



# National Health Service Act 2006

## 2006 CHAPTER 41

### PART 2 **E+W**

#### HEALTH SERVICE BODIES

### [<sup>F1</sup>CHAPTER A1 **E+W**

#### [<sup>F2</sup>NHS ENGLAND]

#### Textual Amendments

- F1** Pt. 2 Ch. A1 inserted (27.3.2012 for specified purposes, 1.10.2012 for specified purposes, 1.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012](#) (c. 7), ss. **23(1)**, 306(1)(d)(4); S.I. 2012/1831, art. 2(2) (with art. 4); S.I. 2012/2657, art. 2(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F2** Words in Act substituted (1.7.2022) by [Health and Care Act 2022](#) (c. 31), s. 186(6), Sch. 1 para. 1(1)(2); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

#### *Secretary of State's mandate to [<sup>F2</sup>NHS England]*

### **13A** Mandate to [<sup>F3</sup>NHS England] **E+W**

- (1) <sup>F4</sup>... The Secretary of State must publish and lay before Parliament a document to be known as “the mandate”.
- (2) The Secretary of State must specify in the mandate—
  - (a) the objectives that the Secretary of State considers [<sup>F2</sup>NHS England] should seek to achieve in the exercise of its functions <sup>F5</sup>..., and
  - (b) any requirements that the Secretary of State considers it necessary to impose on [<sup>F2</sup>NHS England] for the purpose of ensuring that it achieves those objectives.

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[ The objectives specified by the Secretary of State under subsection (2)(a) for NHS  
<sup>F6</sup>(2A) England must include objectives relating to outcomes for cancer patients, and those objectives are to be treated by NHS England as having priority over any other objectives relating specifically to cancer.]

<sup>F7</sup>(3) .....

<sup>F8</sup>(4) .....

(5) The Secretary of State may also specify in the mandate the matters by reference to which the Secretary of State proposes to assess [<sup>F2</sup>NHS England's] performance<sup>F9</sup>....

(6) The Secretary of State may not specify in the mandate an objective or requirement about the exercise of [<sup>F2</sup>NHS England's] functions in relation to only one [<sup>F10</sup>integrated care board].

[ The Secretary of State may revise the mandate.  
<sup>F11</sup>(6A)

(6B) If the Secretary of State revises the mandate, the Secretary of State must publish and lay before Parliament the mandate as revised.]

(7) [<sup>F2</sup>NHS England] must—

- (a) seek to achieve the objectives specified in the mandate, and
- (b) comply with any requirements so specified.

(8) Before specifying any objectives or requirements in the mandate, the Secretary of State must consult—

- (a) [<sup>F2</sup>NHS England],
- (b) the Healthwatch England committee of the Care Quality Commission, and
- (c) such other persons as the Secretary of State considers appropriate.

(9) Requirements included in the mandate have effect only if regulations so provide.

#### Textual Amendments

**F3** Words in s. 13A heading substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 1 para. 8**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

**F4** Words in s. 13A(1) omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), **ss. 4(2)(a)**, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

**F5** Words in s. 13A(2)(a) omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), **ss. 4(2)(b)**, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

**F6** S. 13A(2A) inserted (14.6.2023) by Health and Care Act 2022 (c. 31), **ss. 5(2)**, 186(6); S.I. 2023/648, reg. 2

**F7** S. 13A(3) omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), **ss. 4(2)(c)**, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

**F8** S. 13A(4) omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), **ss. 4(2)(c)**, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

**F9** Words in s. 13A(5) omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), **ss. 4(2)(d)**, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

**F10** Words in s. 13A(6) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 4 para. 96**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

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**F11** S. 13A(6A)(6B) inserted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 4(2)(e), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

**13B** [F12Review of NHS England’s performance in implementing the mandate] **E**  
**+W**

(1) The Secretary of State must keep [F2NHS England’s] performance in achieving any objectives or requirements specified in the mandate under review.

F13(2) .....

F13(3) .....

F13(4) .....

F13(5) .....

**Textual Amendments**

**F12** S. 13B heading substituted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 4(3)(a), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

**F13** S. 13B(2)-(5) omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), ss. 4(3)(b), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

*General duties of [F2NHS England]*

**13C** **Duty to promote NHS Constitution** **E+W**

(1) [F2NHS England] must, in the exercise of its functions—

- (a) act with a view to securing that health services are provided in a way which promotes the NHS Constitution, and
- (b) promote awareness of the NHS Constitution among patients, staff and members of the public.

(2) In this section, “patients” and “staff” have the same meaning as in Chapter 1 of Part 1 of the Health Act 2009 (see section 3(7) of that Act).

**13D** **Duty as to effectiveness, efficiency etc.** **E+W**

[F2NHS England] must exercise its functions effectively, efficiently and economically.

**13E** **Duty as to improvement in quality of services** **E+W**

(1) [F2NHS England] must exercise its functions with a view to securing continuous improvement in the quality of services provided to individuals for or in connection with—

- (a) the prevention, diagnosis or treatment of illness, or
- (b) the protection or improvement of public health.

(2) In discharging its duty under subsection (1), [F2NHS England] must, in particular, act with a view to securing continuous improvement in the outcomes that are achieved from the provision of the services.

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- (3) The outcomes relevant for the purposes of subsection (2) include, in particular, outcomes which show—
- (a) the effectiveness of the services,
  - (b) the safety of the services, and
  - (c) the quality of the experience undergone by patients.
- (4) In discharging its duty under subsection (1), [<sup>F2</sup>NHS England] must have regard to—
- (a) any document published by the Secretary of State for the purposes of this section, and
  - (b) the quality standards prepared by NICE under section 234 of the Health and Social Care Act 2012.

<sup>F14</sup>**13F Duty as to promoting autonomy** **E+W**

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**Textual Amendments**

- F14** S. 13F omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), ss. 73(1)(b), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

**13G Duty as to reducing inequalities** **E+W**

- [<sup>F2</sup>NHS England] must, in the exercise of its functions, have regard to the need to—
- (a) reduce inequalities between [<sup>F15</sup>persons] with respect to their ability to access health services, and
  - (b) reduce inequalities between patients with respect to the outcomes achieved for them by the provision of health services [<sup>F16</sup>(including the outcomes described in section 13E(3))].

**Textual Amendments**

- F15** Word in s. 13G(a) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 6(a), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F16** Words in s. 13G(b) inserted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 6(b), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

**13H Duty to promote involvement of each patient** **E+W**

- [<sup>F2</sup>NHS England] must, in the exercise of its functions, promote the involvement of patients, and their carers and representatives (if any), in decisions which relate to—
- (a) the prevention or diagnosis of illness in the patients, or
  - (b) their care or treatment.

**13I Duty as to patient choice** **E+W**

- [<sup>F2</sup>NHS England] must, in the exercise of its functions, act with a view to enabling patients to make choices with respect to aspects of health services provided to them.

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### 13J Duty to obtain appropriate advice **E+W**

[<sup>F2</sup>NHS England] must obtain advice appropriate for enabling it effectively to <sup>F17</sup>(1) discharge its functions from persons who (taken together) have a broad range of professional expertise in—

- (a) the prevention, diagnosis or treatment of illness, and
- (b) the protection or improvement of public health.

[<sup>F18</sup>(2) Subsection (1) does not apply in relation to NHS England’s education and training functions (see section 102 of the Care Act 2014 for the obtaining of advice in relation to those functions).]

#### Textual Amendments

**F17** S. 13J renumbered as s. 13J(1) (1.4.2023) by The Health Education England (Transfer of Functions, Abolition and Transitional Provisions) Regulations 2023 (S.I. 2023/368), reg. 1(2), **Sch. 1 para. 9(5)** (a) (with reg. 7)

**F18** S. 13J(2) inserted (1.4.2023) by The Health Education England (Transfer of Functions, Abolition and Transitional Provisions) Regulations 2023 (S.I. 2023/368), reg. 1(2), **Sch. 1 para. 9(5)(b)** (with reg. 7)

### 13K Duty to promote innovation **E+W**

(1) [<sup>F2</sup>NHS England] must, in the exercise of its functions, promote innovation in the provision of health services (including innovation in the arrangements made for their provision).

(2) [<sup>F2</sup>NHS England] may make payments as prizes to promote innovation in the provision of health services.

(3) A prize may relate to—

- (a) work at any stage of innovation (including research);
- (b) work done at any time (including work before the commencement of section 23 of the Health and Social Care Act 2012).

### 13L Duty in respect of research **E+W**

[<sup>F2</sup>NHS England] must, in the exercise of its functions, [<sup>F19</sup>facilitate or otherwise] promote—

- (a) research on matters relevant to the health service, and
- (b) the use in the health service of evidence obtained from research.

#### Textual Amendments

**F19** Words in s. 13L inserted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 7(2), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

### 13M Duty as to promoting education and training **E+W**

[<sup>F2</sup>NHS England] must, in exercising its functions [<sup>F20</sup>other than its education and training functions], have regard to the need to promote education and training for the

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persons mentioned in section 1F(1) so as to assist <sup>F21</sup>... in the discharge of the duty under that section.

#### Textual Amendments

- F20** Words in s. 13M inserted (1.4.2023) by [The Health Education England \(Transfer of Functions, Abolition and Transitional Provisions\) Regulations 2023 \(S.I. 2023/368\)](#), reg. 1(2), **Sch. 1 para. 9(6)(a)** (with reg. 7)
- F21** Words in s. 13M omitted (1.4.2023) by virtue of [The Health Education England \(Transfer of Functions, Abolition and Transitional Provisions\) Regulations 2023 \(S.I. 2023/368\)](#), reg. 1(2), **Sch. 1 para. 9(6)(b)** (with reg. 7)

### 13N Duty as to promoting integration **E+W**

- (1) [<sup>F2</sup>NHS England] must exercise its functions with a view to securing that health services are provided in an integrated way where it considers that this would—
- improve the quality of those services (including the outcomes that are achieved from their provision),
  - reduce inequalities between persons with respect to their ability to access those services, or
  - reduce inequalities between persons with respect to the outcomes achieved for them by the provision of those services.
- (2) [<sup>F2</sup>NHS England] must exercise its functions with a view to securing that the provision of health services is integrated with the provision of health-related services or social care services where it considers that this would—
- improve the quality of the health services (including the outcomes that are achieved from the provision of those services),
  - reduce inequalities between persons with respect to their ability to access those services, or
  - reduce inequalities between persons with respect to the outcomes achieved for them by the provision of those services.

[ Subsections (1) and (2) do not apply in relation to the exercise of NHS England's <sup>F22</sup>(2A) education and training functions.]

- (3) [<sup>F2</sup>NHS England] must encourage [<sup>F23</sup>integrated care boards] to enter into arrangements with local authorities in pursuance of regulations under section 75 where it considers that this would secure—
- that health services are provided in an integrated way and that this would have any of the effects mentioned in subsection (1)(a) to (c), or
  - that the provision of health services is integrated with the provision of health-related services or social care services and that this would have any of the effects mentioned in subsection (2)(a) to (c).
- (4) In this section—

“health-related services” means services that may have an effect on the health of individuals but are not health services or social care services;

“social care services” means services that are provided in pursuance of the social services functions of local authorities (within the meaning of the

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Local Authority Social Services Act 1970 [<sup>F24</sup>or for the purposes of the Social Services and Well-being (Wales) Act 2014]).

[ For the purposes of this section, the provision of housing accommodation is a health-<sup>F25</sup>(5) related service.]

#### Textual Amendments

- F22** S. 13N(2A) inserted (1.4.2023) by The Health Education England (Transfer of Functions, Abolition and Transitional Provisions) Regulations 2023 (S.I. 2023/368), reg. 1(2), **Sch. 1 para. 9(7)** (with reg. 7)
- F23** Words in s. 13N(3) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 4 para. 97**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F24** Words in s. 13N(4) inserted (6.4.2016) by The Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016 (S.I. 2016/413), regs. 2(1), **238**
- F25** S. 13N(5) inserted (1.4.2015) by Care Act 2014 (c. 23), **ss. 3(6)**, 127(1); S.I. 2015/993, art. 2(a) (with transitional provisions in S.I. 2015/995)

#### <sup>F26</sup>13NA **Duty to have regard to wider effect of decisions** **E+W**

- (1) In making a decision about the exercise of its functions, NHS England must have regard to all likely effects of the decision in relation to—
- (a) the health and well-being of the people of England;
  - (b) the quality of services provided to individuals—
    - (i) by relevant bodies, or
    - (ii) in pursuance of arrangements made by relevant bodies,
 for or in connection with the prevention, diagnosis or treatment of illness, as part of the health service in England;
  - (c) efficiency and sustainability in relation to the use of resources by relevant bodies for the purposes of the health service in England.
- (2) In subsection (1)—
- (a) the reference to a decision does not include a reference to a decision about the services to be provided to a particular individual for or in connection with the prevention, diagnosis or treatment of illness;
  - (b) the reference to effects of a decision in relation to the health and well-being of the people of England includes a reference to its effects in relation to inequalities between the people of England with respect to their health and well-being;
  - (c) the reference to effects of a decision in relation to the quality of services provided to individuals includes a reference to its effects in relation to inequalities between individuals with respect to the benefits that they can obtain from those services.
- (3) In discharging the duty under this section, NHS England must have regard to guidance published by it under section 13NB.
- (4) In this section “relevant bodies” means—
- (a) NHS England,
  - (b) integrated care boards,
  - (c) NHS trusts established under section 25, and



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- (d) NHS foundation trusts.

#### Textual Amendments

**F26** Ss. 13NA, 13NB inserted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 8, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

### 13NB Guidance about discharge of duty **E+W**

- (1) NHS England may publish guidance about the discharge of—
- the duty imposed on it by section 13NA;
  - the duty imposed on integrated care boards by section 14Z43;
  - the duty imposed on NHS trusts by section 26A;
  - the duty imposed on NHS foundation trusts by section 63A.
- (2) NHS England must consult any persons NHS England considers it appropriate to consult—
- before first publishing guidance under this section, and
  - before publishing any revised guidance containing changes that are, in the opinion of NHS England, significant.]

#### Textual Amendments

**F26** Ss. 13NA, 13NB inserted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 8, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

### <sup>I</sup><sub>F27</sub> 13NC Duties as to climate change etc **E+W**

- (1) NHS England must, in the exercise of its functions, have regard to the need to—
- contribute towards compliance with—
    - section 1 of the Climate Change Act 2008 (UK net zero emissions target), and
    - section 5 of the Environment Act 2021 (environmental targets), and
  - adapt to any current or predicted impacts of climate change identified in the most recent report under section 56 of the Climate Change Act 2008.
- (2) In discharging the duty under this section, NHS England must have regard to guidance published by it under section 13ND.

#### Textual Amendments

**F27** Ss. 13NC, 13ND inserted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 9, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

### 13ND Guidance about discharge of duty under section 13NC etc **E+W**

- NHS England may publish guidance about the discharge of—
- the duty imposed on it by section 13NC;



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- (b) the duty imposed on integrated care boards by section 14Z44;
- (c) the duty imposed on NHS trusts by section 26B;
- (d) the duty imposed on NHS foundation trusts by section 63B.]

#### Textual Amendments

**F27** Ss. 13NC, 13ND inserted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 9, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

### 13O Duty to have regard to impact on services in certain areas **E+W**

- (1) In making commissioning decisions, [F<sup>2</sup>NHS England] must have regard to the likely impact of those decisions on the provision of health services to persons who reside in an area of Wales or Scotland that is close to the border with England.
- (2) In this section, “commissioning decisions”, in relation to [F<sup>2</sup>NHS England], means decisions about the carrying out of its functions in arranging for the provision of health services.

### 13P Duty as respects variation in provision of health services **E+W**

[F<sup>2</sup>NHS England] must not exercise its functions for the purpose of causing a variation in the proportion of services provided as part of the health service that is provided by persons of a particular description if that description is by reference to—

- (a) whether the persons in question are in the public or (as the case may be) private sector, or
- (b) some other aspect of their status.

### [F<sup>28</sup> 13PA. functions **E+W** Duty to cooperate for education and training functions and specified

- (1) NHS England must, in exercising its education and training functions, co-operate with the Secretary of State in the exercise of the public health functions of the Secretary of State.
- (2) Regulations may require NHS England and a person specified in those regulations to co-operate with each other in the exercise of—
  - (a) NHS England’s education and training functions;
  - (b) the functions of the specified person;
  - (c) such of the functions in paragraphs (a) or (b) as may be specified.]

#### Textual Amendments

**F28** S. 13PA inserted (1.4.2023) by The Health Education England (Transfer of Functions, Abolition and Transitional Provisions) Regulations 2023 (S.I. 2023/368), reg. 1(2), Sch. 1 para. 9(8) (with reg. 7)

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### Public involvement

#### 13Q Public involvement and consultation by <sup>F2</sup>NHS England **E+W**

- (1) This section applies in relation to any health services which are, or are to be, provided pursuant to arrangements made by <sup>F2</sup>NHS England] in the exercise of its functions (“commissioning arrangements”).
- (2) <sup>F2</sup>NHS England] must make arrangements to secure that individuals to whom the services are being or may be provided <sup>F29</sup>, and their carers and representatives (if any),] are involved (whether by being consulted or provided with information or in other ways)—
  - (a) in the planning of the commissioning arrangements by <sup>F2</sup>NHS England],
  - (b) in the development and consideration of proposals by <sup>F2</sup>NHS England] for changes in the commissioning arrangements where the implementation of the proposals would have an impact on the manner in which the services are delivered to the individuals or the range of health services available to them, and
  - (c) in decisions of <sup>F2</sup>NHS England] affecting the operation of the commissioning arrangements where the implementation of the decisions would (if made) have such an impact.
- (3) The reference in subsection (2)(b) to the delivery of services is a reference to their delivery at the point when they are received by users.
- <sup>F30</sup>(4) This section does not require NHS England to make arrangements in relation to matters to which a trust special administrator’s draft or final report under section 65F or 65I relates before—
  - (a) in a case where the administrator’s report relates to an NHS trust, NHS England and the Secretary of State have made their decisions under section 65K(1) and (2), or
  - (b) in a case where the administrator’s report relates to an NHS foundation trust, the Secretary of State is satisfied as mentioned in section 65KB(1) or 65KD(1) or makes a decision under section 65KD(9).]

#### Textual Amendments

**F29** Words in s. 13Q(2) inserted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), **ss. 10**, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

**F30** S. 13Q(4) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 8 para. 23**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

### Functions in relation to information

#### 13R Information on safety of services provided by the health service **E+W**

- (1) <sup>F2</sup>NHS England] must establish and operate systems for collecting and analysing information relating to the safety of the services provided by the health service.
- (2) <sup>F2</sup>NHS England] must make information collected by virtue of subsection (1), and any other information obtained by analysing it, available to such persons as <sup>F2</sup>NHS England] considers appropriate.

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- (3) [F<sup>2</sup>NHS England] may impose charges, calculated on such basis as it considers appropriate, in respect of information made available by it under subsection (2).
- (4) [F<sup>2</sup>NHS England] must give advice and guidance, to such persons as it considers appropriate, for the purpose of maintaining and improving the safety of the services provided by the health service.
- (5) [F<sup>2</sup>NHS England] must monitor the effectiveness of the advice and guidance given by it under subsection (4).
- (6) [F<sup>31</sup>An integrated care board] must have regard to any advice or guidance given to it under subsection (4).
- (7) [F<sup>2</sup>NHS England] may arrange for any other person (including another NHS body) to exercise any of [F<sup>2</sup>NHS England’s] functions under this section.
- (8) Arrangements made under subsection (7) do not affect the liability of [F<sup>2</sup>NHS England] for the exercise of any of its functions.

#### Textual Amendments

**F31** Words in s. 13R(6) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 4 para. 98](#); [S.I. 2022/734](#), reg. 2(a), [Sch.](#) (with regs. 13, 29, 30)

### 13S Guidance in relation to processing of information **E+W**

- (1) [F<sup>2</sup>NHS England] must publish guidance for registered persons on the practice to be followed by them in relation to the processing of—
  - (a) patient information, and
  - (b) any other information obtained or generated in the course of the provision of the health service.
- (2) Registered persons who carry on an activity which involves, or is connected with, the provision of health care must have regard to any guidance published under this section.
- (3) In this section, “patient information”, “processing” and “registered person” have the same meaning as in section 20A of the Health and Social Care Act 2008.

### **F32** 13SA Information about inequalities **E+W**

- (1) NHS England must publish a statement setting out—
  - (a) a description of the powers available to relevant NHS bodies to collect, analyse and publish information relating to—
    - (i) inequalities between persons with respect to their ability to access health services;
    - (ii) inequalities between persons with respect to the outcomes achieved for them by the provision of health services (including the outcomes described in section 13E(3)); and
  - (b) the views of NHS England about how those powers should be exercised in connection with such information.
- (2) NHS England may from time to time publish a revised statement under subsection (1).

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- (3) In this section “relevant NHS bodies” means—
- (a) integrated care boards,
  - (b) NHS trusts established under section 25, and
  - (c) NHS foundation trusts.]

