



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

[^{F1}Consultation and report

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)

65F Draft report

- (1) Within the period of [^{F2}65 working days] beginning with the day on which a trust special administrator's appointment takes effect, the administrator must provide to the Secretary of State and publish a draft report stating the action which the administrator recommends the Secretary of State should take in relation to the trust.
- (2) When preparing the draft report, the administrator must consult—
 - [the Board,]
 - ^{F3}(za)
 - (a) ^{F4} ... ^{F5} ...
 - (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 [^{F6}, and
 - (c) the Care Quality Commission.]
- (3) After receiving the draft report, the Secretary of State must lay it before Parliament.

Status: Point in time view as at 15/07/2014.

Changes to legislation: National Health Service Act 2006, Cross Heading: Consultation and report is up to date with all changes known to be in force on or before 13 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

[For the purposes of this section in its application to the case of an NHS foundation ^{F7}(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 [^{F8}—
 - (i) would achieve the objective set out in section 65DA(1)(a), and
 - (ii) would do so without harming essential services provided for the purposes of the NHS by any other NHS foundation trust or NHS trust that provides services under this Act to the commissioner,] 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.

[Nor, in the case of an NHS foundation trust, may the administrator provide the draft ^{F9}(5A) report to the regulator under subsection (1) without having obtained from the Care Quality Commission a statement that it considers that the recommendation in the draft report would achieve that part of the objective set out in section 65DA(1)(aa).]

(6) Where the Board [^{F10}or the Care Quality Commission] decides not to provide to the administrator a statement [^{F11}to the effect mentioned in subsection (5) or (5A)], the Board [^{F12}or (as the case may be) the Commission] 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.

[Where the administrator recommends taking action in relation to another NHS ^{F13}(8) foundation trust or an NHS trust, the references in subsection (5) to a commissioner also include a reference to a person to which the other NHS foundation trust or the NHS trust provides services under this Act that would be affected by the action.

(9) A service provided by an NHS foundation trust or an NHS trust is an essential service for the purposes of subsection (5) if the person making the statement in question is satisfied that the criterion in section 65DA(3) is met.

(10) Section 65DA(4) applies to the person making the statement when that person is determining whether that criterion is met.]]

Textual Amendments

- F2** Words in s. 65F(1) substituted (15.7.2014) by [Care Act 2014 \(c. 23\), ss. 120\(2\), 127\(1\); S.I. 2014/1714, art. 3\(2\)\(c\)](#)
- F3** 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\(2\)](#)
- F4** 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\(2\)](#)

Status: Point in time view as at 15/07/2014.

Changes to legislation: National Health Service Act 2006, Cross Heading: Consultation and report is up to date with all changes known to be in force on or before 13 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- F5** Words in s. 65F(2) omitted (15.7.2014) by virtue of Care Act 2014 (c. 23), **ss. 85(3)(a)**, 127(1); S.I. 2014/1714, art. 3(2)(b)
- F6** s. 65F(2)(c) and preceding word inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 85(3)(b)**, 127(1); S.I. 2014/1714, art. 3(2)(b)
- F7** 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)
- F8** Words in s. 65F(5)(a) substituted (15.7.2014) by Care Act 2014 (c. 23), **ss. 120(3)**, 127(1); S.I. 2014/1714, art. 3(2)(c)
- F9** S. 65F(5A) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 85(5)**, 127(1); S.I. 2014/1714, art. 3(2)(b)
- F10** Words in s. 65F(6) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 85(6)(a)**, 127(1); S.I. 2014/1714, art. 3(2)(b)
- F11** Words in s. 65F(6) substituted (15.7.2014) by Care Act 2014 (c. 23), **ss. 85(6)(b)**, 127(1); S.I. 2014/1714, art. 3(2)(b)
- F12** Words in s. 65F(6) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 85(6)(c)**, 127(1); S.I. 2014/1714, art. 3(2)(b)
- F13** S. 65F(8)-(10) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 120(4)**, 127(1); S.I. 2014/1714, art. 3(2)(c)

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 [^{F14}40 working days] within which the administrator seeks responses (the “consultation period”).
- (3) The first day of the consultation period must be within the period of 5 working days beginning with the day on which the draft report is published.

[In the case of an NHS foundation trust, the administrator may not make a variation to ^{F15}(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 [^{F16}—
 - (i) would achieve the objective set out in section 65DA(1)(a), and
 - (ii) would do so without harming essential services provided for the purposes of the NHS by any other NHS foundation trust or NHS trust that provides services under this Act to the commissioner,] 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.

