
Status: Point in time view as at 01/11/2012.

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Health Act 2009

2009 CHAPTER 21

PART 2

POWERS IN RELATION TO HEALTH BODIES

CHAPTER 1

POWERS IN RELATION TO FAILING NHS BODIES IN ENGLAND

De-authorisation of NHS foundation trusts

^{F1} 15 De-authorisation of NHS foundation trusts

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Textual Amendments

F1 S. 15 omitted (1.11.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 173\(5\)](#), 306(4); [S.I. 2012/2657](#), art. 2(2)

Trust special administrators

16 Trust special administrators: NHS trusts and NHS foundation trusts

After section 65 of the National Health Service Act 2006 (c. 41) insert—

Status: Point in time view as at 01/11/2012.

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“CHAPTER 5A

TRUST SPECIAL ADMINISTRATORS: NHS TRUSTS AND NHS FOUNDATION TRUSTS

Application

65A Application

- (1) This Chapter applies to—
 - (a) an NHS trust all or most of whose hospitals, establishments and facilities are in England;
 - (b) an NHS foundation trust authorised under section 35 on an application under section 33;
 - (c) an NHS foundation trust established under section 56 to which subsection (2) applies.
- (2) This subsection applies to an NHS foundation trust if—
 - (a) at least one of the trusts on whose application the NHS foundation trust was established was an NHS trust within subsection (1)(a) or an NHS foundation trust within subsection (1)(b), or
 - (b) the NHS foundation trust is the result of a succession of mergers under section 56, any of which involved an NHS trust within subsection (1)(a) or an NHS foundation trust within subsection (1)(b).

Appointment

65B Appointment of trust special administrator

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

Status: Point in time view as at 01/11/2012.

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- (6) If an order is made under subsection (1), the Secretary of State must—
 - (a) appoint a person as the trust special administrator with effect from the day specified in the order, and
 - (b) publish the name of the person appointed.
- (7) A person appointed as a trust special administrator holds and vacates office in accordance with the terms of the appointment.
- (8) The Secretary of State may pay remuneration and expenses to a trust special administrator.

65C Suspension of directors

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

De-authorisation of NHS foundation trusts

65D NHS foundation trusts: regulator's notice

- (1) The regulator may give the Secretary of State a notice under this section if it is satisfied that—
 - (a) an NHS foundation trust to which this Chapter applies is failing to comply with a notice under section 52, and
 - (b) further exercise of the powers conferred by section 52 would not be likely to secure the provision of the goods and services which the trust's authorisation requires it to provide.
- (2) The notice must be in writing.
- (3) With the notice the regulator must give the Secretary of State a report stating the reasons why it is satisfied as mentioned in subsection (1).
- (4) Before giving a notice under this section, the regulator must consult first the Secretary of State and then—
 - (a) the trust,
 - (b) any Strategic Health Authority in whose area the trust has hospitals, establishments or facilities, and
 - (c) any other person to which the trust provides goods or services under this Act and which the regulator considers it appropriate to consult.

65E NHS foundation trusts: de-authorisation and appointment of trust special administrator

- (1) If the regulator gives notice under section 65D in relation to a trust, the Secretary of State must make an order for it to cease to be an NHS foundation trust.

Status: Point in time view as at 01/11/2012.

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- (2) An order made under subsection (1) must specify the date when it is to take effect, which must be within the period of 5 working days beginning with the day on which it is made.
- (3) The Secretary of State must lay before Parliament (with the statutory instrument containing the order) the regulator's report under section 65D(3).
- (4) On an order under subsection (1) taking effect in relation to a body, it ceases to be an NHS foundation trust and a public benefit corporation and becomes a National Health Service trust.
- (5) Schedule 8A makes further provision about trusts in respect of which an order is made under subsection (1).
- (6) Where an order is made under subsection (1) in relation to a trust, the Secretary of State must also make an order under section 65B(1) authorising the appointment of a trust special administrator in relation to the trust.
- (7) The order under section 65B(1) must provide for the appointment to take effect at the same time as the order under this section.
- (8) Section 65B(2), (4) and (5) do not apply in relation to the order under section 65B(1).