#### Textual Amendments

**F32** S. 13SA inserted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 11(2), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

#### *[<sup>F33</sup>Regulatory functions*

#### Textual Amendments

**F33** S. 13SB and cross-heading inserted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 34(2), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 19(1)(2), 29, 30)

### 13SB Minimising conflicts between regulatory and other functions **E+W**

- (1) NHS England must make arrangements for—
- (a) minimising the risk of conflicts between the exercise of its regulatory functions and its other functions;
  - (b) managing any conflicts that arise.
- (2) In this Act “regulatory functions”, in relation to NHS England, means—
- (a) its functions under the provisions listed in subsection (3),
  - (b) its functions under Chapter 5A of Part 2 (trust special administrators) in relation to NHS foundation trusts, except for any functions that are conferred on it under section 65DA, 65F or 65G as a commissioner, and
  - (c) any other functions of NHS England so far as exercisable in connection with functions within paragraph (a) or (b).
- (3) Those provisions are—
- (a) in Part 2 of this Act, Chapter 5 (NHS foundation trusts);
  - (b) in Part 3 of the Health and Social Care Act 2012—
    - (i) Chapter 3 (licensing);
    - (ii) Chapter 4 (NHS payment scheme);
    - (iii) Chapter 5 (health special administration);
    - (iv) Chapter 6 (financial assistance in special administration cases).]

### <sup>F34</sup>13SC Provision of regulatory information or assistance to the CMA **E+W**

- (1) NHS England must give the Competition and Markets Authority (“the CMA”)—
- (a) any regulatory information that the CMA may require to enable the CMA to exercise its relevant functions,
  - (b) any other regulatory information it considers would assist the CMA in exercising its relevant functions, and

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- (c) any other assistance the CMA may require to assist the CMA in exercising its relevant functions.

(2) In this section—

“regulatory information” means information held by NHS England in connection with—

- (a) its regulatory functions falling within section 13SB(2)(a) or (b), or  
(b) its functions under—

- (i) sections 6F and Schedule 1ZA (patient choice: enforcement);  
(ii) sections 27A and 27C (NHS trusts: oversight and support and recommendations about restructuring);

“relevant functions”, in relation to the CMA, means its functions under the Competition Act 1998 and the Enterprise Act 2002 so far as those functions are exercisable on behalf of the CMA by the CMA Board or a CMA group (within the meaning of Schedule 4 to the Enterprise and Regulatory Reform Act 2013).]

#### Textual Amendments

**F34** S. 13SC inserted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 82(1), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 20, 29, 30)

### *Business plan and report*

#### 13T **Business plan** **E+W**

- (1) Before the start of each financial year, [F<sup>2</sup>NHS England] must publish a business plan setting out how it proposes to exercise its functions in that year and each of the next two financial years.
- (2) The business plan must, in particular, explain how [F<sup>2</sup>NHS England] proposes to discharge its duties under—
- (a) sections 13E, 13G [F<sup>35</sup>, 13L] and 13Q, and  
(b) sections 223C to 223E.
- (3) The business plan must, in particular, explain how [F<sup>2</sup>NHS England] proposes to achieve the objectives, and comply with the requirements, specified in the mandate  
F<sup>36</sup>  
....

[ The fact that the mandate is revised during the period to which a business plan relates  
F<sup>37</sup>(3A) does not require NHS England to revise the plan.]

- (4) [F<sup>2</sup>NHS England] may revise the plan.  
(5) [F<sup>2</sup>NHS England] must publish any revised plan.

#### Textual Amendments

**F35** Word in s. 13T(2)(a) inserted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 7(3), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

**F36** Words in s. 13T(3) omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), ss. 4(4)(a), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

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**F37** S. 13T(3A) inserted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 4(4)(b), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

### 13U Annual report **E+W**

- (1) As soon as practicable after the end of each financial year, [F<sup>2</sup>NHS England] must publish an annual report on how it has exercised its functions during the year.
- (2) The annual report must, in particular, contain an assessment of—
  - [F<sup>38</sup>(a) the extent to which, in that year, it met any objectives or requirements specified in the mandate,]
  - (b) the extent to which it gave effect to the proposals for that year in its business plan, F<sup>39</sup>...
  - (c) how effectively it discharged its duties under [F<sup>40</sup>or by virtue of—
    - section 6E(1A) and (1B);
    - section 13E;
    - section 13G;
    - section 13I;
    - [F<sup>41</sup>section 13L;]
    - section 13Q.]
  - (d) how effectively it discharged its relevant data functions (as defined by section 253(3) of the Health and Social Care Act 2012)[F<sup>42</sup>, and
  - (e) how effectively it has discharged its education and training functions including, in particular, the extent to which it has during the year achieved the outcomes set by the Secretary of State for the purpose of section 100(2) of the Care Act 2014.]

[ The annual report must include a statement explaining what NHS England has done, F<sup>43</sup>(2A) during the financial year, to comply with its duties under section 13SB.]

[ The annual report must include— F<sup>44</sup>(2B)

- (a) a statement of the amount of expenditure incurred by NHS England and integrated care boards during the year (taken together) in relation to mental health,
- (b) a calculation of the proportion of the expenditure incurred by NHS England and integrated care boards during the year (taken together) that relates to mental health, and
- (c) an explanation of the statement and calculation.]

- (3) [F<sup>2</sup>NHS England] must—
  - (a) lay the annual report before Parliament, and
  - (b) once it has done so, send a copy of it to the Secretary of State.
- (4) The Secretary of State must, having considered the annual report, set out in a letter to [F<sup>2</sup>NHS England] the Secretary of State's assessment of [F<sup>2</sup>NHS England's] performance of its functions in the financial year in question.
- (5) The letter must, in particular, contain the Secretary of State's assessment of the matters mentioned in subsection (2)(a) to (c).
- (6) The Secretary of State must—
  - (a) publish the letter to [F<sup>2</sup>NHS England], and

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(b) lay it before Parliament.

#### Textual Amendments

- F38** S. 13U(2)(a) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 4(5), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F39** Word in s. 13U(2)(b) omitted (1.2.2023) by virtue of The Health and Social Care Information Centre (Transfer of Functions, Abolition and Transitional Provisions) Regulations 2023 (S.I. 2023/98), reg. 1(2), Sch. para. 10(3)(a) (with reg. 3)
- F40** Words in s. 13U(2)(c) substituted (1.1.2024) by Health and Care Act 2022 (c. 31), ss. 78(4), 186(6); S.I. 2023/1431, reg. 3(a)
- F41** Words in s. 13U(2)(c) inserted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 7(4), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F42** S. 13U(2)(e) and word inserted (1.4.2023) by The Health Education England (Transfer of Functions, Abolition and Transitional Provisions) Regulations 2023 (S.I. 2023/368), reg. 1(2), Sch. 1 para. 9(9)(b) (with reg. 7)
- F43** S. 13U(2A) inserted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 34(3), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 19(1)(2), 29, 30)
- F44** S. 13U(2B) inserted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 3(3), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

#### <sup>F45</sup> Joint appointments

#### Textual Amendments

- F45** S. 13UA and cross-heading inserted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 74, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

### 13UA Guidance about joint appointments **E+W**

- (1) NHS England may publish guidance for a relevant NHS body about the making of a joint appointment to which this section applies.
- (2) A joint appointment to which this section applies is an appointment of a person to a position in—
  - (a) one or more relevant NHS commissioner and one or more relevant NHS provider,
  - (b) one or more relevant NHS body and one or more local authority,<sup>F46</sup> ...
  - (c) one or more relevant NHS body and one or more combined authority<sup>F47</sup>, or
  - (d) one or more relevant NHS body and one or more combined county authority.]
- (3) A relevant NHS body must have regard to guidance published under this section.
- (4) NHS England must consult such persons as NHS England considers appropriate—
  - (a) before it first publishes guidance under this section, and
  - (b) before it publishes any revised guidance containing changes that are, in the opinion of NHS England, significant.
- (5) In this section—

“local authority” has the same meaning as in section 2B;



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- “relevant NHS body” means—
- (a) a relevant NHS commissioner;
  - (b) a relevant NHS provider;
- “relevant NHS commissioner” means—
- (a) NHS England;
  - (b) an integrated care board;
- “relevant NHS provider” means—
- (a) an NHS trust established under section 25;
  - (b) an NHS foundation trust.]

#### Textual Amendments

- F46** Word in s. 13UA(2)(b) omitted (26.12.2023) by virtue of [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), s. 255(2)(c), [Sch. 4 para. 165\(a\)](#) (with s. 247)
- F47** S. 13UA(2)(d) and word inserted (26.12.2023) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), s. 255(2)(c), [Sch. 4 para. 165\(b\)](#) (with s. 247)

#### *Additional powers*

### 13V Establishment of pooled funds **E+W**

- (1) [<sup>F2</sup>NHS England] and one or more [<sup>F48</sup>integrated care boards] may establish and maintain a pooled fund.
- (2) A pooled fund is a fund—
- (a) which is made up of contributions by the bodies which established it, and
  - (b) out of which payments may be made, with the agreement of those bodies, towards expenditure incurred in the discharge of any of their commissioning functions.
- (3) In this section, “commissioning functions” means functions in arranging for the provision of services as part of the health service.

#### Textual Amendments

- F48** Words in s. 13V(1) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 4 para. 99](#); S.I. 2022/734, reg. 2(a), [Sch.](#) (with regs. 13, 29, 30)

### 13W [<sup>F49</sup>NHS England’s] power to generate income, etc. **E+W**

- (1) [<sup>F2</sup>NHS England] has power to do anything specified in section 7(2) of the Health and Medicines Act 1988 (provision of goods, services, etc.) for the purpose of making additional income available for improving the health service.
- (2) [<sup>F2</sup>NHS England] may exercise a power conferred by subsection (1) only to the extent that its exercise does not to any significant extent interfere with the performance by [<sup>F2</sup>NHS England] of its functions.

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### Textual Amendments

**F49** Words in s. 13W heading substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 1 para. 9](#); S.I. 2022/734, reg. 2(a), [Sch.](#) (with regs. 13, 29, 30)

### 13X Power to make grants etc. **E+W**

- (1) [<sup>F2</sup>NHS England] may make payments by way of grant or loan to a voluntary organisation which provides or arranges for the provision of services which are similar to the services in respect of which [<sup>F2</sup>NHS England] has functions.
- (2) The payments may be made subject to such terms and conditions as [<sup>F2</sup>NHS England] considers appropriate.

### 13Y [<sup>F50</sup>NHS England’s] incidental powers: further provision **E+W**

The power conferred on [<sup>F2</sup>NHS England] by section 2 includes, in particular, power to—

- (a) enter into agreements,
- (b) acquire and dispose of property, and
- (c) accept gifts (including property to be held on trust for the purposes of [<sup>F2</sup>NHS England]).

### Textual Amendments

**F50** Words in s. 13Y heading substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 1 para. 10](#); S.I. 2022/734, reg. 2(a), [Sch.](#) (with regs. 13, 29, 30)

*[<sup>F51</sup> Assistance and support*

### Textual Amendments

**F51** S. 13YA and cross-heading inserted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), [ss. 12](#), 186(6); S.I. 2022/734, reg. 2(a), [Sch.](#) (with regs. 13, 29, 30)

### 13YA Power of NHS England to provide assistance and support **E+W**

- (1) NHS England may provide assistance or support to—
  - (a) any person providing or proposing to provide services as part of the health service;
  - (b) any person, not within paragraph (a), exercising functions in relation to the health service.
  - [<sup>F52</sup>(c) any public authority, where the assistance or support is in relation to the education or training of health care workers.]

[ In subsection (1), “health care workers” means persons in relation to whom the <sup>F53</sup>(1A) Secretary of State’s duty under section 1F(1) is to be performed.]

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- (2) The assistance that may be provided under [<sup>F54</sup>subsection (1)] includes making available the services of NHS England’s employees or any other resources of NHS England.
- [<sup>F55</sup>(3) The assistance that may be provided under subsection (1)(a) or (c), or that may be provided under subsection (1)(b) to integrated care boards, also includes financial assistance.]
- (4) Assistance or support provided under this section may be provided on such terms, including terms as to payment, as NHS England considers appropriate.]
- [<sup>F56</sup>(5) In this section, a reference to a public authority—
- (a) includes a public authority in the Channel Islands or the Isle of Man, but
  - (b) subject to that, does not include a reference to a public authority outside the United Kingdom.]

#### Textual Amendments

- F52** S. 13YA(1)(c) inserted (1.4.2023) by The Health Education England (Transfer of Functions, Abolition and Transitional Provisions) Regulations 2023 (S.I. 2023/368), reg. 1(2), **Sch. 1 para. 9(10)(a)** (with reg. 7)
- F53** S. 13YA(1A) inserted (1.4.2023) by The Health Education England (Transfer of Functions, Abolition and Transitional Provisions) Regulations 2023 (S.I. 2023/368), reg. 1(2), **Sch. 1 para. 9(10)(b)** (with reg. 7)
- F54** Words in s. 13YA(2) substituted (1.4.2023) by The Health Education England (Transfer of Functions, Abolition and Transitional Provisions) Regulations 2023 (S.I. 2023/368), reg. 1(2), **Sch. 1 para. 9(10)(c)** (with reg. 7)
- F55** S. 13YA(3) substituted (1.4.2023) by The Health Education England (Transfer of Functions, Abolition and Transitional Provisions) Regulations 2023 (S.I. 2023/368), reg. 1(2), **Sch. 1 para. 9(10)(d)** (with reg. 7)
- F56** S. 13YA(5) inserted (1.4.2023) by The Health Education England (Transfer of Functions, Abolition and Transitional Provisions) Regulations 2023 (S.I. 2023/368), reg. 1(2), **Sch. 1 para. 9(10)(e)** (with reg. 7)

#### [<sup>F57</sup>Discharge of functions

#### Textual Amendments

- F57** S. 13YB and cross-heading inserted (1.4.2023) by Health and Care Act 2022 (c. 31), **ss. 13(2)**, 186(6); S.I. 2023/371, reg. 2(a)

### 13YB Directions in respect of functions relating to provision of services **E+W**

- (1) NHS England may by direction provide for any of its relevant functions to be exercised by one or more integrated care boards.
- (2) In this section “relevant function” means—
- (a) any function of NHS England under section 3B(1) (commissioning functions);
  - (b) any function of NHS England, not within paragraph (a), that relates to the provision of—

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- (i) primary medical services,
    - (ii) primary dental services,
    - (iii) primary ophthalmic services, or
    - (iv) services that may be provided as pharmaceutical services, or as local pharmaceutical services, under Part 7;
  - (c) any function of NHS England by virtue of section 7A or 7B (exercise of Secretary of State’s public health functions);
  - (d) any other functions of NHS England so far as exercisable in connection with any functions within paragraphs (a) to (c).
- (3) Regulations may—
- (a) provide that the power in subsection (1) does not apply, or applies only to a prescribed extent, in relation to a prescribed function;
  - (b) impose conditions on the exercise of the power.
- (4) A direction under subsection (1) may include provision prohibiting or restricting the integrated care board from making delegation arrangements in relation to a function that is exercisable by it by virtue of the direction.
- (5) In subsection (4) “delegation arrangements” means arrangements made by a person for the exercise of a function by someone else.
- (6) NHS England may make payments to an integrated care board in respect of the exercise by it of a function by virtue of a direction under subsection (1).
- (7) NHS England may give directions to an integrated care board as to the exercise by it of any functions in pursuance of a direction under subsection (1).
- (8) As soon as reasonably practicable after giving a direction under subsection (1), NHS England must publish it.
- (9) Any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by an integrated care board of any function by virtue of this section are enforceable by or against it (and no other person).]

.....

**Modifications etc. (not altering text)**

**C1** S. 13YB(1) restricted (29.9.2023) by [The National Health Service \(Disapplication of NHS England’s Powers of Direction\) \(England\) Regulations 2023 \(S.I. 2023/945\)](#), regs. 1(2), 3

F58 ...

.....

**Textual Amendments**

**F58** S. 13Z-13ZB and cross-heading omitted (1.7.2022) by virtue of [Health and Care Act 2022 \(c. 31\)](#), ss. 71(4), 186(6); S.I. 2022/734, reg. 2(a), **Sch.** (with regs. 13, 29, 30)

<sup>F58</sup> **13Z Exercise of functions** **E+W**

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<sup>F58</sup> **13ZA Section 13Z: further provision in relation to devolved arrangements** **E+W**

.....

<sup>F58</sup> **13ZB Section 13Z: arrangements in relation to the function under section 3B(1)(d)** **E+W**

.....

<sup>F59</sup> Powers of direction

**Textual Amendments**

**F59** Ss. 13ZC-13ZF and cross-heading inserted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 45(2), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

**13ZC Secretary of State directions as to exercise of NHS England functions** **E+W**

- (1) The Secretary of State may give NHS England directions as to the exercise of any of its functions.
- (2) The directions that may be given include a direction as to whether a power is to be exercised or not.
- (3) The directions that may be given include a direction as to—
  - (a) when or how a function is, or is not, to be exercised;
  - (b) conditions that must be met before a function is exercised (for example, conditions relating to the provision of information, consultation or approval);
  - (c) matters to be taken into account in exercising a function.
- (4) For exceptions to the power to give directions under subsection (1), see section 13ZD.
- (5) A direction under subsection (1) must include a statement that the Secretary of State considers the direction to be in the public interest.
- (6) As soon as reasonably practicable after giving a direction under subsection (1), the Secretary of State must publish it.
- (7) The fact that the Secretary of State has a function under any other enactment in relation to NHS England's exercise of functions is not to be read as limiting the power conferred by subsection (1).
- (8) The reference in subsection (7) to a function of the Secretary of State does not include a function of making subordinate legislation.

**13ZD Power to give directions: exceptions** **E+W**

- (1) A direction under section 13ZC may not be given in relation to a function relating to the appointment or employment of a person.
- (2) A direction under section 13ZC may not be given in relation to a decision about the services to be provided to a particular individual for or in connection with the prevention, diagnosis or treatment of illness.

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- (3) A direction under section 13ZC may not be given in relation to the provision of any drug, medicine or other treatment, or the use of any diagnostic technique, unless NICE has made a recommendation or issued guidance as to its clinical and cost effectiveness and the direction is not inconsistent with that recommendation or guidance.

### **13ZE Compliance with directions: significant failure** E+W

- (1) This section applies where—
- (a) NHS England is given a direction under section 13ZC,
  - (b) the direction —
    - (i) states that the Secretary of State considers that NHS England is failing or has failed to discharge any of its functions, and
    - (ii) states that the Secretary of State considers that the failure is significant and explains why,
  - (c) the direction states that it is given for the purposes of addressing that failure, and
  - (d) NHS England fails to comply with the direction.
- (2) The Secretary of State may—
- (a) discharge the functions to which the direction relates, or
  - (b) make arrangements for any other person to discharge them on the Secretary of State's behalf.
- (3) Where the Secretary of State exercises the power under subsection (2), the Secretary of State must publish the reasons for doing so.
- (4) For the purpose of this section—
- (a) a failure to discharge a function includes a failure to discharge it properly, and
  - (b) a failure to discharge a function properly includes a failure to discharge it consistently with what the Secretary of State considers to be the interests of the health service.

### **13ZF Secretary of State directions to provide information** E+W

- (1) The Secretary of State may direct NHS England to provide the Secretary of State with any documents or other information that may be specified in the direction.
- (2) The directions that may be given include a direction to provide documents or other information that NHS England would need to obtain from others in the exercise of some other power.
- (3) The directions may include provision as to—
- (a) the form or manner in which the documents or information must be provided;
  - (b) the time at which or period within which the documents or information must be provided.]

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**Changes to legislation:** National Health Service Act 2006, Part 2 is up to date with all changes known to be in force on or before 19 April 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) View outstanding changes

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*Power to confer additional functions*

**13Z1 Power to confer additional functions on [F<sup>2</sup>NHS England] E+W**

- (1) Regulations may provide that [F<sup>2</sup>NHS England] is to have such additional functions in relation to the health service as may be specified in the regulations.
- (2) A function may be specified in regulations under subsection (1) only if the function is connected to another function of [F<sup>2</sup>NHS England].

F60 ...

**Textual Amendments**

**F60** S. 13Z2 and cross-heading omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), ss. 45(3), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

**F60 13Z2 Failure by the Board to discharge any of its functions E+W**

.....

*Disclosure of information*

**13Z3 Permitted disclosures of information E+W**

- (1) [F<sup>2</sup>NHS England] may disclose information obtained by it in the exercise of its functions if—
  - (a) the information has previously been lawfully disclosed to the public,
  - (b) the disclosure is made under or pursuant to regulations under section 113 or 114 of the Health and Social Care (Community Health and Standards) Act 2003 (complaints about health care or social services),
  - (c) the disclosure is made in accordance with any enactment or court order,
  - (d) the disclosure is necessary or expedient for the purposes of protecting the welfare of any individual,
  - (e) the disclosure is made to any person in circumstances where it is necessary or expedient for the person to have the information for the purpose of exercising functions of that person under any enactment,
  - (f) the disclosure is made for the purpose of facilitating the exercise of any of [F<sup>2</sup>NHS England's] functions,
  - (g) the disclosure is made in connection with the investigation of a criminal offence (whether or not in the United Kingdom), or
  - (h) the disclosure is made for the purpose of criminal proceedings (whether or not in the United Kingdom).
- (2) Paragraphs (a) to (c) and (h) of subsection (1) have effect notwithstanding any rule of common law which would otherwise prohibit or restrict the disclosure.



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## Interpretation

### 13Z4 Interpretation **E+W**

(1) In this Chapter—

“the health service” means the health service in England;

“health services” means services provided as part of the health service and, in sections 13O and 13Q, also includes services that are to be provided as part of the health service.

<sup>F61</sup>(2) .....

<sup>F61</sup>(3) .....

<sup>F61</sup>(4) .....]

#### Textual Amendments

**F61** Ss. 13Z4(2)-(4) omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), s. 186(6), Sch. 9 para. 7; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

## <sup>F62</sup>CHAPTER A2 **E+W**

### CLINICAL COMMISSIONING GROUPS

#### Textual Amendments

**F62** Pt. 2 Ch. A2 omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), s. 186(6), Sch. 4 para. 100; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 23, 24, 29, 30)

### *Establishment of clinical commissioning groups*

#### 14A General duties of Board in relation to clinical commissioning groups **E+W**

.....

