of information** E+W

- (1) The Board may disclose information obtained by it in the exercise of its functions if—
  - (a) the information has previously been lawfully disclosed to the public,
  - (b) the disclosure is made under or pursuant to regulations under section 113 or 114 of the Health and Social Care (Community Health and Standards) Act 2003 (complaints about health care or social services),
  - (c) the disclosure is made in accordance with any enactment or court order,
  - (d) the disclosure is necessary or expedient for the purposes of protecting the welfare of any individual,
  - (e) the disclosure is made to any person in circumstances where it is necessary or expedient for the person to have the information for the purpose of exercising functions of that person under any enactment,
  - (f) the disclosure is made for the purpose of facilitating the exercise of any of the Board's functions,
  - (g) the disclosure is made in connection with the investigation of a criminal offence (whether or not in the United Kingdom), or
  - (h) the disclosure is made for the purpose of criminal proceedings (whether or not in the United Kingdom).
- (2) Paragraphs (a) to (c) and (h) of subsection (1) have effect notwithstanding any rule of common law which would otherwise prohibit or restrict the disclosure.

#### *Interpretation*

### **13Z4 Interpretation** E+W

- (1) In this Chapter—
  - “the health service” means the health service in England;

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“health services” means services provided as part of the health service and, in sections 13O and 13Q, also includes services that are to be provided as part of the health service.

- (2) Any reference (however expressed) in the following provisions of this Act to the functions of the Board includes a reference to the functions of the Secretary of State that are exercisable by the Board by virtue of arrangements under section 7A—

section 6E(7) and (10)(b),  
section 13A(2),  
section 13C(1),  
section 13D,  
section 13E(1),  
section 13F,  
section 13G,  
section 13H,  
section 13I,  
section 13J,  
section 13K(1),  
section 13L,  
section 13M,  
section 13N(1) and (2),  
section 13O(2),  
section 13Q(1),  
section 13T(1),  
section 13U(1) and (4),  
section 13W(2),  
section 13X(1),  
section 13Z2(1),  
section 13Z3(1),  
section 72(1),  
section 75(1)(a) and (2),  
section 82,  
section 223C(2)(a),  
in Schedule A1, paragraph 13.

- (3) Any reference (however expressed) in the following provisions of other Acts to the functions of the Board includes a reference to the functions of the Secretary of State that are exercisable by the Board by virtue of arrangements under section 7A—

sections 116 to 116B of the Local Government and Public Involvement in Health Act 2007 (joint strategic needs assessments etc.),  
section 197(6) of the Health and Social Care Act 2012 (participation of the Board in work of Health and Wellbeing Boards),  
section 199(4) of that Act (supply of information to Health and Wellbeing Boards),  
section 290(1) and (2) of that Act (duties to co-operate),  
section 291(2)(d) of that Act (breaches of duties to co-operate).

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- (4) The Secretary of State may by order amend the list of provisions specified in subsection (2) or (3).]

## [<sup>F2</sup>CHAPTER A2 E+W

### CLINICAL COMMISSIONING GROUPS

#### Textual Amendments

- F2** Pt. 2 Ch. A2 inserted (27.3.2012 for specified purposes, 1.10.2012 for specified purposes, 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 25(1)**, 306(1)(d)(4) (with [Sch. 6 paras. 7-13](#)); [S.I. 2012/1831](#), art. 2(2) (with art. 5); [S.I. 2013/160](#), art. 2(2) (with arts. 7-9)

#### *Establishment of clinical commissioning groups*

### 14A **General duties of Board in relation to clinical commissioning groups** E+W

- (1) The Board must exercise its functions under this Chapter so as to ensure that at any time after the day specified by order of the Secretary of State for the purposes of this section each provider of primary medical services is a member of a clinical commissioning group.
- (2) The Board must exercise its functions under this Chapter so as to ensure that at any time after the day so specified the areas specified in the constitutions of clinical commissioning groups—
  - (a) together cover the whole of England, and
  - (b) do not coincide or overlap.
- (3) For the purposes of this Chapter, “provider of primary medical services” means a person who is a party to an arrangement mentioned in subsection (4).
- (4) The arrangements mentioned in this subsection are—
  - (a) a general medical services contract to provide primary medical services of a prescribed description,
  - (b) arrangements under section 83(2) for the provision of primary medical services of a prescribed description,
  - (c) section 92 arrangements for the provision of primary medical services of a prescribed description.
- (5) Where a person who is a provider of primary medical services is a party to more than one arrangement mentioned in subsection (4), the person is to be treated for the purposes of this Chapter as a separate provider of primary medical services in respect of each of those arrangements.
- (6) Where two or more individuals practising in partnership are parties to an arrangement mentioned in subsection (4), the partnership is to be treated for the purposes of this Chapter as a provider of primary medical services (and the individuals are not to be so treated).
- (7) Where two or more individuals are parties to an arrangement mentioned in subsection (4) but are not practising in partnership, those persons collectively are to

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be treated for the purposes of this Chapter as a provider of primary medical services (and the individuals are not to be so treated).

#### **14B Applications for the establishment of clinical commissioning groups** **E+W**

- (1) An application for the establishment of a clinical commissioning group may be made to the Board.
- (2) The application may be made by any two or more persons each of whom—
  - (a) is or wishes to be a provider of primary medical services, and
  - (b) wishes to be a member of the clinical commissioning group.
- (3) The application must be accompanied by—
  - (a) a copy of the proposed constitution of the clinical commissioning group,
  - (b) the name of the person whom the group wishes the Board to appoint as its accountable officer (as to which see paragraph 12 of Schedule 1A), and
  - (c) such other information as the Board may specify in a document published for the purposes of this section.
- (4) At any time before the Board determines the application—
  - (a) a person who is or wishes to be a provider of primary medical services (and wishes to be a member of the clinical commissioning group) may become a party to the application, with the agreement of the Board and the existing applicants;
  - (b) any of the applicants may withdraw.
- (5) At any time before the Board determines the application, the applicants may modify the proposed constitution with the agreement of the Board.
- (6) Part 1 of Schedule 1A makes provision about the constitution of a clinical commissioning group.

#### **14C Determination of applications** **E+W**

- (1) The Board must grant an application under section 14B if it is satisfied as to the following matters.
- (2) Those matters are—
  - (a) that the constitution complies with the requirements of Part 1 of Schedule 1A and is otherwise appropriate,
  - (b) that each of the members specified in the constitution will be a provider of primary medical services on the date the clinical commissioning group is established,
  - (c) that the area specified in the constitution is appropriate,
  - (d) that it would be appropriate for the Board to appoint, as the accountable officer of the group, the person named by the group under section 14B(3)(b),
  - (e) that the applicants have made appropriate arrangements to ensure that the clinical commissioning group will be able to discharge its functions,
  - (f) that the applicants have made appropriate arrangements to ensure that the group will have a governing body which satisfies any requirements imposed by or under this Act and is otherwise appropriate, and
  - (g) such other matters as may be prescribed.

*Status: Point in time view as at 01/04/2013.*

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- (3) Regulations may make provision—
- (a) as to factors which the Board must or may take into account in deciding whether it is satisfied as to the matters mentioned in subsection (2);
  - (b) as to the procedure for the making and determination of applications under section 14B.

#### **14D Effect of grant of application** E+W

- (1) If the Board grants an application under section 14B—
  - (a) a clinical commissioning group is established, and
  - (b) the proposed constitution has effect as the clinical commissioning group's constitution.
- (2) Part 2 of Schedule 1A makes further provision about clinical commissioning groups.

#### *Variation of constitution*

#### **14E Applications for variation of constitution** E+W

- (1) A clinical commissioning group may apply to the Board to vary its constitution (including doing so by varying its area or its list of members).
- (2) If the Board grants the application, the constitution of the clinical commissioning group has effect subject to the variation.
- (3) Regulations may make provision—
  - (a) as to the circumstances in which the Board must or may grant, or must or may refuse, applications under this section;
  - (b) as to factors which the Board must or may take into account in determining whether to grant such applications;
  - (c) as to the procedure for the making and determination of such applications.

#### **14F Variation of constitution otherwise than on application** E+W

- (1) The Board may vary the area specified in the constitution of a clinical commissioning group.
- (2) The Board may—
  - (a) add any person who is a provider of primary medical services to the list of members specified in the constitution of a clinical commissioning group;
  - (b) remove any person from such a list.
- (3) The power conferred by subsection (1) or (2) is exercisable if—
  - (a) the clinical commissioning group consents to the variation, or
  - (b) the Board considers that the variation is necessary for the purpose of discharging any of its duties under section 14A.
- (4) Before varying the constitution of a clinical commissioning group under subsection (1) or (2), the Board must consult—
  - (a) that group, and

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- (b) any other clinical commissioning group that the Board thinks might be affected by the variation.
- (5) Regulations may—
- (a) confer powers on the Board to vary the constitution of a clinical commissioning group;
  - (b) make provision as to the circumstances in which those powers are exercisable and the procedure to be followed before they are exercised.

*Mergers, dissolution etc.*

#### **14G Mergers** E+W

- (1) Two or more clinical commissioning groups may apply to the Board for—
  - (a) those groups to be dissolved, and
  - (b) another clinical commissioning group to be established under this section.
- (2) An application under this section must be accompanied by—
  - (a) a copy of the proposed constitution of the clinical commissioning group,
  - (b) the name of the person whom the group wishes the Board to appoint as its accountable officer, and
  - (c) such other information as the Board may specify in a document published for the purposes of this section.
- (3) The applicants may, with the agreement of the Board, modify the application or the proposed constitution at any time before the Board determines the application.
- (4) Sections 14C and 14D(1) apply in relation to an application under this section as they apply in relation to an application under section 14B.

#### **14H Dissolution** E+W

- (1) A clinical commissioning group may apply to the Board for the group to be dissolved.
- (2) Regulations may make provision—
  - (a) as to the circumstances in which the Board must or may grant, or must or may refuse, applications under this section;
  - (b) as to factors which the Board must or may take into account in determining whether to grant such applications;
  - (c) as to the procedure for the making and determination of such applications.

*Supplemental provision about applications, variation, mergers etc.*

#### **14I Transfers in connection with variation, merger, dissolution etc.** E+W

- (1) The Board may make a property transfer scheme or a staff transfer scheme in connection with—
  - (a) the variation of the constitution of a clinical commissioning group under section 14E or 14F, or
  - (b) the dissolution of a clinical commissioning group under section 14G or 14H.



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- (2) A property transfer scheme is a scheme for the transfer from the clinical commissioning group of any property, rights or liabilities, other than rights or liabilities under or in connection with a contract of employment, to the Board or another clinical commissioning group.
- (3) A staff transfer scheme is a scheme for the transfer from the clinical commissioning group of any rights or liabilities under or in connection with a contract of employment to the Board or another clinical commissioning group.
- (4) Part 3 of Schedule 1A makes further provision about property transfer schemes and staff transfer schemes.

#### **14J Publication of constitution of clinical commissioning groups** E+W

- (1) A clinical commissioning group must publish its constitution.
- (2) If the constitution of a clinical commissioning group is varied under section 14E or 14F, the group must publish the constitution as so varied.

#### **14K Guidance about the establishment of clinical commissioning groups etc.** E+W

The Board may publish guidance as to—

- (a) the making of applications under section 14B for the establishment of a clinical commissioning group, including guidance on the form, content or publication of the proposed constitution;
- (b) the making of applications under section 14E, 14G or 14H;
- (c) the publication of the constitutions of clinical commissioning groups under section 14J.

#### *Governing bodies of clinical commissioning groups*

#### **14L Governing bodies of clinical commissioning groups** E+W

- (1) A clinical commissioning group must have a governing body.
- (2) The main function of the governing body is to ensure that the group has made appropriate arrangements for ensuring that it complies with—
  - (a) its obligations under section 14Q, and
  - (b) such generally accepted principles of good governance as are relevant to it.
- (3) The governing body also has—
  - (a) the function of determining the remuneration, fees and allowances payable to the employees of the clinical commissioning group or to other persons providing services to it,
  - (b) the function of determining the allowances payable under a pension scheme established under paragraph 11(4) of Schedule 1A, and
  - (c) such other functions connected with the exercise of its main function as may be specified in the group's constitution or by regulations.
- (4) Only the following may be members of the governing body—
  - (a) a member of the group who is an individual;

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- (b) an individual appointed by virtue of regulations under section 14N(2);
  - (c) an individual of a description specified in the constitution of the group.
- (5) Regulations may make provision requiring a clinical commissioning group to obtain the approval of its governing body before exercising any functions specified in the regulations.
- (6) Regulations may make provision requiring governing bodies of clinical commissioning groups to publish, in accordance with the regulations, prescribed information relating to determinations made under subsection (3)(a) or (b).
- (7) The Board may publish guidance for governing bodies on the exercise of their functions under subsection (3)(a) or (b).

#### **14M Audit and remuneration committees of governing bodies** E+W

- (1) The governing body of a clinical commissioning group must have an audit committee and a remuneration committee.
- (2) The audit committee has—
- (a) such functions in relation to the financial duties of the clinical commissioning group as the governing body considers appropriate for the purpose of assisting it in discharging its function under section 14L(2), and
  - (b) such other functions connected with the governing body's function under section 14L(2) as may be specified in the group's constitution or by regulations.
- (3) The remuneration committee has—
- (a) the function of making recommendations to the governing body as to the discharge of its functions under section 14L(3)(a) and (b), and
  - (b) such other functions connected with the governing body's function under section 14L(2) as may be specified in the group's constitution or by regulations.

#### **14N Regulations as to governing bodies of clinical commissioning groups** E+W

- (1) Regulations may make provision specifying the minimum number of members of governing bodies of clinical commissioning groups.
- (2) Regulations may—
- (a) provide that the members of governing bodies must include the accountable officer of the clinical commissioning group;
  - (b) provide that the members of governing bodies, or their audit or remuneration committees, must include—
    - (i) individuals who are health care professionals of a prescribed description;
    - (ii) individuals who are lay persons;
    - (iii) individuals of any other description which is prescribed;
  - (c) in relation to any description of individuals mentioned in regulations by virtue of paragraph (b), specify—
    - (i) the minimum number of individuals of that description who must be appointed;

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- (ii) the maximum number of such individuals who may be appointed;
  - (d) provide that the descriptions specified for the purposes of section 14L(4)(c) may not include prescribed descriptions.
- (3) Regulations may make provision as to—
- (a) qualification and disqualification for membership of governing bodies or their audit or remuneration committees;
  - (b) how members are to be appointed;
  - (c) the tenure of members (including the circumstances in which a member ceases to hold office or may be removed or suspended from office);
  - (d) eligibility for re-appointment.
- (4) Regulations may make provision for the appointment of chairs and deputy chairs of governing bodies or their audit or remuneration committees, including provision as to—
- (a) qualification and disqualification for appointment;
  - (b) tenure of office (including the circumstances in which the chair or deputy chair ceases to hold office or may be removed or suspended from office);
  - (c) eligibility for re-appointment.
- (5) Regulations may—
- (a) make provision as to the matters which must be included in the constitutions of clinical commissioning groups under paragraph 8 of Schedule 1A;
  - (b) make such other provision about the procedure of governing bodies or their audit or remuneration committees as the Secretary of State considers appropriate, including provision about the frequency of meetings.
- (6) In this section—
- “health care professional” means an individual who is a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002;
  - “lay person” means an individual who is not—
    - (a) a member of the clinical commissioning group,
    - (b) a health care professional, or
    - (c) an individual of a prescribed description.

### *Conflicts of interest*

## **140 Registers of interests and management of conflicts of interest** **E+W**

- (1) Each clinical commissioning group must maintain one or more registers of the interests of—
- (a) the members of the group,
  - (b) the members of its governing body,
  - (c) the members of its committees or sub-committees or of committees or sub-committees of its governing body, and
  - (d) its employees.

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- (2) Each clinical commissioning group must publish the registers maintained under subsection (1) or make arrangements to ensure that members of the public have access to the registers on request.
- (3) Each clinical commissioning group must make arrangements to ensure—
  - (a) that a person mentioned in subsection (1) declares any conflict or potential conflict of interest that the person has in relation to a decision to be made in the exercise of the commissioning functions of the group,
  - (b) that any such declaration is made as soon as practicable after the person becomes aware of the conflict or potential conflict and, in any event, within 28 days, and
  - (c) that any such declaration is included in the registers maintained under subsection (1).
- (4) Each clinical commissioning group must make arrangements for managing conflicts and potential conflicts of interest in such a way as to ensure that they do not, and do not appear to, affect the integrity of the group's decision-making processes.
- (5) The Board must publish guidance for clinical commissioning groups on the discharge of their functions under this section.
- (6) Each clinical commissioning group must have regard to guidance published under subsection (5).
- (7) For the purposes of this section, the commissioning functions of a clinical commissioning group are the functions of the group in arranging for the provision of services as part of the health service.

### *f<sup>3</sup>General duties of clinical commissioning groups*

#### **Textual Amendments**

- F3** Ss. 14P-14Z24 inserted (27.3.2012 for specified purposes, 1.10.2012 for specified purposes, 1.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 26, 306\(1\)\(d\)\(4\)](#); [S.I. 2012/1831](#), [art. 2\(2\)](#) (with [art. 6](#)); [S.I. 2012/2657](#), [art. 2\(4\)](#); [S.I. 2013/160](#), [art. 2\(2\)](#) (with [arts. 7-9](#))

## **14P Duty to promote NHS Constitution E+W**

- (1) Each clinical commissioning group must, in the exercise of its functions—
  - (a) act with a view to securing that health services are provided in a way which promotes the NHS Constitution, and
  - (b) promote awareness of the NHS Constitution among patients, staff and members of the public.
- (2) In this section, “patients” and “staff” have the same meaning as in Chapter 1 of Part 1 of the Health Act 2009 (see section 3(7) of that Act).

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**Modifications etc. (not altering text)**

- C1 S. 14P(1) modified (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 6 para. 11\(2\)\(a\)](#); S.I. 2012/1831, art. 2(2)

**14Q Duty as to effectiveness, efficiency etc. E+W**

Each clinical commissioning group must exercise its functions effectively, efficiently and economically.