Consultation and report

65F Draft report

- (1) Within the period of 45 working days beginning with the day on which a trust special administrator's appointment takes effect, the administrator must provide to the Secretary of State and publish a draft report stating the action which the administrator recommends the Secretary of State should take in relation to the trust.
- (2) When preparing the draft report, the administrator must consult—
 - (a) any Strategic Health Authority in whose area the trust has hospitals, establishments or facilities, and
 - (b) any other person to which the trust provides goods or services under this Act and which the Secretary of State directs the administrator to consult.
- (3) After receiving the draft report, the Secretary of State must lay it before Parliament.

65G Consultation plan

- (1) At the same time as publishing a draft report under section 65F, a trust special administrator must publish a statement setting out the means by which the administrator will seek responses to the draft report.
- (2) The statement must specify a period of 30 working days within which the administrator seeks responses (the “consultation period”).

Status: Point in time view as at 01/11/2012.

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- (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.

65H Consultation requirements

- (1) The following duties apply during the consultation period.
- (2) The trust special administrator must publish a notice stating that the administrator is seeking responses to the draft report and describing how people can give their responses.
- (3) A notice under subsection (2) must include details of how responses can be given in writing.
- (4) The trust special administrator must hold at least one meeting to seek responses from staff of the trust and from such persons as the trust special administrator may recognise as representing staff of the trust.
- (5) The trust special administrator must hold at least one other meeting to seek responses from any person who wishes to attend, after publishing notice of the date, time and place of the meeting.
- (6) Notices under subsections (2) and (5) must be published at least once in the first 5 working days of the consultation period.
- (7) The trust special administrator must request a written response from—
- (a) any Strategic Health Authority in whose area the trust has hospitals, establishments or facilities;
 - (b) any other person to which the trust provides goods or services under this Act, if required by directions given by the Secretary of State;
 - (c) any person within subsection (8), if required by directions given by the Secretary of State.
- (8) The persons within this subsection are—
- (a) an overview and scrutiny committee of any authority to which section 244 applies;
 - (b) a committee of a local authority operating alternative arrangements under Part 2 of the Local Government Act 2000 which exercises functions corresponding to those of an overview and scrutiny committee under section 21(2)(f) of that Act;
 - (c) a joint overview and scrutiny committee;
 - (d) a committee established under section 247(1);
 - (e) a person carrying on, in pursuance of arrangements made by any local authority under subsection (1) of section 221 of the Local Government and Public Involvement in Health Act 2007, activities specified in subsection (2) of that section (local involvement networks);
 - (f) the member of Parliament for any constituency.
- (9) The trust special administrator must hold at least one meeting to seek responses from representatives of each of the persons from whom the administrator must request a written response under subsection (7)(a) or (b).
- (10) The Secretary of State may direct an administrator to—

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- (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).

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.

65J Power to extend time

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

Status: Point in time view as at 01/11/2012.

Changes to legislation: Health Act 2009, Part 2 is up to date with all changes known to be in force on or before 21 September 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)

Action by the Secretary of State

65K Secretary of State's decision

- (1) Within the period of 20 working days beginning with the day on which the Secretary of State receives a final report under section 65I, the Secretary of State must decide what action to take in relation to the trust.
- (2) The Secretary of State must as soon as reasonably practicable—
 - (a) publish a notice of the decision and of the reasons for it;
 - (b) lay a copy of the notice before Parliament.

65L Trusts coming out of administration

- (1) This section applies if the Secretary of State decides under section 65K not to dissolve the trust.
- (2) The Secretary of State must make an order specifying a date when the appointment of the trust special administrator and the suspension of the chairman and directors of the trust come to an end.
- (3) Subsections (4) and (5) apply in the case of a trust which is an NHS trust by virtue of an order made under section 65E(1).
- (4) The Secretary of State must make an order specifying, in relation to the trust, the matters mentioned in paragraph 5(1)(a) to (c) of Schedule 4 and, where the trust has a significant teaching commitment, the matters mentioned in paragraph 5(1)(d).
- (5) If it appears to the Secretary of State to be necessary in order to comply with provision made under subsection (4), or made by regulations under paragraph 4 of Schedule 4, the Secretary of State may by order—
 - (a) terminate the office of any executive or non-executive director of the trust;
 - (b) appoint a person to be an executive or non-executive director of the trust.