#### 14B Applications for the establishment of clinical commissioning groups **E+W**

.....

#### 14C Determination of applications **E+W**

.....

#### 14D Effect of grant of application **E+W**

.....

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*Changes to legislation:* National Health Service Act 2006, Part 2 is up to date with all changes known to be in force on or before 19 April 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) View outstanding changes

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*Variation of constitution*

**14E Applications for variation of constitution E+W**

.....

**14F Variation of constitution otherwise than on application E+W**

.....

*Mergers, dissolution etc.*

<sup>F62</sup>**14G Mergers E+W**

.....

**14H Dissolution E+W**

.....

*Supplemental provision about applications, variation, mergers etc.*

**14I Transfers in connection with variation, merger, dissolution etc. E+W**

.....

**14J Publication of constitution of clinical commissioning groups E+W**

.....

**14K Guidance about the establishment of clinical commissioning groups etc. E+W**

.....

*Governing bodies of clinical commissioning groups*

**14L Governing bodies of clinical commissioning groups E+W**

.....

**14M Audit and remuneration committees of governing bodies E+W**

.....

**14N Regulations as to governing bodies of clinical commissioning groups E+W**

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**Changes to legislation:** National Health Service Act 2006, Part 2 is up to date with all changes known to be in force on or before 19 April 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) View outstanding changes

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*Conflicts of interest*

**14O Registers of interests and management of conflicts of interest** **E+W**

.....

*General duties of clinical commissioning groups*

**14P Duty to promote NHS Constitution** **E+W**

.....

**14Q Duty as to effectiveness, efficiency etc.** **E+W**

.....

**14R Duty as to improvement in quality of services** **E+W**

.....

**14S Duty in relation to quality of primary medical services** **E+W**

.....

**14T Duties as to reducing inequalities** **E+W**

.....

**14U Duty to promote involvement of each patient** **E+W**

.....

**14V Duty as to patient choice** **E+W**

.....

**14W Duty to obtain appropriate advice** **E+W**

.....

**14X Duty to promote innovation** **E+W**

.....

**14Y Duty in respect of research** **E+W**

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**14Z Duty as to promoting education and training** **E+W**

.....

**14Z1 Duty as to promoting integration** **E+W**

.....

*Public involvement*

**14Z2 Public involvement and consultation by clinical commissioning groups** **E+W**

.....

*Arrangements with others*

**14Z3 Arrangements by clinical commissioning groups in respect of the exercise of functions** **E+W**

.....

**14Z3A Joint exercise of functions with combined authorities** **E+W**

.....

**14Z4 Joint exercise of functions with Local Health Boards** **E+W**

.....

*Additional powers of clinical commissioning groups*

**14Z5 Raising additional income** **E+W**

.....

**14Z6 Power to make grants** **E+W**

.....

*Board's functions in relation to clinical commissioning groups*

**14Z7 Responsibility for payments to providers** **E+W**

.....

**14Z8 Guidance on commissioning by the Board** **E+W**

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**14Z9 Exercise of functions by, or jointly with, the Board** **E+W**

.....

**14Z10 Power of Board to provide assistance or support** **E+W**

.....

*Commissioning plans and reports*

**14Z11 Commissioning plan** **E+W**

.....

**14Z12 Revision of commissioning plans** **E+W**

.....

**14Z13 Consultation about commissioning plans** **E+W**

.....

**14Z14 Opinion of Health and Wellbeing Boards on commissioning plans** **E+W**

.....

**14Z15 Reports by clinical commissioning groups** **E+W**

.....

*Performance assessment of clinical commissioning groups*

**14Z16 Performance assessment of clinical commissioning groups** **E+W**

.....

*Powers to require information etc.*

**14Z17 Circumstances in which powers in sections 14Z18 and 14Z19 apply** **E+W**

.....

**14Z18 Power to require documents and information etc.** **E+W**

.....

**14Z19 Power to require explanation** **E+W**

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#### 14Z20 Use of information **E+W**

.....

*Intervention powers*

#### 14Z21 Power to give directions, dissolve clinical commissioning groups etc. **E+W**

.....

*Procedural requirements in connection with certain powers*

#### 14Z22 Procedural requirements in connection with certain powers **E+W**

.....

*Disclosure of information*

#### 14Z23 Permitted disclosures of information **E+W**

.....

*Interpretation*

#### 14Z24 Interpretation **E+W**

.....

### <sup>F63</sup> CHAPTER A3 **E+W**

#### INTEGRATED CARE BOARDS

##### Textual Amendments

**F63** Pt. 2 Ch. A3 inserted (9.5.2022 but only for the insertion of ss. 14Z25 (for specified purposes), 14Z26, 14Z28, 1.7.2022 in so far as not already in force) by [Health and Care Act 2022 \(c. 31\), ss. 19\(2\), 186\(6\); S.I. 2022/515, reg. 2\(c\); S.I. 2022/734, reg. 2\(a\), Sch. \(with regs. 13, 29, 30\)](#)

*Establishment of integrated care boards (including by re-purposing clinical commissioning groups)*

#### 14Z25 Duty to establish integrated care boards **E+W**

- (1) NHS England must establish bodies called integrated care boards in accordance with this Chapter.
- (2) Each integrated care board is to be established by order made by NHS England for an area within England.

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- (3) The area for which an integrated care board is established must not coincide or overlap with the area of any other integrated care board.
- (4) NHS England must ensure that, at all times on and after the appointed day, the areas of integrated care boards together cover the whole of England.
- (5) An order establishing an integrated care board must provide for the constitution of the board, either by setting out the constitution or by making provision by reference to a published document where it is set out.
- (6) In Schedule 1B—
  - (a) Part 1 is about the constitution of an integrated care board (including its area);
  - (b) Part 2 is about the status and powers of an integrated care board and its accounts.
- (7) Before varying or revoking an order under this section NHS England must consult any integrated care board that it considers likely to be affected.
- (8) NHS England must publish orders under this section.
- (9) In this section “the appointed day” means a day appointed under this subsection by regulations made by the Secretary of State.

#### **14Z26 Process for establishing initial integrated care boards** E+W

- (1) NHS England must publish a list of the initial areas for which integrated care boards are to be established (each of which is referred to in this section as an “initial area”).
- (2) The relevant clinical commissioning group or groups for an initial area must propose the constitution of the first integrated care board to be established for that area.
- (3) Before making a proposal under subsection (2), the relevant clinical commissioning group or groups must consult any persons they consider it appropriate to consult (and it is immaterial for this purpose whether the consultation is carried out before or after this section comes into force).
- (4) When establishing the first integrated care board under section 14Z25 for an initial area, NHS England must give effect to any proposal under subsection (2) unless it considers that—
  - (a) the proposal is inappropriate, or
  - (b) the relevant clinical commissioning group or groups have not carried out an appropriate consultation under subsection (3),and in that case NHS England must determine the terms of the constitution itself.
- (5) Nothing in this section—
  - (a) prevents NHS England from establishing the first integrated care board for an initial area in a case where the relevant clinical commissioning group or groups have failed within a reasonable period to make a proposal under subsection (2), or
  - (b) limits the re-exercise of the power in section 14Z25.
- (6) NHS England may publish guidance for clinical commissioning groups about the exercise of their functions under this section.



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- (7) A clinical commissioning group must have regard to guidance published under this section.
- (8) In this section “the relevant clinical commissioning group or groups” means—
  - (a) in relation to an area that coincides with the area of a clinical commissioning group, that group;
  - (b) in relation to an area that includes the whole or part of the area of more than one clinical commissioning group, those groups acting jointly.

#### **14Z27 Abolition of clinical commissioning groups** E+W

- (1) Any clinical commissioning group in existence immediately before the appointed day is abolished at the beginning of that day.
- (2) In this section “the appointed day” has the same meaning as in section [14Z25](#).

#### **14Z28 Transfer schemes in connection with integrated care boards** E+W

- (1) NHS England may, in connection with the abolition of a clinical commissioning group under section [14Z27](#), make a scheme for the transfer of the group’s property, rights or liabilities to NHS England or an integrated care board.
- (2) NHS England may, in connection with the establishment of an integrated care board, make a scheme for the transfer of property, rights or liabilities to the board from—
  - (a) NHS England,
  - (b) an NHS trust established under section [25](#),
  - (c) an NHS foundation trust, or
  - (d) a Special Health Authority established under section [28](#).
- (3) NHS England may, in connection with the variation of the constitution of an integrated care board or the abolition of an integrated care board, make a scheme for the transfer of the board’s property, rights or liabilities to NHS England or an integrated care board.
- (4) The reference in subsection [\(3\)](#) to the variation of the constitution of an integrated care board is to its variation by order under section [14Z25](#) or under provision included in its constitution by virtue of paragraph [14](#) of Schedule [1B](#).
- (5) NHS England must exercise its powers under subsection [\(1\)](#) or [\(3\)](#) so as to ensure that—
  - (a) on the abolition of a clinical commissioning group whose area coincides with that of an integrated care board, all of the group’s property, rights and liabilities (other than criminal liabilities) are transferred to that board;
  - (b) on the abolition of a clinical commissioning group whose area does not coincide with that of an integrated care board, all of the group’s property, rights and liabilities (other than criminal liabilities) are transferred to one or more integrated care boards;
  - (c) on the abolition of an integrated care board, all of the board’s liabilities (other than criminal liabilities) are transferred.
- (6) The things that may be transferred under a transfer scheme include—
  - (a) property, rights and liabilities that could not otherwise be transferred;

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- (b) property acquired, and rights and liabilities arising, after the making of the scheme;
  - (c) criminal liabilities.
- (7) A transfer scheme may—
- (a) create rights, or impose liabilities, in relation to property or rights transferred;
  - (b) make provision about the continuing effect of things done by, on behalf of or in relation to the transferor in respect of anything transferred;
  - (c) make provision about the continuation of things (including legal proceedings) in the process of being done by, on behalf of or in relation to the transferor in respect of anything transferred;
  - (d) make provision for references to the transferor in an instrument or other document in respect of anything transferred to be treated as references to the transferee;
  - (e) make provision for the shared ownership or use of property;
  - (f) make provision which is the same as or similar to the TUPE regulations;
  - (g) make other consequential, supplementary, incidental or transitional provision.
- (8) A transfer scheme may provide—
- (a) for modifications by agreement;
  - (b) for modifications to have effect from the date when the original scheme came into effect.
- (9) In subsection (7)(f), “the TUPE regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246).
- (10) In this section—
- (a) references to rights and liabilities include rights and liabilities relating to a contract of employment;
  - (b) references to the transfer of property include the grant of a lease.

*Constitution: publication*

**14Z29 Duty for integrated care board to publish constitution** **E+W**

Each integrated care board must publish its constitution (as varied from time to time by order under section 14Z25 or under provision included in its constitution by virtue of paragraph 15 of Schedule 1B).

*Conflicts of interest*

**14Z30 Register of interests and management of conflicts of interests** **E+W**

- (1) Each integrated care board must maintain one or more registers of the interests of—
- (a) members of the board,
  - (b) members of its committees or sub-committees, and
  - (c) its employees.

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- (2) Each integrated care board must publish the registers maintained under subsection (1) or make arrangements to ensure that members of the public have access to the registers on request.
- (3) Each integrated care board must make arrangements to ensure—
  - (a) that a person mentioned in subsection (1) declares any conflict or potential conflict of interest that the person has in relation to a decision to be made in the exercise of the commissioning functions of the integrated care board,
  - (b) that any such declaration is made as soon as practicable after the person becomes aware of the conflict or potential conflict and, in any event, within 28 days of the person becoming aware, and
  - (c) that any such declaration is included in the registers maintained under subsection (1).
- (4) Each integrated care board must make arrangements for managing conflicts and potential conflicts of interest in such a way as to ensure that they do not, and do not appear to, affect the integrity of the board’s decision-making processes.
- (5) For the purposes of this section, the commissioning functions of an integrated care board are the functions of the board in arranging for the provision of services as part of the health service.]

*[<sup>F64</sup>People for whom integrated care board has responsibility*

#### Textual Amendments

**F64** S. 14Z31 and cross-heading inserted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 20(2), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

### 14Z31 People for whom integrated care board has responsibility **E+W**

- (1) NHS England must from time to time publish rules for determining the group of people for whom each integrated care board has core responsibility.
- (2) The rules must ensure that the following are allocated to at least one group—
  - (a) everyone who is provided with NHS primary medical services, and
  - (b) everyone who is usually resident in England and is not provided with NHS primary medical services.
- (3) Regulations may create exceptions to subsection (2) in relation to people of a prescribed description (which may include a description framed by reference to the primary medical services with which the people are provided).
- (4) References in this Act to the group of people for whom an integrated care board has core responsibility are to be read in accordance with this section.
- (5) In this section, “NHS primary medical services” means services provided by a person, other than NHS England or an integrated care board, in pursuance of—
  - (a) a general medical services contract to provide primary medical services of a prescribed description,
  - (b) arrangements under section 83(2) for the provision of primary medical services of a prescribed description, or

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- (c) section 92 arrangements for the provision of primary medical services of a prescribed description.]

**Modifications etc. (not altering text)**

**C2** S. 14Z31: power to amend conferred (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), [ss. 20\(4\)\(a\)](#), [186\(6\)](#); S.I. 2022/734, [reg. 2\(a\)](#), [Sch.](#) (with [regs. 13, 29, 30](#))

*<sup>F65</sup>General duties of integrated care boards*

**Textual Amendments**

**F65** Ss. 14Z32-14Z64 and cross-headings inserted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), [ss. 25\(2\)](#), [186\(6\)](#); S.I. 2022/734, [reg. 2\(a\)](#), [Sch.](#) (with [regs. 13, 29, 30, 33](#))

**14Z32 Duty to promote NHS Constitution** **E+W**

- (1) Each integrated care board must, in the exercise of its functions—
- (a) act with a view to securing that health services are provided in a way which promotes the NHS Constitution, and
  - (b) promote awareness of the NHS Constitution among patients, staff and members of the public.
- (2) In this section, “patients” and “staff” have the same meaning as in Chapter 1 of Part 1 of the Health Act 2009 (see section 3(7) of that Act).

**14Z33 Duty as to effectiveness, efficiency etc** **E+W**

Each integrated care board must exercise its functions effectively, efficiently and economically.

**14Z34 Duty as to improvement in quality of services** **E+W**

- (1) Each integrated care board must exercise its functions with a view to securing continuous improvement in the quality of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness.
- (2) In discharging its duty under subsection (1), an integrated care board must, in particular, act with a view to securing continuous improvement in the outcomes that are achieved from the provision of the services.
- (3) The outcomes relevant for the purposes of subsection (2) include, in particular, outcomes which show—
- (a) the effectiveness of the services,
  - (b) the safety of the services, and
  - (c) the quality of the experience undergone by patients.

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#### **14Z35 Duties as to reducing inequalities** **E+W**

Each integrated care board must, in the exercise of its functions, have regard to the need to—

- (a) reduce inequalities between persons with respect to their ability to access health services, and
- (b) reduce inequalities between patients with respect to the outcomes achieved for them by the provision of health services (including the outcomes described in section 14Z34(3)).

#### **14Z36 Duty to promote involvement of each patient** **E+W**

Each integrated care board must, in the exercise of its functions, promote the involvement of patients, and their carers and representatives (if any), in decisions which relate to—

- (a) the prevention or diagnosis of illness in the patients, or
- (b) their care or treatment.

#### **14Z37 Duty as to patient choice** **E+W**

Each integrated care board must, in the exercise of its functions, act with a view to enabling patients to make choices with respect to aspects of health services provided to them.

#### **14Z38 Duty to obtain appropriate advice** **E+W**

Each integrated care board must obtain advice appropriate for enabling it effectively to discharge its functions from persons who (taken together) have a broad range of professional expertise in—

- (a) the prevention, diagnosis or treatment of illness, and
- (b) the protection or improvement of public health.

#### **14Z39 Duty to promote innovation** **E+W**

Each integrated care board must, in the exercise of its functions, promote innovation in the provision of health services (including innovation in the arrangements made for their provision).

#### **14Z40 Duty in respect of research** **E+W**

Each integrated care board must, in the exercise of its functions, facilitate or otherwise promote—

- (a) research on matters relevant to the health service, and
- (b) the use in the health service of evidence obtained from research.

#### **14Z41 Duty to promote education and training** **E+W**

Each integrated care board must, in exercising its functions, have regard to the need to promote education and training for the persons mentioned in section 1F(1) so as to assist the Secretary of State and [F66 NHS England] in the discharge of the duty under that section.

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### Textual Amendments

**F66** Words in s. 14Z41 substituted (1.4.2023) by [The Health Education England \(Transfer of Functions, Abolition and Transitional Provisions\) Regulations 2023 \(S.I. 2023/368\)](#), reg. 1(2), **Sch. 1 para. 9(11)** (with reg. 7)

## 14Z42 Duty to promote integration **E+W**

- (1) Each integrated care board must exercise its functions with a view to securing that health services are provided in an integrated way where it considers that this would—
  - (a) improve the quality of those services (including the outcomes that are achieved from their provision),
  - (b) reduce inequalities between persons with respect to their ability to access those services, or
  - (c) reduce inequalities between persons with respect to the outcomes achieved for them by the provision of those services.
- (2) Each integrated care board must exercise its functions with a view to securing that the provision of health services is integrated with the provision of health-related services or social care services where it considers that this would—
  - (a) improve the quality of the health services (including the outcomes that are achieved from the provision of those services),
  - (b) reduce inequalities between persons with respect to their ability to access those services, or
  - (c) reduce inequalities between persons with respect to the outcomes achieved for them by the provision of those services.
- (3) In this section—

“health-related services” means services that may have an effect on the health of individuals but are not health services or social care services;

“social care services” means services that are provided in pursuance of the social services functions of local authorities (within the meaning of the Local Authority Social Services Act 1970 or for the purposes of the Social Services and Well-being (Wales) Act 2014).
- (4) For the purposes of this section, the provision of housing accommodation is a health-related service.

## 14Z43 Duty to have regard to wider effect of decisions **E+W**

- (1) In making a decision about the exercise of its functions, an integrated care board must have regard to all likely effects of the decision in relation to—
  - (a) the health and well-being of the people of England;
  - (b) the quality of services provided to individuals—
    - (i) by relevant bodies, or
    - (ii) in pursuance of arrangements made by relevant bodies,for or in connection with the prevention, diagnosis or treatment of illness, as part of the health service in England;
  - (c) efficiency and sustainability in relation to the use of resources by relevant bodies for the purposes of the health service in England.

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- (2) In subsection (1)—
- (a) the reference to a decision does not include a reference to a decision about the services to be provided to a particular individual for or in connection with the prevention, diagnosis or treatment of illness;
  - (b) the reference to effects of a decision in relation to the health and well-being of the people of England includes a reference to its effects in relation to inequalities between the people of England with respect to their health and well-being;
  - (c) the reference to effects of a decision in relation to the quality of services provided to individuals includes a reference to its effects in relation to inequalities between individuals with respect to the benefits that they can obtain from those services.
- (3) In discharging the duty under this section, integrated care boards must have regard to guidance published by NHS England under section 13NB.
- (4) In this section “relevant bodies” means—
- (a) NHS England,
  - (b) integrated care boards,
  - (c) NHS trusts established under section 25, and
  - (d) NHS foundation trusts.

#### 14Z44 Duties as to climate change etc E+W

- (1) Each integrated care board must, in the exercise of its functions, have regard to the need to—
- (a) contribute towards compliance with—
    - (i) section 1 of the Climate Change Act 2008 (UK net zero emissions target), and
    - (ii) section 5 of the Environment Act 2021 (environmental targets), and
  - (b) adapt to any current or predicted impacts of climate change identified in the most recent report under section 56 of the Climate Change Act 2008.
- (2) In discharging the duty under this section, integrated care boards must have regard to guidance published by NHS England under section 13ND.

#### *Involvement of the public*

#### 14Z45 Public involvement and consultation by integrated care boards E+W

- (1) This section applies in relation to any health services which are, or are to be, provided pursuant to arrangements made by an integrated care board in the exercise of its functions (“commissioning arrangements”).
- (2) The integrated care board must make arrangements to secure that individuals to whom the services are being or may be provided, and their carers and representatives (if any), are involved (whether by being consulted or provided with information or in other ways)—
- (a) in the planning of the commissioning arrangements by the integrated care board,



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- (b) in the development and consideration of proposals by the integrated care board for changes in the commissioning arrangements where the implementation of the proposals would have an impact on—
    - (i) the manner in which the services are delivered to the individuals (at the point when the service is received by them), or
    - (ii) the range of health services available to them, and
  - (c) in decisions of the integrated care board affecting the operation of the commissioning arrangements where the implementation of the decisions would (if made) have such an impact.
- (3) This section does not require an integrated care board to make arrangements in relation to matters to which a trust special administrator’s draft or final report under section 65F or 65I relates before—
- (a) in a case where the administrator’s report relates to an NHS trust, NHS England and the Secretary of State have made their decisions under section 65K(1) and (2), or
  - (b) in a case where the administrator’s report relates to an NHS foundation trust, the Secretary of State is satisfied as mentioned in section 65KB(1) or 65KD(1) or makes a decision under section 65KD(9).