**Modifications etc. (not altering text)**

- C2 S. 14Q modified (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 6 para. 11\(2\)\(b\)](#); S.I. 2012/1831, art. 2(2)

**14R Duty as to improvement in quality of services E+W**

- (1) Each clinical commissioning group must exercise its functions with a view to securing continuous improvement in the quality of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness.
- (2) In discharging its duty under subsection (1), a clinical commissioning group must, in particular, act with a view to securing continuous improvement in the outcomes that are achieved from the provision of the services.
- (3) The outcomes relevant for the purposes of subsection (2) include, in particular, outcomes which show—
  - (a) the effectiveness of the services,
  - (b) the safety of the services, and
  - (c) the quality of the experience undergone by patients.
- (4) In discharging its duty under subsection (1), a clinical commissioning group must have regard to any guidance published under section 14Z8.

**Modifications etc. (not altering text)**

- C3 S. 14R(1) modified (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 6 para. 11\(2\)\(c\)](#); S.I. 2012/1831, art. 2(2)

**14S Duty in relation to quality of primary medical services E+W**

Each clinical commissioning group must assist and support the Board in discharging its duty under section 13E so far as relating to securing continuous improvement in the quality of primary medical services.

**14T Duties as to reducing inequalities E+W**

Each clinical commissioning group must, in the exercise of its functions, have regard to the need to—

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- (a) reduce inequalities between patients with respect to their ability to access health services, and
- (b) reduce inequalities between patients with respect to the outcomes achieved for them by the provision of health services.

**Modifications etc. (not altering text)**

C4 S. 14T modified (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 6 para. 11\(2\)\(d\)](#); S.I. 2012/1831, art. 2(2)

**14U Duty to promote involvement of each patient** **E+W**

- (1) Each clinical commissioning group must, in the exercise of its functions, promote the involvement of patients, and their carers and representatives (if any), in decisions which relate to—
  - (a) the prevention or diagnosis of illness in the patients, or
  - (b) their care or treatment.
- (2) The Board must publish guidance for clinical commissioning groups on the discharge of their duties under this section.
- (3) A clinical commissioning group must have regard to any guidance published by the Board under subsection (2).

**Modifications etc. (not altering text)**

C5 S. 14U(1) modified (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 6 para. 11\(2\)\(e\)](#); S.I. 2012/1831, art. 2(2)

**14V Duty as to patient choice** **E+W**

Each clinical commissioning group must, in the exercise of its functions, act with a view to enabling patients to make choices with respect to aspects of health services provided to them.

**Modifications etc. (not altering text)**

C6 S. 14V modified (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 6 para. 11\(2\)\(f\)](#); S.I. 2012/1831, art. 2(2)

**14W Duty to obtain appropriate advice** **E+W**

- (1) Each clinical commissioning group must obtain advice appropriate for enabling it effectively to discharge its functions from persons who (taken together) have a broad range of professional expertise in—
  - (a) the prevention, diagnosis or treatment of illness, and
  - (b) the protection or improvement of public health.
- (2) The Board may publish guidance for clinical commissioning groups on the discharge of their duties under subsection (1).

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- (3) A clinical commissioning group must have regard to any guidance published by the Board under subsection (2).

**Modifications etc. (not altering text)**

C7 S. 14W(1) modified (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 6 para. 11\(2\)\(g\)](#); S.I. 2012/1831, art. 2(2)

**14X Duty to promote innovation** E+W

Each clinical commissioning group must, in the exercise of its functions, promote innovation in the provision of health services (including innovation in the arrangements made for their provision).

**14Y Duty in respect of research** E+W

Each clinical commissioning group must, in the exercise of its functions, promote—

- (a) research on matters relevant to the health service, and
- (b) the use in the health service of evidence obtained from research.

**Modifications etc. (not altering text)**

C8 S. 14Y modified (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 6 para. 11\(2\)\(i\)](#); S.I. 2012/1831, art. 2(2)

**14Z Duty as to promoting education and training** E+W

Each clinical commissioning group must, in exercising its functions, have regard to the need to promote education and training for the persons mentioned in section 1F(1) so as to assist the Secretary of State in the discharge of the duty under that section.

**14Z1 Duty as to promoting integration** E+W

- (1) Each clinical commissioning group must exercise its functions with a view to securing that health services are provided in an integrated way where it considers that this would—
  - (a) improve the quality of those services (including the outcomes that are achieved from their provision),
  - (b) reduce inequalities between persons with respect to their ability to access those services, or
  - (c) reduce inequalities between persons with respect to the outcomes achieved for them by the provision of those services.
- (2) Each clinical commissioning group must exercise its functions with a view to securing that the provision of health services is integrated with the provision of health-related services or social care services where it considers that this would—
  - (a) improve the quality of the health services (including the outcomes that are achieved from the provision of those services),



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- (b) reduce inequalities between persons with respect to their ability to access those services, or
  - (c) reduce inequalities between persons with respect to the outcomes achieved for them by the provision of those services.
- (3) In this section—
- “health-related services” means services that may have an effect on the health of individuals but are not health services or social care services;
  - “social care services” means services that are provided in pursuance of the social services functions of local authorities (within the meaning of the Local Authority Social Services Act 1970).

**Modifications etc. (not altering text)**

**C9** S. 14Z1(1)(2) modified (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 6 para. 11\(2\)\(j\)](#); [S.I. 2012/1831, art. 2\(2\)](#)

*Public involvement*

**14Z2 Public involvement and consultation by clinical commissioning groups** **E+W**

- (1) This section applies in relation to any health services which are, or are to be, provided pursuant to arrangements made by a clinical commissioning group in the exercise of its functions (“commissioning arrangements”).
- (2) The clinical commissioning group must make arrangements to secure that individuals to whom the services are being or may be provided are involved (whether by being consulted or provided with information or in other ways)—
  - (a) in the planning of the commissioning arrangements by the group,
  - (b) in the development and consideration of proposals by the group for changes in the commissioning arrangements where the implementation of the proposals would have an impact on the manner in which the services are delivered to the individuals or the range of health services available to them, and
  - (c) in decisions of the group affecting the operation of the commissioning arrangements where the implementation of the decisions would (if made) have such an impact.
- (3) The clinical commissioning group must include in its constitution—
  - (a) a description of the arrangements made by it under subsection (2), and
  - (b) a statement of the principles which it will follow in implementing those arrangements.
- (4) The Board may publish guidance for clinical commissioning groups on the discharge of their functions under this section.
- (5) A clinical commissioning group must have regard to any guidance published by the Board under subsection (4).
- (6) The reference in subsection (2)(b) to the delivery of services is a reference to their delivery at the point when they are received by users.

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### *Arrangements with others*

#### **14Z3 Arrangements by clinical commissioning groups in respect of the exercise of functions** E+W

- (1) Any two or more clinical commissioning groups may make arrangements under this section.
- (2) The arrangements may provide for—
  - (a) one of the clinical commissioning groups to exercise any of the commissioning functions of another on its behalf, or
  - (b) all the clinical commissioning groups to exercise any of their commissioning functions jointly.
- (3) For the purposes of the arrangements a clinical commissioning group may—
  - (a) make payments to another clinical commissioning group, or
  - (b) make the services of its employees or any other resources available to another clinical commissioning group.
- (4) For the purposes of the arrangements, all the clinical commissioning groups may establish and maintain a pooled fund.
- (5) A pooled fund is a fund—
  - (a) which is made up of contributions by all the groups, and
  - (b) out of which payments may be made towards expenditure incurred in the discharge of any of the commissioning functions in respect of which the arrangements are made.
- (6) Arrangements made under this section do not affect the liability of a clinical commissioning group for the exercise of any of its functions.
- (7) In this section, “commissioning functions” means the functions of clinical commissioning groups in arranging for the provision of services as part of the health service (including the function of making a request to the Board for the purposes of section 14Z9).

#### **Modifications etc. (not altering text)**

**C10** S. 14Z3(7) modified (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 6 para. 11\(2\)\(k\)](#); S.I. 2012/1831, art. 2(2)

#### **14Z4 Joint exercise of functions with Local Health Boards** E+W

- (1) Regulations may provide for any prescribed functions of a clinical commissioning group to be exercised jointly with a Local Health Board.
- (2) Regulations may provide for any functions that are (by virtue of subsection (1)) exercisable jointly by a clinical commissioning group and a Local Health Board to be exercised by a joint committee of the group and the Local Health Board.
- (3) Arrangements made by virtue of this section do not affect the liability of a clinical commissioning group for the exercise of any of its functions.

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**Modifications etc. (not altering text)**

- C11** S. 14Z4(1) modified (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 6 para. 11\(2\)\(l\)](#); [S.I. 2012/1831](#), art. 2(2)

*Additional powers of clinical commissioning groups*

**14Z5 Raising additional income** **E+W**

- (1) A clinical commissioning group has power to do anything specified in section 7(2)(a), (b) and (e) to (h) of the Health and Medicines Act 1988 (provision of goods etc.) for the purpose of making additional income available for improving the health service.
- (2) A clinical commissioning group may exercise a power conferred by subsection (1) only to the extent that its exercise does not to any significant extent interfere with the performance by the group of its functions.

**Modifications etc. (not altering text)**

- C12** S. 14Z5(2) modified (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 6 para. 11\(2\)\(m\)](#); [S.I. 2012/1831](#), art. 2(2)

**14Z6 Power to make grants** **E+W**

- (1) A clinical commissioning group may make payments by way of grant or loan to a voluntary organisation which provides or arranges for the provision of services which are similar to the services in respect of which the group has functions.
- (2) The payments may be made subject to such terms and conditions as the group considers appropriate.

*Board's functions in relation to clinical commissioning groups*

**14Z7 Responsibility for payments to providers** **E+W**

- (1) The Board may publish a document specifying—
  - (a) circumstances in which a clinical commissioning group is liable to make a payment to a person in respect of services provided by that person in pursuance of arrangements made by another clinical commissioning group in the discharge of its commissioning functions, and
  - (b) how the amount of any such payment is to be determined.
- (2) A clinical commissioning group is required to make payments in accordance with any document published under subsection (1).
- (3) Where a clinical commissioning group is required to make a payment by virtue of subsection (2), no other clinical commissioning group is liable to make it.
- (4) Accordingly, any obligation of another clinical commissioning group to make the payment ceases to have effect.

*Status: Point in time view as at 01/04/2013.*

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- (5) Any sums payable by virtue of subsection (2) may be recovered summarily as a civil debt (but this does not affect any other method of recovery).
- (6) The Board may publish guidance for clinical commissioning groups for the purpose of assisting them in understanding and applying any document published under subsection (1).
- (7) In this section and section 14Z8, “commissioning functions” means the functions of clinical commissioning groups in arranging for the provision of services as part of the health service.

**Modifications etc. (not altering text)**

C13 S. 14Z7(7) modified (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 6 para. 11\(2\)\(n\)](#); S.I. 2012/1831, art. 2(2)

**14Z8 Guidance on commissioning by the Board** E+W

- (1) The Board must publish guidance for clinical commissioning groups on the discharge of their commissioning functions.
- (2) Each clinical commissioning group must have regard to guidance under this section.
- (3) The Board must consult the Healthwatch England committee of the Care Quality Commission—
  - (a) before it first publishes guidance under this section, and
  - (b) before it publishes any revised guidance containing changes that are, in the opinion of the Board, significant.

**14Z9 Exercise of functions by the Board** E+W

- (1) The Board may, at the request of a clinical commissioning group, exercise on behalf of the group—
  - (a) any of its functions under section 3 or 3A which are specified in the request, and
  - (b) any other functions of the group which are related to the exercise of those functions.
- (2) Regulations may provide that the power in subsection (1) does not apply in relation to functions of a prescribed description.
- (3) Arrangements under this section may be on such terms and conditions (including terms as to payment) as may be agreed between the Board and the clinical commissioning group.
- (4) Arrangements made under this section do not affect the liability of a clinical commissioning group for the exercise of any of its functions.

**14Z10 Power of Board to provide assistance or support** E+W

- (1) The Board may provide assistance or support to a clinical commissioning group.
- (2) The assistance that may be provided includes—

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- (a) financial assistance, and
  - (b) making the services of the Board's employees or any other resources of the Board available to the clinical commissioning group.
- (3) Assistance or support provided under this section may be provided on such terms and conditions, including terms as to payment, as the Board considers appropriate.
- (4) The Board may, in particular, impose restrictions on the use of any financial or other assistance or support provided under this section.
- (5) A clinical commissioning group must comply with any restrictions imposed under subsection (4).

### *Commissioning plans and reports*

#### **14Z11 Commissioning plan** **E+W**

- (1) Before the start of each relevant period, a clinical commissioning group must prepare a plan setting out how it proposes to exercise its functions in that period.
- (2) In subsection (1), “relevant period”, in relation to a clinical commissioning group, means—
  - (a) the period which —
    - (i) begins on such day during the first financial year of the group as the Board may direct, and
    - (ii) ends at the end of that financial year, and
  - (b) each subsequent financial year.
- (3) The plan must, in particular, explain how the group proposes to discharge its duties under—
  - (a) sections 14R, 14T and 14Z2, and
  - (b) sections 223H to 223J.
- (4) The clinical commissioning group must publish the plan.
- (5) The clinical commissioning group must give a copy of the plan to the Board before the date specified by the Board in a direction.
- (6) The clinical commissioning group must give a copy of the plan to each relevant Health and Wellbeing Board.
- (7) The Board may publish guidance for clinical commissioning groups on the discharge of their functions by virtue of this section and sections 14Z12 and 14Z13.
- (8) A clinical commissioning group must have regard to any guidance published by the Board under subsection (7).
- (9) In this Chapter, “relevant Health and Wellbeing Board”, in relation to a clinical commissioning group, means a Health and Wellbeing Board established by a local authority whose area coincides with, or includes the whole or any part of, the area of the group.

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### 14Z12 Revision of commissioning plans **E+W**

- (1) A clinical commissioning group may revise a plan published by it under section 14Z11.
- (2) If the clinical commissioning group revises the plan in a way which it considers to be significant—
  - (a) the group must publish the revised plan, and
  - (b) subsections (5) and (6) of section 14Z11 apply in relation to the revised plan as they apply in relation to the original plan.
- (3) If the clinical commissioning group revises the plan in any other way, the group must—
  - (a) publish a document setting out the changes it has made to the plan, and
  - (b) give a copy of the document to the Board and each relevant Health and Wellbeing Board.

### 14Z13 Consultation about commissioning plans **E+W**

- (1) This section applies where a clinical commissioning group is—
  - (a) preparing a plan under section 14Z11, or
  - (b) revising a plan under section 14Z12 in a way which it considers to be significant.
- (2) The clinical commissioning group must consult individuals for whom it has responsibility for the purposes of section 3.
- (3) The clinical commissioning group must involve each relevant Health and Wellbeing Board in preparing or revising the plan.
- (4) The clinical commissioning group must, in particular—
  - (a) give each relevant Health and Wellbeing Board a draft of the plan or (as the case may be) the plan as revised, and
  - (b) consult each such Board on whether the draft takes proper account of each joint health and wellbeing strategy published by it which relates to the period (or any part of the period) to which the plan relates.
- (5) Where a Health and Wellbeing Board is consulted under subsection (4)(b), the Health and Wellbeing Board must give the clinical commissioning group its opinion on the matter mentioned in that subsection.
- (6) Where a Health and Wellbeing Board is consulted under subsection (4)(b)—
  - (a) it may also give the Board its opinion on the matter mentioned in that subsection, and
  - (b) if it does so, it must give the clinical commissioning group a copy of its opinion.
- (7) If a clinical commissioning group revises or further revises a draft after it has been given to each relevant Health and Wellbeing Board under subsection (4), subsections (4) to (6) apply in relation to the revised draft as they apply in relation to the original draft.
- (8) A clinical commissioning group must include in a plan published under section 14Z11(4) or 14Z12(2)—
  - (a) a summary of the views expressed by individuals consulted under subsection (2),

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- (b) an explanation of how the group took account of those views, and
  - (c) a statement of the final opinion of each relevant Health and Wellbeing Board consulted in relation to the plan under subsection (4).
- (9) In this section, “joint health and wellbeing strategy” means a strategy under section 116A of the Local Government and Public Involvement in Health Act 2007 which is prepared and published by a Health and Wellbeing Board by virtue of section 196 of the Health and Social Care Act 2012.

#### **14Z14 Opinion of Health and Wellbeing Boards on commissioning plans** **E+W**

- (1) A relevant Health and Wellbeing Board—
- (a) may give the Board its opinion on whether a plan published by a clinical commissioning group under section 14Z11(4) or 14Z12(2) takes proper account of each joint health and wellbeing strategy published by the Health and Wellbeing Board which relates to the period (or any part of the period) to which the plan relates, and
  - (b) if it does so, must give the clinical commissioning group a copy of its opinion.
- (2) In this section, “joint health and wellbeing strategy” has the same meaning as in section 14Z13.

#### **14Z15 Reports by clinical commissioning groups** **E+W**

- (1) In each financial year other than its first financial year, a clinical commissioning group must prepare a report (an “annual report”) on how it has discharged its functions in the previous financial year.
- (2) An annual report must, in particular—
- (a) explain how the clinical commissioning group has discharged its duties under sections 14R, 14T and 14Z2, and
  - (b) review the extent to which the group has contributed to the delivery of any joint health and wellbeing strategy to which it was required to have regard under section 116B(1)(b) of the Local Government and Public Involvement in Health Act 2007.
- (3) In preparing the review required by subsection (2)(b), the clinical commissioning group must consult each relevant Health and Wellbeing Board.
- (4) The Board may give directions to clinical commissioning groups as to the form and content of an annual report.
- (5) A clinical commissioning group must give a copy of its annual report to the Board before the date specified by the Board in a direction.
- (6) A clinical commissioning group must—
- (a) publish its annual report, and
  - (b) hold a meeting for the purpose of presenting the report to members of the public.



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### *Performance assessment of clinical commissioning groups*

#### **14Z16 Performance assessment of clinical commissioning groups** E+W

- (1) The Board must conduct a performance assessment of each clinical commissioning group in respect of each financial year.
- (2) A performance assessment is an assessment of how well the clinical commissioning group has discharged its functions during that year.
- (3) The assessment must, in particular, include an assessment of how well the group has discharged its duties under—
  - (a) sections 14R, 14T, 14W and 14Z2,
  - (b) sections 223H to 223J, and
  - (c) section 116B(1) of the Local Government and Public Involvement in Health Act 2007 (duty to have regard to assessments and strategies).
- (4) In conducting a performance assessment, the Board must consult each relevant Health and Wellbeing Board as to its views on the clinical commissioning group's contribution to the delivery of any joint health and wellbeing strategy to which the group was required to have regard under section 116B(1)(b) of that Act of 2007.
- (5) The Board must, in particular, have regard to—
  - (a) any document published by the Secretary of State for the purposes of this section, and
  - (b) any guidance published under section 14Z8.
- (6) The Board must publish a report in respect of each financial year containing a summary of the results of each performance assessment conducted by the Board in respect of that year.