[Nor may the administrator make a variation to the draft report following the ^{F17}(4A) consultation period without having obtained from the Care Quality Commission a statement that it considers that the recommendation in the draft report as so varied would achieve that part of the objective set out in section 65DA(1)(aa).]

- (5) Where the Board [^{F18}or the Care Quality Commission] decides not to provide to the administrator a statement [^{F19}to the effect mentioned in subsection (4) or (4A)], the Board [^{F20}or (as the case may be) the Commission] must—

Status: Point in time view as at 15/07/2014.

Changes to legislation: National Health Service Act 2006, Cross Heading: Consultation and report is up to date with all changes known to be in force on or before 13 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (a) 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.
- [Where the administrator recommends taking action in relation to another NHS foundation trust or an NHS trust, the references in subsection (4) to a commissioner also include a reference to a person to which the other NHS foundation trust or the NHS trust provides services under this Act that would be affected by the action.”
- (8) A service provided by an NHS foundation trust or an NHS trust is an essential service for the purposes of subsection (4) if the person making the statement in question is satisfied that the criterion in section 65DA(3) is met.
- (9) Section 65DA(4) applies to the person making the statement when that person is determining whether that criterion is met.]]

Textual Amendments

- F14** Words in s. 65G(2) substituted (15.7.2014) by [Care Act 2014 \(c. 23\)](#), **ss. 120(5)**, 127(1); S.I. 2014/1714, art. 3(2)(c)
- F15** 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)
- F16** Words in s. 65G(4)(a) substituted (15.7.2014) by [Care Act 2014 \(c. 23\)](#), **ss. 120(6)**, 127(1); S.I. 2014/1714, art. 3(2)(c)
- F17** S. 65G(4A) inserted (15.7.2014) by [Care Act 2014 \(c. 23\)](#), **ss. 85(8)**, 127(1); S.I. 2014/1714, art. 3(2)(b)
- F18** Words in s. 65G(5) inserted (15.7.2014) by [Care Act 2014 \(c. 23\)](#), **ss. 85(9)(a)**, 127(1); S.I. 2014/1714, art. 3(2)(b)
- F19** Words in s. 65G(5) substituted (15.7.2014) by [Care Act 2014 \(c. 23\)](#), **ss. 85(9)(b)**, 127(1); S.I. 2014/1714, art. 3(2)(b)
- F20** Words in s. 65G(5) inserted (15.7.2014) by [Care Act 2014 \(c. 23\)](#), **ss. 85(9)(c)**, 127(1); S.I. 2014/1714, art. 3(2)(b)
- F21** S. 65G(7)-(9) inserted (15.7.2014) by [Care Act 2014 \(c. 23\)](#), **ss. 120(7)**, 127(1); S.I. 2014/1714, art. 3(2)(c)

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 [F22—

Status: Point in time view as at 15/07/2014.

Changes to legislation: National Health Service Act 2006, Cross Heading: Consultation and report is up to date with all changes known to be in force on or before 13 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (a) 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 ^{F23}, and
- (b) in the case of each affected trust, 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,]
- ^{F24}(za)
- ^{F25}(a)
- (b) any other person to which the trust provides goods or services under this Act ^{F26} ...;
- [any affected trust;
- ^{F27}(bza)
- (bzb) any person to which an affected trust provides goods or services under this Act that would be affected by the action recommended in the draft report;
- (bzc) any local authority in whose area the trust provides goods or services under this Act;
- (bzd) any local authority in whose area an affected trust provides goods or services under this Act;
- (bze) any Local Healthwatch organisation for the area of a local authority mentioned in paragraph (bzc) or (bzd);]
- [the Care Quality Commission;]
- ^{F28}(ba)
- (c) any person within subsection (8), if required by directions given by the Secretary of State ^{F29};
- (d) any other person specified in a direction given by the Secretary of State].
- (8) The persons within this subsection are—
- ^{F30}(a)
- ^{F30}(b)
- ^{F30}(c)
- ^{F30}(d)
- ^{F31}(e)
- (f) the member of Parliament for any constituency.
- (9) The trust special administrator must ^{F32}—
- (a) hold at least one meeting to seek responses from representatives of ^{F33}the Board and] each of the persons from whom the administrator must request a written response under subsection ^{F34}(7)(b), ^{F35}(bzb), ^{F36}(ba),] (c) or (d),
- ^{F37}(b) [hold at least one meeting to seek responses from representatives of each of the trusts from which the administrator must request a written response under subsection (7)(bza), and

Status: Point in time view as at 15/07/2014.