#### *Joint exercise of functions with Local Health Boards*

### **14Z46 Joint exercise of functions with Local Health Boards** **E+W**

- (1) Regulations may provide for any prescribed functions of an integrated care board to be exercised jointly with a Local Health Board.
- (2) The regulations may permit or require any functions that are exercisable jointly by an integrated care board and a Local Health Board by virtue of the regulations to be exercised by a joint committee of those bodies.
- (3) Arrangements made by virtue of this section do not affect the liability of an integrated care board for the exercise of any of its functions.

#### *Additional powers of integrated care boards*

### **14Z47 Raising additional income** **E+W**

- (1) An integrated care board has power to do anything specified in section 7(2)(a), (b) and (e) to (h) of the Health and Medicines Act 1988 (provision of goods etc) for the purpose of making additional income available for improving the health service.
- (2) An integrated care board may exercise a power conferred by subsection (1) only to the extent that its exercise does not to any significant extent interfere with the exercise by the board of its other functions.

### **14Z48 Power to make grants** **E+W**

- (1) An integrated care board may make payments—
  - (a) by way of grant to any of its partner NHS trusts or NHS foundation trusts;



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- (b) by way of grant or loan to a voluntary organisation which provides or arranges for the provision of services which are similar to the services in respect of which the integrated care board has functions.
- (2) The payments may be made subject to such terms as the integrated care board considers appropriate.
- (3) For the purposes of this Act an NHS trust or NHS foundation trust is a “partner” of an integrated care board if the trust—
- (a) provides services for the purposes of the health service within the integrated care board’s area, and
  - (b) has the function, under the integrated care board’s constitution, of participating in the nomination of members as a result of falling within a description prescribed for the purposes paragraph 8(2)(a) of Schedule 1B.

#### *Experience of members*

#### **14Z49 Duty to keep experience of members under review etc** E+W

An integrated care board must—

- (a) keep under review the skills, knowledge and experience that it considers necessary for members of the board to possess (when taken together) in order for the board effectively to carry out its functions, and
- (b) if it considers that the board as constituted lacks the necessary skills, knowledge and experience, take such steps as it considers necessary to address or mitigate that shortcoming.

#### *NHS England’s functions in relation to integrated care boards*

#### **14Z50 Responsibility for payments to providers** E+W

- (1) NHS England may publish a document specifying—
- (a) circumstances in which an integrated care board is liable to make a payment to a person in respect of services provided by that person in pursuance of arrangements made by another integrated care board in the discharge of commissioning functions, and
  - (b) how the amount of any such payment is to be determined.
- (2) An integrated care board is required to make payments in accordance with any document published under subsection (1).
- (3) Where an integrated care board is required to make a payment by virtue of subsection (2), no other integrated care board is liable to make it.
- (4) Accordingly, any obligation of another integrated care board to make the payment ceases to have effect.
- (5) Any sums payable by virtue of subsection (2) may be recovered summarily as a civil debt (but this does not affect any other method of recovery).
- (6) NHS England may publish guidance for integrated care boards for the purpose of assisting them in understanding and applying any document published under subsection (1).

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- (7) In this section “commissioning functions” means the functions of integrated care boards in arranging for the provision of services as part of the health service.

#### **14Z51 Guidance by NHS England** **E+W**

- (1) NHS England must publish guidance for integrated care boards on the discharge of their functions.
- (2) Each integrated care board must have regard to guidance under this section.

#### *Forward planning and reports*

#### **14Z52 Joint forward plans for integrated care board and its partners** **E+W**

- (1) Before the start of each financial year, an integrated care board and its partner NHS trusts and NHS foundation trusts must prepare a plan setting out how they propose to exercise their functions in the next five years.
- (2) The plan must, in particular—
- (a) describe the health services for which the integrated care board proposes to make arrangements in the exercise of its functions by virtue of this Act;
  - (b) explain how the integrated care board proposes to discharge its duties under—
    - (i) sections 14Z34 to 14Z45 (general duties of integrated care boards), and
    - (ii) sections 223GB to 223N (financial duties);
  - (c) set out any steps that the integrated care board proposes to take to implement any joint local health and wellbeing strategy to which it is required to have regard under section 116B(1) of the Local Government and Public Involvement in Health Act 2007;
  - (d) set out any steps that the integrated care board proposes to take to address the particular needs of children and young persons under the age of 25;
  - (e) set out any steps that the integrated care board proposes to take to address the particular needs of victims of abuse (including domestic abuse and sexual abuse, whether of children or adults).
- (3) The integrated care board and its partner NHS trusts and NHS foundation trusts must publish the plan.
- (4) The integrated care board and its partner NHS trusts and NHS foundation trusts must give a copy of the plan to—
- (a) the integrated care partnership for the board’s area,
  - (b) each relevant Health and Wellbeing Board, and
  - (c) NHS England.
- (5) NHS England may give a direction as to the date by which subsection (4) must be complied with.
- (6) An integrated care board and its partner NHS trusts and NHS foundation trusts must have regard to the plan under subsection (1).
- (7) In this Chapter “relevant Health and Wellbeing Board”, in relation to an integrated care board (or an integrated care board and its partner NHS trusts and NHS foundation

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trusts), means a Health and Wellbeing Board established by a local authority whose area coincides with, or includes the whole or any part of, the area of the integrated care board.

- (8) In this Act “financial year”, in relation to an integrated care board, means—
- (a) the period beginning with the date on which the integrated care board is established and ending with the 31 March following that date, and
  - (b) each successive period of twelve months.

#### **14Z53 Revision of forward plans** E+W

- (1) An integrated care board and its partner NHS trusts and NHS foundation trusts may revise a plan published under section [14Z52](#).
- (2) If the integrated care board and its partner NHS trusts and NHS foundation trusts revise the plan in a way that they consider to be significant, section [14Z52\(3\)](#) and [\(4\)](#) apply in relation to the revised plan as they applied in relation to the original plan.
- (3) If the integrated care board and its partner NHS trusts and NHS foundation trusts revise the plan in any other way they must—
  - (a) publish a document setting out the changes, and
  - (b) give a copy of the document to—
    - (i) the integrated care partnership for the board’s area,
    - (ii) each relevant Health and Wellbeing Board, and
    - (iii) NHS England.

#### **14Z54 Consultation about forward plans** E+W

- (1) This section applies where an integrated care board and its partner NHS trusts and NHS foundation trusts are—
  - (a) preparing a plan under section [14Z52](#), or
  - (b) revising a plan under section [14Z53](#) in a way that they consider to be significant.
- (2) The integrated care board and its partner NHS trusts and NHS foundation trusts must consult—
  - (a) the group of people for whom the integrated care board has core responsibility, and
  - (b) any other persons they consider it appropriate to consult.
- (3) The integrated care board and its partner NHS trusts and NHS foundation trusts must involve each relevant Health and Wellbeing Board in preparing or revising the plan.
- (4) The integrated care board and its partner NHS trusts and NHS foundation trusts must, in particular—
  - (a) give each relevant Health and Wellbeing Board a draft of the plan or (as the case may be) the plan as revised, and
  - (b) consult each relevant Health and Wellbeing Board on whether the draft takes proper account of each joint local health and wellbeing strategy published by it which relates to the period (or any part of the period) to which the plan relates.
- (5) Where a Health and Wellbeing Board is consulted under subsection [\(4\)\(b\)](#)—

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- (a) it must respond with its opinion on the matter mentioned there;
  - (b) it may also give that opinion to NHS England.
- (6) Where a Health and Wellbeing Board gives its opinion to NHS England under subsection (5)(b) it must inform the integrated care board and its partner NHS trusts and NHS foundation trusts that it has done so (unless it informed them, in advance, that it was planning to do so).
- (7) If an integrated care board and its partner NHS trusts and NHS foundation trusts revise or further revise a draft after it has been given to each relevant Health and Wellbeing Board under subsection (4), subsections (4) and (5) apply in relation to the revised draft as they applied in relation to the original draft.
- (8) An integrated care board and its partner NHS trusts and NHS foundation trusts must include in a plan published under section 14Z52(3)—
- (a) a summary of the views expressed by anyone consulted under subsection (2),
  - (b) an explanation of how they took account of those views, and
  - (c) a statement of the final opinion of each relevant Health and Wellbeing Board consulted in relation to the plan under subsection (4).
- (9) In this section, “joint local health and wellbeing strategy” means a strategy under section 116A of the Local Government and Public Involvement in Health Act 2007.

#### **14Z55 Opinion of Health and Wellbeing Boards on forward plan** **E+W**

- (1) A relevant Health and Wellbeing Board—
- (a) may give NHS England its opinion on whether a plan published by an integrated care board and its partner NHS trusts and NHS foundation trusts under section 14Z52(3) takes proper account of each joint local health and wellbeing strategy published by the Health and Wellbeing Board which relates to the period (or any part of the period) to which the plan relates, and
  - (b) if it does so, must give the integrated care board and its partner NHS trusts and NHS foundation trusts a copy of its opinion.
- (2) In this section, “joint local health and wellbeing strategy” has the same meaning as in section 14Z54(9).

#### **14Z56 Joint capital resource use plan for integrated care board and its partners** **E+W**

- (1) Before the start of each financial year, an integrated care board and its partner NHS trusts and NHS foundation trusts must prepare a plan setting out their planned capital resource use.
- (2) The plan must relate to such period as may be specified in a direction by the Secretary of State.
- (3) The Secretary of State must publish any direction under subsection (2).
- (4) The integrated care board and its partner NHS trusts and NHS foundation trusts must publish the plan.
- (5) The integrated care board and its partner NHS trusts and NHS foundation trusts must give a copy of the plan to—
- (a) the integrated care partnership for the board’s area,

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- (b) each relevant Health and Wellbeing Board, and
  - (c) NHS England.
- (6) NHS England may give a direction as to the date by which subsection (5) must be complied with.
- (7) NHS England may publish guidance about the discharge by an integrated care board and its partner NHS trusts and NHS foundation trusts of their functions under this section.
- (8) An integrated care board and its partner NHS trusts and NHS foundation trusts must have regard to any guidance published under subsection (7).
- (9) NHS England may give directions, in relation to a financial year—
- (a) specifying descriptions of resources which must, or must not, be treated as capital resources for the purposes of this section;
  - (b) specifying uses of capital resources which must, or must not, be taken into account for the purposes of this section.
- (10) The reference in subsection (1) to the use of capital resources is a reference to its expenditure, consumption or reduction in value.

#### **14Z57 Revision of joint capital resource use plans** E+W

- (1) An integrated care board and its partner NHS trusts and NHS foundation trusts may revise a plan published under section 14Z56.
- (2) If the integrated care board and its partner NHS trusts and NHS foundation trusts revise the plan in a way that they consider to be significant, section 14Z56(4) and (5) apply in relation to the revised plan as they applied in relation to the original plan.
- (3) If the integrated care board and its partner NHS trusts and NHS foundation trusts revise the plan in any other way, they must—
- (a) publish a document setting out the changes, and
  - (b) give a copy of the document to—
    - (i) the integrated care partnership for the board’s area,
    - (ii) each relevant Health and Wellbeing Board, and
    - (iii) NHS England.

#### **14Z58 Annual report** E+W

- (1) An integrated care board must, in each financial year, prepare a report (an “annual report”) on how it has discharged its functions in the previous financial year.
- (2) An annual report must, in particular—
- (a) explain how the integrated care board has discharged its duties under sections 14Z34 to 14Z45 and 14Z49 (general duties of integrated care boards),
  - (b) review the extent to which the board has exercised its functions in accordance with the plans published under—
    - section 14Z52 (forward plan), and
    - section 14Z56 (capital resource use plan),
  - (c) review the extent to which the board has exercised its functions consistently with NHS England’s views set out in the latest statement published

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- under section 13SA(1) (views about how functions relating to inequalities information should be exercised), and
- (d) review any steps that the board has taken to implement any joint local health and wellbeing strategy to which it was required to have regard under section 116B(1) of the Local Government and Public Involvement in Health Act 2007.
- (3) In undertaking the review required by subsection (2)(d), an integrated care board must consult each relevant Health and Wellbeing Board.
- (4) An annual report must include—
- (a) a statement of the amount of expenditure incurred by the integrated care board during the financial year in relation to mental health,
  - (b) a calculation of the proportion of the expenditure incurred by the integrated care board during the financial year that relates to mental health, and
  - (c) an explanation of the statement and calculation.
- (5) NHS England may give directions to integrated care boards as to the form and content of an annual report.
- (6) An integrated care board must—
- (a) give a copy of its annual report to NHS England before the date specified by NHS England in a direction, and
  - (b) publish a copy of the annual report.

#### *Performance assessment of integrated care boards*

### **14Z59 Performance assessment of integrated care boards** **E+W**

- (1) NHS England must conduct a performance assessment of each integrated care board in respect of each financial year.
- (2) A performance assessment is an assessment of how well the integrated care board has discharged its functions during that year.
- (3) The assessment must, in particular, include an assessment of how well the integrated care board has discharged its duties under—
- (a) section 14Z34 (improvement in quality of services),
  - (b) section 14Z35 (reducing inequalities),
  - (c) section 14Z38 (obtaining appropriate advice),
  - (d) section 14Z40 (duty in respect of research),
  - (e) section 14Z43 (duty to have regard to effect of decisions),
  - (f) section 14Z45 (public involvement and consultation),
  - (g) sections 223GB to 223N (financial duties), and
  - (h) section 116B(1) of the Local Government and Public Involvement in Health Act 2007 (duty to have regard to assessments and strategies).
- (4) In conducting a performance assessment, NHS England must consult each relevant Health and Wellbeing Board as to its views on any steps that the board has taken to implement any joint local health and wellbeing strategy to which the board was required to have regard under section 116B(1) of that Act of 2007.



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- (5) In conducting a performance assessment, NHS England must, in particular, have regard to—
- (a) any guidance published by the Secretary of State for the purposes of this section, and
  - (b) any guidance published under section 14Z51.
- (6) NHS England must publish a report in respect of each financial year containing a summary of the results of each performance assessment conducted by NHS England in respect of that year.

*Power of NHS England to obtain information*

**14Z60 Power of NHS England to obtain information** E+W

- (1) NHS England may require an integrated care board to provide NHS England with information.
- (2) The information must be provided in such form, and at such time or within such period, as NHS England may require.

*Intervention powers*

**14Z61 Power to give directions to integrated care boards** E+W

- (1) This section applies if NHS England is satisfied that—
  - (a) an integrated care board is failing or has failed to discharge any of its functions, or
  - (b) there is a significant risk that an integrated care board will fail to do so.
- (2) NHS England may direct the integrated care board to discharge such of those functions in such manner and within such period or periods as may be specified in the direction.
- (3) NHS England may direct—
  - (a) the integrated care board, or
  - (b) the chief executive of the integrated care board,
 to cease to perform any functions for such period or periods as may be specified in the direction.
- (4) NHS England may—
  - (a) terminate the appointment of the integrated care board’s chief executive, and
  - (b) direct the chair of the board as to which individual to appoint as a replacement and on what terms.
- (5) Where a direction is given under subsection (3)(a) NHS England may—
  - (a) exercise, on behalf of the integrated care board, any of the functions that are the subject of the direction;
  - (b) direct another integrated care board to perform any of those functions on behalf of the integrated care board, in such manner and within such period or periods as may be specified in the direction.

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- (6) A direction under subsection (5)(b) may include provision prohibiting or restricting the integrated care board from making delegation arrangements in relation to a function that is exercisable by it by virtue of the direction.
- (7) In subsection (6) “delegation arrangements” means arrangements made by a person for the exercise of a function by someone else.
- (8) Where a direction is given under subsection (3)(b) NHS England may—
  - (a) exercise, on behalf of the chief executive, any of the functions that are the subject of the direction;
  - (b) direct the chief executive of another integrated care board to perform any of those functions on behalf of the chief executive, in such manner and within such period or periods as may be specified in the direction.
- (9) For the purposes of this section—
  - (a) a failure to discharge a function includes a failure to discharge it properly, and
  - (b) a failure to discharge a function properly includes a failure to discharge it consistently with what NHS England considers to be the interests of the health service.

#### **14Z62 Section 14Z61 directions: consultation and cooperation** E+W

- (1) Before exercising the power conferred by section 14Z61(5)(b) or (8)(b) NHS England must consult the integrated care board to which it is proposing to give the direction or to whose chief executive it is proposing to give the direction.
- (2) Where a direction is given under section 14Z61(3)(b) to the chief executive of an integrated care board, that board must co-operate with any chief executive to whom a direction is given under subsection (8)(b).

#### *Disclosure of information*

#### **14Z63 Permitted disclosures of information** E+W

- (1) An integrated care board may disclose information obtained by it in the exercise of its functions if—
  - (a) the information has previously been lawfully disclosed to the public,
  - (b) the disclosure is made under or pursuant to regulations under section 113 or 114 of the Health and Social Care (Community Health and Standards) Act 2003 (complaints about health care or social services),
  - (c) the disclosure is made in accordance with any enactment or court order,
  - (d) the disclosure is necessary or expedient for the purposes of protecting the welfare of any individual,
  - (e) the disclosure is made to any person in circumstances where it is necessary or expedient for the person to have the information for the purpose of exercising functions of that person under any enactment,
  - (f) the disclosure is made for the purpose of facilitating the exercise of any of the integrated care board’s functions,
  - (g) the disclosure is made in connection with the investigation of a criminal offence (whether or not in the United Kingdom), or



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- (h) the disclosure is made for the purpose of criminal proceedings (whether or not in the United Kingdom).
- (2) Subsection (1)(a) to (c) and (h) have effect notwithstanding any rule of common law which would otherwise prohibit or restrict the disclosure.

*Interpretation*

**14Z64 Interpretation E+W**

In this Chapter—

- “the health service” means the health service in England;
- “health services” means services provided as part of the health service;
- “integrated care partnership” has the meaning given by section 116ZA(1) of the Local Government and Public Involvement in Health Act 2007;
- “relevant Health and Wellbeing Board”, in relation to an integrated care board, has the meaning given by section 14Z52(7).]

<sup>F67</sup> **CHAPTER 1 E+W**

STRATEGIC HEALTH AUTHORITIES

**Textual Amendments**

<sup>F67</sup> Pt. 2 Ch. 1 repealed (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), ss. 33(2), 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

- 13 Strategic Health Authorities E+W**  
 .....
- 14 Exercise of Strategic Health Authority functions E+W**  
 .....
- 15 Strategic Health Authorities' directions E+W**  
 .....
- 16 Section 92 arrangements and section 107 arrangements and LPS schemes E+W**  
 .....
- 17 Advice for Strategic Health Authorities E+W**  
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**17A Reports on consultation** **E+W**

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<sup>F68</sup>**CHAPTER 2** **E+W**

**PRIMARY CARE TRUSTS**

**Textual Amendments**

**F68** Pt. 2 Ch. 2 repealed (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), ss. **34(2)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

**18 Primary Care Trusts** **E+W**

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**19 Exercise of Primary Care Trust functions** **E+W**

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**20 Strategic Health Authority directions to Primary Care Trusts** **E+W**

.....

**21 Provision of services etc** **E+W**

.....

**22 Administration and management of services** **E+W**

.....

**23 Advice for Primary Care Trusts** **E+W**

.....

**23A Arrangements for improving quality of health care** **E+W**

.....

**24 Plans for improving health etc** **E+W**

.....

**24A Report on consultation** **E+W**

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## CHAPTER 3 **E+W**

### NHS TRUSTS

#### 25 **NHS trusts** **E+W**

- (1) The Secretary of State may by order establish bodies, called National Health Service trusts (“NHS trusts”), to provide goods and services for the purposes of the health service.
- (2) An order under subsection (1) is referred to in this Act as “an NHS trust order”.
- (3) No NHS trust order may be made until after the completion of such consultation as may be prescribed.
- (4) Schedule 4 makes further provision about NHS trusts.

#### 26 **General duty of NHS trusts** **E+W**

An NHS trust must exercise its functions effectively, efficiently and economically.

#### [<sup>F69</sup>26A **Duty to have regard to wider effect of decisions** **E+W**

- (1) In making a decision about the exercise of its functions, an NHS trust established under section 25 must have regard to all likely effects of the decision in relation to—
  - (a) the health and well-being of the people of England;
  - (b) the quality of services provided to individuals—
    - (i) by relevant bodies, or
    - (ii) in pursuance of arrangements made by relevant bodies,
 for or in connection with the prevention, diagnosis or treatment of illness, as part of the health service in England;
  - (c) efficiency and sustainability in relation to the use of resources by relevant bodies for the purposes of the health service in England.
- (2) In subsection (1)—
  - (a) the reference to a decision does not include a reference to a decision about the services to be provided to a particular individual for or in connection with the prevention, diagnosis or treatment of illness;
  - (b) the reference to effects of a decision in relation to the health and well-being of the people of England includes a reference to its effects in relation to inequalities between the people of England with respect to their health and well-being;
  - (c) the reference to effects of a decision in relation to the quality of services provided to individuals includes a reference to its effects in relation to inequalities between individuals with respect to the benefits that they can obtain from those services.
- (3) In discharging the duty under this section, NHS trusts must have regard to guidance published by NHS England under section 13NB.
- (4) In this section “relevant bodies” means—
  - (a) NHS England,

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- (b) integrated care boards,
- (c) NHS trusts established under section 25, and
- (d) NHS foundation trusts.]

#### Textual Amendments

**F69** S. 26A inserted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 52, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

### [<sup>F70</sup> 26B Duties in relation to climate change etc **E+W**

- (1) An NHS trust established under section 25 must, in the exercise of its functions, have regard to the need to—
- (a) contribute towards compliance with—
    - (i) section 1 of the Climate Change Act 2008 (UK net zero emissions target), and
    - (ii) section 5 of the Environment Act 2021 (environmental targets), and
  - (b) adapt to any current or predicted impacts of climate change identified in the most recent report under section 56 of the Climate Change Act 2008.
- (2) In discharging the duty under this section, NHS trusts must have regard to guidance published by NHS England under section 13ND.]