*Powers to require information etc.*

#### **14Z17 Circumstances in which powers in sections 14Z18 and 14Z19 apply** E+W

- (1) Sections 14Z18 and 14Z19 apply where the Board has reason to believe—
  - (a) that the area of a clinical commissioning group is no longer appropriate, or
  - (b) that a clinical commissioning group might have failed, might be failing or might fail to discharge any of its functions.
- (2) For the purposes of this section—
  - (a) a failure to discharge a function includes a failure to discharge it properly, and
  - (b) a failure to discharge a function properly includes a failure to discharge it consistently with what the Board considers to be the interests of the health service.

#### **Modifications etc. (not altering text)**

**C14** S. 14Z17(1) modified (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 6 para. 11\(2\)\(o\)](#); S.I. 2012/1831, art. 2(2)

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#### **14Z18 Power to require documents and information etc.** **E+W**

- (1) Where this section applies, the Board may require a person mentioned in subsection (2) to provide to the Board any information, documents, records or other items that the Board considers it necessary or expedient to have for the purposes of any of its functions in relation to the clinical commissioning group.
- (2) The persons mentioned in this subsection are—
  - (a) the clinical commissioning group if it has possession or control of the item in question;
  - (b) any member or employee of the group who has possession or control of the item in question.
- (3) A person must comply with a requirement imposed under subsection (1).
- (4) The power conferred by subsection (1) includes power to require that any information, documents or records kept by means of a computer be provided in legible form.
- (5) The power conferred by subsection (1) does not include power to require the provision of personal records.
- (6) In subsection (5), “personal records” has the meaning given by section 12 of the Police and Criminal Evidence Act 1984.

#### **14Z19 Power to require explanation** **E+W**

- (1) Where this section applies, the Board may require the clinical commissioning group to provide it with an explanation of any matter which relates to the exercise by the group of any of its functions, including an explanation of how the group is proposing to exercise any of its functions.
- (2) The Board may require the explanation to be given—
  - (a) orally at such time and place as the Board may specify, or
  - (b) in writing.
- (3) The clinical commissioning group must comply with a requirement imposed under subsection (1).

##### **Modifications etc. (not altering text)**

**C15** S. 14Z19(1) modified (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 6 para. 11\(2\)\(o\)](#); [S.I. 2012/1831](#), art. 2(2)

#### **14Z20 Use of information** **E+W**

Any information, documents, records or other items that are obtained by the Board in pursuance of section 14Z18 or 14Z19 may be used by the Board in connection with any of its functions in relation to clinical commissioning groups.

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### *Intervention powers*

#### **14Z21 Power to give directions, dissolve clinical commissioning groups etc. E+W**

- (1) This section applies if the Board is satisfied that—
  - (a) a clinical commissioning group is failing or has failed to discharge any of its functions, or
  - (b) there is a significant risk that a clinical commissioning group will fail to do so.
- (2) The Board may direct the clinical commissioning group to discharge such of those functions, and in such manner and within such period or periods, as may be specified in the direction.
- (3) The Board may direct—
  - (a) the clinical commissioning group, or
  - (b) the accountable officer of the group,
 to cease to perform any functions for such period or periods as may be specified in the direction.
- (4) The Board may—
  - (a) terminate the appointment of the clinical commissioning group's accountable officer, and
  - (b) appoint another person to be its accountable officer.
- (5) Paragraph 12(4) of Schedule 1A does not apply to an appointment under subsection (4) (b).
- (6) The Board may vary the constitution of the clinical commissioning group, including doing so by—
  - (a) varying its area,
  - (b) adding any person who is a provider of primary medical services to the list of members, or
  - (c) removing any person from that list.
- (7) The Board may dissolve the clinical commissioning group.
- (8) Where a direction is given under subsection (3) the Board may—
  - (a) exercise any of the functions that are the subject of the direction on behalf of the clinical commissioning group or (as the case may be) the accountable officer;
  - (b) direct another clinical commissioning group or (as the case may be) the accountable officer of another clinical commissioning group to perform any of those functions on behalf of the group or (as the case may be) the accountable officer, in such manner and within such period or periods as may be specified in the directions.
- (9) A clinical commissioning group to which a direction is given under subsection (3) must—
  - (a) where the Board exercises a function of the group under subsection (8)(a), co-operate with the Board, and
  - (b) where a direction is given under subsection (8)(b) to another clinical commissioning group or to the accountable officer of another clinical

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commissioning group, co-operate with the other group or (as the case may be) the accountable officer.

- (10) Before exercising the power conferred by subsection (8)(b) the Board must consult the clinical commissioning group to which it is proposing to give the direction.
- (11) Where the Board exercises a power conferred by subsection (6) or (7), the Board may make a property transfer scheme or a staff transfer scheme.
- (12) In subsection (11), “property transfer scheme” and “staff transfer scheme” have the same meaning as in section 14I.
- (13) Part 3 of Schedule 1A applies in relation to a property transfer scheme or a staff transfer scheme under subsection (11) as it applies in relation to a property transfer scheme or (as the case may be) a staff transfer scheme under section 14I(1).
- (14) For the purposes of this section—
  - (a) a failure to discharge a function includes a failure to discharge it properly, and
  - (b) a failure to discharge a function properly includes a failure to discharge it consistently with what the Board considers to be the interests of the health service.

**Modifications etc. (not altering text)**

- C16** S. 14Z21(1) modified (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 6 para. 11\(2\)\(o\)](#); [S.I. 2012/1831, art. 2\(2\)](#)
- C17** S. 14Z21(3) modified (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 6 para. 11\(2\)\(o\)](#); [S.I. 2012/1831, art. 2\(2\)](#)

*Procedural requirements in connection with certain powers*

**14Z22 Procedural requirements in connection with certain powers** **E+W**

- (1) Before exercising the power to dissolve a clinical commissioning group under section 14Z21(7) the Board must consult the following persons—
  - (a) the clinical commissioning group,
  - (b) relevant local authorities, and
  - (c) any other persons the Board considers it appropriate to consult.
- (2) For that purpose, the Board must provide those persons with a statement—
  - (a) explaining that it is proposing to exercise the power, and
  - (b) giving its reasons for doing so.
- (3) After consulting those persons (and before exercising the power), the Board must publish a report containing its response to the consultation.
- (4) If the Board decides to exercise the power, the report must, in particular, explain its reasons for doing so.
- (5) Regulations may make provision as to the procedure to be followed by the Board before the exercise of the powers conferred by sections 14Z18, 14Z19 and 14Z21.

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- (6) The Board must publish guidance as to how it proposes to exercise the powers conferred by those sections.
- (7) For the purposes of subsection (1) a local authority is a relevant local authority if its area coincides with, or includes the whole or any part of, the area of the clinical commissioning group.

### *Disclosure of information*

#### **14Z23 Permitted disclosures of information** E+W

- (1) A clinical commissioning group may disclose information obtained by it in the exercise of its functions if—
  - (a) the information has previously been lawfully disclosed to the public,
  - (b) the disclosure is made under or pursuant to regulations under section 113 or 114 of the Health and Social Care (Community Health and Standards) Act 2003 (complaints about health care or social services),
  - (c) the disclosure is made in accordance with any enactment or court order,
  - (d) the disclosure is necessary or expedient for the purposes of protecting the welfare of any individual,
  - (e) the disclosure is made to any person in circumstances where it is necessary or expedient for the person to have the information for the purpose of exercising functions of that person under any enactment,
  - (f) the disclosure is made for the purpose of facilitating the exercise of any of the clinical commissioning group's functions,
  - (g) the disclosure is made in connection with the investigation of a criminal offence (whether or not in the United Kingdom), or
  - (h) the disclosure is made for the purpose of criminal proceedings (whether or not in the United Kingdom).
- (2) Paragraphs (a) to (c) and (h) of subsection (1) have effect notwithstanding any rule of common law which would otherwise prohibit or restrict the disclosure.

### *Interpretation*

#### **14Z24 Interpretation** E+W

- (1) In this Chapter—
  - “financial year”, in relation to a clinical commissioning group, includes the period which begins on the day the group is established and ends on the following 31 March;
  - “the health service” means the health service in England;
  - “health services” means services provided as part of the health service and, in section 14Z2, also includes services that are to be provided as part of the health service;
  - “relevant Health and Wellbeing Board”, in relation to a clinical commissioning group, has the meaning given by section 14Z11(9).
- (2) Any reference (however expressed) in the following provisions of this Act to the functions of a clinical commissioning group includes a reference to the functions of

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the Secretary of State that are exercisable by the group by virtue of arrangements under section 7A—

section 6E(7) and (10)(b),  
section 14C(2)(e),  
section 14P,  
section 14Q,  
section 14T,  
section 14U(1),  
section 14V,  
section 14W(1),  
section 14X,  
section 14Y,  
section 14Z,  
section 14Z1(1) and (2),  
section 14Z2(1),  
section 14Z4(1),  
section 14Z5(2),  
section 14Z6(1),  
section 14Z7(7),  
section 14Z11(1),  
section 14Z15(1),  
section 14Z16(2),  
sections 14Z17(1), 14Z19(1) and 14Z21(1) and (3),  
section 14Z23(1),  
section 72(1),  
section 75(1)(a) and (2),  
section 77(1)(b),  
section 82,  
section 89(1A)(d),  
section 94(3A)(d),  
section 223C(2)(b),  
section 223H(1),  
in Schedule 1A, paragraphs 3(1) and (3), 6, 12(9)(b) and 16(3).

(3) Any reference (however expressed) in the following provisions of other Acts to the functions of a clinical commissioning group includes a reference to the functions of the Secretary of State that are exercisable by the group by virtue of arrangements under section 7A—

sections 116 to 116B of the Local Government and Public Involvement in Health Act 2007 (joint strategic needs assessments etc.),  
section 199(4) of the Health and Social Care Act 2012 (supply of information to Health and Wellbeing Boards),  
section 291(2)(d) of that Act (breaches of duties to co-operate),  
in Schedule 6 to that Act, paragraph 8(4).

(4) The Secretary of State may by order amend the list of provisions specified in subsection (2) or (3).]]

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## <sup>F4</sup>CHAPTER 1 **E+W**

### STRATEGIC HEALTH AUTHORITIES

#### Textual Amendments

**F4** Pt. 2 Ch. 1 repealed (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 33(2)**, 306(4); S.I. 2013/160, art. 2(2) (with [arts. 7-9](#))

#### 13 Strategic Health Authorities **E+W**

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#### 14 Exercise of Strategic Health Authority functions **E+W**

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#### 15 Strategic Health Authorities' directions **E+W**

.....

#### 16 Section 92 arrangements and section 107 arrangements and LPS schemes **E+W**

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#### 17 Advice for Strategic Health Authorities **E+W**

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#### 17A Reports on consultation **E+W**

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## <sup>F5</sup>CHAPTER 2 **E+W**

### PRIMARY CARE TRUSTS

#### Textual Amendments

**F5** Pt. 2 Ch. 2 repealed (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 34(2)**, 306(4); S.I. 2013/160, art. 2(2) (with [arts. 7-9](#))

#### 18 Primary Care Trusts **E+W**

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- 19 **Exercise of Primary Care Trust functions** **E+W**  
.....
- 20 **Strategic Health Authority directions to Primary Care Trusts** **E+W**  
.....
- 21 **Provision of services etc** **E+W**  
.....
- 22 **Administration and management of services** **E+W**  
.....
- 23 **Advice for Primary Care Trusts** **E+W**  
.....
- 23A **Arrangements for improving quality of health care** **E+W**  
.....
- 24 **Plans for improving health etc** **E+W**  
.....
- 24A **Report on consultation** **E+W**  
.....

### CHAPTER 3 **E+W**

#### NHS TRUSTS

- 25 **NHS trusts** **E+W**
  - (1) The Secretary of State may by order establish bodies, called National Health Service trusts (“NHS trusts”), to provide goods and services for the purposes of the health service.
  - (2) An order under subsection (1) is referred to in this Act as “an NHS trust order”.
  - (3) No NHS trust order may be made until after the completion of such consultation as may be prescribed.
  - (4) Schedule 4 makes further provision about NHS trusts.
- 26 **General duty of NHS trusts** **E+W**

An NHS trust must exercise its functions effectively, efficiently and economically.

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## 27 Financial provisions relating to NHS trusts **E+W**

Schedule 5 makes provision about the financing of NHS trusts.

### CHAPTER 4 **E+W**

#### SPECIAL HEALTH AUTHORITIES

## 28 Special Health Authorities **E+W**

- (1) The Secretary of State may by order establish special bodies for the purpose of exercising any functions which may be conferred on them by or under this Act.
- (2) The Secretary of State may make such further provision relating to a body established under subsection (1) as he considers appropriate.
- (3) A body established under this section is called a Special Health Authority.
- (4) An order may, in particular, contain provisions as to—
  - (a) the membership of the body established by the order,
  - (b) the transfer to the body of officers, property and liabilities, and
  - (c) the name of the body.
- (5) The liabilities which may be transferred by virtue of this section, section 272(8) and section 273(1) to an NHS body on the abolition of a Special Health Authority include criminal liabilities.
- <sup>F6</sup>(6) .....
- (7) The Secretary of State must, before he makes an order under this section, consult with respect to the order such bodies as he may recognise as representing officers who in his opinion are likely to be transferred or affected by transfers in pursuance of the order.
- (8) Schedule 6 makes further provision about Special Health Authorities.

#### Textual Amendments

**F6** S. 28(6) omitted (1.10.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 4 para. 13](#); S.I. 2012/1831, art. 2(2)

## <sup>F7</sup>28A Special Health Authorities: further provision **E+W**

- (1) This section applies in relation to an order under section 28 which is made after the coming into force of section 48 of the Health and Social Care Act 2012.
- (2) The order must include—
  - (a) provision for the abolition of the Special Health Authority on a day specified in the order, and
  - (b) provision as to the transfer of officers, property and liabilities of the Authority on its abolition.
- (3) The day specified in accordance with subsection (2)(a) must be within the period of 3 years beginning with the day on which the Special Health Authority is established.

*Status: Point in time view as at 01/04/2013.*

*Changes to legislation: National Health Service Act 2006, Part 2 is up to date with all changes known to be in force on or before 10 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (4) The power (by virtue of section 273(1)) to vary an order under section 28 includes power to vary the provision mentioned in subsection (2) by—
- (a) providing for the abolition of the Special Health Authority on a day which is earlier or later than the day for the time being specified in the order;
  - (b) making different provision as to the matters mentioned in subsection (2)(b).
- (5) If an order is varied to provide for the abolition of the Special Health Authority on a later day, that day must be within the period of 3 years beginning with the day on which the Special Health Authority would (but for the variation) have been abolished.]

#### Textual Amendments

- F7** S. 28A inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 48\(1\)](#), [306\(1\)\(d\)\(4\)](#); [S.I. 2013/160](#), [art. 2\(2\)](#) (with [arts. 7-9](#))

## 29 Exercise of Special Health Authority functions **E+W**

- (1) Regulations may provide for any functions which are exercisable by a Special Health Authority under section 7 to be exercised—
- (a) by another Special Health Authority, or
  - (b) jointly with one or more other Special Health Authorities.
- (2) Regulations may provide—
- (a) for any functions which are exercisable by a Special Health Authority under section 7 <sup>F8</sup>... <sup>F9</sup>... or this section to be exercised on behalf of that Special Health Authority by a committee, sub-committee or officer of the Special Health Authority,
  - (b) for any functions exercisable jointly under subsection (1)(b) to be exercised, on behalf of the Special Health Authorities in question, by a joint committee or joint sub-committee.

#### Textual Amendments

- F8** Words in s. 29(2)(a) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), [s. 306\(4\)](#), [Sch. 4 para. 14\(a\)](#); [S.I. 2013/160](#), [art. 2\(2\)](#) (with [arts. 7-9](#))
- F9** Words in s. 29(2)(a) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), [s. 306\(4\)](#), [Sch. 4 para. 14\(b\)](#); [S.I. 2013/160](#), [art. 2\(2\)](#) (with [arts. 7-9](#))

*Status: Point in time view as at 01/04/2013.*

*Changes to legislation: National Health Service Act 2006, Part 2 is up to date with all changes known to be in force on or before 10 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## CHAPTER 5 **E+W**

### NHS FOUNDATION TRUSTS

#### *Introductory*

#### **30 NHS foundation trusts **E+W****

- (1) An NHS foundation trust is a public benefit corporation [<sup>F10</sup>the function of which is to provide in accordance with this Chapter] goods and services for the purposes of the health service in England.
- (2) A public benefit corporation is a body corporate which, in pursuance of an application under this Chapter, is constituted in accordance with Schedule 7.

#### **Textual Amendments**

- F10** Words in s. 30(1) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 159(1)**, 306(4); S.I. 2013/671, art. 2(3)

#### <sup>F11</sup>**31 Independent Regulator of NHS Foundation Trusts **E+W****

.....

#### **Textual Amendments**

- F11** S. 31 omitted (1.7.2012 for specified purposes, 1.11.2012 in so far as not already in force) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), **Sch. 13 para. 9(1)**; S.I. 2012/1319, art. 2(3); S.I. 2012/2657, art. 2(2)

#### <sup>F12</sup>**32 General duty of regulator **E+W****

.....

#### **Textual Amendments**

- F12** S. 32 omitted (1.11.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), **Sch. 13 para. 10(1)** (with **Sch. 13 para. 10(2)**); S.I. 2012/2657, art. 2(2) (with art. 12)

#### *Authorisation*

#### **33 Applications by NHS trusts **E+W****

- (1) An NHS trust may make an application to the regulator for authorisation to become an NHS foundation trust, if the application is supported by the Secretary of State.
- (2) The application must—
  - <sup>F13</sup>(a) .....

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- (b) be accompanied by a copy of the proposed constitution of the NHS foundation trust,  
and must give any further information which the regulator requires the applicant to give.
- (3) The applicant may modify the application with the agreement of the regulator at any time before authorisation is given under section 35.
- (4) Once an NHS trust has made the application—
  - (a) the provisions of the proposed constitution which give effect to paragraphs 3 to 19 of Schedule 7 have effect, but only for the purpose of establishing the initial membership of the NHS foundation trust and of the [<sup>F14</sup>council of governors], and the initial directors, and enabling the [<sup>F14</sup>council of governors] and board of directors to make preparations for the performance of their functions,
  - (b) the NHS trust may do anything (including the things mentioned in paragraph 14 of Schedule 4) which appears to it to be necessary or expedient for the purpose of preparing it for NHS foundation trust status.