Changes to legislation: National Health Service Act 2006, Cross Heading: Consultation and report is up to date with all changes known to be in force on or before 13 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (c) hold at least one meeting to seek responses from representatives of each of the local authorities and Local Healthwatch organisations from which the administrator must request a written response under subsection (7)(bzc), (bzd) and (bze).]
- (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).
- [In this section, “affected trust” means—
- ^{F38}(11A) (a) where the trust in question is an NHS trust, another NHS trust, or an NHS foundation trust, which provides goods or services under this Act that would be affected by the action recommended in the draft report;
- (b) where the trust in question is an NHS foundation trust, another NHS foundation trust, or an NHS trust, which provides services under this Act that would be affected by the action recommended in the draft report.
- (11B) In this section, a reference to a local authority includes a reference to the council of a district only where the district is comprised in an area for which there is no county council.]
- [For the purposes of this section in its application to the case of an NHS foundation
- ^{F39}(12) trust—
- (a) in subsection (7)(b) [^{F40}, (bzb), (bzc) and (bzd)], 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

- F22** S. 65H(4)(a): words in s. 65(4) renumbered as s. 65(4)(a) (15.7.2014) by [Care Act 2014 \(c. 23\)](#), **ss. 120(8)(a)**, 127(1); S.I. 2014/1714, [art. 3\(2\)\(c\)](#)
- F23** S. 65H(4)(b) and preceding word inserted (15.7.2014) by [Care Act 2014 \(c. 23\)](#), **ss. 120(8)(b)**, 127(1); S.I. 2014/1714, [art. 3\(2\)\(c\)](#)
- F24** 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\(2\)](#)
- F25** 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\(2\)](#)
- F26** 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\(2\)](#)
- F27** Ss. 65H(7)(bza)–(bze) inserted (15.7.2014) by [Care Act 2014 \(c. 23\)](#), **ss. 120(9)**, 127(1); S.I. 2014/1714, [art. 3\(2\)\(c\)](#)
- F28** S. 65H(7)(ba) inserted (15.7.2014) by [Care Act 2014 \(c. 23\)](#), **ss. 85(10)(a)**, 127(1); S.I. 2014/1714, [art. 3\(2\)\(b\)](#)

Status: Point in time view as at 15/07/2014.

Changes to legislation: National Health Service Act 2006, Cross Heading: Consultation and report is up to date with all changes known to be in force on or before 13 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- F29** 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)
- F30** 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)
- F31** S. 65H(8)(e) omitted (15.7.2014) by virtue of [Care Act 2014 \(c. 23\)](#), **ss. 120(10)**, 127(1); S.I. 2014/1714, art. 3(2)(c)
- F32** S. 65H(9)(a): words in s. 65H(9) renumbered as s. 65H(9)(a) (15.7.2014) by [Care Act 2014 \(c. 23\)](#), **ss. 120(11)(a)**, 127(1); S.I. 2014/1714, art. 3(2)(c)
- F33** 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)
- F34** 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)
- F35** Word in s. 65H(9) inserted (15.7.2014) by [Care Act 2014 \(c. 23\)](#), **ss. 120(11)(b)**, 127(1); S.I. 2014/1714, art. 3(2)(c)
- F36** Word in s. 65H(9) inserted (15.7.2014) by [Care Act 2014 \(c. 23\)](#), **ss. 85(10)(b)**, 127(1); S.I. 2014/1714, art. 3(2)(b)
- F37** S. 65H(9)(b)(c) inserted (15.7.2014) by [Care Act 2014 \(c. 23\)](#), **ss. 120(11)(c)**, 127(1); S.I. 2014/1714, art. 3(2)(c)
- F38** S. 65H(11A)(11B) inserted (15.7.2014) by [Care Act 2014 \(c. 23\)](#), **ss. 120(12)**, 127(1); S.I. 2014/1714, art. 3(2)(c)
- F39** 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)
- F40** Words in s. 65H(12)(a) inserted (15.7.2014) by [Care Act 2014 \(c. 23\)](#), **ss. 120(13)**, 127(1); S.I. 2014/1714, art. 3(2)(c)

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 ^{F41}(4) trust, the references to the Secretary of State are to be read as references to the regulator.]

Textual Amendments

- F41** 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—

Status: Point in time view as at 15/07/2014.

Changes to legislation: National Health Service Act 2006, Cross Heading: Consultation and report is up to date with all changes known to be in force on or before 13 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

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

Textual Amendments

F42 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)

Status:

Point in time view as at 15/07/2014.

Changes to legislation:

National Health Service Act 2006, Cross Heading: Consultation and report is up to date with all changes known to be in force on or before 13 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.