#### Textual Amendments

**F70** S. 26B inserted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 53, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

### 27 Financial provisions relating to NHS trusts **E+W**

Schedule 5 makes provision about the financing of NHS trusts.

### [<sup>F71</sup> 27A Oversight and support of NHS trusts **E+W**

NHS England must—

- (a) monitor NHS trusts established under section 25 in the carrying out of their functions, and
- (b) provide such advice, guidance or other support as it considers appropriate to help NHS trusts established under section 25 in the carrying out of their functions.]

#### Textual Amendments

**F71** S. 27A inserted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 54(2), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29)

**Changes to legislation:** National Health Service Act 2006, Part 2 is up to date with all changes known to be in force on or before 19 April 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) View outstanding changes

### [<sup>F72</sup>27B NHS England’s directions to NHS trusts **E+W**

- (1) NHS England may give directions to an NHS trust established under section 25 about its exercise of any functions.
- (2) In so far as a direction under this section conflicts with a direction under section 8 or paragraph 25(3) of Schedule 4, it is of no effect.]

#### Textual Amendments

**F72** S. 27B inserted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 55(2), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

### [<sup>F73</sup>27C Recommendations about restructuring **E+W**

- (1) NHS England may—
  - (a) make recommendations to NHS trusts for or in connection with the making of restructuring applications;
  - (b) take such other steps as it considers appropriate to facilitate restructuring applications involving NHS trusts.
- (2) In this section “restructuring application”, in relation to an NHS trust, means an application by the NHS trust under—
  - (a) section 56 (mergers involving NHS foundation trusts);
  - (b) section 56A (acquisitions by NHS foundation trusts);
  - (c) section 69A (transfer of property etc between NHS bodies);
  - (d) paragraph 28 of Schedule 4 (dissolution of NHS trusts).]

#### Textual Amendments

**F73** S. 27C inserted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 56, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

### [<sup>F74</sup>27D Intervention in NHS trusts: recommendations etc by NHS England **E+W**

- (1) If NHS England considers that Secretary of State ought to make an order under section 66(2) or 68(2) in relation to an NHS trust established under section 25, NHS England must—
  - (a) make a recommendation to that effect,
  - (b) set out its reasons for the recommendation, and
  - (c) make any recommendations it considers appropriate as to the contents of the order.
- (2) NHS England must make any inquiries, and provide any other assistance, that the Secretary of State may require in connection with deciding whether to make an order under section 66(2) or 68(2) in relation to an NHS trust established under section 25 and, if so, on what terms.]

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**Textual Amendments**

**F74** S. 27D inserted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 57, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

**CHAPTER 4 E+W**

**SPECIAL HEALTH AUTHORITIES**

**28 Special Health Authorities E+W**

- (1) The Secretary of State may by order establish special bodies for the purpose of exercising any functions which may be conferred on them by or under this Act.
- (2) The Secretary of State may make such further provision relating to a body established under subsection (1) as he considers appropriate.
- (3) A body established under this section is called a Special Health Authority.
- (4) An order may, in particular, contain provisions as to—
  - (a) the membership of the body established by the order,
  - (b) the transfer to the body of officers, property and liabilities, and
  - (c) the name of the body.
- (5) The liabilities which may be transferred by virtue of this section, section 272(8) and section 273(1) to an NHS body on the abolition of a Special Health Authority include criminal liabilities.
- <sup>F75</sup>(6) .....
- (7) The Secretary of State must, before he makes an order under this section, consult with respect to the order such bodies as he may recognise as representing officers who in his opinion are likely to be transferred or affected by transfers in pursuance of the order.
- (8) Schedule 6 makes further provision about Special Health Authorities.

**Textual Amendments**

**F75** S. 28(6) omitted (1.10.2012) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 13; S.I. 2012/1831, art. 2(2)

**<sup>F76</sup>28A Special Health Authorities: further provision E+W**

.....

**Textual Amendments**

**F76** S. 28A omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), ss. 86(1)(a), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

**Changes to legislation:** National Health Service Act 2006, Part 2 is up to date with all changes known to be in force on or before 19 April 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) View outstanding changes

## 29 Exercise of Special Health Authority functions **E+W**

- (1) Regulations may provide for any functions which are exercisable by a Special Health Authority under section 7 to be exercised—
  - (a) by another Special Health Authority, or
  - (b) jointly with one or more other Special Health Authorities.
- (2) Regulations may provide—
  - (a) for any functions which are exercisable by a Special Health Authority under section 7 <sup>F77</sup> ... <sup>F78</sup> ... or this section to be exercised on behalf of that Special Health Authority by a committee, sub-committee or officer of the Special Health Authority,
  - (b) for any functions exercisable jointly under subsection (1)(b) to be exercised, on behalf of the Special Health Authorities in question, by a joint committee or joint sub-committee.

### Textual Amendments

**F77** Words in s. 29(2)(a) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 4 para. 14\(a\)](#); [S.I. 2013/160, art. 2\(2\)](#) (with [arts. 7-9](#))

**F78** Words in s. 29(2)(a) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 4 para. 14\(b\)](#); [S.I. 2013/160, art. 2\(2\)](#) (with [arts. 7-9](#))

## <sup>F79</sup>29A Special Health Authorities: accounts and audit **E+W**

- (1) In this section a reference to a Special Health Authority is to a Special Health Authority which—
  - (a) performs functions only or mainly in respect of England, or
  - (b) neither performs functions only or mainly in respect of England, nor performs functions only or mainly in respect of Wales.
- (2) A Special Health Authority must keep proper accounts and proper records in relation to the accounts.
- (3) The Secretary of State may give a Special Health Authority directions as to the form in which its accounts must be kept.
- (4) A Special Health Authority must prepare, in respect of each financial year, annual accounts in such form as the Secretary of State may direct.
- (5) A Special Health Authority must send copies of any annual accounts prepared by it under subsection (4)—
  - (a) to the Secretary of State, by such date as the Secretary of State may direct, and
  - (b) to the Comptroller and Auditor General, as soon as is reasonably practicable following the end of the financial year in question.
- (6) The Comptroller and Auditor General must examine, certify and report on the annual accounts.
- (7) The Special Health Authority must lay before Parliament—
  - (a) a copy of the annual accounts, and
  - (b) the Comptroller and Auditor General's report on them.

**Changes to legislation:** National Health Service Act 2006, Part 2 is up to date with all changes known to be in force on or before 19 April 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) View outstanding changes

- (8) Nothing in subsection (2) requires any annual accounts prepared by a Special Health Authority to include matters relating to a charitable trust of which it is a trustee.
- (9) Nothing in subsection (4) has effect in relation to accounts relating to a charitable trust of which the Special Health Authority is a trustee.]

**Textual Amendments**

**F79** S. 29A inserted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 87(1), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

**CHAPTER 5 E+W**

**NHS FOUNDATION TRUSTS**

*Introductory*

**30 NHS foundation trusts E+W**

- (1) An NHS foundation trust is a public benefit corporation [<sup>F80</sup>the function of which is to provide in accordance with this Chapter] goods and services for the purposes of the health service in England.
- (2) A public benefit corporation is a body corporate which, in pursuance of an application under this Chapter, is constituted in accordance with Schedule 7.

**Textual Amendments**

**F80** Words in s. 30(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), ss. 159(1), 306(4); S.I. 2013/671, art. 2(3)

**<sup>F81</sup>31 Independent Regulator of NHS Foundation Trusts E+W**

.....

**Textual Amendments**

**F81** S. 31 omitted (1.7.2012 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), s. 306(4), Sch. 13 para. 9(1); S.I. 2012/1319, art. 2(3); S.I. 2012/2657, art. 2(2)

**<sup>F82</sup>32 General duty of regulator E+W**

.....



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**Textual Amendments**

**F82** S. 32 omitted (1.11.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 13 para. 10\(1\)](#) (with [Sch. 13 para. 10\(2\)](#)); S.I. 2012/2657, art. 2(2) (with art. 12)

*Authorisation*

**33 Applications by NHS trusts** **E+W**

- (1) An NHS trust may make an application to [<sup>F83</sup>NHS England] for authorisation to become an NHS foundation trust <sup>F84</sup>....
- (2) The application must—
  - <sup>F85</sup>(a) .....
  - (b) be accompanied by a copy of the proposed constitution of the NHS foundation trust,  
and must give any further information which [<sup>F83</sup>NHS England] requires the applicant to give.
- (3) The applicant may modify the application with the agreement of [<sup>F83</sup>NHS England] at any time before authorisation is given under section 35.
- (4) Once an NHS trust has made the application—
  - (a) the provisions of the proposed constitution which give effect to paragraphs 3 to 19 of Schedule 7 have effect, but only for the purpose of establishing the initial membership of the NHS foundation trust and of the [<sup>F86</sup>council of governors], and the initial directors, and enabling the [<sup>F86</sup>council of governors] and board of directors to make preparations for the performance of their functions,
  - (b) the NHS trust may do anything (including the things mentioned in paragraph 14 of Schedule 4) which appears to it to be necessary or expedient for the purpose of preparing it for NHS foundation trust status.

**Textual Amendments**

**F83** Words in s. 33(1)-(3) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 11](#); S.I. 2022/734, reg. 2(a), [Sch.](#) (with regs. 13, 29, 30)

**F84** Words in s. 33(1) omitted (1.7.2022) by virtue of [Health and Care Act 2022 \(c. 31\)](#), [ss. 58\(2\)](#), 186(6); S.I. 2022/734, reg. 2(a), [Sch.](#) (with regs. 13, 29, 30)

**F85** S. 33(2)(a) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 159\(2\)](#), 306(4); S.I. 2013/671, art. 2(3)

**F86** Words in s. 33(4)(a) substituted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 151\(9\)\(a\)](#), 306(4); S.I. 2012/1831, art. 2(2)

<sup>F87</sup>**34 Other applications** **E+W**

.....

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### Textual Amendments

**F87** S. 34 omitted (1.7.2012) by virtue of Health and Social Care Act 2012 (c. 7), ss. 160(1), 306(4) (with s. 160(4)(7)); S.I. 2012/1319, art. 2(3)

## 35 Authorisation of NHS foundation trusts **E+W**

- (1) [<sup>F88</sup>NHS England] may give an authorisation under this section—
  - (a) to an NHS trust which has applied under section 33, <sup>F89</sup>...
  - <sup>F89</sup>(b) .....if [<sup>F90</sup>the Secretary of State approves the authorisation and][<sup>F91</sup>NHS England] is satisfied as to the following matters.
- (2) The matters are that—
  - (a) the applicant's constitution will be in accordance with Schedule 7 and will otherwise be appropriate,
  - (b) the applicant has taken steps to secure that (taken as a whole) the actual membership of any public constituency, and (if there is one) of the patients' constituency, will be representative of those eligible for such membership,
  - (c) there will be a [<sup>F92</sup>council of governors], and a board of directors, constituted in accordance with the constitution,
  - (d) the steps necessary to prepare for NHS foundation trust status have been taken,
  - <sup>F93</sup>(e) the applicant will be able to provide goods and services for the purposes of the health service in England,]
  - (f) any other requirements which [<sup>F94</sup>NHS England] considers appropriate are met.
- (3) In deciding whether it is satisfied as to the matters referred to in subsection (2)(e), [<sup>F95</sup>NHS England] must consider (among other things)—
  - (a) any report or recommendation in respect of the applicant made by [<sup>F96</sup>the Care Quality Commission],
  - (b) the financial position of the applicant.
- <sup>F97</sup>(4) .....
- (5) [<sup>F98</sup>NHS England] must not give an authorisation unless it is satisfied that the applicant has sought the views about the application of the following—
  - <sup>F99</sup>(a) .....
  - (b) individuals who live in any area specified in the proposed constitution as the area for a public constituency,
  - (c) any local authority that would be authorised by the proposed constitution to appoint a member of the [<sup>F100</sup>council of governors],
  - (d) if the proposed constitution provides for a patients' constituency, individuals who would be able to apply to become members of that constituency,
  - (e) any prescribed persons.
- (6) If regulations make provision about consultation, [<sup>F101</sup>NHS England] may not give an authorisation unless it is satisfied that the applicant has complied with the regulations.
- <sup>F102</sup>(7) .....

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**Textual Amendments**

- F88** Words in s. 35(1) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 12(2)(a)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F89** S. 35(1)(b) and word omitted (1.7.2012) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 160(2), 306(4)** (with s. 160(5)); S.I. 2012/1319, art. 2(3)
- F90** Words in s. 35(1) inserted (1.7.2022) by Health and Care Act 2022 (c. 31), **ss. 58(3)**, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F91** Words in s. 35(1) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 12(2)(b)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F92** Words in s. 35(2)(c) substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), **ss. 151(9)(a), 306(4)**; S.I. 2012/1831, art. 2(2)
- F93** S. 35(2)(e) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), **ss. 159(3)**, 306(4); S.I. 2013/671, art. 2(3)
- F94** Words in s. 35(2)(f) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 12(3)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F95** Words in s. 35(3) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 12(3)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F96** Words in s. 35(3)(a) substituted (1.4.2009) by Health and Social Care Act 2008 (c. 14), s. 170(3)(4), **Sch. 5 para. 83**; S.I. 2009/462, art. 2(1), Sch. 1 para. 35(bb)
- F97** S. 35(4) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 159(5)**, 306(4); S.I. 2013/671, art. 2(3)
- F98** Words in s. 35(5) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 12(4)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F99** S. 35(5)(a) repealed (1.4.2008) by Local Government and Public Involvement in Health Act 2007 (c. 28), s. 245(5), **Sch. 18 Pt. 18**; S.I. 2008/461, art. 2(3), Sch.
- F100** Words in s. 35(5)(c) substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), **ss. 151(9)(a), 306(4)**; S.I. 2012/1831, art. 2(2)
- F101** Words in s. 35(6) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 12(5)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F102** S. 35(7) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), **ss. 159(5)**, 306(4); S.I. 2013/671, art. 2(3)

**36 Effect of authorisation E+W**

- (1) On an authorisation being given to a body corporate which is an NHS trust—
  - (a) it ceases to be an NHS trust and becomes an NHS foundation trust,
  - (b) the proposed constitution has effect, and
  - (c) any order under section 25(1) is revoked.

<sup>F103</sup>(2) .....

- (3) The authorisation is conclusive evidence that the body in question is an NHS foundation trust.
- (4) Subsections (1) to (3) do not affect the continuity of the body or of its property or liabilities (including its criminal liabilities).
- (5) The validity of any act of an NHS foundation trust is not affected by any vacancy among the directors or by any defect in the appointment of any director.
- (6) An NHS foundation trust must not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and an NHS foundation

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trust's property must not be regarded as property of, or property held on behalf of, the Crown.

**Textual Amendments**

**F103** S. 36(2) omitted (1.7.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 160(3)**, 306(4) (with s. 160(6)(7)); S.I. 2012/1319, art. 2(3)

**37 Amendments of constitution** **E+W**

[<sup>F104</sup>(1)] An NHS foundation trust may make amendments of its constitution [<sup>F105</sup>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.]

[<sup>F106</sup>(2) Amendments made under this section take effect as soon as the conditions in subsection (1)(a) and (b) are satisfied.

(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 [<sup>F107</sup>NHS England] of amendments made under this section; but [<sup>F108</sup>NHS England'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.]

**Textual Amendments**

**F104** S. 37 renumbered as s. 37(1) (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 161(1)**, 306(4) (with s. 161(3)); S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

**F105** Words in s. 37(1) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 161(1)**, 306(4) (with s. 161(3)); S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

**F106** S. 37(2)-(4) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 161(2)**, 306(4) (with s. 161(3)); S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

**F107** Words in s. 37(4) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 5 para. 13(a)**; S.I. 2022/734, **reg. 2(a)**, Sch. (with regs. 13, 29, 30)

**F108** Words in s. 37(4) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 5 para. 13(b)**; S.I. 2022/734, **reg. 2(a)**, Sch. (with regs. 13, 29, 30)

<sup>F109</sup>**38 Variation of authorisation** **E+W**

.....

**Textual Amendments**

**F109** S. 38 omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 159(6)**, 306(4); S.I. 2013/671, art. 2(3)

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### 39 Register of NHS foundation trusts **E+W**

- (1) [<sup>F110</sup>NHS England] must continue to maintain a register of NHS foundation trusts.
- (2) The register must contain in relation to each NHS foundation trust—
- (a) a copy of the current constitution,
  - <sup>F111</sup>(b) .....
  - (c) a copy of the latest annual accounts and of any report of the auditor on them,
  - (d) a copy of the latest annual report,
  - <sup>F112</sup>(e) .....
  - <sup>F113</sup>(f) .....
  - <sup>F114</sup>(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.]
- (3) In relation to any time before an NHS foundation trust is first required to send an annual report to [<sup>F115</sup>NHS England], the register must contain a list of the persons who were first elected or appointed as—
- (a) the members of the [<sup>F116</sup>council of governors],
  - (b) the directors.
- (4) Members of the public may inspect the register at any reasonable time.
- (5) Any person who requests it must be provided with a copy of, or extract from, any document contained in the register on payment of a reasonable charge.

#### Textual Amendments

**F110** Words in s. 39(1) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 14\(2\)](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

**F111** S. 39(2)(b) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 159\(7\)](#), 306(4); S.I. 2013/671, art. 2(3)

**F112** S. 39(2)(e) omitted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 156\(5\)](#), 306(1)(d)(4); S.I. 2013/671, art. 2(3)

**F113** S. 39(2)(f) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 111\(11\)\(a\)](#), 306(4); S.I. 2013/671, art. 2(3)

**F114** S. 39(2)(g)-(p) inserted (1.11.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 178\(5\)](#), 306(4); S.I. 2012/2657, art. 2(2)

**F115** Words in s. 39(3) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 14\(3\)](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

**F116** Words in s. 39(3)(a) substituted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 151\(9\)\(a\)](#), 306(4); S.I. 2012/1831, art. 2(2)

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### [<sup>F117</sup>39A Panel for advising governors **E+W**

- (1) [<sup>F118</sup>NHS England] 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) [<sup>F119</sup>NHS England]—
  - (a) must pay expenses properly incurred by the panel, and
  - (b) must make administrative support available to the panel.
- (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.]

#### Textual Amendments

**F117** S. 39A inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), ss. 162, 306(1)(d)(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

**F118** Words in s. 39A(1) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 15](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

**F119** Words in s. 39A(9) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 15](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

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### *Financial matters*

#### **40 Power of Secretary of State to give financial assistance** E+W

- (1) The Secretary of State may give financial assistance to any NHS foundation trust.
- (2) The financial assistance may be given by way of loan, public dividend capital, grant or other payment.
- (3) The Secretary of State may guarantee the payment of any amount payable by an NHS foundation trust under an externally financed development agreement.
- (4) “Externally financed development agreement” has the same meaning as in paragraph 23 of Schedule 4, reading references in sub-paragraphs (3) and (5) of that paragraph to the NHS trust as references to the NHS foundation trust.
- [<sup>F120</sup>(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).]

#### **Textual Amendments**

**F120** S. 40(5)-(9) inserted (1.4.2013 for specified purposes) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 163(1), 306(4)**; [S.I. 2013/160](#), art. 2(2) (with arts. 7-9)

#### <sup>F121</sup>**41 Prudential borrowing code** E+W

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### Textual Amendments

**F121** S. 41 omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 163(2)**, 306(4); S.I. 2013/671, art. 2(3)

## 42 Public dividend capital **E+W**

- (1) Where an NHS trust becomes an NHS foundation trust, the amount which was the public dividend capital of the NHS trust immediately before the giving of the authorisation continues as public dividend capital of the NHS foundation trust held on the same conditions (“initial public dividend capital”), but subject to this section.
- (2) Any amount issued to an NHS foundation trust as public dividend capital under section 40 is (like initial public dividend capital) an asset of the Consolidated Fund.
- (3) The Secretary of State may, with the consent of the Treasury, decide the terms on which any public dividend capital of an NHS foundation trust must be treated as having been issued.

<sup>F122</sup>(4) .....

<sup>F123</sup>(5) .....

- (6) Any amount paid to the Secretary of State by an NHS foundation trust by way of repayment of public dividend capital must be paid into the Consolidated Fund.

[<sup>F124</sup>(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.]

### Textual Amendments

**F122** S. 42(4) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 163(3)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

**F123** S. 42(5) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 163(4)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

**F124** S. 42(7) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 163(5)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)



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## [<sup>F125</sup> 42A Criteria for making loans etc. E+W

- (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.
- (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) [<sup>F126</sup>NHS England], and
  - (c) such other persons as the Secretary of State considers appropriate.]

### Textual Amendments

**F125** S. 42A inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), ss. **163(6)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

**F126** Words in s. 42A(7)(b) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 16](#); S.I. 2022/734, reg. 2(a), [Sch.](#) (with regs. 13, 29, 30)

## [<sup>F127</sup> 42B Limits on capital expenditure E+W

- (1) NHS England may make an order imposing a limit on the capital expenditure of an NHS foundation trust in respect of a single financial year.
- (2) The order must specify—
  - (a) the trust,
  - (b) the capital expenditure limit, and
  - (c) the financial year to which the limit relates.
- (3) NHS England must consult the trust before making the order.

