



Health and Social Care Act 2012

2012 CHAPTER 7

PART 4 **E+W**

NHS FOUNDATION TRUSTS & NHS TRUSTS

Governance and management

151 **Governors** **E+W**

- (1) In paragraph 7 of Schedule 7 to the National Health Service Act 2006 (public benefit corporation to have governors)—
 - (a) in sub-paragraph (1), for “a board of governors” substitute “a council of governors”, and
 - (b) in sub-paragraphs (2), (3) and (4), for “the board” substitute “the council”.
- (2) Omit paragraph 9(3) of that Schedule (requirement for at least one member of council of governors to be appointed by PCT).
- (3) For paragraph 9(7) of that Schedule (partnership organisations) substitute—

“(7) Any organisation specified in the constitution for the purposes of this sub-paragraph may appoint one or more members of the council (but no more than the number specified for those purposes in the constitution).”
- (4) After paragraph 10 of that Schedule insert—

“10A The general duties of the council of governors are—

 - (a) to hold the non-executive directors individually and collectively to account for the performance of the board of directors, and
 - (b) to represent the interests of the members of the corporation as a whole and the interests of the public.”
- (5) After paragraph 10A of that Schedule insert—

Status: Point in time view as at 31/10/2012. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Health and Social Care Act 2012, PART 4 is up to date with all changes known to be in force on or before 31 August 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)

“10B A public benefit corporation must take steps to secure that the governors are equipped with the skills and knowledge they require in their capacity as such.”

(6) After paragraph 10B of that Schedule insert—

“10C For the purpose of obtaining information about the corporation's performance of its functions or the directors' performance of their duties (and deciding whether to propose a vote on the corporation's or directors' performance), the council of governors may require one or more of the directors to attend a meeting.”

(7) In paragraph 23(4) of that Schedule (persons eligible for appointment as auditor by governors), in sub-paragraph (c), for “the regulator” substitute “the Secretary of State”.

(8) In paragraph 26(2) of that Schedule (information that must be given in annual reports etc.), after paragraph (a) insert—

“(aa) information on any occasions in the period to which the report relates on which the council of governors exercised its power under paragraph 10C,”.

(9) In consequence of subsection (1)—

- (a) in sections 33(4)(a) (in each place it appears), 35(2)(c) and (5)(c), 39(3)(a), 59(1), (2)(b) and (5) and 60(1) of that Act, for “board of governors” substitute “council of governors”,
- (b) in section 60(2) and (3) and paragraphs 8 to 14, 17, 18, 20, 21, 23, 27 and 28 of Schedule 7 to that Act, for “the board” (in each place it appears) substitute “the council”,
- (c) for the cross-heading preceding paragraph 7 of that Schedule substitute “Council of Governors”,
- (d) in the cross-heading preceding paragraph 28 of that Schedule, for “board” substitute “council”, and
- (e) in paragraphs 4(2) and 5(1) of Schedule 10 to that Act, for “board of governors” substitute “council of governors”.

Commencement Information

II S. 151(1)(9) in force at 1.10.2012 by [S.I. 2012/1831](#), **art. 2(2)**

VALID FROM 01/04/2013

152 Directors **E+W**

(1) After paragraph 18 of Schedule 7 to the National Health Service Act 2006 insert—

“18A The general duty of the board of directors, and of each director individually, is to act with a view to promoting the success of the

Status: Point in time view as at 31/10/2012. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Health and Social Care Act 2012, PART 4 is up to date with all changes known to be in force on or before 31 August 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)

corporation so as to maximise the benefits for the members of the corporation as a whole and for the public.”

(2) After paragraph 18A of that Schedule insert—

“18B (1) The duties that a director of a public benefit corporation has by virtue of being a director include in particular—

- (a) a duty to avoid a situation in which the director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the corporation;
- (b) a duty not to accept a benefit from a third party by reason of being a director or doing (or not doing) anything in that capacity.

(2) The duty referred to in sub-paragraph (1)(a) is not infringed if—

- (a) the situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
- (b) the matter has been authorised in accordance with the constitution.

(3) The duty referred to in sub-paragraph (1)(b) is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

(4) In sub-paragraph (1)(b), “third party” means a person other than—

- (a) the corporation, or
- (b) a person acting on its behalf.”

(3) After paragraph 18B of that Schedule insert—

“18C (1) If a director of a public benefit corporation has in any way a direct or indirect interest in a proposed transaction or arrangement with the corporation, the director must declare the nature and extent of that interest to the other directors.

(2) If a declaration under this paragraph proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.