**Textual Amendments**

- F13** S. 33(2)(a) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 159(2)**, 306(4); S.I. 2013/671, art. 2(3)
- F14** Words in s. 33(4)(a) substituted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 151(9)(a)**, 306(4); S.I. 2012/1831, art. 2(2)

**<sup>F15</sup>34 Other applications** **E+W**

.....

**Textual Amendments**

- F15** S. 34 omitted (1.7.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 160(1)**, 306(4) (with s. 160(4)(7)); S.I. 2012/1319, art. 2(3)

**35 Authorisation of NHS foundation trusts** **E+W**

- (1) The regulator may give an authorisation under this section—
  - (a) to an NHS trust which has applied under section 33, <sup>F16</sup>...
  - <sup>F16</sup>(b) .....if the regulator is satisfied as to the following matters.
- (2) The matters are that—
  - (a) the applicant's constitution will be in accordance with Schedule 7 and will otherwise be appropriate,
  - (b) the applicant has taken steps to secure that (taken as a whole) the actual membership of any public constituency, and (if there is one) of the patients' constituency, will be representative of those eligible for such membership,
  - (c) there will be a [<sup>F17</sup>council of governors], and a board of directors, constituted in accordance with the constitution,

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- (d) the steps necessary to prepare for NHS foundation trust status have been taken,
- [<sup>F18</sup>(e) the applicant will be able to provide goods and services for the purposes of the health service in England,]
- (f) any other requirements which the regulator considers appropriate are met.
- (3) In deciding whether it is satisfied as to the matters referred to in subsection (2)(e), the regulator must consider (among other things)—
- (a) any report or recommendation in respect of the applicant made by [<sup>F19</sup>the Care Quality Commission],
- (b) the financial position of the applicant.
- <sup>F20</sup>(4) . . . . .
- (5) The regulator must not give an authorisation unless it is satisfied that the applicant has sought the views about the application of the following—
- <sup>F21</sup>(a) . . . . .
- (b) individuals who live in any area specified in the proposed constitution as the area for a public constituency,
- (c) any local authority that would be authorised by the proposed constitution to appoint a member of the [<sup>F22</sup>council of governors],
- (d) if the proposed constitution provides for a patients' constituency, individuals who would be able to apply to become members of that constituency,
- (e) any prescribed persons.
- (6) If regulations make provision about consultation, the regulator may not give an authorisation unless it is satisfied that the applicant has complied with the regulations.
- <sup>F23</sup>(7) . . . . .

#### Textual Amendments

- F16** S. 35(1)(b) and word omitted (1.7.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 160(2), 306(4)** (with s. 160(5)); S.I. 2012/1319, art. 2(3)
- F17** Words in s. 35(2)(c) substituted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 151(9)(a), 306(4)**; S.I. 2012/1831, art. 2(2)
- F18** S. 35(2)(e) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 159(3), 306(4)**; S.I. 2013/671, art. 2(3)
- F19** Words in s. 35(3)(a) substituted (1.4.2009) by [Health and Social Care Act 2008 \(c. 14\)](#), s. 170(3)(4), **Sch. 5 para. 83**; S.I. 2009/462, art. 2(1), Sch. 1 para. 35(bb)
- F20** S. 35(4) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 159(5), 306(4)**; S.I. 2013/671, art. 2(3)
- F21** S. 35(5)(a) repealed (1.4.2008) by [Local Government and Public Involvement in Health Act 2007 \(c. 28\)](#), s. 245(5), **Sch. 18 Pt. 18**; S.I. 2008/461, art. 2(3), Sch.
- F22** Words in s. 35(5)(c) substituted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 151(9)(a), 306(4)**; S.I. 2012/1831, art. 2(2)
- F23** S. 35(7) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 159(5), 306(4)**; S.I. 2013/671, art. 2(3)

## 36 Effect of authorisation **E+W**

- (1) On an authorisation being given to a body corporate which is an NHS trust—
- (a) it ceases to be an NHS trust and becomes an NHS foundation trust,

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- (b) the proposed constitution has effect, and
- (c) any order under section 25(1) is revoked.

<sup>F24</sup>(2) . . . . .

- (3) The authorisation is conclusive evidence that the body in question is an NHS foundation trust.
- (4) Subsections (1) to (3) do not affect the continuity of the body or of its property or liabilities (including its criminal liabilities).
- (5) The validity of any act of an NHS foundation trust is not affected by any vacancy among the directors or by any defect in the appointment of any director.
- (6) An NHS foundation trust must not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and an NHS foundation trust's property must not be regarded as property of, or property held on behalf of, the Crown.

**Textual Amendments**

**F24** S. 36(2) omitted (1.7.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 160(3)**, 306(4) (with [s. 160\(6\)\(7\)](#)); [S.I. 2012/1319](#), **art. 2(3)**

**37 Amendments of constitution** **E+W**

<sup>F25</sup>(1) An NHS foundation trust may make amendments of its constitution [<sup>F26</sup>only if—  
(a) more than half of the members of the council of governors of the trust voting approve the amendments, and  
(b) more than half of the members of the board of directors of the trust voting approve the amendments.]

<sup>F27</sup>(2) Amendments made under this section take effect as soon as the conditions in subsection (1)(a) and (b) are satisfied.

- (3) But an amendment is of no effect in so far as the constitution would, as a result of the amendment, not accord with Schedule 7.
- (4) The trust must inform the regulator of amendments made under this section; but the regulator's functions do not include a power or duty to determine whether or not the constitution, as a result of the amendments, accords with Schedule 7.]

**Textual Amendments**

**F25** S. 37 renumbered as s. 37(1) (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 161(1)**, 306(4) (with [s. 161\(3\)](#)); [S.I. 2013/160](#), **art. 2(2)** (with [arts. 7-9](#))

**F26** Words in s. 37(1) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 161(1)**, 306(4) (with [s. 161\(3\)](#)); [S.I. 2013/160](#), **art. 2(2)** (with [arts. 7-9](#))

**F27** S. 37(2)-(4) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 161(2)**, 306(4) (with [s. 161\(3\)](#)); [S.I. 2013/160](#), **art. 2(2)** (with [arts. 7-9](#))



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## <sup>F28</sup> 38 Variation of authorisation **E+W**

.....

### Textual Amendments

**F28** S. 38 omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 159(6)**, 306(4); [S.I. 2013/671](#), art. 2(3)

## 39 Register of NHS foundation trusts **E+W**

- (1) The regulator must continue to maintain a register of NHS foundation trusts.
- (2) The register must contain in relation to each NHS foundation trust—
  - (a) a copy of the current constitution,
  - <sup>F29</sup>(b) .....
  - (c) a copy of the latest annual accounts and of any report of the auditor on them,
  - (d) a copy of the latest annual report,
  - <sup>F30</sup>(e) .....
  - <sup>F31</sup>(f) .....
  - <sup>F32</sup>(g) a copy of any order made under section 65D, 65J, 65KC, 65L or 65LA,
  - (h) a copy of any report laid under section 65D,
  - (i) a copy of any information published under section 65D,
  - (j) a copy of any draft report published under section 65F,
  - (k) a copy of any statement provided under section 65F,
  - (l) a copy of any notice published under section 65F, 65G, 65H, 65J, 65KA, 65KB, 65KC or 65KD,
  - (m) a copy of any statement published or provided under section 65G,
  - (n) a copy of any final report published under section 65I,
  - (o) a copy of any statement published under section 65J or 65KC,
  - (p) a copy of any information published under section 65M.]
- (3) In relation to any time before an NHS foundation trust is first required to send an annual report to the regulator, the register must contain a list of the persons who were first elected or appointed as—
  - (a) the members of the [<sup>F33</sup>council of governors],
  - (b) the directors.
- (4) Members of the public may inspect the register at any reasonable time.
- (5) Any person who requests it must be provided with a copy of, or extract from, any document contained in the register on payment of a reasonable charge.

### Textual Amendments

**F29** S. 39(2)(b) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 159(7)**, 306(4); [S.I. 2013/671](#), art. 2(3)

**F30** S. 39(2)(e) omitted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 156(5)**, 306(1)(d)(4); [S.I. 2013/671](#), art. 2(3)

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- F31** S. 39(2)(f) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 111(11)(a)**, 306(4); S.I. 2013/671, art. 2(3)
- F32** S. 39(2)(g)-(p) inserted (1.11.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 178(5)**, 306(4); S.I. 2012/2657, art. 2(2)
- F33** Words in s. 39(3)(a) substituted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 151(9)(a)**, 306(4); S.I. 2012/1831, art. 2(2)

[<sup>F34</sup>**39A Panel for advising governors** **E+W**

- (1) The regulator may appoint a panel of persons to which a governor of an NHS foundation trust may refer a question as to whether the trust has failed or is failing—
  - (a) to act in accordance with its constitution, or
  - (b) to act in accordance with provision made by or under this Chapter.
- (2) A governor may refer a question to the panel only if more than half of the members of the council of governors voting approve the referral.
- (3) The panel—
  - (a) may regulate its own procedure, and
  - (b) may establish such procedures, and make such other arrangements, as it considers appropriate for the purpose of determining questions referred to it under this section.
- (4) The panel may decide whether, or to what extent, to carry out an investigation on a question referred to it under this section.
- (5) The panel may for that purpose, or for the purpose of carrying out such an investigation, request information or advice.
- (6) Where the panel has carried out such an investigation, it must publish a report of its determination of the question referred to it.
- (7) If a person refuses to comply with a request made under subsection (5), the report under subsection (6) may refer to the refusal.
- (8) On any proceedings before a court or tribunal relating to a question referred to the panel under this section, the court may take the panel's report of its determination of the question into account.
- (9) The regulator—
  - (a) must pay expenses properly incurred by the panel, and
  - (b) must make administrative support available to the panel.
- (10) Regulations may make provision as to—
  - (a) eligibility for membership of the panel;
  - (b) the number of persons that may be appointed as members;
  - (c) the terms of appointment of members;
  - (d) circumstances in which a person ceases to be a member or may be suspended.]

**Textual Amendments**

- F34** S. 39A inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 162**, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

*Status: Point in time view as at 01/04/2013.*

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### Financial matters

#### 40 Power of Secretary of State to give financial assistance **E+W**

- (1) The Secretary of State may give financial assistance to any NHS foundation trust.
- (2) The financial assistance may be given by way of loan, public dividend capital, grant or other payment.
- (3) The Secretary of State may guarantee the payment of any amount payable by an NHS foundation trust under an externally financed development agreement.
- (4) “Externally financed development agreement” has the same meaning as in paragraph 23 of Schedule 4, reading references in sub-paragraphs (3) and (5) of that paragraph to the NHS trust as references to the NHS foundation trust.
- [<sup>F35</sup>(5) As soon as is practicable after the end of each financial year, the Secretary of State must prepare a report on the exercise of the power under subsection (1).
- (6) In relation to each exercise of the power under that subsection during the year to which the report relates, the report must specify the amount of the loan, issue of public dividend capital, grant or other payment and—
  - (a) in the case of a loan, the amount (if any) outstanding at the end of the year and the other terms on which the loan was made,
  - (b) in the case of an issue of public dividend capital, the terms on which it was issued (or, where a decision under section 42(3) is made in relation to it during that year, the terms so decided as those on which it is treated as having been issued), and
  - (c) in the case of a grant or other payment, the terms on which it was made.
- (7) In relation to each loan made under that subsection during a previous financial year but not repaid by the beginning of the year to which the report relates, the report must specify—
  - (a) the amount outstanding at the beginning of the year,
  - (b) the amount (if any) outstanding at the end of the year, and
  - (c) the other terms on which the loan was made.
- (8) A report under subsection (5) must, in relation to each NHS foundation trust, specify—
  - (a) the amount of the public dividend capital of that trust at the end of the year to which the report relates, and
  - (b) the conditions on which it is held.
- (9) The Secretary of State must publish a report under subsection (5).]

#### Textual Amendments

**F35** S. 40(5)-(9) inserted (1.4.2013 for specified purposes) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 163(1), 306(4)**; [S.I. 2013/160](#), art. 2(2) (with arts. 7-9)

#### <sup>F36</sup>41 Prudential borrowing code **E+W**

.....

*Status: Point in time view as at 01/04/2013.*

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### Textual Amendments

**F36** S. 41 omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 163(2)**, 306(4); S.I. 2013/671, art. 2(3)

## 42 Public dividend capital **E+W**

- (1) Where an NHS trust becomes an NHS foundation trust, the amount which was the public dividend capital of the NHS trust immediately before the giving of the authorisation continues as public dividend capital of the NHS foundation trust held on the same conditions (“initial public dividend capital”), but subject to this section.
- (2) Any amount issued to an NHS foundation trust as public dividend capital under section 40 is (like initial public dividend capital) an asset of the Consolidated Fund.
- (3) The Secretary of State may, with the consent of the Treasury, decide the terms on which any public dividend capital of an NHS foundation trust must be treated as having been issued.

<sup>F37</sup>(4) .....

<sup>F38</sup>(5) .....

- (6) Any amount paid to the Secretary of State by an NHS foundation trust by way of repayment of public dividend capital must be paid into the Consolidated Fund.

[<sup>F39</sup>(7) The terms which may be decided under subsection (3) include terms to which the exercise of any power of an NHS foundation trust to do any of the following will be subject as a consequence—

- (a) providing goods or services,
- (b) borrowing or investing money,
- (c) providing financial assistance,
- (d) acquiring or disposing of property,
- (e) entering into contracts, or making other arrangements, to do anything referred to in paragraphs (a) to (d),
- (f) applying for dissolution (whether or not when also applying for the establishment of one or more other trusts),
- (g) applying to acquire another body.]

### Textual Amendments

**F37** S. 42(4) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 163(3)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

**F38** S. 42(5) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 163(4)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

**F39** S. 42(7) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 163(5)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

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#### [<sup>F40</sup>42A Criteria for making loans etc. **E+W**

- (1) The Secretary of State must publish guidance on the powers conferred by sections 40 and 42.
- (2) The guidance on the power to make a loan under section 40(1) must in particular—
  - (a) explain that, in exercising the power, the Secretary of State will apply the principle that a loan should be made only where there is a reasonable expectation that it will be repaid in accordance with the terms on which it is made;
  - (b) include other criteria that the Secretary of State will apply when determining whether to exercise the power and, if so, the terms on which to make the loan.
- (3) The guidance on that power must also explain—
  - (a) the process for applying for a loan under section 40(1);
  - (b) the consequences of failing to comply with terms on which a loan is made under that provision.
- (4) The guidance on the power to decide terms under section 42(3) must, in particular, include the criteria that the Secretary of State will apply when deciding the terms.
- (5) The guidance on that power must also explain the consequences of failing to comply with the terms decided.
- (6) In preparing guidance under this section, the Secretary of State must have regard (among other things) to any generally accepted principles used by financial institutions to determine whether to make loans to bodies corporate and the terms on which to make loans to them.
- (7) Before publishing the guidance, the Secretary of State must consult—
  - (a) the Treasury,
  - (b) the regulator, and
  - (c) such other persons as the Secretary of State considers appropriate.]

#### Textual Amendments

**F40** S. 42A inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 163(6), 306(4)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

#### Functions

#### 43 [<sup>F41</sup>Provision of goods and services] **E+W**

- [<sup>F42</sup>(1) The principal purpose of an NHS foundation trust is the provision of goods and services for the purposes of the health service in England.]
- [<sup>F42</sup>(2) An NHS foundation trust may provide goods and services for any purposes related to—
  - (a) the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and
  - (b) the promotion and protection of public health.]

*Status: Point in time view as at 01/04/2013.*

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- [<sup>F42</sup>(2A) An NHS foundation trust does not fulfil its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.]
- (3) [<sup>F43</sup>An] NHS foundation trust may also carry on activities other than those mentioned in [<sup>F44</sup>subsection (2)]<sup>F45</sup>... for the purpose of making additional income available in order better to carry on its principal purpose.
- [<sup>F46</sup>(3A) Each annual report prepared by an NHS foundation trust must give information on the impact that income received by the trust otherwise than from the provision of goods and services for the purposes of the health service in England has had on the provision by the trust of goods and services for those purposes.
- (3B) Each document prepared by an NHS foundation trust under paragraph 27 of Schedule 7 (forward plan) must include information about—
- (a) the activities other than the provision of goods and services for the purposes of the health service in England that the trust proposes to carry on, and
  - (b) the income it expects to receive from doing so.
- (3C) Where a document which is being prepared under paragraph 27 of Schedule 7 contains a proposal that an NHS foundation trust carry on an activity of a kind mentioned in subsection (3B)(a), the council of governors of the trust must—
- (a) determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the trust of its principal purpose or the performance of its other functions, and
  - (b) notify the directors of the trust of its determination.
- (3D) An NHS foundation trust which proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England may implement the proposal only if more than half of the members of the council of governors of the trust voting approve its implementation.]

<sup>F47</sup>(4) .....

<sup>F47</sup>(5) .....

<sup>F47</sup>(6) .....

<sup>F47</sup>(7) .....

#### Textual Amendments

- F41** S. 43 title substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 164(5)**, 306(4); S.I. 2013/671, art. 2(3)
- F42** S. 43(1)-(2A) substituted for s. 43(1)(2) (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 164(1)**, 306(4); S.I. 2012/1831, art. 2(2)
- F43** Word in s. 43(3) substituted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 164(2)(a)**, 306(4); S.I. 2012/1831, art. 2(2)
- F44** Words in s. 43(3) substituted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 164(2)(b)**, 306(4); S.I. 2012/1831, art. 2(2)
- F45** Words in s. 43(3) omitted (1.10.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 164(2)(c)**, 306(4); S.I. 2012/1831, art. 2(2)

*Status: Point in time view as at 01/04/2013.*

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- F46** S. 43(3A)-(3D) inserted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 164(3)**, 306(4); S.I. 2012/1831, art. 2(2)
- F47** S. 43(4)-(7) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 164(4)**, 306(4); S.I. 2013/671, art. 2(3)

**44** [<sup>F48</sup>**Power to charge for accommodation etc.**] **E+W**

- <sup>F49</sup>(1) .....
- <sup>F50</sup>(2) .....
- <sup>F51</sup>(2A) .....
- <sup>F52</sup>(3) .....
- <sup>F52</sup>(4) .....
- <sup>F52</sup>(5) .....