Supplementary

65M Replacement of trust special administrator

- (1) If a trust special administrator ceases to hold office for any reason before the Secretary of State has made either an order under section 65L(2) or an order dissolving the trust, the Secretary of State must—
 - (a) appoint another person as the trust special administrator, and
 - (b) publish the name of the person appointed.
- (2) Where a person is appointed under subsection (1) in relation to a trust, anything done by or in relation to a previous trust special administrator has effect as if done by or in relation to that person, unless the Secretary of State directs otherwise.

Status: Point in time view as at 01/11/2012.

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65N Guidance

- (1) The Secretary of State must publish guidance for trust special administrators.
- (2) It must include guidance about the publication of notices under sections 65H and 65J.
- (3) It must include guidance about the preparation of draft reports, as to—
 - (a) persons to be consulted;
 - (b) factors to be taken into account;
 - (c) relevant publications.

65O Interpretation of this Chapter

In this Chapter—

“trust special administrator” means a person appointed under section 65B(6)(a) or section 65M(1)(a);

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

Commencement Information

II S. 16 in force at 15.2.2010 by S.I. 2010/30, art. 3(a)

17 Trust special administrators: Primary Care Trusts

After section 65O of the National Health Service Act 2006 (c. 41) (inserted by section 16) insert—

“CHAPTER 5B

TRUST SPECIAL ADMINISTRATORS: PRIMARY CARE TRUSTS

Appointment

65P Appointment of trust special administrator

- (1) The Secretary of State may give directions to a Primary Care Trust requiring the Primary Care Trust to appoint a trust special administrator to exercise on its behalf, to the extent, and subject to any conditions, specified in the directions, such provider functions of the Primary Care Trust as are specified in the directions.
- (2) Directions may be given under subsection (1) only if the Secretary of State considers it appropriate in the interests of the health service.
- (3) The directions must specify—

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- (a) 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 directions are given, and
 - (b) the name of the person to be appointed.
- (4) Before giving directions under subsection (1) the Secretary of State must consult—
- (a) the Primary Care Trust,
 - (b) any Strategic Health Authority whose area includes any part of the Primary Care Trust's area, and
 - (c) any other person to which the Primary Care Trust provides goods or services under this Act and which the Secretary of State considers it appropriate to consult.
- (5) The Secretary of State must lay before Parliament (with the instrument containing the directions) a report stating the reasons for giving the directions.
- (6) Where a person is appointed pursuant to directions under subsection (1), the Secretary of State must publish the name of the person appointed.
- (7) A person appointed as a trust special administrator holds and vacates office in accordance with the terms of the appointment.
- (8) Directions under subsection (1) may require the appointment to be on terms specified in the directions.
- (9) The Primary Care Trust may pay the trust special administrator remuneration and expenses in accordance with the terms of the appointment.
- (10) In this section “provider function” means—
- (a) any function of providing goods or services except to the extent that at the time of the appointment there are arrangements between the Primary Care Trust and another person or body under which the goods or services are, or are to be, provided by that person or body, and
 - (b) any function that is not a function of providing goods or services but that may be exercised for the purposes of a function within paragraph (a).

65Q Displacement of functions

- (1) When the appointment of a trust special administrator takes effect, the relevant functions cease to be exercisable by any committee, sub-committee or officer of the Primary Care Trust by whom they were previously exercisable.
- (2) Subsection (1) does not affect the employment of any officer of the Primary Care Trust.
- (3) In this Chapter “relevant functions” means the functions of the Primary Care Trust exercisable by the trust special administrator.

Status: Point in time view as at 01/11/2012.

