



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

[^{F2}(1) A trust special administrator appointed in relation to an NHS trust must, within the period of 65 working days beginning with the day on which the administrator's appointment takes effect—

- (a) provide NHS England and the Secretary of State with a draft report recommending any action that NHS England or the Secretary of State should take in relation to the trust, and
- (b) publish a copy of that draft report.

(1A) A trust special administrator appointed in relation to an NHS foundation trust must, within the period of 65 working days beginning with the day on which the administrator's appointment takes effect—

- (a) provide NHS England with a draft report recommending the action that NHS England should take in relation to the trust, and
- (b) publish a copy of that draft report,

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unless unable to obtain the statements required by subsections (1B) and (1C).

- (1B) A trust special administrator may not provide a draft report under subsection (1A)—
 - (a) without having obtained a statement from each commissioner that the commissioner considers that the recommendation in the draft report—
 - (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 is unable to obtain a statement to that effect from one or more of the commissioners (other than NHS England), without having obtained a statement to that effect from NHS England.

(1C) A trust special administrator may not provide a draft report under subsection (1A) without having obtained a statement from the Care Quality Commission that it considers that the recommendation in the draft report would achieve that part of the objective set out in section 65DA(1)(aa).

- (2) When preparing a draft report under subsection (1) or (1A), the administrator must consult—
 - (a) any person to which the trust provides goods or services under this Act and which NHS England directs the administrator to consult, and
 - (b) the Care Quality Commission.

(3) After receiving a draft report under subsection (1) or (1A), NHS England must lay it before Parliament.]

^{F3}(4)

^{F4}(5)

^{F5}(5A)

[^{F6}(6) Where NHS England decides not to provide to the administrator a statement to the effect mentioned in subsection (1B)(b), NHS England must—

- (a) give a notice of the reasons for its decision to the administrator,
- (b) publish the notice, and
- (c) lay a copy of it before Parliament.

(6A) Where the Care Quality Commission decides not to provide to the administrator a statement to the effect mentioned in subsection (1C), the Commission must—

- (a) give a notice of the reasons for its decision to the administrator and to NHS England,
- (b) publish the notice, and
- (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 ^{F7}(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.

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- (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** S. 65F(1)-(3) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 8 para. 5(2)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F3** S. 65F(4) omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 8 para. 5(3)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F4** S. 65F(5) omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 8 para. 5(3)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F5** S. 65F(5A) omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 8 para. 5(3)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F6** S. 65F(6)(6A) substituted for s. 65F(6) (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 8 para. 5(4)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F7** 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 [^{F8}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 ^{F9}(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 [^{F10}—
- (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 [^{F11}NHS England]), without having obtained a statement to that effect from [^{F11}NHS England].

[Nor may the administrator make a variation to the draft report following the ^{F12}(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).]

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- [^{F13}(5) Where NHS England decides not to provide to the administrator a statement to the effect mentioned in subsection (4)(b), NHS England must—
- (a) give a notice of the reasons for its decision to the administrator,
 - (b) publish the notice, and
 - (c) lay a copy of it before Parliament.
- (5A) Where the Care Quality Commission decides not to provide to the administrator a statement to the effect mentioned in subsection (4A), the Commission must—
- (a) give a notice of the reasons for its decision to the administrator and to NHS England,
 - (b) publish the notice, and
 - (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
- ^{F14}(7) 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

- F8** 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)
- F9** 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)
- F10** 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)
- F11** Words in s. 65G(4)(b) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 8 para. 6(2)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F12** 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)
- F13** S. 65G(5)(5A) substituted for s. 65G(5) (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 8 para. 6(3)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F14** 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.