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- (4) NHS England must publish each order under this section.
- (5) An order under this section may be made at any time during or before the financial year to which it relates.
- (6) A trust that is the subject of an order under this section must not exceed the capital expenditure limit imposed by the order during the financial year to which it relates.
- (7) In this section “capital expenditure”, in relation to an NHS foundation trust, means expenditure of the trust which falls to be capitalised in its annual accounts.

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**Textual Amendments**

**F127** Ss. 42B, 42C inserted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 62(2), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

**42C Guidance in relation to orders under section 42B** **E+W**

- (1) NHS England must publish guidance about the exercise of its power to make orders under section 42B, including guidance about—
  - (a) the circumstances in which it is likely to make an order, and
  - (b) the method it will use to determine the capital expenditure limit.
- (2) NHS England must consult the Secretary of State before it publishes guidance, or revised guidance, under this section.
- (3) NHS England must have regard to the guidance in exercising its power to make orders under section 42B.]

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**Textual Amendments**

**F127** Ss. 42B, 42C inserted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 62(2), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

*Functions*

**43** [<sup>F128</sup>**Provision of goods and services**] **E+W**

- [<sup>F129</sup>(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.]
- [<sup>F129</sup>(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.]
- [<sup>F129</sup>(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.]

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- (3) <sup>F130</sup>[An] NHS foundation trust may also carry on activities other than those mentioned in <sup>F131</sup>[subsection (2)]<sup>F132</sup>... for the purpose of making additional income available in order better to carry on its principal purpose.
- <sup>F133</sup>(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.
- <sup>F134</sup>(3B) .....
- <sup>F135</sup>(3C) .....
- (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.]
- <sup>F136</sup>(4) .....
- <sup>F136</sup>(5) .....
- <sup>F136</sup>(6) .....
- <sup>F136</sup>(7) .....

#### Textual Amendments

- F128** S. 43 title substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), ss. 164(5), 306(4); S.I. 2013/671, art. 2(3)
- F129** S. 43(1)-(2A) substituted for s. 43(1)(2) (1.10.2012) by Health and Social Care Act 2012 (c. 7), ss. 164(1), 306(4); S.I. 2012/1831, art. 2(2)
- F130** Word in s. 43(3) substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), ss. 164(2)(a), 306(4); S.I. 2012/1831, art. 2(2)
- F131** Words in s. 43(3) substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), ss. 164(2)(b), 306(4); S.I. 2012/1831, art. 2(2)
- F132** Words in s. 43(3) omitted (1.10.2012) by virtue of Health and Social Care Act 2012 (c. 7), ss. 164(2)(c), 306(4); S.I. 2012/1831, art. 2(2)
- F133** S. 43(3A)-(3D) inserted (1.10.2012) by Health and Social Care Act 2012 (c. 7), ss. 164(3), 306(4); S.I. 2012/1831, art. 2(2)
- F134** S. 43(3B) omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), ss. 63(1)(a), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 17, 29)
- F135** S. 43(3C) omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), ss. 63(1)(a), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 17, 29)
- F136** S. 43(4)-(7) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), ss. 164(4), 306(4); S.I. 2013/671, art. 2(3)

#### 44 <sup>F137</sup>Power to charge for accommodation etc.] **E+W**

- <sup>F138</sup>(1) .....
- <sup>F139</sup>(2) .....

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F140(2A) .....

F141(3) .....

F141(4) .....

F141(5) .....

(6) According to the nature of its functions, an NHS foundation trust may, in the case of patients being provided with goods and services for the purposes of the health service, make accommodation or further services available for patients who give undertakings (or for whom undertakings are given) to pay any charges imposed by the NHS foundation trust in respect of the accommodation or services.

(7) An NHS foundation trust may exercise the power conferred by subsection (6) only to the extent that its exercise does not to any significant extent interfere with the performance by the NHS foundation trust of its functions.

**Textual Amendments**

F137 S. 44 title substituted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 165(2)**, 306(4); S.I. 2012/1831, art. 2(2)

F138 S. 44(1) omitted (1.10.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 165(1)(a)**, 306(4); S.I. 2012/1831, art. 2(2)

F139 S. 44(2) omitted (1.10.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 165(1)(b)**, 306(4); S.I. 2012/1831, art. 2(2)

F140 S. 44(2A) omitted (1.10.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 165(1)(c)**, 306(4); S.I. 2012/1831, art. 2(2)

F141 S. 44(3)-(5) omitted (1.10.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 165(1)(d)**, 306(4); S.I. 2012/1831, art. 2(2)

F142 **45 Protection of property** **E+W**

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**Textual Amendments**

F142 S. 45 omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 163(7)**, 306(4); S.I. 2013/671, art. 2(3)

**46 Financial powers** **E+W**

(1) An NHS foundation trust may borrow money for the purposes of or in connection with its functions.

F143(2) .....

F143(3) .....

(4) An NHS foundation trust may invest money (other than money held by it as trustee) for the purposes of or in connection with its functions.

(5) The investment may include investment by—

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- (a) forming, or participating in forming, bodies corporate,
  - (b) otherwise acquiring membership of bodies corporate.
- (6) An NHS foundation trust may give financial assistance (whether by way of loan, guarantee or otherwise) to any person for the purposes of or in connection with its functions.

#### Textual Amendments

**F143** S. 46(2)(3) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), ss. **163(8)**, 306(4); S.I. 2013/671, art. 2(3)

#### 47 General powers **E+W**

- (1) An NHS foundation trust may do anything which appears to it to be necessary or expedient for the purpose of or in connection with its functions.
- (2) In particular it may—
- (a) acquire and dispose of property,
  - (b) enter into contracts,
  - (c) accept gifts of property (including property to be held on trust for the purposes of the NHS foundation trust or for any purposes relating to the health service),
  - (d) employ staff.
- (3) Any power of the NHS foundation trust to pay remuneration and allowances to any person includes power to make arrangements for providing, or securing the provision of, pensions or gratuities (including those payable by way of compensation for loss of employment or loss or reduction of pay).
- (4) “The purposes of the NHS foundation trust” means the general or any specific purposes of the trust (including the purposes of any specific hospital at or from which services are provided by the trust).

#### [<sup>F144</sup>47A Joint exercise of functions **E+W**

An NHS foundation trust may enter into arrangements for the carrying out, on such terms as the NHS foundation trust considers appropriate, of any of its functions jointly with any other person.]

#### Textual Amendments

**F144** S. 47A inserted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), ss. **64**, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

#### [<sup>F145</sup>48 Information **E+W**

- (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.

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[<sup>F146</sup>(1A) An integrated care board may require any of its partner NHS foundation trusts to provide it with any information that it requires.]

(2) [<sup>F147</sup>Information required under this section must be provided in such form, and at such time or within such period, as may be specified by the person imposing the requirement.]]

**Textual Amendments**

**F145** S. 48 substituted (1.11.2012) by Health and Social Care Act 2012 (c. 7), ss. 166, 306(4); S.I. 2012/2657, art. 2(2) (with art. 10)

**F146** S. 48(1A) inserted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 25(3)(a), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30, 33)

**F147** S. 48(2) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 25(3)(b), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30, 33)

<sup>F148</sup>**49 Entry and inspection of premises** **E+W**

**Textual Amendments**

**F148** S. 49 omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), ss. 159(8), 306(4); S.I. 2013/671, art. 2(3)

[<sup>F149</sup>**50 Fees** **E+W**

An NHS foundation trust must pay to [<sup>F150</sup>NHS England] such fee as [<sup>F150</sup>NHS England] may determine in respect of its exercise of functions under—

- (a) section 39;
- (b) section 39A.]

**Textual Amendments**

**F149** S. 50 substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), ss. 163(9), 306(4); S.I. 2013/671, art. 2(3)

**F150** Words in s. 50 substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 17; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

<sup>F151</sup>**51 Trust funds and trustees** **E+W**

**Textual Amendments**

**F151** S. 51 omitted (17.6.2021) by virtue of NHS (Charitable Trusts Etc) Act 2016 (c. 10), ss. 1(1)(a), 5(1); S.I. 2021/712, reg. 3(a)

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### <sup>F152</sup>51A Significant transactions **E+W**

- (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.]

#### Textual Amendments

**F152** S. 51A inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 167**, 306(4); S.I. 2013/160, **art. 2(2)** (with **arts. 7-9**)

#### *Failure*

### <sup>F153</sup>52 Failing NHS foundation trusts **E+W**

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#### Textual Amendments

**F153** S. 52 omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 111(11)**, 306(4); S.I. 2013/671, **art. 2(3)**

### <sup>F154</sup>52A Application of sections 52B to 52E **E+W**

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#### Textual Amendments

**F154** Ss. 52A, 52B, 52D, 52E: the insertion of these provisions by [2009 c. 21](#), **s. 15(1)** falls by virtue of the omission of that amending provision (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)**

### <sup>F155</sup>52B De-authorisation: regulator's notice **E+W**

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#### Textual Amendments

**F155** Ss. 52A, 52B, 52D, 52E: the insertion of these provisions by [2009 c. 21](#), **s. 15(1)** falls by virtue of the omission of that amending provision (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)**

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**F156 52C Grounds for de-authorisation notice** **E+W**

.....

**Textual Amendments**

**F156** S. 52C omitted (1.11.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 173(1)**, 306(4); S.I. 2012/2657, art. 2(2)

**F157 52D De-authorisation** **E+W**

.....

**Textual Amendments**

**F157** Ss. 52A, 52B, 52D, 52E: the insertion of these provisions by [2009 c. 21, s. 15\(1\)](#) falls by virtue of the omission of that amending provision (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)**

**F158 52E Secretary of State's request** **E+W**

.....

**Textual Amendments**

**F158** Ss. 52A, 52B, 52D, 52E: the insertion of these provisions by [2009 c. 21, s. 15\(1\)](#) falls by virtue of the omission of that amending provision (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)**

**F159 53 Voluntary arrangements** **E+W**

.....

**Textual Amendments**

**F159** Ss. 53-55 omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 173(2)**, 306(4); S.I. 2013/671, art. 2(3)

**F159 54 Dissolution etc** **E+W**

.....

**Textual Amendments**

**F159** Ss. 53-55 omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 173(2)**, 306(4); S.I. 2013/671, art. 2(3)



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**F159 55 Sections 53 and 54: supplementary E+W**

.....

**Textual Amendments**  
**F159** Ss. 53-55 omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), ss. 173(2), 306(4); S.I. 2013/671, art. 2(3)

*[F160 Mergers, acquisitions and separations]*

**Textual Amendments**  
**F160** S. 56 cross-heading substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), ss. 172(9), 306(4); S.I. 2013/671, art. 2(3)

**56 Mergers E+W**

- (1) An application may be made jointly by—
  - (a) an NHS foundation trust, and
  - (b) another NHS foundation trust or an NHS trust [F161 established under section 25],to [F162 NHS England] for [F163 the dissolution of the trusts and the establishment of a new NHS foundation trust.]

[F164 (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).]

- (2) The application must—
  - F165 (a) .....
  - (b) specify the property and liabilities proposed to be transferred to the new NHS foundation trust,
  - (c) F166 ...and
  - (d) be accompanied by a copy of the proposed constitution of the new trust,F167 ...

F168 (3) .....

[F169 (4) NHS England must grant the application if—

- (a) it is satisfied that such steps as are necessary to prepare for the dissolution of the trusts and the establishment of the new trust have been taken, and
- (b) the Secretary of State approves the grant of the application,

and must otherwise refuse the application.]

F170 (5) .....

F170 (6) .....

F170 (7) .....

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<sup>F170</sup>(8) .....

<sup>F170</sup>(9) .....

<sup>F170</sup>(10) .....

- (11) [<sup>F171</sup>On the grant of the application], the proposed constitution of the NHS foundation trust has effect, but the directors of the applicants may exercise the functions of the trust on its behalf until a board of directors is appointed in accordance with the constitution.

#### Textual Amendments

- F161** Words in s. 56(1)(b) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 168(1)(a)**, 306(4); S.I. 2013/671, art. 2(3)
- F162** Words in s. 56(1) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 5 para. 18**; S.I. 2022/734, reg. 2(a), **Sch.** (with regs. 13, 29, 30)
- F163** Words in s. 56(1) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 168(1)(b)**, 306(4); S.I. 2013/671, art. 2(3)
- F164** S. 56(1A) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 168(2)**, 306(4); S.I. 2013/671, art. 2(3)
- F165** S. 56(2)(a) omitted (1.7.2022) by virtue of [Health and Care Act 2022 \(c. 31\)](#), **ss. 65(2)(a)**, 186(6); S.I. 2022/734, reg. 2(a), **Sch.** (with regs. 13, 29, 30)
- F166** S. 56(2)(c) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 168(3)(a)**, 306(4); S.I. 2013/671, art. 2(3)
- F167** Words in s. 56(2) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 168(3)(b)**, 306(4); S.I. 2013/671, art. 2(3)
- F168** S. 56(3) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 168(4)**, 306(4); S.I. 2013/671, art. 2(3)
- F169** S. 56(4) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), **ss. 65(2)(b)**, 186(6); S.I. 2022/734, reg. 2(a), **Sch.** (with regs. 13, 29, 30)
- F170** S. 56(5)-(10) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 168(6)**, 306(4); S.I. 2013/671, art. 2(3)
- F171** Words in s. 56(11) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 168(7)**, 306(4); S.I. 2013/671, art. 2(3)

#### [<sup>F172</sup>56A Acquisitions **E+W**

- (1) An application may be made jointly by—
- an NHS foundation trust (A), and
  - another NHS foundation trust or an NHS trust established under section 25 (B),
- to [<sup>F173</sup>NHS England] 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—
- <sup>F174</sup>(a) .....
  - be accompanied by a copy of the proposed constitution of A, amended on the assumption that A acquires B.

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- [<sup>F175</sup>(4) NHS England must grant the application if—
- (a) it is satisfied that such steps as are necessary to prepare for the acquisition have been taken, and
  - (b) the Secretary of State approves the grant of the application, and must otherwise refuse the application.]
- [ Where [<sup>F177</sup>NHS England] proposes to grant the application, it may by order make
- <sup>F176</sup>(4A) provision for the transfer of employees of B to A on the grant of the application.]
- (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.]

#### Textual Amendments

- F172** S. 56A inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 169**, 306(4); S.I. 2013/671, art. 2(3)
- F173** Words in s. 56A(1) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 5 para. 19(2)**; S.I. 2022/734, [reg. 2\(a\)](#), [Sch. \(with regs. 13, 29, 30\)](#)
- F174** S. 56A(3)(a) omitted (1.7.2022) by virtue of [Health and Care Act 2022 \(c. 31\)](#), **ss. 65(3)(a)**, 186(6); S.I. 2022/734, [reg. 2\(a\)](#), [Sch. \(with regs. 13, 29, 30\)](#)
- F175** S. 56A(4) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), **ss. 65(3)(b)**, 186(6); S.I. 2022/734, [reg. 2\(a\)](#), [Sch. \(with regs. 13, 29, 30\)](#)
- F176** S. 56A(4A) inserted (26.5.2015) by [Deregulation Act 2015 \(c. 20\)](#), **ss. 96(2)**, 115(7); S.I. 2015/994, art. 6(r)
- F177** Words in s. 56A(4A) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 5 para. 19(3)**; S.I. 2022/734, [reg. 2\(a\)](#), [Sch. \(with regs. 13, 29, 30\)](#)

#### [<sup>F178</sup>56A Acquisitions under section 56A: supplementary **E+W**

- (1) On the grant of an application under section 56A—
  - (a) any order made by [<sup>F179</sup>NHS England] under section 56A(4A) takes effect,
  - (b) the property and liabilities of the acquired NHS foundation trust or NHS trust are transferred to the acquiring NHS foundation trust (other than rights and liabilities which may be dealt with by order under section 56A(4A)),
  - (c) the acquired NHS foundation trust or NHS trust is dissolved, and
  - (d) where the acquired trust is an NHS trust, the NHS trust order establishing it is revoked.
- (2) So far as may be necessary for the purposes of subsection (1)(b)—
  - (a) anything done before the grant of the application by or in relation to the acquired trust is to be treated (on and after the grant) as having been done by or in relation to the acquiring trust;
  - (b) any reference in a document to the acquired trust is to be read as a reference to the acquiring trust.
- (3) Anything (including legal proceedings) that, immediately before the grant of the application, is in the process of being done by or in relation to the acquired trust may continue to be done afterwards by or in relation to the acquiring trust.
- (4) In subsection (1)—

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- (a) “liabilities” includes criminal liabilities;
- (b) “property” includes trust property.]

#### Textual Amendments

**F178** S. 56AA inserted (26.5.2015) by Deregulation Act 2015 (c. 20), ss. 96(3), 115(7); S.I. 2015/994, art. 6(r)

**F179** Words in s. 56AA(1)(a) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 20; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

#### [<sup>F180</sup>56B Separations **E+W**

- (1) An application may be made to [<sup>F181</sup>NHS England] 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.

[<sup>F182</sup>(4) NHS England must grant the application if—

- (a) 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, and
- (b) the Secretary of State approves the grant of the application, and must otherwise refuse the application.]

- (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.]

#### Textual Amendments

**F180** S. 56B inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), ss. 170, 306(4); S.I. 2013/671, art. 2(3)

**F181** Words in s. 56B(1) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 21; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

**F182** S. 56B(4) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 65(4), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

#### 57 [<sup>F183</sup>Sections 56 to 56B: supplementary] **E+W**

- (1) Where [<sup>F184</sup>an application is granted under section 56 or 56B], [<sup>F185</sup>NHS England] must specify the property and liabilities to be transferred to the new NHS foundation trust [<sup>F186</sup>or trusts].
- (2) Where [<sup>F187</sup>such an application is granted, [<sup>F188</sup>NHS England]] must make an order—

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- (a) dissolving the [<sup>F189</sup>trust or] trusts in question, and
- (b) transferring, or providing for the transfer of, the property and liabilities specified by [<sup>F188</sup>NHS England] to the new NHS foundation trust [<sup>F190</sup>or trusts].

[<sup>F191</sup>(2A) An order under section 56 or 56B is conclusive evidence of incorporation and conclusive evidence that the corporation is an NHS foundation trust.]

(3) The order may—

- (a) transfer, or provide for the transfer of, any of the remaining property or liabilities to [<sup>F192</sup>another NHS foundation trust, an NHS trust established under section 25 or the Secretary of State],

<sup>F193</sup>(b) .....

[<sup>F194</sup>(3A) The order may include provision for the transfer of employees of the trust or trusts dissolved by the order.]

- (4) In [<sup>F195</sup>sections 56(2) and 56B(3)], and subsections (1) and (2) of this section, “liabilities” includes criminal liabilities; and an order under subsection (3) of this section may transfer any remaining criminal liabilities to [<sup>F196</sup>another NHS foundation trust or an NHS trust established under section 25].

- (5) Where one of the parties to an application under section 56 [<sup>F197</sup>or 56A] is an NHS trust, the powers conferred on the Secretary of State [<sup>F198</sup>or NHS England] by Part 3 of Schedule 4 are not exercisable in relation to the trust.

<sup>F199</sup>(6) .....

#### Textual Amendments

- F183** S. 57 title substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 172(8)**, 306(4); S.I. 2013/671, art. 2(3)
- F184** Words in s. 57(1) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 172(1)(a)**, 306(4); S.I. 2013/671, art. 2(3)
- F185** Words in s. 57(1) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 5 para. 22**; S.I. 2022/734, reg. 2(a), [Sch. \(with regs. 13, 29, 30\)](#)
- F186** Words in s. 57(1) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 172(1)(b)**, 306(4); S.I. 2013/671, art. 2(3)
- F187** Words in s. 57(2) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 172(2)(a)**, 306(4); S.I. 2013/671, art. 2(3)
- F188** Words in s. 57(2) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 5 para. 22**; S.I. 2022/734, reg. 2(a), [Sch. \(with regs. 13, 29, 30\)](#)
- F189** Words in s. 57(2)(a) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 172(2)(b)**, 306(4); S.I. 2013/671, art. 2(3)
- F190** Words in s. 57(2)(b) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 172(2)(c)**, 306(4); S.I. 2013/671, art. 2(3)
- F191** S. 57(2A) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 172(3)**, 306(4); S.I. 2013/671, art. 2(3)
- F192** Words in s. 57(3)(a) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 172(4)**, **173(2)(a)(i)**, 306(4); S.I. 2013/671, arts. 2(2)(3)
- F193** S. 57(3)(b) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 173(2)(a)(ii)**, 306(4); S.I. 2013/671, art. 2(3)
- F194** S. 57(3A) inserted (26.5.2015) by [Deregulation Act 2015 \(c. 20\)](#), **ss. 96(4)**, 115(7); S.I. 2015/994, art. 6(r)

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- F195** Words in s. 57(4) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), ss. 172(5)(a), 306(4); S.I. 2013/671, art. 2(3)
- F196** Words in s. 57(4) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), ss. 172(5)(b), 173(2)(a)(iii), 306(4); S.I. 2013/671, arts. 2(2)(3)
- F197** Words in s. 57(5) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), ss. 172(6), 306(4); S.I. 2013/671, art. 2(3)
- F198** Words in s. 57(5) inserted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 58(4), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F199** S. 57(6) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), ss. 172(7), 306(4); S.I. 2013/671, art. 2(3)

## [<sup>F200</sup> 57A Dissolution **E+W**

- (1) An application may be made by an NHS foundation trust to [<sup>F201</sup>NHS England] 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) [<sup>F202</sup>NHS England] must grant the application if it is satisfied that—
    - <sup>F203</sup>(a) .....
    - (b) such steps as are necessary to prepare for the dissolution have been taken.
  - (4) Where an application under this section is granted, [<sup>F204</sup>NHS England] must make an order—
    - (a) dissolving the trust in question, and
    - <sup>F205</sup>(b) transferring, or providing for the transfer of, the property and liabilities (including criminal liabilities) to another NHS foundation trust, an NHS trust established under section 25 or the Secretary of State.]
- [ The order must include provision for the transfer of any employees of the NHS <sup>F206</sup>(5) foundation trust that is dissolved.]]