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Consultation and report

65R Draft report

- (1) Within the period of 45 working days beginning with the day on which a trust special administrator's appointment takes effect, the administrator must provide to the Secretary of State and publish a draft report stating the action which the administrator recommends the Secretary of State should take in relation to the performance of the relevant functions.
- (2) When preparing the draft report, the administrator must consult—
 - (a) any Strategic Health Authority whose area includes any part of the Primary Care Trust's area, and
 - (b) any other person to which the Primary Care Trust provides goods or services under this Act, if required by directions given by the Secretary of State.
- (3) After receiving the draft report, the Secretary of State must lay it before Parliament.

65S Consultation plan

- (1) At the same time as publishing a draft report under section 65R, a trust special administrator must publish a statement setting out the means by which the administrator will seek responses to the draft report.
- (2) The statement must specify a period of 30 working days within which the administrator seeks responses (the “consultation period”).
- (3) The first day of the consultation period must be within the period of 5 working days beginning with the day on which the draft report is published.

65T Consultation requirements

- (1) The following duties apply during the consultation period.
- (2) The trust special administrator must publish a notice stating that the administrator is seeking responses to the draft report and describing how people can give their responses.
- (3) A notice under subsection (2) must include details of how responses can be given in writing.
- (4) The trust special administrator must hold at least one meeting to seek responses from relevant staff and from such persons as the trust special administrator may recognise as representing relevant staff.
- (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.

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- (7) The trust special administrator must request a written response from—
 - (a) any Strategic Health Authority in whose area any part of the Primary Care Trust's area falls;
 - (b) any other person to which the Primary Care Trust provides goods or services under this Act, if required by directions given by the Secretary of State;
 - (c) any person within section 65H(8), if required by directions given by the Secretary of State.
- (8) The trust special administrator must hold at least one meeting to seek responses from representatives of each of the persons from whom the administrator must request a written response under subsection (7)(a) and (b).
- (9) The Secretary of State may direct a trust special administrator to—
 - (a) request a written response from any person;
 - (b) hold a meeting to seek a response from any person.
- (10) In subsection (4) “relevant staff” 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), wholly or partly in connection with the relevant functions.

65U 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 performance of the relevant functions.
- (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.

65V 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 65R(1);
 - (b) the duty of a trust special administrator to consult in the consultation period specified under section 65S(2);
 - (c) the duty of a trust special administrator to provide a final report within the period specified in section 65U(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.

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- (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.

Action by the Secretary of State

65W Secretary of State's decision

- (1) Within the period of 20 working days beginning with the day on which the Secretary of State receives a final report under section 65U, the Secretary of State must decide what action to take in relation to the performance of the relevant functions.
- (2) The Secretary of State must as soon as reasonably practicable—
 - (a) publish a notice of the decision and of the reasons for it;
 - (b) lay a copy of the notice before Parliament.

65X Removal of a trust special administrator

The Secretary of State may at any time give directions to a Primary Care Trust and a trust special administrator who exercises functions on behalf of the Primary Care Trust, requiring that the appointment of the administrator should come to an end with effect from a specified day.

Supplementary

65Y Replacement of trust special administrator

- (1) Where the Secretary of State has given directions under section 65P and, before the Secretary of State has published a decision under section 65W, the trust special administrator appointed under the directions (or whose appointment has effect as if made under the directions) ceases to hold office for any reason, the Secretary of State must—
 - (a) appoint another person as the trust special administrator, and
 - (b) publish the name of the person appointed.
- (2) An appointment under subsection (1) has effect as if made by the Primary Care Trust under the directions.
- (3) Where a person is appointed under subsection (1) in relation to a Primary Care Trust, anything done by or in relation to a previous trust special administrator has effect as if done by or in relation to that person, unless the Secretary of State directs otherwise.

Status: Point in time view as at 01/11/2012.

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65Z Secretary of State's directions to trust special administrator

The Secretary of State may give directions to a trust special administrator about the exercise of functions under or by virtue of this Chapter.

65Z1 Guidance

- (1) The Secretary of State must publish guidance for trust special administrators.
- (2) It must include guidance about the publication of notices under sections 65T and 65V.
- (3) It must include guidance in relation to the preparation of draft reports, as to—
 - (a) persons to be consulted;
 - (b) factors to be taken into account;
 - (c) relevant publications.