(3) Any declaration required by this paragraph must be made before the corporation enters into the transaction or arrangement.

(4) This paragraph does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.

(5) A director need not declare an interest—

- (a) if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
- (b) if, or to the extent that, the directors are already aware of it;
- (c) if, or to the extent that, it concerns terms of the director's appointment that have been or are to be considered—
 - (i) by a meeting of the board of directors, or

Status: Point in time view as at 31/10/2012. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Health and Social Care Act 2012, PART 4 is up to date with all changes known to be in force on or before 31 August 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)

(ii) by a committee of the directors appointed for the purpose under the constitution.”

(4) After paragraph 18C of that Schedule insert—

“18D (1) Before holding a meeting, the board of directors must send a copy of the agenda of the meeting to the council of governors.

(2) As soon as practicable after holding a meeting, the board of directors must send a copy of the minutes of the meeting to the council of governors.”

(5) After paragraph 18D of that Schedule insert—

“18E (1) The constitution must provide for meetings of the board of directors to be open to members of the public.

(2) But the constitution may provide for members of the public to be excluded from a meeting for special reasons.”

VALID FROM 01/04/2013

153 **Members** E+W

(1) In section 61 of the National Health Service Act 2006 (representative membership), the existing text becomes subsection (1) and, in that subsection, for “An authorisation may require an NHS foundation trust to” substitute “An NHS foundation trust must”.

(2) After that subsection insert—

“(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.”

154 **Accounts: initial arrangements** E+W

(1) In paragraph 24 of Schedule 7 to the National Health Service Act 2006 (accounts: general), for sub-paragraph (1) substitute—

“(1) A public benefit corporation must keep proper accounts and proper records in relation to the accounts.

(1A) The regulator may with the approval of the Secretary of State give directions to the corporation as to the content and form of its accounts.”

(2) In sub-paragraph (3) of that paragraph, in paragraph (b) for “any records” substitute “the records”.

(3) In paragraph 25 of that Schedule (annual accounts), in sub-paragraph (1), for “the Treasury” substitute “the Secretary of State”.

Status: Point in time view as at 31/10/2012. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Health and Social Care Act 2012, PART 4 is up to date with all changes known to be in force on or before 31 August 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) After sub-paragraph (1) of that paragraph insert—

“(1A) The regulator may with the approval of the Secretary of State direct a public benefit corporation—

- (a) to prepare accounts in respect of such period or periods as may be specified in the direction;
- (b) that any accounts prepared by it by virtue of paragraph (a) are to be audited in accordance with such requirements as may be specified in the direction.”

(5) In sub-paragraph (2) of that paragraph—

- (a) after “annual accounts” insert “or in preparing any accounts by virtue of sub-paragraph (1A)(a)”,
- (b) for “the Treasury” substitute “the Secretary of State”, and
- (c) for “information to be given in” substitute “content and form of”.

(6) In sub-paragraph (3) of that paragraph, after “annual accounts” insert “, or of any accounts to be prepared by it by virtue of sub-paragraph (1A)(a),”.

(7) In sub-paragraph (4) of that paragraph, in paragraph (b)—

- (a) omit “once it has done so,”, and
- (b) at the end insert “within such period as the regulator may direct”.

(8) After that sub-paragraph insert—

“(4A) The corporation must send to the regulator within such period as the regulator may direct—

- (a) a copy of any accounts prepared by the corporation by virtue of sub-paragraph (1A)(a), and
- (b) a copy of any report of an auditor on them prepared by virtue of sub-paragraph (1A)(b).”

Commencement Information

- I2** S. 154 partly in force; s. 154 in force for specified purposes at Royal Assent, see s. 306(1)(d)
- I3** S. 154 in force at 1.10.2012 in so far as not already in force by [S.I. 2012/1831](#), [art. 2\(2\)](#)

PROSPECTIVE

F1 155 Accounts: variations to initial arrangements **E+W**

Textual Amendments

- F1** S. 155 omitted (1.7.2022) by virtue of [Health and Care Act 2022 \(c. 31\)](#), [ss. 63\(2\)\(a\)](#), 186(6); [S.I. 2022/734](#), [reg. 2\(a\)](#), [Sch. \(with regs. 13, 29\)](#)

Status: Point in time view as at 31/10/2012. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Health and Social Care Act 2012, PART 4 is up to date with all changes known to be in force on or before 31 August 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)