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- (3) A notice under subsection (2) must include details of how responses can be given in writing.
- (4) The trust special administrator must [^{F15}—
- (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 [^{F16}, 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—
- ^{F17}(za)
 - ^{F18}(a)
 - (b) any ^{F19}... person to which the trust provides goods or services under this Act ^{F20}...;
 - [any affected trust;
 - ^{F21}(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;]
 - ^{F22}(ba)
 - [^{F23}(c) the member of Parliament for any constituency, if required by directions given by NHS England;
 - (d) any other person specified in a direction given by NHS England.]
- ^{F24}(8)
- (9) The trust special administrator must [^{F25}—
- (a) hold at least one meeting to seek responses from representatives of ^{F26}... each of the persons from whom the administrator must request a written response under subsection [^{F27}(7)(b), [^{F28}(bzb),][^{F29}(ba),] (c) or (d)],
 - [hold at least one meeting to seek responses from representatives of each of
 - ^{F30}(b) the trusts from which the administrator must request a written response under subsection (7)(bza), and
 - (c) hold at least one meeting to seek responses from representatives of each of the local authorities and Local Healthwatch organisations from which the

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administrator must request a written response under subsection (7)(bzc), (bzd) and (bze).]

[NHS England may direct the administrator to hold a meeting to seek a response from ^{F31}(9A) any person.]

[^{F32}(10) The Secretary of State may direct NHS England as to the persons from whom it should direct the administrator to—

- (a) request a written response (for NHS England’s powers of direction, see subsection (7)(c) and (d));
- (b) seek a response by holding a meeting (for NHS England’s power of direction, see subsection (9A)).]

(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—

- ^{F33}(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 ^{F34}(12) trust—

- (a) in subsection (7)(b) [^{F35}, (bzb), (bzc) and (bzd)], the words “goods or” are to be ignored, ^{F36} ...

^{F36}(b)

^{F37}(13)]

Textual Amendments

- F15** 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)
- F16** 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)
- F17** S. 65H(7)(za) omitted (1.7.2022) by virtue of [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 8 para. 7(2)(a)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F18** 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)
- F19** Word in s. 65H(7)(b) omitted (1.7.2022) by virtue of [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 8 para. 7(2)(b)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F20** 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)
- F21** 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)

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- F22** 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)
- F23** S. 65H(7)(c)(d) substituted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 8 para. 7(2)(c)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F24** S. 65H(8) omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 8 para. 7(3)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F25** 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)
- F26** Words in s. 65H(9)(a) omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 8 para. 7(4)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F27** Words in s. 65H(9) substituted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 176(6)(b)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)
- F28** 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)
- F29** 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)
- F30** 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)
- F31** S. 65H(9A) inserted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 8 para. 7(5)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F32** S. 65H(10) substituted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 8 para. 7(6)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F33** 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)
- F34** 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)
- F35** 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)
- F36** S. 65H(12)(b) and word omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 8 para. 7(8)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F37** S. 65H(13) omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 8 para. 7(9)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

65I Final report

- [^{F38}(1) A trust special administrator appointed in relation to an NHS trust must, within the period of 15 working days beginning with the end of the consultation period, provide NHS England and the Secretary of State with a final report stating any action that the administrator recommends that NHS England or Secretary of State should take in relation to the trust.
- (1A) A trust special administrator appointed in relation to an NHS foundation trust must, within the period of 15 working days beginning with the end of the consultation period, provide NHS England with a final report stating the action that the administrator recommends that NHS England should take in relation to the trust.]
- (2) The administrator must attach to the final report [^{F39}mentioned in subsection (1) or (1A)] 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, [^{F40}NHS England] must publish it and lay it before Parliament.

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F41(4)

Textual Amendments

- F38** S. 65I(1)(1A) substituted for s. 65I(1) (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 8 para. 8(2)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F39** Words in s. 65I(2) inserted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 8 para. 8(3)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F40** Words in s. 65I(3) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 8 para. 8(4)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F41** S. 65I(4) omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 8 para. 8(5)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

65J Power to extend time

- (1) This section applies to—
- (a) the duty of a trust special administrator to provide a draft report within the period specified in section 65F(1) [F42 or (1A)];
 - (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) [F43 or (1A)].
- (2) If [F44 NHS England] thinks it is not reasonable in the circumstances for the administrator to be required to carry out the duty within the specified period, [F44 NHS England] 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.

F45(5)]

Textual Amendments

- F42** Words in s. 65J(1)(a) inserted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 8 para. 9(2)(a)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F43** Words in s. 65J(1)(c) inserted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 8 para. 9(2)(b)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F44** Words in s. 65J(2) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 8 para. 9(3)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F45** S. 65J(5) omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 8 para. 9(4)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

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