



National Health Service Act 2006

2006 CHAPTER 41

PART 2

HEALTH SERVICE BODIES

[^{F1}CHAPTER 5A

TRUST SPECIAL ADMINISTRATORS: NHS TRUSTS AND NHS FOUNDATION TRUSTS

Textual Amendments

F1 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

(1) This Chapter applies to—

(a) an NHS trust all or most of whose hospitals, establishments and facilities are in England;

[^{F2}(b) any NHS foundation trust.]

^{F3}(2)

Textual Amendments

F2 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)

F3 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)

Status: Point in time view as at 01/04/2013.

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Appointment

65B [F4NHS trusts: appointment of trust special administrator]

- (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—
 - (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

- F4** 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

- (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.

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F5
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Textual Amendments

- F5** 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 [F6NHS foundation trusts: appointment of trust special administrator]

[F7(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.]

[F7(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.]

[F7(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 [F8making an order] under this section, the regulator must consult first the Secretary of State and then—

- (a) the trust,
[the Board,]

F9(aa)

F10(b)

- (c) any other person to which the trust provides F11... services under this Act and which the regulator considers it appropriate to consult [F12, and
(d) the Care Quality Commission.]

[An order under subsection (2) must specify the date when the appointment is to take F13(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.

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- (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

- F6** 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)
- F7** 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)
- F8** 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)
- F9** 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)
- F10** 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)
- F11** 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)
- F12** 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)
- F13** 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)

Objective of trust special administration

F14 **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

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- (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.]

Textual Amendments

F14 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\(2\)](#)

^{F15}65E NHS foundation trusts: de-authorisation and appointment of trust special administrator

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Textual Amendments

F15 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

- (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.

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- (2) When preparing the draft report, the administrator must consult—
- [the Board,]
^{F16}(za)
- (a) ^{F17}... 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.
- [For the purposes of this section in its application to the case of an NHS foundation
- ^{F18}(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;
- (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

- F16** 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)
- F17** 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)
- F18** 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

- (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.

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- [In the case of an NHS foundation trust, the administrator may not make a variation to ^{F19}(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

F19 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)

65H Consultation requirements

- (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,]
 - ^{F20}(za)
 - ^{F21}(a)
 - (b) any other person to which the trust provides goods or services under this Act ^{F22}...

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- (c) any person within subsection (8), if required by directions given by the Secretary of State ^{F23};
- (d) any other person specified in a direction given by the Secretary of State].
- (8) The persons within this subsection are—
- ^{F24}(a)
- ^{F24}(b)
- ^{F24}(c)
- ^{F24}(d)
- ^{F25}(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 ^{F26}the Board and] each of the persons from whom the administrator must request a written response under subsection ^{F27}(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).
- [For the purposes of this section in its application to the case of an NHS foundation ^{F28}(12) trust—
- (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

- F20** 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)
- F21** 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)
- F22** 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)
- F23** 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)
- F24** 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)
- F25** 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)
- F26** 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)

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- F27** 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)
- F28** 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

- (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 ^{F29}(4) trust, the references to the Secretary of State are to be read as references to the regulator.]

Textual Amendments

- F29** 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

- (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.

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[For the purposes of this section in its application to the case of an NHS foundation trust,^{F30}(5) the references to the Secretary of State are to be read as references to the regulator.]

Textual Amendments

F30 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)

[^{F31}Action by the Secretary of State and the regulator]

Textual Amendments

F31 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 [^{F32}Secretary of State's decision in case of NHS trust]

- (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 [^{F33}relating to an NHS trust], the Secretary of State must decide what action to take in relation to the trust.
- (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

F32 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)

F33 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)

[^{F34}65KA Regulator's decision in case of NHS foundation trust

- (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.

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- (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

F34 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)

65KB Secretary of State's response to regulator's decision

- (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.

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

Changes to legislation: National Health Service Act 2006, Chapter 5A is up to date with all changes known to be in force on or before 05 July 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

F34 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

- (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
 - (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

F34 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

- (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—

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- (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)).
- (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

F34 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

- (1) This section applies if the Secretary of State decides under section 65K not to dissolve the trust.

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

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(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—

- (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.]

^{F36}(3)

^{F36}(4)

^{F36}(5)

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

^{F37}(6)

(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

F35 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\(2\)](#)

F36 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\(2\)](#)

F37 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\(2\)](#)

^{F38} **65LA** Trusts to be dissolved

(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.

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

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- (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

- F38** 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\(2\)](#)

Supplementary

65M Replacement of trust special administrator

- (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 ^{F39}(3) trust, the references to the Secretary of State are to be read as references to the regulator.]

Textual Amendments

- F39** 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

- (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—

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

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- ^{F40}(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,
^{F41}(4) the reference in subsection (1) to the Secretary of State is to be read as a reference to the regulator.]

Textual Amendments

- F40** 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)
F41 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)

650 Interpretation of this Chapter

In this Chapter—

- “trust special administrator” means a person appointed under section 65B(6)
(a) [^{F42}, 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

- F42** 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)

Status:

Point in time view as at 01/04/2013.

Changes to legislation:

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