### Textual Amendments

- F200** S. 57A inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), ss. 171, 306(4); S.I. 2013/671, art. 2(3)
- F201** Words in s. 57A(1) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 23(2); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F202** Words in s. 57A(3) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 23(3); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F203** S. 57A(3)(a) omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), ss. 66(a), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F204** Words in s. 57A(4) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 23(4); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F205** S. 57A(4)(b) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 66(b), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F206** S. 57A(5) inserted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 66(c), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

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### Miscellaneous

#### <sup>F207</sup> 58 Taxation **E+W**

##### Textual Amendments

**F207** S. 58 repealed (with effect in accordance with s. 216(3)(4) of the amending Act) by [Finance Act 2012 \(c. 14\), s. 216\(2\)\(b\)](#)

#### 59 Conduct of elections **E+W**

- (1) Regulations may make provision as to the conduct of elections for membership of the [<sup>F208</sup>council of governors] of an NHS foundation trust.
- (2) The regulations may in particular provide for—
  - (a) nomination of candidates and obligations to declare their interests,
  - (b) systems and methods of voting, and the allocation of places on the [<sup>F209</sup>council of governors], at contested elections,
  - (c) filling of vacancies,
  - (d) supervision of elections,
  - (e) elections expenses and publicity,
  - (f) questioning of elections and the consequences of irregularities.
- (3) Regulations under this section may create offences punishable on summary conviction with a maximum fine not exceeding level 4 on the standard scale.
- (4) An NHS foundation trust must secure that its constitution is in accordance with regulations under this section.
- (5) Pending the coming into force of regulations under this section, elections for membership of the [<sup>F210</sup>council of governors] of an NHS foundation trust, if contested, must be by secret ballot.

##### Textual Amendments

**F208** Words in s. 59(1) substituted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\), ss. 151\(9\)\(a\), 306\(4\); S.I. 2012/1831, art. 2\(2\)](#)

**F209** Words in s. 59(2)(b) substituted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\), ss. 151\(9\)\(a\), 306\(4\); S.I. 2012/1831, art. 2\(2\)](#)

**F210** Words in s. 59(5) substituted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\), ss. 151\(9\)\(a\), 306\(4\); S.I. 2012/1831, art. 2\(2\)](#)

#### 60 Voting and standing for election **E+W**

- (1) A person may not vote at an election for the [<sup>F211</sup>council of governors] of an NHS foundation trust unless, within the specified period, he has made a declaration in the specified form of the particulars of his qualification to vote as a member of the constituency, or class within a constituency, for which the election is being held.



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- (2) A person may not stand for election to <sup>F212</sup>the council] unless—
- (a) he has within the specified period made a declaration in the specified form of the particulars of his qualification to vote as a member of the constituency, or class within a constituency, for which the election is being held, and
  - (b) he is not prevented from being a member of <sup>F212</sup>the council] by paragraph 8 of Schedule 7.
- (3) A person elected to <sup>F212</sup>the council] may not vote at a meeting of <sup>F212</sup>the council] unless—
- (a) he has within the specified period made a declaration in the specified form of the particulars of his qualification to vote as a member of the trust, and
  - (b) he is not prevented from being a member of <sup>F212</sup>the council] by paragraph 8 of Schedule 7.
- (4) This section does not apply to an election held for the staff constituency.
- (5) “Specified” means specified in the trust's constitution.
- (6) A person is guilty of an offence if he—
- (a) makes a declaration under this section which he knows to be false in a material particular, or
  - (b) recklessly makes such a declaration which is false in a material particular.
- (7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

#### Textual Amendments

**F211** Words in s. 60(1) substituted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 151(9)(a)**, 306(4); S.I. 2012/1831, art. 2(2)

**F212** Words in s. 60(2)(3) substituted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 151(9)(b)**, 306(4); S.I. 2012/1831, art. 2(2)

## 61 Representative membership **E+W**

- <sup>F213</sup>(1) <sup>F214</sup>An NHS foundation trust must] take steps to secure that (taken as a whole) the actual membership of any public constituency and (if there is one) of the patients' constituency is representative of those eligible for such membership.
- <sup>F215</sup>(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.]

#### Textual Amendments

**F213** S. 61(1): s. 61 renumbered as s. 61(1) (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 153(1)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

**F214** Words in s. 61(1) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 153(1)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

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**F215** S. 61(2) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 153(2), 306(4)**; [S.I. 2013/160](#), art. 2(2) (with arts. 7-9)

## 62 **Audit** **E+W**

Schedule 10 makes provision in relation to the audit of accounts of NHS foundation trusts.

## 63 **General duty of NHS foundation trusts** **E+W**

An NHS foundation trust must exercise its functions effectively, efficiently and economically.

### [<sup>F216</sup>63A **Duty to have regard to wider effect of decisions** **E+W**

- (1) In making a decision about the exercise of its functions, an NHS foundation trust must have regard to all likely effects of the decision in relation to—
- (a) the health and well-being of the people of England;
  - (b) the quality of services provided to individuals—
    - (i) by relevant bodies, or
    - (ii) in pursuance of arrangements made by relevant bodies,
 for or in connection with the prevention, diagnosis or treatment of illness, as part of the health service in England;
  - (c) efficiency and sustainability in relation to the use of resources by relevant bodies for the purposes of the health service in England.
- (2) In subsection (1)—
- (a) the reference to a decision does not include a reference to a decision about the services to be provided to a particular individual for or in connection with the prevention, diagnosis or treatment of illness;
  - (b) the reference to effects of a decision in relation to the health and well-being of the people of England includes a reference to its effects in relation to inequalities between the people of England with respect to their health and well-being;
  - (c) the reference to effects of a decision in relation to the quality of services provided to individuals includes a reference to its effects in relation to inequalities between individuals with respect to the benefits that they can obtain from those services.
- (3) In discharging the duty under this section, NHS foundation trusts must have regard to guidance published by NHS England under section 13NB.
- (4) In this section “relevant bodies” means—
- (a) NHS England,
  - (b) integrated care boards,
  - (c) NHS trusts established under section 25, and
  - (d) NHS foundation trusts.]

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#### Textual Amendments

**F216** S. 63A inserted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 67, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

### [<sup>F217</sup> 63B Duties in relation to climate change etc **E+W**

- (1) An NHS foundation trust must, in the exercise of its functions, have regard to the need to—
  - (a) contribute towards compliance with—
    - (i) section 1 of the Climate Change Act 2008 (UK net zero emissions target), and
    - (ii) section 5 of the Environment Act 2021 (environmental targets), and
  - (b) adapt to any current or predicted impacts of climate change identified in the most recent report under section 56 of the Climate Change Act 2008.
- (2) In discharging the duty under this section, NHS foundation trusts must have regard to guidance published by NHS England under section 13ND.]

#### Textual Amendments

**F217** S. 63B inserted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 68, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

### Supplementary

### 64 Orders and regulations under this Chapter **E+W**

- (1) Any power under this Chapter to make an order or regulations [<sup>F218</sup>, other than the power to make an order under section 42B,] is exercisable by statutory instrument.
- (2) Subject to subsections (3) and (4), a statutory instrument made by virtue of this Chapter is subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) A statutory instrument containing—
  - (a) the first regulations under section 55(4) or 59,
  - [<sup>F219</sup>(aa) regulations under paragraph 30(1) of Schedule 7,] or
  - (b) an order or regulations under this Chapter making, by virtue of subsection (5) (b), provision which amends or repeals any part of the text of an Act,may not be made unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament.
- (4) Subsection (2) does not apply to a statutory instrument containing an order under—
  - (a) section 51,
  - [<sup>F220</sup>(b) .....
  - [<sup>F221</sup>(ba) section 56A(4A),]
  - (c) section 57 [<sup>F222</sup>, or
  - (d) section 57A.]

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- [<sup>F223</sup>(4A) The Statutory Instruments Act 1946 applies in relation to the power of [<sup>F224</sup>NHS England] to make an order under section [<sup>F225</sup>56A(4A),] 57 or 57A as if [<sup>F224</sup>NHS England] were a Minister of the Crown.]
- (5) Any order or regulations under this Chapter—
- (a) may make different provision for different purposes, and
  - (b) may make incidental, supplementary, consequential, transitory or transitional or saving provision.
- (6) Any power under this Chapter to make an order or regulations (as well as being exercisable in relation to all cases to which it extends) may be exercised in relation to all those cases subject to exceptions or in relation to any particular case or class of case.

#### Textual Amendments

- F218** Words in s. 64(1) inserted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 62(3), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F219** S. 64(3)(aa) inserted (27.3.2012 for specified purposes, 1.10.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), ss. 158(2), 306(1)(d)(4); S.I. 2012/1831, art. 2(2)
- F220** S. 64(4)(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), ss. 172(10)(a), 173(2)(b), 306(4); S.I. 2013/671, art. 2(3)
- F221** S. 64(4)(ba) inserted (26.5.2015) by Deregulation Act 2015 (c. 20), ss. 96(5)(a), 115(7); S.I. 2015/994, art. 6(r)
- F222** S. 64(4)(d) and word inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), ss. 172(10)(b), 306(4); S.I. 2013/671, art. 2(3)
- F223** S. 64(4A) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), ss. 172(11), 306(4); S.I. 2013/671, art. 2(3)
- F224** Words in s. 64(4A) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 24; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F225** Word in s. 64(4A) inserted (26.5.2015) by Deregulation Act 2015 (c. 20), ss. 96(5)(b), 115(7); S.I. 2015/994, art. 6(r)

## 65 Interpretation of this Chapter E+W

- (1) In this Chapter—
- “authorisation” means an authorisation under section 35 or 56,  
 “health service body” means a Strategic Health Authority, a Primary Care Trust, an NHS trust, a Special Health Authority or an NHS foundation trust.
- (2) Any references in this Chapter to goods and services include, in particular, facilities, education and training.

## [<sup>F226</sup>CHAPTER 5A E+W

### TRUST SPECIAL ADMINISTRATORS: NHS TRUSTS AND NHS FOUNDATION TRUSTS

#### Textual Amendments

- F226** 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)

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### *Application*

#### 65A Application **E+W**

- (1) This Chapter applies to—
- (a) an NHS trust all or most of whose hospitals, establishments and facilities are in England;
  - <sup>[F227]</sup>(b) any NHS foundation trust.]

<sup>F228</sup>(2) .....

#### Textual Amendments

**F227** S. 65A(1)(b) substituted for s. 65A(1)(b)(c) (1.11.2012) by [Health and Social Care Act 2012 \(c. 7\), ss. 174\(1\)\(a\), 306\(4\); S.I. 2012/2657, art. 2\(2\)](#)

**F228** S. 65A(2) omitted (1.11.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\), ss. 174\(1\)\(b\), 306\(4\); S.I. 2012/2657, art. 2\(2\)](#)

### *Appointment*

#### <sup>[F229]</sup>65B NHS trusts: appointment of trust special administrator **E+W**

- (1) NHS England may make an order in accordance with this section authorising the appointment of a trust special administrator to exercise the functions of the chair and directors of an NHS trust to which this Chapter applies.
- (2) NHS England—
- (a) must make an order under subsection (1) if required to do so by the Care Quality Commission, and
  - (b) may otherwise make an order under subsection (1) only if—
    - (i) NHS England considers it appropriate to do so in the interests of the health service, and
    - (ii) the Secretary of State has approved the making of the order.
- (3) The Care Quality Commission may require NHS England to make an order under subsection (1) only if it is satisfied that there is a serious failure by the NHS trust to provide services that are of sufficient quality to be provided under this Act.
- (4) Before requiring NHS England to make an order under subsection (1) the Care Quality Commission must—
- (a) consult the Secretary of State and NHS England, and
  - (b) having done that, consult—
    - (i) the trust,
    - (ii) any integrated care board in whose area the trust has hospitals, establishments or facilities, and
    - (iii) any person to which the trust provides goods or services under this Act and which the Commission considers it appropriate to consult.
- (5) Before making an order under subsection (1) in a case where it is not required to do so by the Care Quality Commission, NHS England must consult—
- (a) the trust,

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- (b) any integrated care board in whose area the trust has hospitals, establishments or facilities,
  - (c) any other person to which the trust provides goods or services under this Act and which NHS England considers it appropriate to consult, and
  - (d) the Care Quality Commission.
- (6) An order under subsection (1) 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.
- (7) NHS England must lay before Parliament (with the statutory instrument containing the order) a report stating the reasons for making the order.
- (8) If an order is made under subsection (1), NHS England 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.
- (9) A person appointed as a trust special administrator holds and vacates office in accordance with the terms of the appointment.
- (10) NHS England may pay remuneration and expenses to a trust special administrator appointed under this section.

#### Textual Amendments

**F229** Ss. 65B, 65BA substituted for s. 65B (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 8 para. 2](#); [S.I. 2022/734](#), reg. 2(a), [Sch.](#) (with [regs. 13, 29, 30](#))

### 65BA Care Quality Commission report on safety and quality of services **E+W**

- (1) This section applies where the Care Quality Commission require NHS England to make an order under section [65B\(1\)](#) in relation to an NHS trust.
- (2) The Care Quality Commission must, as soon as reasonably practicable after the making of the order, provide to NHS England and the Secretary of State a report on the safety and quality of the services that the trust provides under this Act.]

#### Textual Amendments

**F229** Ss. 65B, 65BA substituted for s. 65B (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 8 para. 2](#); [S.I. 2022/734](#), reg. 2(a), [Sch.](#) (with [regs. 13, 29, 30](#))

### 65C Suspension of directors **E+W**

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

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F230 ...

### Textual Amendments

**F230** S. 65D cross-heading omitted (1.11.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), ss. [174\(7\)](#), [306\(4\)](#); S.I. 2012/2657, art. 2(2)

## 65D <sup>F231</sup>NHS foundation trusts: appointment of trust special administrator E+W

<sup>F232</sup>(1) This section applies if <sup>F233</sup>[NHS England] is satisfied that <sup>F234</sup>—

- (a) an NHS foundation trust is, or is likely to become, unable to pay its debts<sup>F235</sup>, or
- (b) there is a serious failure by an NHS foundation trust to provide services that are of sufficient quality to be provided under this Act and it is appropriate to make an order under subsection (2).]

[ This section also applies if the Care Quality Commission—

- <sup>F236</sup>(1A) (a) is satisfied that there is a serious failure by an NHS foundation trust to provide services that are of sufficient quality to be provided under this Act and that it is appropriate to make an order under subsection (2),
- (b) informs <sup>F237</sup>[NHS England] that it is satisfied as mentioned in paragraph (a) and gives <sup>F237</sup>[NHS England] its reasons for being so satisfied, and
- (c) requires <sup>F238</sup>[NHS England] to make an order under subsection (2).]

<sup>F232</sup>(2) <sup>F239</sup>[NHS England] may <sup>F240</sup>[or, where this section applies as a result of subsection (1A), must] make an order authorising the appointment of a trust special administrator to exercise the functions of the governors, chairman and directors of the trust.]

[ Where NHS England is not required to make an order under this section as a result of <sup>F241</sup>(2A) subsection (1A), it may do so only if the Secretary of State has approved the making of the order.]

<sup>F232</sup>(3) As soon as reasonably practicable after the making of an order under subsection (2), the Care Quality Commission must provide to <sup>F242</sup>[NHS England] a report on the safety and quality of the services that the trust provides under this Act.]

[ Before imposing a requirement as mentioned in subsection (1A)(c), the Care Quality <sup>F243</sup>(3A) Commission must—

- (a) consult the Secretary of State and <sup>F244</sup>[NHS England], and
- (b) having done that, consult—
  - (i) the trust,
  - (ii) <sup>F245</sup>... and
  - (iii) any other person to which the trust provides services under this Act and which the Commission considers it appropriate to consult.]

<sup>F246</sup>(4) Before making an order under this section in a case where it is not required to do so as a result of subsection (1A), NHS England must consult—

- (a) the trust,
- (b) any person to which the trust provides services under this Act and which NHS England considers it appropriate to consult, and
- (c) the Care Quality Commission.]



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- [ 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) [<sup>F248</sup>NHS England] must lay before Parliament (with the statutory instrument containing the order) a report stating the reasons for making the order.
- (7) If [<sup>F249</sup>NHS England] makes an order under subsection (2), it must—
- (a) appoint a person as the trust special administrator with effect from the day specified in the order, and
  - (b) publish the name of the person appointed.
- (8) A person appointed as a trust special administrator under this section holds and vacates office in accordance with the terms of the appointment.
- (9) A person appointed as a trust special administrator under this section must manage the trust's affairs, business and property, and exercise the trust special administrator's functions, so as to achieve the objective set out in section 65DA as quickly and as efficiently as is reasonably practicable.
- (10) When the appointment of a trust special administrator under this section takes effect, the trust's governors, chairman and executive and non-executive directors are suspended from office; and Chapter 5 of this Part, in its application to the trust, is to be read accordingly.
- (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.
- [<sup>F250</sup>(12) NHS England may pay remuneration and expenses to a trust special administrator appointed under this section.]]

#### Textual Amendments

- F231** S. 65D heading substituted (1.11.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), ss. 174(6), 306(4); [S.I. 2012/2657](#), art. 2(2)
- F232** S. 65D(1)-(3) substituted (1.11.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 174(3)**, 306(4); [S.I. 2012/2657](#), art. 2(2)
- F233** Words in s. 65D(1) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 8 para. 3(2)**; [S.I. 2022/734](#), reg. 2(a), Sch. (with regs. 13, 29, 30)
- F234** S. 65D(1)(a): words in s. 65D(1) renumbered as s. 65D(1)(a) (15.7.2014) by [Care Act 2014 \(c. 23\)](#), **ss. 84(1)(a)**, 127(1); [S.I. 2014/1714](#), art. 3(2)(a)
- F235** S. 65D(1)(b) and preceding word inserted (15.7.2014) by [Care Act 2014 \(c. 23\)](#), **ss. 84(1)(b)**, 127(1); [S.I. 2014/1714](#), art. 3(2)(a)
- F236** S. 65D(1A) inserted (15.7.2014) by [Care Act 2014 \(c. 23\)](#), **ss. 84(2)**, 127(1); [S.I. 2014/1714](#), art. 3(2)(a)
- F237** Words in s. 65D(1A)(b) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 8 para. 3(2)**; [S.I. 2022/734](#), reg. 2(a), Sch. (with regs. 13, 29, 30)
- F238** Words in s. 65D(1A)(c) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 8 para. 3(2)**; [S.I. 2022/734](#), reg. 2(a), Sch. (with regs. 13, 29, 30)
- F239** Words in s. 65D(2) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 8 para. 3(3)**; [S.I. 2022/734](#), reg. 2(a), Sch. (with regs. 13, 29, 30)
- F240** Words in s. 65D(2) inserted (15.7.2014) by [Care Act 2014 \(c. 23\)](#), **ss. 84(3)**, 127(1); [S.I. 2014/1714](#), art. 3(2)(a)

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- F241** S. 65D(2A) inserted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 8 para. 3(4)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F242** Words in s. 65D(3) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 8 para. 3(5)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F243** S. 65D(3A) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 84(4)**, 127(1); S.I. 2014/1714, art. 3(2)(a)
- F244** Words in s. 65D(3A)(a) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 8 para. 3(6)(a)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F245** S. 65D(3A)(b)(ii) omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 8 para. 3(6)(b)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F246** S. 65D(4) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 8 para. 3(7)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F247** S. 65D(5)-(12) inserted (1.11.2012) by Health and Social Care Act 2012 (c. 7), **ss. 174(5)**, 306(4); S.I. 2012/2657, art. 2(2)
- F248** Words in s. 65D(6) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 8 para. 3(8)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F249** Words in s. 65D(7) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 8 para. 3(9)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F250** S. 65D(12) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 8 para. 3(10)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

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

**F251** **65DA**

- (1) The objective of a trust special administration is to secure—
- (a) the continued provision of such of the services provided for the purposes of the NHS by the NHS foundation trust that is subject to an order under section 65D(2), at such level, as the commissioners of those services determine, and
  - (aa) **F252** [ that the services whose continuous provision is secured as mentioned in paragraph (a) are of sufficient safety and quality to be provided under this Act, ]
  - (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
  - (c) such other matters as may be specified in relation to NHS foundation trusts in guidance published by **F253** [NHS England].

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- (5) [<sup>F254</sup>NHS England] may revise guidance under subsection (4)(c) and, if it does so, must publish the guidance as revised.
- [ Before publishing guidance under subsection (4)(c), [<sup>F256</sup>NHS England] must consult <sup>F255</sup>(5A) the Care Quality Commission.]
- (6) Before publishing guidance under subsection (4)(c) or (5), [<sup>F257</sup>NHS England] must obtain the approval of—
- (a) the Secretary of State;
  - <sup>F258</sup>(b) .....
- (7) [<sup>F259</sup>NHS England] 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), [<sup>F260</sup>NHS England] may make the determination (and the duty imposed by subsection (1)(a), so far as applying to the commissioners concerned, is to be regarded as discharged).
- (9) In this section—
- “commissioners” means the persons to which the trust provides services under this Act, and
- “health inequalities” means the inequalities between persons with respect to the outcomes achieved for them by the provision of services that are provided as part of the health service.]