- (6) According to the nature of its functions, an NHS foundation trust may, in the case of patients being provided with goods and services for the purposes of the health service, make accommodation or further services available for patients who give undertakings (or for whom undertakings are given) to pay any charges imposed by the NHS foundation trust in respect of the accommodation or services.
- (7) An NHS foundation trust may exercise the power conferred by subsection (6) only to the extent that its exercise does not to any significant extent interfere with the performance by the NHS foundation trust of its functions.

**Textual Amendments**

- F48** S. 44 title substituted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 165(2)**, 306(4); S.I. 2012/1831, art. 2(2)
- F49** S. 44(1) omitted (1.10.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 165(1)(a)**, 306(4); S.I. 2012/1831, art. 2(2)
- F50** S. 44(2) omitted (1.10.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 165(1)(b)**, 306(4); S.I. 2012/1831, art. 2(2)
- F51** S. 44(2A) omitted (1.10.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 165(1)(c)**, 306(4); S.I. 2012/1831, art. 2(2)
- F52** S. 44(3)-(5) omitted (1.10.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 165(1)(d)**, 306(4); S.I. 2012/1831, art. 2(2)

<sup>F53</sup>**45** **Protection of property** **E+W**

.....

**Textual Amendments**

- F53** S. 45 omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 163(7)**, 306(4); S.I. 2013/671, art. 2(3)



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## 46 Financial powers **E+W**

- (1) An NHS foundation trust may borrow money for the purposes of or in connection with its functions.
- <sup>F54</sup>(2) .....
- <sup>F54</sup>(3) .....
- (4) An NHS foundation trust may invest money (other than money held by it as trustee) for the purposes of or in connection with its functions.
- (5) The investment may include investment by—
  - (a) forming, or participating in forming, bodies corporate,
  - (b) otherwise acquiring membership of bodies corporate.
- (6) An NHS foundation trust may give financial assistance (whether by way of loan, guarantee or otherwise) to any person for the purposes of or in connection with its functions.

### Textual Amendments

**F54** S. 46(2)(3) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), ss. **163(8)**, 306(4); S.I. 2013/671, art. 2(3)

## 47 General powers **E+W**

- (1) An NHS foundation trust may do anything which appears to it to be necessary or expedient for the purpose of or in connection with its functions.
- (2) In particular it may—
  - (a) acquire and dispose of property,
  - (b) enter into contracts,
  - (c) accept gifts of property (including property to be held on trust for the purposes of the NHS foundation trust or for any purposes relating to the health service),
  - (d) employ staff.
- (3) Any power of the NHS foundation trust to pay remuneration and allowances to any person includes power to make arrangements for providing, or securing the provision of, pensions or gratuities (including those payable by way of compensation for loss of employment or loss or reduction of pay).
- (4) “The purposes of the NHS foundation trust” means the general or any specific purposes of the trust (including the purposes of any specific hospital at or from which services are provided by the trust).

## <sup>F55</sup>48 Information **E+W**

- (1) The Secretary of State may require an NHS foundation trust to provide the Secretary of State with such information as the Secretary of State considers it necessary to have for the purposes of the functions of the Secretary of State in relation to the health service.
- (2) The information must be provided in such form, and at such time or within such period, as the Secretary of State may require.]

*Status: Point in time view as at 01/04/2013.*

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#### Textual Amendments

**F55** S. 48 substituted (1.11.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 166**, 306(4); S.I. 2012/2657, art. 2(2) (with art. 10)

### <sup>F56</sup> 49 Entry and inspection of premises **E+W**

.....

#### Textual Amendments

**F56** S. 49 omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 159(8)**, 306(4); S.I. 2013/671, art. 2(3)

### [<sup>F57</sup> 50 Fees **E+W**

An NHS foundation trust must pay to the regulator such fee as the regulator may determine in respect of its exercise of functions under—

- (a) section 39;
- (b) section 39A.]

#### Textual Amendments

**F57** S. 50 substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 163(9)**, 306(4); S.I. 2013/671, art. 2(3)

### 51 Trust funds and trustees **E+W**

- (1) The Secretary of State may by order provide for the appointment of trustees for an NHS foundation trust to hold property on trust—
  - (a) for the purposes of the NHS foundation trust, or
  - (b) for any purposes relating to the health service.
- (2) The order may—
  - (a) make provision as to the persons by whom trustees must be appointed and generally as to the method of their appointment,
  - (b) make any appointment subject to such conditions as may be specified in the order (including conditions requiring the consent of the Secretary of State),
  - (c) make provision as to the number of trustees to be appointed, including provision under which that number may from time to time be determined by the Secretary of State after consultation with such persons as he considers appropriate,
  - (d) make provision with respect to the term of office of any trustee and his removal from office.
- (3) Where trustees have been appointed for an NHS foundation trust under this section, the Secretary of State may by order provide for the transfer of any trust property from the NHS foundation trust to the trustees.

*Status: Point in time view as at 01/04/2013.*

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- (4) Where an NHS trust for which trustees have been appointed under paragraph 10 of Schedule 4 is given an authorisation, the order appointing the trustees has effect as an order under this section.
- (5) “The purposes of the NHS foundation trust” means the general or any specific purposes of the trust (including the purposes of any specific hospital at or from which services are provided by the trust).

[<sup>F58</sup>**51A Significant transactions** **E+W**]

- (1) An NHS foundation trust may enter into a significant transaction only if more than half of the members of the council of governors of the trust voting approve entering into the transaction.
- (2) “Significant transaction” means a transaction or arrangement of such description as may be specified in the trust's constitution.
- (3) If an NHS foundation trust does not wish to specify any descriptions of transaction or arrangement for the purposes of subsection (2), the constitution of the trust must specify that it contains no such descriptions.]

**Textual Amendments**

**F58** S. 51A inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), ss. 167, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

*Failure*

[<sup>F59</sup>**52 Failing NHS foundation trusts** **E+W**]

**Textual Amendments**

**F59** S. 52 omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), ss. 111(11), 306(4); S.I. 2013/671, art. 2(3)

[<sup>F60</sup>**52A Application of sections 52B to 52E** **E+W**]

**Textual Amendments**

**F60** Ss. 52A, 52B, 52D, 52E: the insertion of these provisions by [2009 c. 21, s. 15\(1\)](#) falls by virtue of the omission of that amending provision (1.11.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), ss. 173(5), 306(4); S.I. 2012/2657, art. 2(2)

*Status: Point in time view as at 01/04/2013.*

*Changes to legislation: National Health Service Act 2006, Part 2 is up to date with all changes known to be in force on or before 10 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**F61 52B De-authorisation: regulator's notice** **E+W**

.....

**Textual Amendments**  
**F61** Ss. 52A, 52B, 52D, 52E: the insertion of these provisions by 2009 c. 21, s. 15(1) falls by virtue of the omission of that amending provision (1.11.2012) by virtue of Health and Social Care Act 2012 (c. 7), ss. 173(5), 306(4); S.I. 2012/2657, art. 2(2)

**F62 52C Grounds for de-authorisation notice** **E+W**

.....

**Textual Amendments**  
**F62** S. 52C omitted (1.11.2012) by virtue of Health and Social Care Act 2012 (c. 7), ss. 173(1), 306(4); S.I. 2012/2657, art. 2(2)

**F63 52D De-authorisation** **E+W**

.....

**Textual Amendments**  
**F63** Ss. 52A, 52B, 52D, 52E: the insertion of these provisions by 2009 c. 21, s. 15(1) falls by virtue of the omission of that amending provision (1.11.2012) by virtue of Health and Social Care Act 2012 (c. 7), ss. 173(5), 306(4); S.I. 2012/2657, art. 2(2)

**F64 52E Secretary of State's request** **E+W**

.....

**Textual Amendments**  
**F64** Ss. 52A, 52B, 52D, 52E: the insertion of these provisions by 2009 c. 21, s. 15(1) falls by virtue of the omission of that amending provision (1.11.2012) by virtue of Health and Social Care Act 2012 (c. 7), ss. 173(5), 306(4); S.I. 2012/2657, art. 2(2)

**F65 53 Voluntary arrangements** **E+W**

.....

**Textual Amendments**  
**F65** Ss. 53-55 omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), ss. 173(2), 306(4); S.I. 2013/671, art. 2(3)

*Status: Point in time view as at 01/04/2013.*

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**F65 54 Dissolution etc** **E+W**

.....

**Textual Amendments**

**F65** Ss. 53-55 omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 173(2)**, 306(4); S.I. 2013/671, art. 2(3)

**F65 55 Sections 53 and 54: supplementary** **E+W**

.....

**Textual Amendments**

**F65** Ss. 53-55 omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 173(2)**, 306(4); S.I. 2013/671, art. 2(3)

*[<sup>F66</sup>Mergers, acquisitions and separations]*

**Textual Amendments**

**F66** S. 56 cross-heading substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 172(9)**, 306(4); S.I. 2013/671, art. 2(3)

**56 Mergers** **E+W**

- (1) An application may be made jointly by—
- (a) an NHS foundation trust, and
  - (b) another NHS foundation trust or an NHS trust [<sup>F67</sup>established under section 25],
- to the regulator for [<sup>F68</sup>the dissolution of the trusts and the establishment of a new NHS foundation trust.]

[<sup>F69</sup>(1A) An application under this section may be made only with the approval of more than half of the members of the council of governors of each applicant (that is an NHS foundation trust).]

- (2) The application must—
- (a) be supported by the Secretary of State if one of the parties to it is an NHS trust,
  - (b) specify the property and liabilities proposed to be transferred to the new NHS foundation trust,
  - (c) <sup>F70</sup>...and
  - (d) be accompanied by a copy of the proposed constitution of the new trust,

<sup>F71</sup>...

<sup>F72</sup>(3) .....

*Status: Point in time view as at 01/04/2013.*

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- [<sup>F73</sup>(4) The regulator must grant the application if it is satisfied that such steps as are necessary to prepare for the dissolution of the trusts and the establishment of the proposed new trust have been taken.]
- <sup>F74</sup>(5) .....
- <sup>F74</sup>(6) .....
- <sup>F74</sup>(7) .....
- <sup>F74</sup>(8) .....
- <sup>F74</sup>(9) .....
- <sup>F74</sup>(10) .....
- (11) [<sup>F75</sup>On the grant of the application], the proposed constitution of the NHS foundation trust has effect, but the directors of the applicants may exercise the functions of the trust on its behalf until a board of directors is appointed in accordance with the constitution.

#### Textual Amendments

- F67** Words in s. 56(1)(b) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), ss. 168(1)(a), 306(4); S.I. 2013/671, art. 2(3)
- F68** Words in s. 56(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), ss. 168(1)(b), 306(4); S.I. 2013/671, art. 2(3)
- F69** S. 56(1A) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), ss. 168(2), 306(4); S.I. 2013/671, art. 2(3)
- F70** S. 56(2)(c) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), ss. 168(3)(a), 306(4); S.I. 2013/671, art. 2(3)
- F71** Words in s. 56(2) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), ss. 168(3)(b), 306(4); S.I. 2013/671, art. 2(3)
- F72** S. 56(3) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), ss. 168(4), 306(4); S.I. 2013/671, art. 2(3)
- F73** S. 56(4) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), ss. 168(5), 306(4); S.I. 2013/671, art. 2(3)
- F74** S. 56(5)-(10) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), ss. 168(6), 306(4); S.I. 2013/671, art. 2(3)
- F75** Words in s. 56(11) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), ss. 168(7), 306(4); S.I. 2013/671, art. 2(3)

#### [<sup>F76</sup>56A Acquisitions **E+W**

- (1) An application may be made jointly by—
- (a) an NHS foundation trust (A), and
  - (b) another NHS foundation trust or an NHS trust established under section 25 (B),
- to the regulator for the acquisition by A of B.
- (2) An application under this section may be made only with the approval of more than half of the members of the council of governors of each applicant (that is an NHS foundation trust).

*Status: Point in time view as at 01/04/2013.*

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- (3) The application must—
  - (a) be supported by the Secretary of State if B is an NHS trust, and
  - (b) be accompanied by a copy of the proposed constitution of A, amended on the assumption that A acquires B.
- (4) The regulator must grant the application if it is satisfied that such steps as are necessary to prepare for the acquisition have been taken.
- (5) On the grant of the application, the proposed constitution has effect, but where a person who is specified as a director of A in the constitution has yet to be appointed as such, the directors of A may exercise that person's functions under the constitution.]

#### Textual Amendments

**F76** S. 56A inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), ss. 169, 306(4); S.I. 2013/671, art. 2(3)

#### [<sup>F77</sup>56B Separations **E+W**

- (1) An application may be made to the regulator by an NHS foundation trust for the dissolution of the trust and the establishment of two or more new NHS foundation trusts.
- (2) An application under this section may be made only with the approval of more than half of the members of the council of governors of the applicant.
- (3) The application must, by reference to each of the proposed new trusts—
  - (a) specify the property and liabilities proposed to be transferred to it;
  - (b) be accompanied by a copy of its proposed constitution.
- (4) The regulator must grant the application if it is satisfied that such steps as are necessary to prepare for the dissolution of the trust and the establishment of each of the proposed new trusts have been taken.
- (5) On the grant of the application, the proposed constitution of each of the new trusts has effect but, in the case of each of the new trusts, the proposed directors may exercise the functions of the trust on its behalf until a board of directors is appointed in accordance with the constitution.]

#### Textual Amendments

**F77** S. 56B inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), ss. 170, 306(4); S.I. 2013/671, art. 2(3)

#### 57 [<sup>F78</sup>Sections 56 to 56B: supplementary] **E+W**

- (1) Where [<sup>F79</sup>an application is granted under section 56 or 56B], the regulator must specify the property and liabilities to be transferred to the new NHS foundation trust [<sup>F80</sup>or trusts].
- (2) Where [<sup>F81</sup>such an application is granted, the regulator] must make an order—
  - (a) dissolving the [<sup>F82</sup>trust or] trusts in question, and



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- (b) transferring, or providing for the transfer of, the property and liabilities specified by the regulator to the new NHS foundation trust [<sup>F83</sup>or trusts].
- [<sup>F84</sup>(2A) An order under section 56 or 56B is conclusive evidence of incorporation and conclusive evidence that the corporation is an NHS foundation trust.]
- (3) The order may—
- (a) transfer, or provide for the transfer of, any of the remaining property or liabilities to [<sup>F85</sup>another NHS foundation trust, an NHS trust established under section 25 or the Secretary of State],
- <sup>F86</sup>(b) .....
- (4) In [<sup>F87</sup>sections 56(2) and 56B(3)], and subsections (1) and (2) of this section, “liabilities” includes criminal liabilities; and an order under subsection (3) of this section may transfer any remaining criminal liabilities to [<sup>F88</sup>another NHS foundation trust or an NHS trust established under section 25].
- (5) Where one of the parties to an application under section 56 [<sup>F89</sup>or 56A] is an NHS trust, the powers conferred on the Secretary of State by Part 3 of Schedule 4 are not exercisable in relation to the trust.
- <sup>F90</sup>(6) .....

#### Textual Amendments

- F78** S. 57 title substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), ss. 172(8), 306(4); S.I. 2013/671, art. 2(3)
- F79** Words in s. 57(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), ss. 172(1)(a), 306(4); S.I. 2013/671, art. 2(3)
- F80** Words in s. 57(1) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), ss. 172(1)(b), 306(4); S.I. 2013/671, art. 2(3)
- F81** Words in s. 57(2) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), ss. 172(2)(a), 306(4); S.I. 2013/671, art. 2(3)
- F82** Words in s. 57(2)(a) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), ss. 172(2)(b), 306(4); S.I. 2013/671, art. 2(3)
- F83** Words in s. 57(2)(b) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), ss. 172(2)(c), 306(4); S.I. 2013/671, art. 2(3)
- F84** S. 57(2A) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), ss. 172(3), 306(4); S.I. 2013/671, art. 2(3)
- F85** Words in s. 57(3)(a) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), ss. 172(4), 173(2)(a)(i), 306(4); S.I. 2013/671, arts. 2(2)(3)
- F86** S. 57(3)(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), ss. 173(2)(a)(ii), 306(4); S.I. 2013/671, art. 2(3)
- F87** Words in s. 57(4) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), ss. 172(5)(a), 306(4); S.I. 2013/671, art. 2(3)
- F88** Words in s. 57(4) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), ss. 172(5)(b), 173(2)(a)(iii), 306(4); S.I. 2013/671, arts. 2(2)(3)
- F89** Words in s. 57(5) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), ss. 172(6), 306(4); S.I. 2013/671, art. 2(3)
- F90** S. 57(6) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), ss. 172(7), 306(4); S.I. 2013/671, art. 2(3)

*Status: Point in time view as at 01/04/2013.*

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**[<sup>F91</sup>57A Dissolution E+W**

- (1) An application may be made by an NHS foundation trust to the regulator for dissolution.
- (2) An application under this section may be made only with the approval of more than half of the members of the council of governors of the applicant.
- (3) The regulator must grant the application if it is satisfied that—
  - (a) the trust has no liabilities, and
  - (b) such steps as are necessary to prepare for the dissolution have been taken.
- (4) Where an application under this section is granted, the regulator must make an order—
  - (a) dissolving the trust in question, and
  - (b) transferring, or providing for the transfer of, the property of the trust (if any) to the Secretary of State.]

**Textual Amendments**

**F91** S. 57A inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), ss. 171, 306(4); S.I. 2013/671, art. 2(3)

*Miscellaneous*

**<sup>F92</sup>58 Taxation E+W**

.....

**Textual Amendments**

**F92** S. 58 repealed (with effect in accordance with s. 216(3)(4) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), s. 216(2)(b)

**59 Conduct of elections E+W**

- (1) Regulations may make provision as to the conduct of elections for membership of the [<sup>F93</sup>council of governors] of an NHS foundation trust.
- (2) The regulations may in particular provide for—
  - (a) nomination of candidates and obligations to declare their interests,
  - (b) systems and methods of voting, and the allocation of places on the [<sup>F94</sup>council of governors], at contested elections,
  - (c) filling of vacancies,
  - (d) supervision of elections,
  - (e) elections expenses and publicity,
  - (f) questioning of elections and the consequences of irregularities.
- (3) Regulations under this section may create offences punishable on summary conviction with a maximum fine not exceeding level 4 on the standard scale.