156 Annual report and forward plan **E+W**

- (1) In sub-paragraph (2) of paragraph 26 of Schedule 7 to the National Health Service Act 2006 (information that must be included in annual report), after paragraph (aa) (inserted by section 151(8)) insert—
 - “(ab) information on the corporation's policy on pay and on the work of the committee established under paragraph 18(2) and such other procedures as the corporation has on pay,
 - (ac) information on the remuneration of the directors and on the expenses of the governors and the directors.”
- (2) After that sub-paragraph insert—

“(2A) Before imposing a requirement under sub-paragraph (2)(b) that the regulator considers is sufficiently significant to justify consultation, the regulator must consult such persons as it considers appropriate.”
- (3) The Secretary of State may by order—
 - (a) amend sub-paragraph (2) of paragraph 26 of that Schedule so as to substitute for paragraph (b) the following—

“(b) such other information as may be prescribed.”, and
 - (b) repeal sub-paragraph (2A) of that paragraph.
- (4) In paragraph 27(1) of that Schedule (duty to send forward plan to regulator), for “the regulator” substitute “the Secretary of State”.
- (5) Omit section 39(2)(e) of that Act (requirement for copy of forward plan to be on register).
- (6) In paragraph 22(1) of Schedule 7, omit paragraph (e) (duty to make forward plan available to the public).

Commencement Information

I4 S. 156 partly in force; s. 156 in force for specified purposes at Royal Assent, see s. 306(1)(d)

VALID FROM 01/04/2013

157 Meetings **E+W**

- (1) After paragraph 27 of Schedule 7 to the National Health Service Act 2006 insert—

“**Annual meeting of members**

27A (1) A public benefit corporation must hold an annual meeting of its members.

 - (2) The meeting must be open to members of the public.
 - (3) At least one member of the board of directors of the corporation must attend the meeting and present the following documents to the members at the meeting—
 - (a) the annual accounts,

Status: Point in time view as at 31/10/2012. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Health and Social Care Act 2012, PART 4 is up to date with all changes known to be in force on or before 31 August 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)

<p style="margin-left: 40px;">(b) any report of the auditor on them, (c) the annual report.</p> <p>(4) Where an amendment is made to the constitution in relation to the powers or duties of the council of governors of a public benefit corporation (or otherwise with respect to the role that the council has as part of the corporation)—</p> <p style="margin-left: 40px;">(a) at least one member of the council of governors must attend the next meeting to be held under this paragraph and present the amendment, and (b) the corporation must give the members an opportunity to vote on whether they approve the amendment.</p> <p>(5) If more than half of the members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the corporation must take such steps as are necessary as a result.”</p> <p>(2) In paragraph 28 of that Schedule (meeting of council of governors to consider annual accounts and reports), the existing text of which becomes sub-paragraph (1), after that sub-paragraph insert—</p> <p style="margin-left: 40px;">“(2) Nothing in sub-paragraph (1) prevents the council of governors from holding a general meeting more than once a year.”</p> <p>(3) After that paragraph insert—</p> <p style="margin-left: 20px;">28A “Combined meetings of members and governors</p> <p style="margin-left: 40px;">A public benefit corporation may hold a meeting which combines a meeting under paragraph 27A with a meeting under paragraph 28.”</p>

158 Voting **E+W**

(1) After paragraph 29 of Schedule 7 to the National Health Service Act 2006 insert—

“Power to make provision about voting

30 (1) Regulations may amend this Chapter so as to add, vary or omit provision relating to voting by members of the council of governors of a public benefit corporation that is an NHS foundation trust, by its directors or by its members.

(2) The power under sub-paragraph (1) is exercisable only in relation to provision in this Chapter that was inserted, or otherwise provided for, by Part 4 of the Health and Social Care Act 2012.”

(2) In section 64(3) of that Act (regulations under Chapter 5 of Part 2 of that Act that are subject to affirmative procedure), after paragraph (a) (but before the “or” following it) insert—

“(aa) regulations under paragraph 30(1) of Schedule 7.”.