65Z2 Directions

Directions under the following provisions of this Chapter must be laid before Parliament after they are given—

- (a) section 65P(1);
- (b) section 65X;
- (c) section 65Z.

65Z3 Interpretation of this Chapter

In this Chapter—

“relevant functions” has the meaning given in section 65Q(3);

“trust special administrator” means a person appointed under directions under section 65P(1) or under section 65Y(1)(a);

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

Commencement Information

I2 S. 17 in force at 15.2.2010 by S.I. 2010/30, art. 3(a)

Consequential amendments

18 Trust special administrators: consequential amendments

- (1) The National Health Service Act 2006 (c. 41) is amended as follows.
- (2) Section 53 (voluntary arrangements for NHS foundation trusts) is amended as follows.
- (3) In subsection (1), after “NHS foundation trust” insert “ to which this section applies ”.
- (4) In subsection (2), after “NHS foundation trusts” insert “ to which this section applies ”.

Status: Point in time view as at 01/11/2012.

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- (5) After subsection (4) insert—
- “(4A) This section applies to an NHS foundation trust to which sections 52B to 52E and Chapter 5A do not apply.”
- (6) In section 54 (dissolution etc. of NHS foundation trusts), in subsection (1), after “NHS foundation trust” insert “ to which section 53 applies ”.
- (7) In section 242 (public involvement and consultation), at the end insert—
- “(6) This section does not require a body to make arrangements in relation to matters to which a trust special administrator's report or draft report under section 65F, 65I, 65R or 65U relates before the decision of the Secretary of State under section 65K or 65W has been published.”
- (8) In section 272 (orders, regulations, rules and directions)—
- (a) in subsection (4), for “and (6)” substitute “ , (6) and (6A) ”;
- (b) in subsection (5), after paragraph (a) insert—
- “(aa) section 52D(1) or (7) or 52E(6),
- (ab) section 65B(1), 65E(1), 65J(2), 65L(2), (4) or (5), or 65V(2),”;
- (c) after subsection (6) insert—
- “(6A) A statutory instrument containing an order under section 52D(1), 52E(6), 65B(1), 65E(1), 65J(2), 65L(2) or (4) or 65V(2) must be laid before Parliament after it is made.”
- (9) In section 275(1) (interpretation), in the definition of “NHS trust”, at the end insert “ and, subject to Schedule 8A, a body that becomes a National Health Service trust by virtue of an order made under section 52D(1) or 65E(1), ”.
- (10) In paragraph 28(3) of Schedule 4 (NHS trusts established under section 25), after “as a matter of urgency” insert “ or where the order is made following the publication of a final report under section 65I(3) ”.
- (11) In Schedule 9 (NHS foundation trusts: transfer of staff), in paragraph 1 after “NHS foundation trust” insert “ to which section 53 applies ”.
- (12) In section 206(1) of the National Health Service (Wales) Act 2006 (c. 42) (interpretation), in the definition of “NHS trust”, at the end insert “ (including a body that becomes a National Health Service trust by virtue of an order made under section 52D(1) or 65E(1) of that Act) ”.

Commencement Information

I3 S. 18 in force at 15.2.2010 for specified purposes by S.I. 2010/30, art. 3(b)

Status: Point in time view as at 01/11/2012.

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CHAPTER 2

SUSPENSION

19 NHS and other health appointments: suspension

Schedule 3 (which amends enactments to provide for powers of suspension in relation to chairs, vice-chairs and other members of NHS bodies and other bodies concerned with health) has effect.

Commencement Information

- I4** [S. 19](#) in force at 19.1.2010 for specified purposes by [S.I. 2010/30](#), [art. 2\(f\)](#)
- I5** [S. 19](#) in force at 1.4.2010 for specified purposes by [S.I. 2010/930](#), [art. 2\(c\)](#)

Status:

Point in time view as at 01/11/2012.

Changes to legislation:

Health Act 2009, Part 2 is up to date with all changes known to be in force on or before 21 September 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.