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- (4) An NHS foundation trust must secure that its constitution is in accordance with regulations under this section.
- (5) Pending the coming into force of regulations under this section, elections for membership of the [<sup>F95</sup>council of governors] of an NHS foundation trust, if contested, must be by secret ballot.

#### Textual Amendments

- F93** Words in s. 59(1) substituted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\), ss. 151\(9\)\(a\), 306\(4\); S.I. 2012/1831, art. 2\(2\)](#)
- F94** Words in s. 59(2)(b) substituted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\), ss. 151\(9\)\(a\), 306\(4\); S.I. 2012/1831, art. 2\(2\)](#)
- F95** Words in s. 59(5) substituted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\), ss. 151\(9\)\(a\), 306\(4\); S.I. 2012/1831, art. 2\(2\)](#)

## 60 Voting and standing for election **E+W**

- (1) A person may not vote at an election for the [<sup>F96</sup>council of governors] of an NHS foundation trust unless, within the specified period, he has made a declaration in the specified form of the particulars of his qualification to vote as a member of the constituency, or class within a constituency, for which the election is being held.
- (2) A person may not stand for election to [<sup>F97</sup>the council] unless—
  - (a) he has within the specified period made a declaration in the specified form of the particulars of his qualification to vote as a member of the constituency, or class within a constituency, for which the election is being held, and
  - (b) he is not prevented from being a member of [<sup>F97</sup>the council] by paragraph 8 of Schedule 7.
- (3) A person elected to [<sup>F97</sup>the council] may not vote at a meeting of [<sup>F97</sup>the council] unless—
  - (a) he has within the specified period made a declaration in the specified form of the particulars of his qualification to vote as a member of the trust, and
  - (b) he is not prevented from being a member of [<sup>F97</sup>the council] by paragraph 8 of Schedule 7.
- (4) This section does not apply to an election held for the staff constituency.
- (5) “Specified” means specified in the trust's constitution.
- (6) A person is guilty of an offence if he—
  - (a) makes a declaration under this section which he knows to be false in a material particular, or
  - (b) recklessly makes such a declaration which is false in a material particular.
- (7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

*Status: Point in time view as at 01/04/2013.*

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#### Textual Amendments

- F96** Words in s. 60(1) substituted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\), ss. 151\(9\)\(a\), 306\(4\); S.I. 2012/1831, art. 2\(2\)](#)
- F97** Words in s. 60(2)(3) substituted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\), ss. 151\(9\)\(b\), 306\(4\); S.I. 2012/1831, art. 2\(2\)](#)

### 61 Representative membership **E+W**

[<sup>F98</sup>(1)] [<sup>F99</sup>An NHS foundation trust must] take steps to secure that (taken as a whole) the actual membership of any public constituency and (if there is one) of the patients' constituency is representative of those eligible for such membership.

[<sup>F100</sup>(2) In deciding which areas are to be areas for public constituencies, or in deciding whether there is to be a patients' constituency, an NHS foundation trust must have regard to the need for those eligible for such membership to be representative of those to whom the trust provides services.]

#### Textual Amendments

- F98** S. 61(1): s. 61 renumbered as s. 61(1) (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), ss. 153\(1\), 306\(4\); S.I. 2013/160, art. 2\(2\) \(with arts. 7-9\)](#)
- F99** Words in s. 61(1) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), ss. 153\(1\), 306\(4\); S.I. 2013/160, art. 2\(2\) \(with arts. 7-9\)](#)
- F100** S. 61(2) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), ss. 153\(2\), 306\(4\); S.I. 2013/160, art. 2\(2\) \(with arts. 7-9\)](#)

### 62 Audit **E+W**

Schedule 10 makes provision in relation to the audit of accounts of NHS foundation trusts.

### 63 General duty of NHS foundation trusts **E+W**

An NHS foundation trust must exercise its functions effectively, efficiently and economically.

#### *Supplementary*

### 64 Orders and regulations under this Chapter **E+W**

- (1) Any power under this Chapter to make an order or regulations is exercisable by statutory instrument.
- (2) Subject to subsections (3) and (4), a statutory instrument made by virtue of this Chapter is subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) A statutory instrument containing—
  - (a) the first regulations under section 55(4) or 59,
  - [<sup>F101</sup>(aa) regulations under paragraph 30(1) of Schedule 7,] or

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- (b) an order or regulations under this Chapter making, by virtue of subsection (5) (b), provision which amends or repeals any part of the text of an Act, may not be made unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament.
- (4) Subsection (2) does not apply to a statutory instrument containing an order under—
- (a) section 51,
  - <sup>F102</sup>(b) .....
  - (c) section 57 [<sup>F103</sup>, or
  - (d) section 57A.]
- [<sup>F104</sup>(4A) The Statutory Instruments Act 1946 applies in relation to the power of the regulator to make an order under section 57 or 57A as if the regulator were a Minister of the Crown.]
- (5) Any order or regulations under this Chapter—
- (a) may make different provision for different purposes, and
  - (b) may make incidental, supplementary, consequential, transitory or transitional or saving provision.
- (6) Any power under this Chapter to make an order or regulations (as well as being exercisable in relation to all cases to which it extends) may be exercised in relation to all those cases subject to exceptions or in relation to any particular case or class of case.

#### Textual Amendments

- F101** S. 64(3)(aa) inserted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\), ss. 158\(2\), 306\(1\)\(d\)\(4\); S.I. 2012/1831, art. 2\(2\)](#)
- F102** S. 64(4)(b) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\), ss. 172\(10\)\(a\), 173\(2\)\(b\), 306\(4\); S.I. 2013/671, art. 2\(3\)](#)
- F103** S. 64(4)(d) and word inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), ss. 172\(10\)\(b\), 306\(4\); S.I. 2013/671, art. 2\(3\)](#)
- F104** S. 64(4A) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), ss. 172\(11\), 306\(4\); S.I. 2013/671, art. 2\(3\)](#)

## 65 Interpretation of this Chapter **E+W**

- (1) In this Chapter—
- “authorisation” means an authorisation under section 35 or 56,
- “health service body” means a Strategic Health Authority, a Primary Care Trust, an NHS trust, a Special Health Authority or an NHS foundation trust.
- (2) Any references in this Chapter to goods and services include, in particular, facilities, education and training.

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## [<sup>F105</sup>CHAPTER 5A **E+W**

### TRUST SPECIAL ADMINISTRATORS: NHS TRUSTS AND NHS FOUNDATION TRUSTS

#### Textual Amendments

**F105** Pt. 2 Ch. 5A inserted (15.2.2010) by [Health Act 2009 \(c. 21\)](#), **ss. 16, 40(1)**; S.I. 2010/30, art. 3(a)

#### *Application*

#### **65A Application **E+W****

- (1) This Chapter applies to—
- (a) an NHS trust all or most of whose hospitals, establishments and facilities are in England;
  - [<sup>F106</sup>(b) any NHS foundation trust.]

<sup>F107</sup>(2) .....

#### Textual Amendments

**F106** S. 65A(1)(b) substituted for s. 65A(1)(b)(c) (1.11.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 174(1)(a), 306(4)**; S.I. 2012/2657, art. 2(2)

**F107** S. 65A(2) omitted (1.11.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 174(1)(b), 306(4)**; S.I. 2012/2657, art. 2(2)

#### *Appointment*

#### **65B [<sup>F108</sup>NHS trusts: appointment of trust special administrator] **E+W****

- (1) The Secretary of State may make an order authorising the appointment of a trust special administrator to exercise the functions of the chairman and directors of an NHS trust to which this Chapter applies.
- (2) An order may be made under subsection (1) only if the Secretary of State considers it appropriate in the interests of the health service.
- (3) The order must specify the date when the appointment is to take effect, which must be within the period of 5 working days beginning with the day on which the order is made.
- (4) Before making the order the Secretary of State must consult—
  - (a) the trust,
  - (b) any Strategic Health Authority in whose area the trust has hospitals, establishments or facilities, and
  - (c) any other person to which the trust provides goods or services under this Act and which the Secretary of State considers it appropriate to consult.
- (5) The Secretary of State must lay before Parliament (with the statutory instrument containing the order) a report stating the reasons for making the order.
- (6) If an order is made under subsection (1), the Secretary of State must—

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- (a) appoint a person as the trust special administrator with effect from the day specified in the order, and
  - (b) publish the name of the person appointed.
- (7) A person appointed as a trust special administrator holds and vacates office in accordance with the terms of the appointment.
- (8) The Secretary of State may pay remuneration and expenses to a trust special administrator.

#### Textual Amendments

**F108** S. 65B title substituted (1.11.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 174(2)**, 306(4); [S.I. 2012/2657](#), **art. 2(2)**

### 65C Suspension of directors E+W

- (1) When the appointment of a trust special administrator takes effect, the trust's chairman and executive and non-executive directors are suspended from office.
- (2) Subsection (1) does not affect the employment of the executive directors or their membership of any committee or sub-committee of the trust.

*F109* ...

#### Textual Amendments

**F109** S. 65D cross-heading omitted (1.11.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 174(7)**, 306(4); [S.I. 2012/2657](#), **art. 2(2)**

### 65D <sup>F110</sup>NHS foundation trusts: appointment of trust special administrator E+W

- [<sup>F111</sup>(1) This section applies if the regulator is satisfied that an NHS foundation trust is, or is likely to become, unable to pay its debts.]
- [<sup>F111</sup>(2) The regulator may make an order authorising the appointment of a trust special administrator to exercise the functions of the governors, chairman and directors of the trust.]
- [<sup>F111</sup>(3) As soon as reasonably practicable after the making of an order under subsection (2), the Care Quality Commission must provide to the regulator a report on the safety and quality of the services that the trust provides under this Act.]
- (4) Before [<sup>F112</sup>making an order] under this section, the regulator must consult first the Secretary of State and then—
- (a) the trust,
  - [ the Board,]
  - <sup>F113</sup>(aa)
  - <sup>F114</sup>(b) .....
  - (c) any other person to which the trust provides <sup>F115</sup>... services under this Act and which the regulator considers it appropriate to consult [<sup>F116</sup>, and



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(d) the Care Quality Commission.]

- [ An order under subsection (2) must specify the date when the appointment is to take effect, which must be within the period of 5 working days beginning with the day on which the order is made.
- <sup>F117</sup>(5) effect, which must be within the period of 5 working days beginning with the day on which the order is made.
- (6) The regulator must lay before Parliament (with the statutory instrument containing the order) a report stating the reasons for making the order.
- (7) If the regulator makes an order under subsection (2), it must—
- (a) appoint a person as the trust special administrator with effect from the day specified in the order, and
  - (b) publish the name of the person appointed.
- (8) A person appointed as a trust special administrator under this section holds and vacates office in accordance with the terms of the appointment.
- (9) A person appointed as a trust special administrator under this section must manage the trust's affairs, business and property, and exercise the trust special administrator's functions, so as to achieve the objective set out in section 65DA as quickly and as efficiently as is reasonably practicable.
- (10) When the appointment of a trust special administrator under this section takes effect, the trust's governors, chairman and executive and non-executive directors are suspended from office; and Chapter 5 of this Part, in its application to the trust, is to be read accordingly.
- (11) But subsection (10) does not affect the employment of the executive directors or their membership of any committee or sub-committee of the trust.
- (12) The regulator may indemnify a trust special administrator appointed under this section in respect of such matters as the regulator may determine.]

#### Textual Amendments

- F110** S. 65D heading substituted (1.11.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), ss. 174(6), 306(4); [S.I. 2012/2657](#), art. 2(2)
- F111** S. 65D(1)-(3) substituted (1.11.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), ss. 174(3), 306(4); [S.I. 2012/2657](#), art. 2(2)
- F112** Words in s. 65D(4) substituted (1.11.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), ss. 174(4)(a), 306(4); [S.I. 2012/2657](#), art. 2(2)
- F113** S. 65D(4)(aa) inserted (1.11.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), ss. 174(4)(b), 306(4); [S.I. 2012/2657](#), art. 2(2)
- F114** S. 65D(4)(b) omitted (1.11.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), ss. 174(4)(c), 306(4); [S.I. 2012/2657](#), art. 2(2)
- F115** Words in s. 65D(4)(c) omitted (1.11.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), ss. 174(4)(d), 306(4); [S.I. 2012/2657](#), art. 2(2)
- F116** S. 65D(4)(d) and word inserted (1.11.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), ss. 174(4)(e), 306(4); [S.I. 2012/2657](#), art. 2(2)
- F117** S. 65D(5)-(12) inserted (1.11.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), ss. 174(5), 306(4); [S.I. 2012/2657](#), art. 2(2)

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## **Objective of trust special administration** E+W

**F118** **65DA**

- (1) The objective of a trust special administration is to secure—
  - (a) the continued provision of such of the services provided for the purposes of the NHS by the NHS foundation trust that is subject to an order under section 65D(2), at such level, as the commissioners of those services determine, and
  - (b) that it becomes unnecessary for the order to remain in force for that purpose.
- (2) The commissioners may determine that the objective set out in subsection (1) is to apply to a service only if they are satisfied that the criterion in subsection (3) is met.
- (3) The criterion is that ceasing to provide the service under this Act would, in the absence of alternative arrangements for its provision under this Act, be likely to—
  - (a) have a significant adverse impact on the health of persons in need of the service or significantly increase health inequalities, or
  - (b) cause a failure to prevent or ameliorate either a significant adverse impact on the health of such persons or a significant increase in health inequalities.
- (4) In determining whether that criterion is met, the commissioners must (in so far as they would not otherwise be required to do so) have regard to—
  - (a) the current and future need for the provision of the service under this Act,
  - (b) whether ceasing to provide the service under this Act would significantly reduce equality between those for whom the commissioner arranges for the provision of services under this Act with respect to their ability to access services so provided, and
  - (c) such other matters as may be specified in relation to NHS foundation trusts in guidance published by the regulator.
- (5) The regulator may revise guidance under subsection (4)(c) and, if it does so, must publish the guidance as revised.
- (6) Before publishing guidance under subsection (4)(c) or (5), the regulator must obtain the approval of—
  - (a) the Secretary of State;
  - (b) the Board.
- (7) The Board must make arrangements for facilitating agreement between commissioners in determining the services provided by the trust under this Act to which the objective set out in subsection (1) is to apply.
- (8) Where commissioners fail to reach agreement in pursuance of arrangements under subsection (7), the Board may make the determination (and the duty imposed by subsection (1)(a), so far as applying to the commissioners concerned, is to be regarded as discharged).
- (9) In this section—
 

“commissioners” means the persons to which the trust provides services under this Act, and

“health inequalities” means the inequalities between persons with respect to the outcomes achieved for them by the provision of services that are provided as part of the health service.]

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**Textual Amendments**

**F118** S. 65DA inserted (1.11.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 175(1)**, 306(4) (with s. 175(2)); [S.I. 2012/2657](#), art. 2(2)

**F119 65E NHS foundation trusts: de-authorisation and appointment of trust special administrator** **E+W**

.....

**Textual Amendments**

**F119** S. 65E omitted (1.11.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 173(3)**, 306(4); [S.I. 2012/2657](#), art. 2(2)

*Consultation and report*

**65F Draft report** **E+W**

- (1) Within the period of 45 working days beginning with the day on which a trust special administrator's appointment takes effect, the administrator must provide to the Secretary of State and publish a draft report stating the action which the administrator recommends the Secretary of State should take in relation to the trust.
- (2) When preparing the draft report, the administrator must consult—
  - F120** [ the Board,]  
(za)
  - (a) **F121** ... and
  - (b) any other person to which the trust provides goods or services under this Act and which the Secretary of State directs the administrator to consult.
- (3) After receiving the draft report, the Secretary of State must lay it before Parliament.
- F122** [ For the purposes of this section in its application to the case of an NHS foundation trust, the references to the Secretary of State are to be read as references to the regulator.]
- (4) trust, the references to the Secretary of State are to be read as references to the regulator.
- (5) In the case of an NHS foundation trust, the administrator may not provide the draft report to the regulator under subsection (1)—
  - (a) without having obtained from each commissioner a statement that the commissioner considers that the recommendation in the draft report would achieve the objective set out in section 65DA, or
  - (b) where the administrator does not obtain a statement to that effect from one or more commissioners (other than the Board), without having obtained a statement to that effect from the Board.
- (6) Where the Board decides not to provide to the administrator a statement to that effect, the Board must—
  - (a) give a notice of the reasons for its decision to the administrator and to the regulator;

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- (b) publish the notice;
- (c) lay a copy of it before Parliament.

(7) In subsection (5), “commissioner” means a person to which the trust provides services under this Act.]

#### Textual Amendments

- F120** S. 65F(2)(za) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 176\(1\)\(a\)](#), [306\(1\)\(d\)\(4\)](#); [S.I. 2012/2657](#), [art. 2\(2\)](#)
- F121** S. 65F(2)(a) omitted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 176\(1\)\(b\)](#), [306\(1\)\(d\)\(4\)](#); [S.I. 2012/2657](#), [art. 2\(2\)](#)
- F122** S. 65F(4)-(7) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 176\(2\)](#), [306\(1\)\(d\)\(4\)](#); [S.I. 2012/2657](#), [art. 2\(2\)](#)

#### 65G Consultation plan **E+W**

- (1) At the same time as publishing a draft report under section 65F, a trust special administrator must publish a statement setting out the means by which the administrator will seek responses to the draft report.
  - (2) The statement must specify a period of 30 working days within which the administrator seeks responses (the “consultation period”).
  - (3) The first day of the consultation period must be within the period of 5 working days beginning with the day on which the draft report is published.
- [ In the case of an NHS foundation trust, the administrator may not make a variation to
- <sup>F123</sup>(4) the draft report following the consultation period—
- (a) without having obtained from each commissioner a statement that the commissioner considers that the recommendation in the draft report as so varied would achieve the objective set out in section 65DA, or
  - (b) where the administrator does not obtain a statement to that effect from one or more commissioners (other than the Board), without having obtained a statement to that effect from the Board.
- (5) Where the Board decides not to provide to the administrator a statement to that effect, the Board must—
- (a) give a notice of the reasons for its decision to the administrator and to the regulator;
  - (b) publish the notice;
  - (c) lay a copy of it before Parliament.
- (6) In subsection (4), “commissioner” means a person to which the trust provides services under this Act.]