Status: Point in time view as at 31/10/2012. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Health and Social Care Act 2012, PART 4 is up to date with all changes known to be in force on or before 31 August 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)

Commencement Information

- I5** S. 158 partly in force; s. 158 in force for specified purposes at Royal Assent, see s. 306(1)(d)
I6 S. 158 in force at 1.10.2012 in so far as not already in force by [S.I. 2012/1831](#), [art. 2\(2\)](#)

Foundation trust status

VALID FROM 01/04/2013

159 Authorisation **E+W**

- (1) In section 30(1) of the National Health Service Act 2006 (definition of NHS foundation trust), for “which is authorised under this Chapter to provide” substitute “the function of which is to provide in accordance with this Chapter”.
- (2) Omit section 33(2)(a) of that Act (requirement for application for authorisation to describe goods and services to be provided).
- (3) In section 35(2) of that Act (matters as to which the regulator must be satisfied before giving authorisation), for paragraph (e) substitute—
 - “(e) the applicant will be able to provide goods and services for the purposes of the health service in England.”.
- (4) After section 35(3) of that Act (things the regulator must consider before deciding whether it is satisfied as to the matters in section 35(2)) insert—
 - “(3A) The regulator must not give an authorisation unless it is notified by the Care Quality Commission that it is satisfied that the applicant is complying with (so far as applicable) the requirements mentioned in section 12(2) of the Health and Social Care Act 2008 in relation to the regulated activity or activities the applicant carries on.
 - (3B) In subsection (3A), “regulated activity” has the same meaning as in section 8 of the Health and Social Care Act 2008.”
- (5) Omit section 35(4) and (7) of that Act (power to give authorisation on terms the regulator considers appropriate).
- (6) Omit section 38 of that Act (variation of authorisation).
- (7) Omit section 39(2)(b) of that Act (requirement for copy of authorisation to be on register).
- (8) Omit section 49 of that Act (authorisation to require trust to allow regulator to enter and inspect trust's premises).
- (9) Omit paragraph 22(1)(b) of Schedule 7 to that Act (requirement for copy of authorisation to be available for public inspection).

Status: Point in time view as at 31/10/2012. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Health and Social Care Act 2012, PART 4 is up to date with all changes known to be in force on or before 31 August 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)

160 Bodies which may apply for foundation trust status **E+W**

- (1) Omit section 34 of the National Health Service Act 2006 (application for authorisation by body other than NHS trust).
- (2) In section 35(1) of that Act (bodies which may be given authorisation), omit paragraph (b) (public benefit corporations) and the preceding “or”.
- (3) Omit section 36(2) of that Act (public benefit corporation to become NHS foundation trust on being given authorisation).
- (4) Despite subsection (1)—
 - (a) section 34(1) to (4) of that Act continues to have effect in the case of an application which, immediately before the commencement of that subsection, is pending determination, and
 - (b) section 34(5) to (7) of that Act continues to have effect in the case of an existing public benefit corporation.
- (5) Despite subsection (2), section 35(1)(b) of that Act continues to have effect in the case of an existing public benefit corporation which, immediately before the commencement of that subsection, has not been given an authorisation under section 35.
- (6) Despite subsection (3), section 36(2) of that Act continues to have effect in the case of an existing public benefit corporation.
- (7) In subsections (4) to (6), “existing public benefit corporation” means a public benefit corporation—
 - (a) incorporated under section 34 of that Act and in existence immediately before the commencement of this section, or
 - (b) incorporated under that section by virtue of subsection (4).

Commencement Information

I7 S. 160 in force at 1.7.2012 by [S.I. 2012/1319](#), [art. 2\(3\)](#)

VALID FROM 01/04/2013

161 Amendment of constitution **E+W**

- (1) In section 37 of the National Health Service Act 2006 (amendments of constitution), the existing text of which becomes subsection (1), for “with the approval of the regulator” substitute “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.”
- (2) After that subsection insert—

“(2) Amendments made under this section take effect as soon as the conditions in subsection (1)(a) and (b) are satisfied.

Status: Point in time view as at 31/10/2012. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Health and Social Care Act 2012, PART 4 is up to date with all changes known to be in force on or before 31 August 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)

- (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.”
- (3) Subsections (1) and (2) do not apply in the case of amendments in respect of which, immediately before the commencement of this section, Monitor has yet to decide whether or not to give approval under section 37 of the National Health Service Act 2006.

162 Panel for advising governors E+W

After section 39 of the National Health Service Act 2006 insert—

“39A Panel for advising governors

- (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.

Status: Point in time view as at 31/10/2012. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Health and Social Care Act 2012, PART 4 is up to date with all changes known to be in force on or before 31 August 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)

- (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.”

Commencement Information

18 S. 162 partly in force; s. 162 in force for specified purposes at Royal Assent, see s. 306(1)(d)

VALID FROM 01/04/2013

Finance

163 Financial powers etc. E+W

- (1) At the end of section 40 of the National Health Service Act 2006 (power of Secretary of State to give financial assistance to NHS foundation trusts), insert—
- “(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).”

Status: Point in time view as at 31/10/2012. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Health and Social Care Act 2012, PART 4 is up to date with all changes known to be in force on or before 31 August 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) Omit section 41 of that Act (prudential borrowing code).
- (3) In section 42 of that Act (public dividend capital), omit subsection (4) (dividend payable by NHS foundation trust to be same as that payable by NHS trust).
- (4) Omit subsection (5) of that section (requirement for Secretary of State to consult the regulator).
- (5) At the end of that section insert—

“(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.”

- (6) After that section insert—

“42A Criteria for making loans etc.

- (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.

Status: Point in time view as at 31/10/2012. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Health and Social Care Act 2012, PART 4 is up to date with all changes known to be in force on or before 31 August 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)

- (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.”
- (7) Omit section 45 of that Act (disposal of protected property).
- (8) Omit section 46(2) and (3) of that Act (limitation on power of NHS foundation trusts to borrow money).
- (9) For section 50 of that Act (fees) substitute—

“50 Fees

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.”

Functions

164 Goods and services **E+W**

- (1) In section 43 of the National Health Service Act 2006 (authorised services), for subsections (1) and (2) substitute—
- “(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.
- (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.
- (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.”
- (2) In subsection (3) of that section (power to carry on other activities in order to generate additional income)—
- (a) for “The” substitute “An”,
 - (b) for “subsection (1)” substitute “subsection (2)”, and
 - (c) omit “, subject to any restrictions in the authorisation,”.
- (3) After that subsection insert—

Status: Point in time view as at 31/10/2012. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Health and Social Care Act 2012, PART 4 is up to date with all changes known to be in force on or before 31 August 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)

- “(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.”
- (4) Omit subsections (4) to (7) of that section (goods and services that may be authorised, etc.).
- (5) For the title to that section substitute “Provision of goods and services”.
- (6) In paragraph 2 of Schedule 7 to that Act (constitution), the existing text of which becomes sub-paragraph (1), after that sub-paragraph insert—
- “(2) If the corporation is an NHS foundation trust, the constitution must specify its principal purpose (as to which, see section 43(1)).”

Commencement Information

I9 S. 164(1)-(3)(6) in force at 1.10.2012 by [S.I. 2012/1831](#), [art. 2\(2\)](#)

165 Private health care E+W

- (1) In section 44 of the National Health Service Act 2006 (private health care), omit—
- (a) subsection (1) (restriction on provision of private health services),
 - (b) subsection (2) (cap on private income),
 - (c) subsection (2A) (special provision for mental health foundation trusts), and
 - (d) subsections (3) to (5) (interpretation etc.).

Status: Point in time view as at 31/10/2012. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Health and Social Care Act 2012, PART 4 is up to date with all changes known to be in force on or before 31 August 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) For the title to that section substitute “Power to charge for accommodation etc.”.

(3) In consequence of subsection (1)(b) and (c), omit section 33 of the Health Act 2009.

Commencement Information

I10 S. 165 in force at 1.10.2012 by [S.I. 2012/1831](#), [art. 2\(2\)](#)

VALID FROM 01/11/2012

166 Information **E+W**

For section 48 of the National Health Service Act 2006 (information) substitute—

“48 Information

- (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.”

VALID FROM 01/04/2013

167 Significant transactions **E+W**

“After section 51 of the National Health Service Act 2006 insert—

51A Significant transactions

- (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.”

Status: Point in time view as at 31/10/2012. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Health and Social Care Act 2012, PART 4 is up to date with all changes known to be in force on or before 31 August 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)

VALID FROM 01/04/2013

Mergers, acquisitions, separations and dissolution

168 Mergers **E+W**

- (1) In section 56 of the National Health Service Act 2006 (mergers), in subsection (1)—
 - (a) in paragraph (b), after “NHS trust” insert “established under section 25”, and
 - (b) for the words from “authorisation” to the end substitute “the dissolution of the trusts and the establishment of a new NHS foundation trust.”
- (2) After that subsection insert—

“(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).”
- (3) In subsection (2) of that section, omit—
 - (a) paragraph (c) (but not the “and” following it), and
 - (b) the words from “and must give” to the end.
- (4) Omit subsection (3) of that section.
- (5) For subsection (4) of that section substitute—

“(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.”
- (6) Omit subsections (5) to (10) of that section.
- (7) In subsection (11) of that section, for “On an authorisation being given under this section” substitute “On the grant of the application”.

169 Acquisitions **E+W**

After section 56 of the National Health Service Act 2006 insert—

“56A Acquisitions

- (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).
- (3) The application must—
 - (a) be supported by the Secretary of State if B is an NHS trust, and

Status: Point in time view as at 31/10/2012. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Health and Social Care Act 2012, PART 4 is up to date with all changes known to be in force on or before 31 August 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) 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.”