#### Textual Amendments

- F123** S. 65G(4)-(6) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 176\(3\)](#), [306\(1\)\(d\)\(4\)](#); [S.I. 2012/2657](#), [art. 2\(2\)](#)

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**65H Consultation requirements E+W**

- (1) The following duties apply during the consultation period.
- (2) The trust special administrator must publish a notice stating that the administrator is seeking responses to the draft report and describing how people can give their responses.
- (3) A notice under subsection (2) must include details of how responses can be given in writing.
- (4) The trust special administrator must hold at least one meeting to seek responses from staff of the trust and from such persons as the trust special administrator may recognise as representing staff of the trust.
- (5) The trust special administrator must hold at least one other meeting to seek responses from any person who wishes to attend, after publishing notice of the date, time and place of the meeting.
- (6) Notices under subsections (2) and (5) must be published at least once in the first 5 working days of the consultation period.
- (7) The trust special administrator must request a written response from—
  - [ the Board,]  
<sup>F124</sup>(za) .....
  - <sup>F125</sup>(a) .....
  - (b) any other person to which the trust provides goods or services under this Act  
<sup>F126</sup>....;
  - (c) any person within subsection (8), if required by directions given by the Secretary of State [<sup>F127</sup>;
  - (d) any other person specified in a direction given by the Secretary of State].
- (8) The persons within this subsection are—
  - <sup>F128</sup>(a) .....
  - <sup>F128</sup>(b) .....
  - <sup>F128</sup>(c) .....
  - <sup>F128</sup>(d) .....
  - [<sup>F129</sup>(e) a Local Healthwatch organisation;]
  - (f) the member of Parliament for any constituency.
- (9) The trust special administrator must hold at least one meeting to seek responses from representatives of [<sup>F130</sup>the Board and] each of the persons from whom the administrator must request a written response under subsection [<sup>F131</sup>(7)(b), (c) or (d)].
- (10) The Secretary of State may direct an administrator to—
  - (a) request a written response from any person;
  - (b) hold a meeting to seek a response from any person.
- (11) In subsection (4) “staff of the trust” means persons employed by the trust or otherwise working for the trust (whether as or on behalf of a contractor, as a volunteer or otherwise).

<sup>F132</sup>[ For the purposes of this section in its application to the case of an NHS foundation trust—

*Status: Point in time view as at 01/04/2013.*

*Changes to legislation: National Health Service Act 2006, Part 2 is up to date with all changes known to be in force on or before 10 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) in subsection (7)(b), the words “goods or” are to be ignored, and
- (b) in subsections (7)(c) and (d) and (10), the references to the Secretary of State are to be read as references to the regulator.

(13) In the case of an NHS foundation trust, the Secretary of State may direct the regulator as to persons from whom it should direct the administrator under subsection (10) to request or seek a response.]

#### Textual Amendments

- F124** S. 65H(7)(za) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 176(4)(a)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)
- F125** S. 65H(7)(a) omitted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 176(4)(b)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)
- F126** Words in s. 65H(7)(b) omitted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 176(4)(c)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)
- F127** S. 65H(7)(d) and punctuation inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 176(4)(d)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)
- F128** S. 65H(8)(a)-(d) omitted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 176(5)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)
- F129** S. 65H(8)(e) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 189(5)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F130** Words in s. 65H(9) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 176(6)(a)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)
- F131** Words in s. 65H(9) substituted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 176(6)(b)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)
- F132** S. 65H(12)(13) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 176(7)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

#### 65I Final report **E+W**

- (1) Within the period of 15 working days beginning with the end of the consultation period, the trust special administrator must provide to the Secretary of State a final report stating the action which the administrator recommends that the Secretary of State should take in relation to the trust.
- (2) The administrator must attach to the final report a summary of all responses to the draft report which were received by the administrator in the period beginning with the publication of the draft report and ending with the last day of the consultation period.
- (3) After receiving the administrator's final report, the Secretary of State must publish it and lay it before Parliament.

[ For the purposes of this section in its application to the case of an NHS foundation <sup>F133</sup>(4) trust, the references to the Secretary of State are to be read as references to the regulator.]

*Status: Point in time view as at 01/04/2013.*

*Changes to legislation: National Health Service Act 2006, Part 2 is up to date with all changes known to be in force on or before 10 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Textual Amendments

**F133** S. 65I(4) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 176\(8\)](#), [306\(1\)\(d\)\(4\)](#); [S.I. 2012/2657](#), [art. 2\(2\)](#)

### 65J Power to extend time **E+W**

- (1) This section applies to—
  - (a) the duty of a trust special administrator to provide a draft report within the period specified in section 65F(1);
  - (b) the duty of a trust special administrator to consult in the consultation period specified under section 65G(2);
  - (c) the duty of a trust special administrator to provide a final report within the period specified in section 65I(1).
- (2) If the Secretary of State thinks it is not reasonable in the circumstances for the administrator to be required to carry out the duty within the specified period, the Secretary of State may by order extend the period.
- (3) If an order is made extending the period mentioned in subsection (1)(a) or (c) the trust special administrator must publish a notice stating the new date on which the period will expire.
- (4) If an order is made extending the period mentioned in subsection (1)(b) the trust special administrator must—
  - (a) publish a notice stating the new date on which the period will expire, and
  - (b) publish a statement setting out the means by which the administrator will seek responses to the draft report during the extended consultation period.

[ For the purposes of this section in its application to the case of an NHS foundation <sup>F134</sup>(5) trust, the references to the Secretary of State are to be read as references to the regulator.]

#### Textual Amendments

**F134** S. 65J(5) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 176\(9\)](#), [306\(1\)\(d\)\(4\)](#); [S.I. 2012/2657](#), [art. 2\(2\)](#)

*[<sup>F135</sup>Action by the Secretary of State and the regulator]*

#### Textual Amendments

**F135** S. 65K cross-heading substituted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 177\(7\)](#), [306\(1\)\(d\)\(4\)](#); [S.I. 2012/2657](#), [art. 2\(2\)](#)

### 65K [<sup>F136</sup>Secretary of State's decision in case of NHS trust] **E+W**

- (1) Within the period of 20 working days beginning with the day on which the Secretary of State receives a final report under section 65I [<sup>F137</sup>relating to an NHS trust], the Secretary of State must decide what action to take in relation to the trust.



*Status: Point in time view as at 01/04/2013.*

*Changes to legislation: National Health Service Act 2006, Part 2 is up to date with all changes known to be in force on or before 10 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) The Secretary of State must as soon as reasonably practicable—
- (a) publish a notice of the decision and of the reasons for it;
  - (b) lay a copy of the notice before Parliament.

#### Textual Amendments

**F136** S. 65K heading substituted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 177\(1\)](#), [306\(1\)\(d\)\(4\)](#); [S.I. 2012/2657](#), [art. 2\(2\)](#)

**F137** Words in s. 65K(1) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 177\(1\)](#), [306\(1\)\(d\)\(4\)](#); [S.I. 2012/2657](#), [art. 2\(2\)](#)

#### <sup>F138</sup> **65KA** Regulator's decision in case of NHS foundation trust **E+W**

- (1) Within the period of 20 working days beginning with the day on which the regulator receives a final report under section 65I relating to an NHS foundation trust, the regulator must decide whether it is satisfied—
- (a) that the action recommended in the final report would achieve the objective set out in section 65DA, and
  - (b) that the trust special administrator has carried out the administration duties.
- (2) In subsection (1)(b), “administration duties” means the duties imposed on the administrator by—
- (a) this Chapter,
  - (b) a direction under this Chapter, or
  - (c) the administrator's terms of appointment.
- (3) If the regulator is satisfied as mentioned in subsection (1), it must as soon as reasonably practicable provide to the Secretary of State—
- (a) the final report, and
  - (b) the report provided to the regulator by the Care Quality Commission under section 65D(3).
- (4) If the regulator is not satisfied as mentioned in subsection (1), it must as soon as reasonably practicable give a notice of that decision to the administrator.
- (5) Where the regulator gives a notice under subsection (4), sections 65F to 65J apply in relation to the trust to such extent, and with such modifications, as the regulator may specify in the notice.
- (6) The regulator must as soon as reasonably practicable after giving a notice under subsection (4)—
- (a) publish the notice;
  - (b) lay a copy of it before Parliament.

#### Textual Amendments

**F138** Ss. 65KA-65KD inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 177\(2\)](#), [306\(1\)\(d\)\(4\)](#); [S.I. 2012/2657](#), [art. 2\(2\)](#)

*Status: Point in time view as at 01/04/2013.*

*Changes to legislation: National Health Service Act 2006, Part 2 is up to date with all changes known to be in force on or before 10 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## 65KB Secretary of State's response to regulator's decision **E+W**

- (1) Within the period of 30 working days beginning with the day on which the Secretary of State receives the reports referred to in section 65KA(3), the Secretary of State must decide whether the Secretary of State is satisfied—
  - (a) that the persons to which the NHS foundation trust in question provides services under this Act have discharged their functions for the purposes of this Chapter,
  - (b) that the trust special administrator has carried out the administration duties (within the meaning of section 65KA(1)(b)),
  - (c) that the regulator has discharged its functions for the purposes of this Chapter,
  - (d) that the action recommended in the final report would secure the continued provision of the services provided by the trust to which the objective set out in section 65DA applies,
  - (e) that the recommended action would secure the provision of services that are of sufficient safety and quality to be provided under this Act, and
  - (f) that the recommended action would provide good value for money.
- (2) If the Secretary of State is not satisfied as mentioned in subsection (1), the Secretary of State must as soon as reasonably practicable—
  - (a) give the trust special administrator a notice of the decision and of the reasons for it;
  - (b) give a copy of the notice to the regulator;
  - (c) publish the notice;
  - (d) lay a copy of it before Parliament.

### Textual Amendments

**F138** Ss. 65KA-65KD inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 177\(2\)](#), [306\(1\)\(d\)\(4\)](#); [S.I. 2012/2657](#), [art. 2\(2\)](#)

## 65KC Action following Secretary of State's rejection of final report **E+W**

- (1) Within the period of 20 working days beginning with the day on which the trust special administrator receives a notice under section 65KB(2), the administrator must provide to the regulator the final report varied so far as the administrator considers necessary to secure that the Secretary of State is satisfied as mentioned in section 65KB(1).
- (2) Where the administrator provides to the regulator a final report under subsection (1), section 65KA applies in relation to the report as it applies in relation to a final report under section 65I; and for that purpose, that section has effect as if—
  - (a) in subsection (1), for “20 working days” there were substituted “10 working days”, and
  - (b) subsection (3)(b) were omitted.
- (3) If the Secretary of State thinks that, in the circumstances, it is not reasonable for the administrator to be required to carry out the duty under subsection (1) within the period mentioned in that subsection, the Secretary of State may by order extend the period.
- (4) If an order is made under subsection (3), the administrator must—
  - (a) publish a notice stating the date on which the period will expire, and

*Status: Point in time view as at 01/04/2013.*

*Changes to legislation: National Health Service Act 2006, Part 2 is up to date with all changes known to be in force on or before 10 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) where the administrator is proposing to carry out consultation in response to the notice under section 65KB(2), publish a statement setting out the means by which the administrator will consult during the extended period.

#### Textual Amendments

**F138** Ss. 65KA-65KD inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 177\(2\)](#), [306\(1\)\(d\)\(4\)](#); [S.I. 2012/2657](#), [art. 2\(2\)](#)

### 65KD Secretary of State's response to re-submitted final report E+W

- (1) Within the period of 30 working days beginning with the day on which the Secretary of State receives a final report under section 65KA(3) as applied by section 65KC(2), the Secretary of State must decide whether the Secretary of State is, in relation to the report, satisfied as to the matters in section 65KB(1)(a) to (f).
- (2) If the Secretary of State is not satisfied as mentioned in subsection (1), the Secretary of State must as soon as reasonably practicable—
  - (a) publish a notice of the decision and the reasons for it;
  - (b) lay a copy of the notice before Parliament.
- (3) Where the Secretary of State publishes a notice under subsection (2)(a), subsections (4) to (8) apply.
- (4) If the notice states that the Board has failed to discharge a function—
  - (a) the Board is to be treated for the purposes of this Act as having failed to discharge the function, and
  - (b) the failure is to be treated for those purposes as significant (and section 13Z2 applies accordingly).
- (5) If the notice states that a clinical commissioning group has failed to discharge a function—
  - (a) the group is to be treated for the purposes of this Act as having failed to discharge the function,
  - (b) the Secretary of State may exercise the functions of the Board under section 14Z21(2), (3)(a) and (8)(a), and
  - (c) the Board may not exercise any of its functions under section 14Z21.
- (6) Where, by virtue of subsection (5)(b), the Secretary of State exercises the function of the Board under subsection (3)(a) of section 14Z21, subsection (9)(a) of that section applies but with the substitution for the references to the Board of references to the Secretary of State.
- (7) If the notice states that the trust special administrator has failed to discharge the administration duties (within the meaning of section 65KA(1)(b))—
  - (a) the administration duties are to be treated for the purposes of this Act as functions of the regulator,
  - (b) the regulator is to be treated for the purposes of this Act as having failed to discharge those functions, and
  - (c) the failure is to be treated for those purposes as significant (and section 71 of the Health and Social Care Act 2012 applies accordingly, but with the omission of subsection (3)).

*Status: Point in time view as at 01/04/2013.*

*Changes to legislation: National Health Service Act 2006, Part 2 is up to date with all changes known to be in force on or before 10 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (8) If the notice states that the regulator has failed to discharge a function—
- (a) the regulator is to be treated for the purposes of this Act as having failed to discharge the function, and
  - (b) the failure is to be treated for those purposes as significant (and section 71 of the Health and Social Care Act 2012 applies accordingly, but with the omission of subsection (3)).
- (9) Within the period of 60 working days beginning with the day on which the Secretary of State publishes a notice under subsection (2)(a), the Secretary of State must decide what action to take in relation to the trust.
- (10) The Secretary of State must as soon as reasonably practicable—
- (a) publish a notice of the decision and the reasons for it;
  - (b) lay a copy of the notice before Parliament.]

#### Textual Amendments

**F138** Ss. 65KA-65KD inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 177\(2\)](#), [306\(1\)\(d\)\(4\)](#); [S.I. 2012/2657](#), [art. 2\(2\)](#)

### 65L Trusts coming out of administration **E+W**

- (1) This section applies if the Secretary of State decides under section 65K not to dissolve the trust.
- (2) The Secretary of State must make an order specifying a date when the appointment of the trust special administrator and the suspension of the chairman and directors of the trust come to an end.
- [ For the purposes of subsection (1) in its application to the case of an NHS foundation trust, the reference to section 65K is to be read as a reference to section 65KD(9); and this section also applies in the case of an NHS foundation trust if—
- <sup>F139</sup>(2A)
  - (a) the Secretary of State is satisfied as mentioned in section 65KB(1) or 65KD(1) in relation to the trust, and
  - (b) the action recommended in the final report is to do something other than dissolve the trust.
- (2B) For the purposes of subsection (2) in its application to the case of an NHS foundation trust—
- (a) the reference to the Secretary of State is to be read as a reference to the regulator, and
  - (b) the reference to the chairman and directors of the trust is to be read as including a reference to the governors.]

<sup>F140</sup>(3) .....

<sup>F140</sup>(4) .....

<sup>F140</sup>(5) .....

[ Subsection (7) applies in the case of an NHS foundation trust.

<sup>F141</sup>(6)

*Status: Point in time view as at 01/04/2013.*

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- (7) If it appears to the regulator to be necessary in order to comply with Schedule 7, the regulator may by order—
- (a) terminate the office of any governor or of any executive or non-executive director of the trust;
  - (b) appoint a person to be a governor or an executive or non-executive director of the trust.]

#### Textual Amendments

- F139** S. 65L(2A)(2B) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 177\(3\)](#), [306\(1\)\(d\)\(4\)](#); [S.I. 2012/2657](#), [art. 2\(2\)](#)
- F140** S. 65L(3)-(5) omitted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 177\(4\)](#), [306\(1\)\(d\)\(4\)](#); [S.I. 2012/2657](#), [art. 2\(2\)](#)
- F141** S. 65L(6)(7) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 177\(5\)](#), [306\(1\)\(d\)\(4\)](#); [S.I. 2012/2657](#), [art. 2\(2\)](#)

#### <sup>F142</sup> **65LA** Trusts to be dissolved **E+W**

- (1) This section applies if—
- (a) the Secretary of State is satisfied as mentioned in section 65KB(1) or 65KD(1), and
  - (b) the action recommended in the final report is to dissolve the NHS foundation trust in question.
- (2) This section also applies if the Secretary of State decides under section 65KD(9) to dissolve the NHS foundation trust in question.
- (3) The regulator may make an order—
- (a) dissolving the trust, and
  - (b) transferring, or providing for the transfer of, the property and liabilities of the trust—
    - (i) to another NHS foundation trust or the Secretary of State, or
    - (ii) between another NHS foundation trust and the Secretary of State.
- (4) An order under subsection (3) may include provision for the transfer of employees of the trust.
- (5) The liabilities that may be transferred to an NHS foundation trust by virtue of subsection (3)(b) include criminal liabilities.]

#### Textual Amendments

- F142** S. 65LA inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 177\(6\)](#), [306\(1\)\(d\)\(4\)](#); [S.I. 2012/2657](#), [art. 2\(2\)](#)

*Status: Point in time view as at 01/04/2013.*

*Changes to legislation: National Health Service Act 2006, Part 2 is up to date with all changes known to be in force on or before 10 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## Supplementary

### 65M Replacement of trust special administrator **E+W**

(1) If a trust special administrator ceases to hold office for any reason before the Secretary of State has made either an order under section 65L(2) or an order dissolving the trust, the Secretary of State must—

- (a) appoint another person as the trust special administrator, and
- (b) publish the name of the person appointed.

(2) Where a person is appointed under subsection (1) in relation to a trust, anything done by or in relation to a previous trust special administrator has effect as if done by or in relation to that person, unless the Secretary of State directs otherwise.

[ For the purposes of this section in its application to the case of an NHS foundation trust, the references to the Secretary of State are to be read as references to the regulator.]

#### Textual Amendments

**F143** S. 65M(3) inserted (1.11.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 178(1)**, 306(4); S.I. 2012/2657, art. 2(2)

### 65N Guidance **E+W**

(1) The Secretary of State must publish guidance for trust special administrators.

(2) It must include guidance about the publication of notices under sections 65H and 65J.

[ It must include guidance about the publication of—

- F144**(2A)
  - (a) notices under section 65KC(4)(a);
  - (b) statements under section 65KC(4)(b).]