170 Separations **E+W**

After section 56A of the National Health Service Act 2006 insert—

“56B Separations

- (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.”

171 Dissolution **E+W**

After section 57 of the National Health Service Act 2006 insert—

“57A Dissolution

- (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.

Status: Point in time view as at 31/10/2012. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Health and Social Care Act 2012, PART 4 is up to date with all changes known to be in force on or before 31 August 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) 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.”

172 **Supplementary** **E+W**

- (1) In section 57 of the National Health Service Act 2006 (mergers: supplementary), in subsection (1)—
 - (a) for “an authorisation is given under section 56” substitute “an application is granted under section 56 or 56B”, and
 - (b) at the end insert “or trusts”.
- (2) In subsection (2) of that section—
 - (a) for “such an authorisation is given, the Secretary of State” substitute “such an application is granted, the regulator”, and
 - (b) in paragraph (a), after “dissolving the” insert “trust or”, and
 - (c) in paragraph (b), at the end insert “or trusts”.
- (3) After that subsection insert—

“(2A) An order under section 56 or 56B is conclusive evidence of incorporation and conclusive evidence that the corporation is an NHS foundation trust.”
- (4) In subsection (3)(a) of that section, for “section 54(3)” substitute “section 54(4)”.
- (5) In subsection (4) of that section—
 - (a) for “section 56(1) and (2)” substitute “sections 56(2) and 56B(3)”, and
 - (b) for “section 54(4)(a) to (c)” substitute “section 54(4)(a) or (c)”.
- (6) In subsection (5) of that section, after “section 56” insert “or 56A”.
- (7) Omit subsection (6) of that section.
- (8) For the title to that section substitute “Sections 56 to 56B: supplementary”.
- (9) For the cross-heading preceding section 56 of that Act substitute “Mergers, acquisitions and separations”.
- (10) In section 64 of that Act (orders and regulations under Chapter 5 of Part 2 of that Act), in subsection (4)—
 - (a) omit the “or” following paragraph (b), and
 - (b) after paragraph (c), insert “, or
 - (d) section 57A.”
- (11) After that subsection insert—

“(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.”
- (12) In section 271(3)(b) of that Act (territorial limit of exercise of functions under Chapter 5), for “Part 1” substitute “Part 2”.

Status: Point in time view as at 31/10/2012. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Health and Social Care Act 2012, PART 4 is up to date with all changes known to be in force on or before 31 August 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)

Failure

VALID FROM 01/11/2012

173 Repeal of de-authorisation provisions **E+W**

- (1) Omit section 52C of the National Health Service Act 2006 (guidance etc. on de-authorisation notices).
- (2) Omit sections 53 to 55 of, and Schedule 9 to, that Act (voluntary arrangements and dissolution); and in consequence of that—
 - (a) in section 57 of that Act (as amended by section 172 of this Act)—
 - (i) in subsection (3)(a), for “the persons mentioned in section 54(4)” substitute “another NHS foundation trust, an NHS trust established under section 25 or the Secretary of State”,
 - (ii) omit subsection (3)(b), and
 - (iii) in subsection (4), for “any of the bodies mentioned in section 54(4) (a) or (c)” substitute “another NHS foundation trust or an NHS trust established under section 25”,
 - (b) in section 64(4) of that Act (as amended by section 172 of this Act), omit paragraph (b), and
 - (c) omit section 18(2) to (6) and (11) of the Health Act 2009.
- (3) Omit section 65E of the National Health Service Act 2006 (NHS foundation trusts: de-authorisation and appointment of administrator).
- (4) Omit Schedule 8A to that Act (de-authorised NHS trusts and NHS foundation trusts).
- (5) Omit section 15 of the Health Act 2009 (which inserts sections 52A to 52E and Schedule 8A in the National Health Service Act 2006).
- (6) In section 272 of the National Health Service Act 2006 (orders, regulations, rules and directions)—
 - (a) in subsection (5), omit paragraph (aa), and
 - (b) in subsection (6A), omit “52D(1), 52E(6),”.
- (7) In section 275(1) of that Act (interpretation), in the definition of “NHS trust”—
 - (a) omit “, subject to Schedule 8A,”, and
 - (b) omit “52D(1) or”.
- (8) In section 206(1) of the National Health Service (Wales) Act 2006, in the definition of “NHS trust”, omit “52D(1) or”.

VALID FROM 01/11/2012

174 Trust special administrators **E+W**

- (1) In section 65A of the National Health Service Act 2006 (bodies to which trust special administration regime applies)—
 - (a) in subsection (1), for paragraphs (b) and (c) substitute—

Status: Point in time view as at 31/10/2012. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Health and Social Care Act 2012, PART 4 is up to date with all changes known to be in force on or before 31 August 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) any NHS foundation trust.”, and
- (b) omit subsection (2).
- (2) For the title to section 65B of that Act substitute “NHS trusts: appointment of trust special administrator”.
- (3) In section 65D of that Act (NHS foundation trusts: regulator's notice), for subsections (1) to (3) substitute—
- “(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.
- (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.
- (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) In subsection (4) of that section—
- (a) for “giving a notice” substitute “making an order”,
- (b) after paragraph (a) insert—
- “(aa) the Board,”,
- (c) omit paragraph (b),
- (d) in paragraph (c), omit “goods or”, and
- (e) after paragraph (c) insert “, and
- (d) the Care Quality Commission.”
- (5) After that subsection insert—
- “(5) 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.
- (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

Status: Point in time view as at 31/10/2012. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Health and Social Care Act 2012, PART 4 is up to date with all changes known to be in force on or before 31 August 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)

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.”
- (6) For the title to that section substitute “NHS foundation trusts: appointment of trust special administrator”.
- (7) Omit the cross-heading preceding that section.

VALID FROM 01/11/2012

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

- (1) After section 65D of the National Health Service Act 2006 insert—

“65DA Objective of trust special administration

- (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

Status: Point in time view as at 31/10/2012. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Health and Social Care Act 2012, PART 4 is up to date with all changes known to be in force on or before 31 August 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)

- (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.”
- (2) If, at any time before section 9 comes into force, Monitor obtains the approval of the NHS Commissioning Board Authority to publish guidance under section 65DA(4)(c) or (5) of the National Health Service Act 2006, that approval is to be treated for the purposes of subsection (6)(b) of that section as approval obtained from the National Health Service Commissioning Board.

176 Procedure etc. **E+W**

- (1) In section 65F of the National Health Service Act 2006 (administrator's draft report), in subsection (2)—
- (a) before paragraph (a) insert—

“(za) the Board,” and
 - (b) omit paragraph (a) (but not the following “and”).
- (2) At the end of that section insert—
- “(4) 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.
- (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

Status: Point in time view as at 31/10/2012. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Health and Social Care Act 2012, PART 4 is up to date with all changes known to be in force on or before 31 August 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 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.”
- (3) At the end of section 65G of that Act (consultation plan) insert—
 - “(4) In the case of an NHS foundation trust, the administrator may not make a variation to 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.”
- (4) In section 65H of that Act (consultation requirements), in subsection (7)—
 - (a) before paragraph (a) insert—
 - “(za) the Board,”,
 - (b) omit paragraph (a),
 - (c) in paragraph (b), omit “, if required by directions given by the Secretary of State”, and
 - (d) after paragraph (c) insert “;
 - (d) any other person specified in a direction given by the Secretary of State.”
- (5) In subsection (8) of that section, omit paragraphs (a) to (d).
- (6) In subsection (9) of that section—
 - (a) after “representatives of” insert “the Board and”, and
 - (b) for “(7)(a) or (b)” substitute “(7)(b), (c) or (d)”.
- [^{F2}(7) At the end of that section insert—

Status: Point in time view as at 31/10/2012. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Health and Social Care Act 2012, PART 4 is up to date with all changes known to be in force on or before 31 August 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)

“(12) For the purposes of this section in its application to the case of an NHS foundation 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.”]

(8) At the end of section 65I of that Act (administrator's final report) insert—

“(4) 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.”

(9) At the end of section 65J of that Act (power to extend time limits for preparing reports and carrying out consultation) insert—

“(5) 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

F2 S. 176(7) omitted (27.3.2012 for specified purposes) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(1)(d)(4), [Sch. 14 para. 17\(6\)](#) (with s. 179(5)(b))

Commencement Information

I11 S. 176 partly in force; s. 176 in force for specified purposes at Royal Assent, see s. 306(1)(d)

177 Action following final report E+W

(1) In section 65K of the National Health Service Act 2006 (Secretary of State's decision on what action to take), in subsection (1), after “a final report under section 65I” insert “relating to an NHS trust”; and in consequence of that, for the title to that section substitute “Secretary of State's decision in case of NHS trust”.