(3) It must include guidance about the preparation of draft reports, as to—

- (a) persons to be consulted;
- (b) factors to be taken into account;
- (c) relevant publications.

[ For the purposes of this section in its application to cases of NHS foundation trusts, the reference in subsection (1) to the Secretary of State is to be read as a reference to the regulator.]

#### Textual Amendments

**F144** S. 65N(2A) inserted (1.11.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 178(2)**, 306(4); S.I. 2012/2657, art. 2(2)

**F145** S. 65N(4) inserted (1.11.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 178(3)**, 306(4); S.I. 2012/2657, art. 2(2)

*Status: Point in time view as at 01/04/2013.*

*Changes to legislation: National Health Service Act 2006, Part 2 is up to date with all changes known to be in force on or before 10 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## 65O Interpretation of this Chapter **E+W**

In this Chapter—

“trust special administrator” means a person appointed under section 65B(6) (a) [<sup>F146</sup>, section 65D(2)] or section 65M(1)(a);

“working day” means any day which is not Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971.]

### Textual Amendments

**F146** Words in s. 65O inserted (1.11.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 178(4)**, 306(4); [S.I. 2012/2657](#), **art. 2(2)**

## <sup>F147</sup>CHAPTER 5B **E+W**

### TRUST SPECIAL ADMINISTRATORS: PRIMARY CARE TRUSTS

### Textual Amendments

**F147** Pt. 2 Ch. 5B omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), **Sch. 4 para. 15**; [S.I. 2013/160](#), **art. 2(2)** (with arts. 7-9)

### *Appointment*

## 65P Appointment of trust special administrator **E+W**

.....

## 65Q Displacement of functions **E+W**

.....

## CHAPTER 6 **E+W**

### MISCELLANEOUS

### *Intervention orders and default powers*

## 66 Intervention orders **E+W**

[<sup>F148</sup>(1) This section applies to—

- (a) NHS trusts, and
- (b) Special Health Authorities.]

(2) If the Secretary of State—



*Status: Point in time view as at 01/04/2013.*

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- (a) considers that a body to which this section applies is not performing one or more of its functions adequately or at all, or that there are significant failings in the way the body is being run, and
  - (b) is satisfied that it is appropriate for him to intervene under this section, he may make an order under this section in respect of the body (an “intervention order”).
- (3) An intervention order may make any provision authorised by section 67 (including any combination of such provisions).

#### Textual Amendments

**F148** S. 66(1) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 21 para. 8\(1\)](#) (with [Sch. 21 para. 8\(2\)\(3\)](#)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

#### Modifications etc. (not altering text)

**C18** S. 66 modified (temp.) (11.7.2012) by [The Health and Social Care Act 2012 \(Commencement No.2 and Transitional, Savings and Transitory Provisions\) Order 2012 \(S.I. 2012/1831\), art. 13\(3\)-\(5\)](#)

**C19** S. 66(1) modified (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 21 para. 8\(2\)\(3\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)

## 67 Effect of intervention orders **E+W**

- (1) In this section—
- (a) “member” means a member of a <sup>F149</sup> ... <sup>F150</sup> ... Special Health Authority <sup>F151</sup> ...,
  - (b) “employee member” means a member of a <sup>F152</sup> ... <sup>F153</sup> ... Special Health Authority <sup>F154</sup> ... who is an officer of the body, <sup>F155</sup> ...
- (2) An intervention order may provide for the removal from office of—
- (a) all the members, or
  - (b) those specified in the order,
- and for their replacement with individuals specified in or determined in accordance with the order (who need not be the same in number as the removed individuals).
- (3) An intervention order may provide for the suspension (either wholly, or in respect only of powers and duties specified in or determined in accordance with the order) of—
- (a) all the members, or
  - (b) those specified in the order,
- and for the powers of the suspended members to be exercised, and their duties performed, during their suspension by individuals specified in or determined in accordance with the order (who need not be the same in number as the suspended individuals).
- (4) The powers and duties referred to in subsection (3) are, in the case of an employee member, only those which he has in his capacity as a member.
- (5) An intervention order may contain directions to the body to which it relates to secure that a function of the body specified in the directions—
- (a) is performed, to the extent specified in the directions, on behalf of the body and at its expense, by such person as is specified in the directions, and
  - (b) is so performed in such a way as to achieve such objectives as are so specified,

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and the directions may require that any contract or other arrangement made by the body with that person contains such terms and conditions as may be so specified.

- (6) If the person referred to in subsection (5)(a) is a body to which section 66 applies, the functions of that body include the performance of the functions specified in the directions under subsection (5).
- (7) Subsection (8) applies in relation to any provision in this Act, or in any order or regulations made, or directions given, under this Act, relating to—
- (a) the membership of the body to which an intervention order relates <sup>F156</sup> ..., or
  - (b) the procedure of the body.
- (8) The intervention order may provide in relation to any provision specified in the order—
- (a) that it does not apply in relation to the body while the order remains in force, or
  - (b) that it applies in relation to the body, while the order remains in force, with modifications specified in the order.
- (9) An intervention order may contain such supplementary directions to the body to which it relates as the Secretary of State considers appropriate for the purpose of giving full effect to the order.

#### Textual Amendments

- F149** Words in s. 67(1)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 16(a)(i); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F150** Words in s. 67(1)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 16(a)(ii); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F151** Words in s. 67(1)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 21 para. 9(2)(a) (with s. 179(5)(c)); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F152** Words in s. 67(1)(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 16(b)(i); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F153** Words in s. 67(1)(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 16(b)(i)(ii); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F154** Words in s. 67(1)(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 21 para. 9(2)(b)(i) (with s. 179(5)(c)); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F155** Words in s. 67(1)(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 21 para. 9(2)(b)(ii) (with s. 179(5)(c)); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F156** Words in s. 67(7)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 21 para. 9(3) (with s. 179(5)(c)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

## 68 Default powers **E+W**

- [<sup>F157</sup>(1) This section applies to—
- (a) NHS trusts established under section 25, and
  - (b) Special Health Authorities.]
- (2) If the Secretary of State considers that a body to which this section applies—
- (a) has failed to carry out any functions conferred or imposed on it by or under this Act, or
  - (b) has in carrying out those functions failed to comply with any regulations or directions relating to those functions,

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he may after such inquiry as he considers appropriate make an order declaring it to be in default.

- (3) The members of the body in default must immediately vacate their office, and the order—
- (a) must provide for the appointment, in accordance with the provisions of this Act, of new members of the body, and
  - (b) may contain such provisions as seem to the Secretary of State expedient for authorising any person to act in the place of the body pending the appointment of new members.
- (4) An order under this section may contain such supplementary and incidental provisions as appear to the Secretary of State to be necessary or expedient, including—
- (a) provision for the transfer to the Secretary of State of property and liabilities of the body in default, and
  - (b) where any such order is varied or revoked by a subsequent order, provision in the subsequent order for the transfer to the body in default of any property or liabilities acquired or incurred by the Secretary of State in discharging any of the functions transferred to him.

#### Textual Amendments

**F157** S. 68(1) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 21 para. 10\(1\)](#) (with [Sch. 21 para. 9\(2\)\(3\)](#)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

#### Modifications etc. (not altering text)

- C20** S. 68 modified (temp.) (11.7.2012) by [The Health and Social Care Act 2012 \(Commencement No.2 and Transitional, Savings and Transitory Provisions\) Order 2012 \(S.I. 2012/1831\), art. 13\(3\)-\(5\)](#)
- C21** S. 68(1) modified (temp.) (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 21 para. 10\(2\)\(3\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)

### *Protection of members and officers of health service bodies*

#### **69 Protection from personal liability** **E+W**

- (1) Section 265 of the Public Health Act 1875 (c. 55) (which relates to the protection of members and officers of certain authorities) has effect as if there were included in the authorities referred to in that section a reference to an NHS body.
- (2) Any reference in that section to the Public Health Act 1875 has effect as if it included a reference to this Act and the National Health Service (Wales) Act 2006 (c. 42).

### *Transfer of residual liabilities*

#### **70 Transfer of residual liabilities** [<sup>F158</sup>of certain health service bodies] **E+W**

- (1) If <sup>F159</sup>... <sup>F160</sup>... an NHS trust or a Special Health Authority ceases to exist, the Secretary of State must exercise his functions so as to secure that all of the body's liabilities (other than any criminal liabilities) are dealt with.

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- (2) A liability is dealt with by being transferred to an NHS body, the Secretary of State or the Welsh Ministers.

#### Textual Amendments

- F158** Words in s. 70 heading inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 4 para. 17\(b\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F159** Words in s. 70(1) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 4 para. 17\(a\)\(i\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F160** Words in s. 70(1) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 4 para. 17\(a\)\(ii\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)

### *Losses and liabilities of certain health service bodies*

## 71 **Schemes for meeting losses and liabilities etc of certain health service bodies** E

+W

- (1) The Secretary of State may by regulations made with the consent of the Treasury establish a scheme whereby any of the bodies [<sup>F161</sup>or other persons] specified in subsection (2) may make provision to meet—
- (a) expenses arising from any loss of or damage to their property, and
  - (b) liabilities to third parties for loss, damage or injury arising out of the carrying out of the functions of the bodies [<sup>F161</sup>or other persons] concerned.
- (2) The bodies [<sup>F162</sup>and other persons ] referred to in subsection (1) are—
- [<sup>F163</sup>(za) the Board,
  - (zb) clinical commissioning groups,]
  - [<sup>F164</sup>(a) .....
  - [<sup>F165</sup>(b) .....
  - (c) NHS trusts,
  - (d) Special Health Authorities,
  - [<sup>F166</sup>(da) NICE,]
  - [<sup>F167</sup>(db) the Health and Social Care Information Centre,]
  - (e) NHS foundation trusts,
  - (f) [<sup>F168</sup>the Care Quality Commission] , and
  - [<sup>F169</sup>(g) .....
  - [<sup>F170</sup>(h) the Secretary of State,
  - [ a company formed under section 223 and wholly or partly owned by the
  - [<sup>F171</sup>(ha) Secretary of State or the Board,
  - (hb) a subsidiary of a company which is formed under that section and wholly owned by the Secretary of State,] and
  - (i) a body or other person (other than a body or other person within any of [<sup>F172</sup>paragraphs (za) to (hb)] ) providing, or arranging the provision of, health services whose provision is the subject of arrangements with a body or other person within any of [<sup>F173</sup>paragraphs (za) to (h)] ,]
- but a scheme under this section may limit the class or description of bodies which [<sup>F174</sup>, or other persons who, ] are eligible to participate in it.

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- [<sup>F175</sup>(2A) In subsection (1)(b) “functions”—
- (a) in relation to the Secretary of State, means the Secretary of State's functions in connection with the health service;
  - [<sup>F176</sup>(ab) in relation to a company within paragraph (ha) or (hb) of subsection (2), means the company's activities in providing facilities or services to any person or body;]
  - (b) in relation to a body or other person within paragraph (i) of subsection (2), means the body's or person's functions of providing, or arranging the provision of, health services whose provision is the subject of arrangements with a body or other person within any of [<sup>F177</sup>paragraphs (za) to (h)] of that subsection.]
- (3) A scheme under this section may, in particular—
- (a) provide for the scheme to be administered by the Secretary of State [<sup>F178</sup>or the Board] or by a [<sup>F179</sup>... <sup>F180</sup>...NHS trust, Special Health Authority or NHS foundation trust specified in the scheme,
  - (b) require any body which [<sup>F181</sup>, or other person who,] participates in the scheme to make payments in accordance with the scheme, and
  - (c) provide for the making of payments for the purposes of the scheme by the Secretary of State [<sup>F182</sup> (whether or not a participator in the scheme and, if a participator, whether or not required to make payments as a participator) ].
- (4) If the Secretary of State so directs, a body which is eligible to participate in a scheme must do so.
- [<sup>F183</sup>(5) The Secretary of State may make a direction under subsection (4) in respect of a body only if the body is within any of paragraphs [<sup>F184</sup>(c), (d)] [<sup>F185</sup>and (f)] of subsection (2).]
- (6) Where a scheme provides for the scheme to be administered by the Secretary of State, [<sup>F186</sup>the Board or] a [<sup>F187</sup>... <sup>F188</sup>... NHS trust, Special Health Authority or NHS foundation trust must carry out such functions in connection with the administration of the scheme by the Secretary of State as he may direct.
- (7) Subsections (4) and (6) do not affect any other power of direction of the Secretary of State.
- (8) A person or body administering a scheme under this section does not require permission under any provision of the Financial Services and Markets Act 2000 (c. 8) as respects activities carried out under the scheme.
- [<sup>F189</sup>(9) In subsection (2)(i), the reference to a person providing health services does not include a person providing health services under a contract of employment.
- (10) In this section “health services” means services provided as part of the health service. ]

#### Textual Amendments

- F161** Words in s. 71(1) inserted (1.10.2008) by [Health and Social Care Act 2008 \(c. 14\), ss. 142\(2\)](#), 170(3)(4); S.I. 2008/2497, art. 5
- F162** Words in s. 71(2) inserted (1.10.2008) by [Health and Social Care Act 2008 \(c. 14\), ss. 142\(3\)\(a\)](#), 170(3)(4); S.I. 2008/2497, art. 5
- F163** S. 71(2)(za)(zb) inserted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\)](#), [Sch. 4 para. 18\(2\)\(a\)](#); S.I. 2012/1831, art. 2(2)
- F164** S. 71(2)(a) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\)](#), [Sch. 4 para. 18\(2\)\(b\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)

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- F165** S. 71(2)(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 18(2)(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F166** S. 71(2)(da) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 17 para. 10(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F167** S. 71(2)(db) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 19 para. 9(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F168** Words in s. 71(2)(f) substituted (1.4.2009) by Health and Social Care Act 2008 (c. 14), s. 170(3)(4), **Sch. 5 para. 85**; S.I. 2009/462, art. 2(1), Sch. 1 para. 35(bb)
- F169** S. 71(2)(g) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 7 para. 19(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F170** S. 71(2)(h)(i) inserted (1.10.2008) by Health and Social Care Act 2008 (c. 14), **ss. 142(3)(b)**, 170(3)(4); S.I. 2008/2497, art. 5
- F171** S. 71(2)(ha)(hb) inserted (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 18(2)(d)**; S.I. 2012/1831, art. 2(2)
- F172** Words in s. 71(2)(i) substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 18(2)(e)(i)**; S.I. 2012/1831, art. 2(2)
- F173** Words in s. 71(2)(i) substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 18(2)(e)(ii)**; S.I. 2012/1831, art. 2(2)
- F174** Words in s. 71(2) inserted (1.10.2008) by Health and Social Care Act 2008 (c. 14), **ss. 142(3)(c)**, 170(3)(4); S.I. 2008/2497, art. 5
- F175** S. 71(2A) inserted (1.10.2008) by Health and Social Care Act 2008 (c. 14), **ss. 142(4)**, 170(3)(4); S.I. 2008/2497, art. 5
- F176** S. 71(2A)(ab) inserted (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 18(3)(a)**; S.I. 2012/1831, art. 2(2)
- F177** Words in s. 71(2A)(b) substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 18(3)(b)**; S.I. 2012/1831, art. 2(2)
- F178** Words in s. 71(3)(a) inserted (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 18(4)(a)**; S.I. 2012/1831, art. 2(2)
- F179** Words in s. 71(3)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 18(4)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F180** Words in s. 71(3)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 18(4)(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F181** Words in s. 71(3)(b) inserted (1.10.2008) by Health and Social Care Act 2008 (c. 14), **ss. 142(5)(a)**, 170(3)(4); S.I. 2008/2497, art. 5
- F182** Words in s. 71(3)(c) inserted (1.10.2008) by Health and Social Care Act 2008 (c. 14), **ss. 142(5)(b)**, 170(3)(4); S.I. 2008/2497, art. 5
- F183** S. 71(5) substituted (1.10.2008) by Health and Social Care Act 2008 (c. 14), **ss. 142(6)**, 170(3)(4); S.I. 2008/2497, art. 5
- F184** Words in s. 71(5) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 18(5)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F185** Words in s. 71(5) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 7 para. 19(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F186** Words in s. 71(6) inserted (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 18(6)(a)**; S.I. 2012/1831, art. 2(2)
- F187** Words in s. 71(6) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 18(6)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F188** Words in s. 71(6) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 18(6)(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F189** S. 71(9)(10) inserted (1.10.2008) by Health and Social Care Act 2008 (c. 14), **ss. 142(7)**, 170(3)(4); S.I. 2008/2497, art. 5



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**Modifications etc. (not altering text)**

**C22** S. 71(2) modified (temp.) (1.10.2008) by [Health and Social Care Act 2008 \(Consequential Amendments and Transitory Provisions\) Order 2008 \(S.I. 2008/2250\)](#), arts. 1(1), **3(15)**

*Co-operation between NHS bodies*

**72 Co-operation between NHS bodies** **E+W**

[<sup>F190</sup>(1)] It is the duty of NHS bodies to co-operate with each other in exercising their functions.

[<sup>F191</sup>(2) For the purposes of this section, NICE is an NHS body.]

[<sup>F192</sup>(3) For the purposes of this section, the Health and Social Care Information Centre is an NHS body.]

**Textual Amendments**

**F190** S. 72(1): s. 72 renumbered as s. 72(1) (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 17 para. 10\(4\)\(a\)](#); [S.I. 2013/160](#), art. 2(2) (with arts. 7-9)

**F191** S. 72(2) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 17 para. 10\(4\)\(b\)](#); [S.I. 2013/160](#), art. 2(2) (with arts. 7-9)

**F192** S. 72(3) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 19 para. 9\(4\)](#); [S.I. 2013/160](#), art. 2(2) (with arts. 7-9)

*Directions and regulations under this Part*

**73 Directions and regulations under this Part** **E+W**

(1) This section applies to directions and regulations under any of—

(a) section 7,

(b) section 8,

<sup>F193</sup>(c) .....

<sup>F193</sup>(d) .....

<sup>F193</sup>(e) .....

<sup>F193</sup>(f) .....

(g) section 29.

(2) Except in prescribed cases, the directions and regulations must not preclude a person or body by whom the function is exercisable apart from the directions or regulations from exercising the function.

**Textual Amendments**

**F193** S. 73(1)(c)-(f) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 4 para. 19](#); [S.I. 2013/160](#), art. 2(2) (with arts. 7-9)



**Status:**

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**Changes to legislation:**

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