(2) After that section insert—

“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—

Status: Point in time view as at 31/10/2012. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Health and Social Care Act 2012, PART 4 is up to date with all changes known to be in force on or before 31 August 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) 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.

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 31/10/2012. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Health and Social Care Act 2012, PART 4 is up to date with all changes known to be in force on or before 31 August 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)

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.

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—
 - (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—

Status: Point in time view as at 31/10/2012. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Health and Social Care Act 2012, PART 4 is up to date with all changes known to be in force on or before 31 August 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) 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.”
- (3) In section 65L of that Act (trusts coming out of administration), after subsection (2) insert—
 - “(2A) 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

Status: Point in time view as at 31/10/2012. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Health and Social Care Act 2012, PART 4 is up to date with all changes known to be in force on or before 31 August 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) the reference to the chairman and directors of the trust is to be read as including a reference to the governors.”
- (4) Omit subsections (3) to (5) of that section.
- (5) At the end of that section insert—
 - “(6) Subsection (7) applies in the case of an NHS foundation trust.
 - (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.”
- (6) After that section insert—

“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.
- (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.”
- (7) For the cross-heading preceding section 65K substitute “Action by the Secretary of State and the regulator”.

Commencement Information

I12 S. 177 partly in force; s. 177 in force for specified purposes at Royal Assent, see s. 306(1)(d)

Status: Point in time view as at 31/10/2012. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Health and Social Care Act 2012, PART 4 is up to date with all changes known to be in force on or before 31 August 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)

VALID FROM 01/11/2012

178 Sections 174 to 177: supplementary **E+W**

- (1) At the end of section 65M of the National Health Service Act 2006 (replacement of trust special administrator) insert—
 - “(3) 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.”
- (2) In section 65N of that Act (power to issue guidance), after subsection (2) insert—
 - “(2A) It must include guidance about the publication of—
 - (a) notices under section 65KC(4)(a);
 - (b) statements under section 65KC(4)(b).”
- (3) At the end of that section insert—
 - “(4) 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.”
- (4) In section 65O of that Act (interpretation of Chapter 5A), in the definition of “trust special administrator”, after “65B(6)(a)” insert “, section 65D(2)”.
- (5) In section 39 of that Act (register of NHS foundation trusts), in subsection (2), at the end insert “,
 - (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.”
- (6) In section 272 of that Act (orders etc.), in subsection (5), in paragraph (ab)—
 - (a) after “65B(1),” insert “65D(2),”,
 - (b) omit “65E(1),”,
 - (c) after “65J(2),” insert “65KC(3),”, and
 - (d) for “65L(2), (4) or (5)” substitute “65L(2) or (7), 65LA(3)”.
- (7) After subsection (6) insert—
 - “(6ZA) The Statutory Instruments Act 1946 applies in relation to the power of the regulator to make an order under Chapter 5A as if the regulator were a Minister of the Crown.”

Status: Point in time view as at 31/10/2012. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: Health and Social Care Act 2012, PART 4 is up to date with all changes known to be in force on or before 31 August 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) In subsection (6A) of that section—
- (a) after “65B(1),” insert “65D(2),”
 - (b) omit “65E(1),”
 - (c) after “65J(2),” insert “65KC(3),”
 - (d) after “65L(2) or (4)” insert “, 65LA(3)”, and
 - (e) for “(4)” substitute “(7)”.
- (9) In section 275(1) of that Act (interpretation), in the definition of “NHS trust”, omit the words from “and” to the end.
- (10) In paragraph 22(1) of Schedule 7 to that Act (documents which must be made available to the public free of charge), at the end insert “,
- (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.”
- (11) In section 206(1) of the National Health Service (Wales) Act 2006, in the definition of “NHS trust”, omit the words from “(including” to the end.

PROSPECTIVE

Abolition of NHS trusts

F³179 Abolition of NHS trusts in England E+W

.....

Textual Amendments

- F3** S. 179 omitted (1.7.2022) by virtue of [Health and Care Act 2022 \(c. 31\)](#), ss. 48, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

F⁴180 Repeal of provisions on authorisation for NHS foundation trusts E+W

.....

Status: Point in time view as at 31/10/2012. This version of this part contains provisions that are not valid for this point in time.
Changes to legislation: Health and Social Care Act 2012, PART 4 is up to date with all changes known to be in force on or before 31 August 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

- F4** S. 180 omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 7 para. 10**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Status:

Point in time view as at 31/10/2012. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation:

Health and Social Care Act 2012, PART 4 is up to date with all changes known to be in force on or before 31 August 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.