#### Textual Amendments

- F251** S. 65DA inserted (1.11.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 175(1)**, 306(4) (with s. 175(2)); S.I. 2012/2657, art. 2(2)
- F252** S. 65DA(1)(aa) inserted (15.7.2014) by [Care Act 2014 \(c. 23\)](#), **ss. 85(1)**, 127(1); S.I. 2014/1714, art. 3(2)(b)
- F253** Words in s. 65DA(4)(c) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 8 para. 4(2)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F254** Words in s. 65DA(5) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 8 para. 4(3)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F255** S. 65DA(5A) inserted (15.7.2014) by [Care Act 2014 \(c. 23\)](#), **ss. 85(2)**, 127(1); S.I. 2014/1714, art. 3(2)(b)
- F256** Words in s. 65DA(5A) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 8 para. 4(4)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F257** Words in s. 65DA(6) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 8 para. 4(5)(a)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F258** S. 65DA(6)(b) omitted (1.7.2022) by virtue of [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 8 para. 4(5)(b)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F259** Words in s. 65DA(7) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 8 para. 4(6)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F260** Words in s. 65DA(8) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 8 para. 4(7)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

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## <sup>F261</sup>65E NHS foundation trusts: de-authorisation and appointment of trust special administrator **E+W**

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### Textual Amendments

**F261** S. 65E omitted (1.11.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), ss. [173\(3\)](#), [306\(4\)](#); S.I. [2012/2657](#), art. [2\(2\)](#)

### Consultation and report

## 65F Draft report **E+W**

[<sup>F262</sup>(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,

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.

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- (3) After receiving a draft report under subsection (1) or (1A), NHS England must lay it before Parliament.]
- <sup>F263</sup>(4) .....
- <sup>F264</sup>(5) .....
- <sup>F265</sup>(5A) .....
- [<sup>F266</sup>(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

<sup>F267</sup>(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

- F262** 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)
- F263** 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)
- F264** 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)
- F265** 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)
- F266** 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)
- F267** 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)

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## 65G Consultation plan **E+W**

- (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 [<sup>F268</sup>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
- <sup>F269</sup>(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 [<sup>F270</sup>—
    - (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 [<sup>F271</sup>NHS England]), without having obtained a statement to that effect from [<sup>F271</sup>NHS England].
- [ Nor may the administrator make a variation to the draft report following the
- <sup>F272</sup>(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).]
- [<sup>F273</sup>(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
- <sup>F274</sup>(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.



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

#### Textual Amendments

- F268** 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)
- F269** 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)
- F270** 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)
- F271** 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)
- F272** 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)
- F273** 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)
- F274** 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 **E+W**

- (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 <sup>F275</sup>—
  - (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 <sup>F276</sup>, 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—
  - <sup>F277</sup>(za) .....
  - <sup>F278</sup>(a) .....
  - (b) any <sup>F279</sup>... person to which the trust provides goods or services under this Act <sup>F280</sup>...;

[ any affected trust;



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- <sup>F281</sup>(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;]
- <sup>F282</sup>(ba)
- <sup>F283</sup>(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.]
- <sup>F284</sup>(8) . . . . .
- (9) The trust special administrator must [<sup>F285</sup>—
- (a) hold at least one meeting to seek responses from representatives of <sup>F286</sup>... each of the persons from whom the administrator must request a written response under subsection [<sup>F287</sup>(7)(b), [<sup>F288</sup>(bzb),][<sup>F289</sup>(ba),] (c) or (d)],
  - <sup>F290</sup>(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
  - (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).]
- [ NHS England may direct the administrator to hold a meeting to seek a response from <sup>F291</sup>(9A) any person.]
- [<sup>F292</sup>(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—
- <sup>F293</sup>(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.

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(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 trust—

(a) in subsection (7)(b) [<sup>F295</sup>, (bzb), (bzc) and (bzd)], the words “goods or” are to be ignored, <sup>F296</sup> ...

<sup>F296</sup>(b) .....

<sup>F297</sup>(13) ..... ]

### Textual Amendments

- F275** 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)**
- F276** 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)**
- F277** 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)**
- F278** 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)**
- F279** 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)**
- F280** 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)**
- F281** 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)**
- F282** 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)**
- F283** 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)**
- F284** 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)**
- F285** 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)**
- F286** 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)**
- F287** 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)**
- F288** 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)**
- F289** 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)**
- F290** 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)**
- F291** 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)**
- F292** 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)**

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- F293** 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)
- F294** 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)
- F295** 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)
- F296** 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)
- F297** 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 **E+W**

[<sup>F298</sup>(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 [<sup>F299</sup>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, [<sup>F300</sup>NHS England] must publish it and lay it before Parliament.

<sup>F301</sup>(4) . . . . .

### Textual Amendments

- F298** 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)
- F299** 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)
- F300** 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)
- F301** 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 **E+W**

(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) [<sup>F302</sup>or (1A)];
- (b) the duty of a trust special administrator to consult in the consultation period specified under section 65G(2);

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- (c) the duty of a trust special administrator to provide a final report within the period specified in section 65I(1) [<sup>F303</sup>or (1A)].
- (2) If [<sup>F304</sup>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, [<sup>F304</sup>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.

<sup>F305</sup>(5) .....

#### Textual Amendments

- F302** 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](#))
- F303** 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](#))
- F304** 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](#))
- F305** 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](#))

*[<sup>F306</sup>Action by the Secretary of State and [<sup>F307</sup>NHS England]]*

#### Textual Amendments

- F306** S. 65K cross-heading substituted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), ss. 177(7), 306(1)(d)(4); S.I. 2012/2657, [art. 2\(2\)](#)
- F307** Words in s. 65K cross-heading substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 8 para. 10](#); S.I. 2022/734, [reg. 2\(a\)](#), [Sch.](#) (with [regs. 13, 29, 30](#))

[<sup>F308</sup>**65K.Decision of NHS England or Secretary of State in case of NHS trust** **E+W**]

- (1) Within the period of 20 working days beginning with the day on which NHS England receives a final report under section 65I relating to an NHS trust, NHS England must decide what (if any) action to take in relation to the trust.
- (2) Within the period of 20 working days beginning with the day on which the Secretary of State receives a final report under section 65I relating to an NHS trust, the Secretary of State must decide what (if any) action to take in relation to the trust.
- (3) NHS England and the Secretary of State must consult one another before taking the decision under subsection (1) or (2).

**Changes to legislation:** National Health Service Act 2006, Part 2 is up to date with all changes known to be in force on or before 19 April 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) View outstanding changes

- (4) After taking a decision under subsection (1) or (2) NHS England or the Secretary of State (as the case may be) must, as soon as reasonably practicable—
- (a) publish a notice of the decision and of the reasons for it;
  - (b) lay a copy of the notice before Parliament.]

#### Textual Amendments

**F308** S. 65K substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 8 para. 11**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

#### [<sup>F309</sup>65KA] [<sup>F310</sup>NHS England's] decision in case of NHS foundation trust **E+W**

- (1) Within the period of 20 working days beginning with the day on which [<sup>F311</sup>NHS England] receives a final report under section 65I relating to an NHS foundation trust, [<sup>F311</sup>NHS England] must decide whether it is satisfied—
- (a) that the action recommended in the final report would achieve the objective set out in section 65DA, and
  - (b) that the trust special administrator has carried out the administration duties.
- (2) In subsection (1)(b), “administration duties” means the duties imposed on the administrator by—
- (a) this Chapter,
  - (b) a direction under this Chapter, or
  - (c) the administrator's terms of appointment.
- (3) If [<sup>F312</sup>NHS England] 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 [<sup>F312</sup>NHS England] by the Care Quality Commission under section 65D(3).
- (4) If [<sup>F312</sup>NHS England] 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 [<sup>F312</sup>NHS England] gives a notice under subsection (4), sections 65F to 65J apply in relation to the trust to such extent, and with such modifications, as [<sup>F312</sup>NHS England] may specify in the notice.
- (6) [<sup>F313</sup>NHS England] must as soon as reasonably practicable after giving a notice under subsection (4)—
- (a) publish the notice;
  - (b) lay a copy of it before Parliament.

#### Textual Amendments

**F309** Ss. 65KA-65KD inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 177(2)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

**F310** Words in s. 65KA heading substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 8 para. 12(2)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

**F311** Words in s. 65KA(1) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 8 para. 12(3)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

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**F312** Words in s. 65KA(3)-(5) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 8 para. 12(3)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

**F313** Words in s. 65KA(6) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 8 para. 12(4)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

## **65KB Secretary of State's response to [<sup>F314</sup>NHS England's] decision E+W**

- (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 [<sup>F315</sup>NHS England] has discharged its functions for the purposes of this Chapter,
  - [<sup>F316</sup>(ca) that the Care Quality Commission 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 [<sup>F317</sup>NHS England][<sup>F318</sup>and the Care Quality Commission];
  - (c) publish the notice;
  - (d) lay a copy of it before Parliament.

### **Textual Amendments**

**F309** Ss. 65KA-65KD inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by Health and Social Care Act 2012 (c. 7), **ss. 177(2)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)

**F314** Words in s. 65KB heading substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 8 para. 13(2)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

**F315** Words in s. 65KB(1)(c) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 8 para. 13(3)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

**F316** S. 65KB(1)(ca) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 85(11)**, 127(1); S.I. 2014/1714, art. 3(2)(b)

**F317** Words in s. 65KB(2)(b) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 8 para. 13(3)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

**F318** Words in s. 65KB(2)(b) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 85(12)**, 127(1); S.I. 2014/1714, art. 3(2)(b)



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### 65KC Action following Secretary of State's rejection of final report **E+W**

- (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 [<sup>F319</sup>NHS England] 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 [<sup>F320</sup>NHS England] a final report under subsection (1), section 65KA applies in relation to the report as it applies in relation to a final report under section 65I; and for that purpose, that section has effect as if—
  - (a) in subsection (1), for “20 working days” there were substituted “10 working days”, and
  - (b) subsection (3)(b) were omitted.
- (3) If the Secretary of State thinks that, in the circumstances, it is not reasonable for the administrator to be required to carry out the duty under subsection (1) within the period mentioned in that subsection, the Secretary of State may by order extend the period.
- (4) If an order is made under subsection (3), the administrator must—
  - (a) publish a notice stating the date on which the period will expire, and
  - (b) where the administrator is proposing to carry out consultation in response to the notice under section 65KB(2), publish a statement setting out the means by which the administrator will consult during the extended period.

#### Textual Amendments

**F309** Ss. 65KA-65KD inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 177\(2\)](#), [306\(1\)\(d\)\(4\)](#); [S.I. 2012/2657](#), [art. 2\(2\)](#)

**F319** Words in [s. 65KC\(1\)](#) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), [s. 186\(6\)](#), [Sch. 8 para. 14](#); [S.I. 2022/734](#), [reg. 2\(a\)](#), [Sch.](#) (with [regs. 13, 29, 30](#))

**F320** Words in [s. 65KC\(2\)](#) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), [s. 186\(6\)](#), [Sch. 8 para. 14](#); [S.I. 2022/734](#), [reg. 2\(a\)](#), [Sch.](#) (with [regs. 13, 29, 30](#))

### 65KD Secretary of State's response to re-submitted final report **E+W**

- (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 [<sup>F321</sup>(5), (6) and] [<sup>F322</sup>(8A)] apply.

<sup>F323</sup>(4) .....

[<sup>F324</sup>(5) If the notice states that an integrated care board has failed to discharge a function—



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- (a) the board is to be treated for the purposes of this Act as having failed to discharge the function,
  - (b) the Secretary of State may exercise the functions of NHS England under section 14Z61(2), (3)(a) and (5)(a), and
  - (c) NHS England may not exercise any of its functions under section 14Z61.
- (6) Where, by virtue of subsection (5)(b), the Secretary of State exercises the function of NHS England under section 14Z61(3)(a), the integrated care board to which the direction is given must cooperate with the Secretary of State.]
- <sup>F325</sup>(7) .....
- <sup>F326</sup>(8) .....
- [ If the notice states that the Care Quality Commission has failed to discharge a <sup>F327</sup>(8A) function—
- (a) the Care Quality Commission 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 82 of the Health and Social Care Act 2008 applies accordingly).]
- (9) Within the period of 60 working days beginning with the day on which the Secretary of State publishes a notice under subsection (2)(a), the Secretary of State must decide what action to take in relation to the trust.
- (10) The Secretary of State must as soon as reasonably practicable—
- (a) publish a notice of the decision and the reasons for it;
  - (b) lay a copy of the notice before Parliament.]

#### Textual Amendments

- F309** Ss. 65KA-65KD inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 177(2)**, 306(1)(d)(4); S.I. 2012/2657, art. 2(2)
- F321** Words in s. 65KD(3) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 8 para. 15(2)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F322** Word in s. 65KD(3) substituted (15.7.2014) by [Care Act 2014 \(c. 23\)](#), **ss. 85(13)**, 127(1); S.I. 2014/1714, art. 3(2)(b)
- F323** S. 65KD(4) omitted (1.7.2022) by virtue of [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 8 para. 15(3)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F324** S. 65KD(5)(6) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 8 para. 15(4)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F325** S. 65KD(7) omitted (1.7.2022) by virtue of [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 8 para. 15(5)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F326** S. 65KD(8) omitted (1.7.2022) by virtue of [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 8 para. 15(5)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F327** S. 65KD(8A) inserted (15.7.2014) by [Care Act 2014 \(c. 23\)](#), **ss. 85(14)**, 127(1); S.I. 2014/1714, art. 3(2)(b)

#### 65L Trusts coming out of administration **E+W**

- [<sup>F328</sup>(1) Subsection (2) applies, in relation to an NHS trust, if NHS England and the Secretary of State both decide under section 65K not to dissolve the trust.

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- (2) NHS England must make an order specifying a date when the following come to an end—
- (a) the appointment of the trust special administrator, and
  - (b) the suspension of the chair and directors of the trust.
- (2A) Subsection (2B) applies, in relation to an NHS foundation trust, if—
- (a) the Secretary of State decides under section 65KD(9) not to dissolve the trust, or
  - (b) the Secretary of State decides under section 65KB(1) or 65KD(1) that the Secretary of State is satisfied of the matters mentioned there, and the action recommended in the final report is to do something other than dissolve the trust.
- (2B) NHS England must make an order specifying a date when the following come to an end—
- (a) the appointment of the trust special administrator, and
  - (b) the suspension of the governors, chair and directors of the trust.]
- <sup>F329</sup>(3) .....
- <sup>F329</sup>(4) .....
- <sup>F329</sup>(5) .....
- [ Subsection (7) applies in the case of an NHS foundation trust.
- <sup>F330</sup>(6)
- (7) If it appears to [<sup>F331</sup>NHS England] to be necessary in order to comply with Schedule 7, [<sup>F331</sup>NHS England] may by order—
- (a) terminate the office of any governor or of any executive or non-executive director of the trust;
  - (b) appoint a person to be a governor or an executive or non-executive director of the trust.]

#### Textual Amendments

- F328** S. 65L(1)-(2B) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 8 para. 16\(2\)](#); S.I. 2022/734, [reg. 2\(a\)](#), [Sch.](#) (with [regs. 13, 29, 30](#))
- F329** S. 65L(3)-(5) omitted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 177\(4\)](#), [306\(1\)\(d\)\(4\)](#); S.I. 2012/2657, [art. 2\(2\)](#)
- F330** S. 65L(6)(7) inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 177\(5\)](#), [306\(1\)\(d\)\(4\)](#); S.I. 2012/2657, [art. 2\(2\)](#)
- F331** Words in s. 65L(7) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 8 para. 16\(3\)](#); S.I. 2022/734, [reg. 2\(a\)](#), [Sch.](#) (with [regs. 13, 29, 30](#))

#### [<sup>F332</sup>65LA] Trusts to be dissolved **E+W**

- (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.

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- (2) This section also applies if the Secretary of State decides under section 65KD(9) to dissolve the NHS foundation trust in question.
- (3) [<sup>F333</sup>NHS England] may make an order—
  - (a) dissolving the trust, and
  - (b) transferring, or providing for the transfer of, the property and liabilities of the trust [<sup>F334</sup>—
    - (i) to an NHS body;
    - (ii) to the Secretary of State;
    - (iii) between more than one NHS body or between one or more NHS bodies 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 [<sup>F335</sup>to an NHS body] by virtue of subsection (3) (b) include criminal liabilities.]

**Textual Amendments**

**F332** S. 65LA inserted (27.3.2012 for specified purposes, 1.11.2012 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\), ss. 177\(6\), 306\(1\)\(d\)\(4\); S.I. 2012/2657, art. 2\(2\)](#)

**F333** Words in s. 65LA(3) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 8 para. 17; S.I. 2022/734, reg. 2\(a\), Sch. \(with regs. 13, 29, 30\)](#)

**F334** Words in s. 65LA(3)(b) substituted (26.5.2015) by [Deregulation Act 2015 \(c. 20\), ss. 96\(6\), 115\(7\); S.I. 2015/994, art. 6\(r\)](#)

**F335** Words in s. 65LA(5) substituted (26.5.2015) by [Deregulation Act 2015 \(c. 20\), ss. 96\(7\), 115\(7\); S.I. 2015/994, art. 6\(r\)](#)

*Supplementary*

**65M Replacement of trust special administrator** **E+W**

- [<sup>F336</sup>(1) If a trust special administrator ceases to hold office for any reason before an order is made under section 65L(2) or (2B) or the trust is dissolved, NHS England 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 [<sup>F337</sup>NHS England] directs otherwise.
- <sup>F338</sup>(3) .....

**Textual Amendments**

**F336** S. 65M(1) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 8 para. 18\(2\); S.I. 2022/734, reg. 2\(a\), Sch. \(with regs. 13, 29, 30\)](#)

**F337** Words in s. 65M(2) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 8 para. 18\(3\); S.I. 2022/734, reg. 2\(a\), Sch. \(with regs. 13, 29, 30\)](#)

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**F338** S. 65M(3) omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 8 para. 18(4)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

## 65N Guidance **E+W**

(1) [<sup>F339</sup>NHS England] must publish guidance for trust special administrators.

[ It must, in so far as it applies to NHS trusts, include guidance about—

<sup>F340</sup>(1A) (a) seeking the support of commissioners for an administrator's recommendation;  
<sup>F341</sup>(b) . . . . .]

(2) It must include guidance about the publication of notices under sections 65H and 65J.

[ It must include guidance about the publication of—

<sup>F342</sup>(2A) (a) notices under section 65KC(4)(a);  
 (b) statements under section 65KC(4)(b).]

(3) It must include guidance about the preparation of draft reports, as to—

- (a) persons to be consulted;
- (b) factors to be taken into account;
- (c) relevant publications.

[ Before publishing guidance under this section, [<sup>F344</sup>NHS England] must consult the

<sup>F343</sup>(3A) Care Quality Commission.]

<sup>F345</sup>(4) . . . . .]

### Textual Amendments

**F339** Words in s. 65N(1) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 8 para. 19(2)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

**F340** S. 65N(1A) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 120(14)**, 127(1); S.I. 2014/1714, art. 3(2)(c)

**F341** S. 65N(1A)(b) omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 8 para. 19(3)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

**F342** S. 65N(2A) inserted (1.11.2012) by Health and Social Care Act 2012 (c. 7), **ss. 178(2)**, 306(4); S.I. 2012/2657, art. 2(2)

**F343** S. 65N(3A) inserted (15.7.2014) by Care Act 2014 (c. 23), **ss. 84(6)**, 127(1); S.I. 2014/1714, art. 3(2)(a)

**F344** Words in s. 65N(3A) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 8 para. 19(4)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

**F345** S. 65N(4) omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 8 para. 19(5)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

## 65O Interpretation of this Chapter **E+W**

[ In this Chapter—

<sup>F346</sup>(1) “trust special administrator” means a person appointed under section [<sup>F347</sup>65B(8)(a)] [<sup>F348</sup>, section 65D(2)] or section 65M(1)(a);

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

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**Changes to legislation:** *National Health Service Act 2006, Part 2 is up to date with all changes known to be in force on or before 19 April 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) View outstanding changes*

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- [<sup>F349</sup>(2) The references in this Chapter to taking action in relation to an NHS trust include a reference to taking action, including in relation to another NHS trust or an NHS foundation trust, which is necessary for and consequential on action taken in relation to that NHS trust.
- (3) The references in this Chapter to taking action in relation to an NHS foundation trust include a reference to taking action, including in relation to another NHS foundation trust or an NHS trust, which is necessary for and consequential on action taken in relation to that NHS foundation trust.]

**Textual Amendments**

- F346** S. 65O(1): s. 65O renumbered as s. 65O(1) (15.7.2014) by [Care Act 2014 \(c. 23\)](#), **ss. 120(1)**, 127(1); S.I. 2014/1714, art. 3(2)(c)
- F347** Word in s. 65O(1) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 8 para. 20**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F348** Words in s. 65O inserted (1.11.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 178(4)**, 306(4); S.I. 2012/2657, art. 2(2)
- F349** S. 65O(2)(3) inserted (15.7.2014) by [Care Act 2014 \(c. 23\)](#), **ss. 120(1)**, 127(1); S.I. 2014/1714, art. 3(2)(c)

<sup>F350</sup>**CHAPTER 5B** **E+W**

TRUST SPECIAL ADMINISTRATORS: PRIMARY CARE TRUSTS

**Textual Amendments**

- F350** Pt. 2 Ch. 5B omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), **Sch. 4 para. 15**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

*Appointment*

**65P** **Appointment of trust special administrator** **E+W**

.....

**65Q** **Displacement of functions** **E+W**

.....

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## CHAPTER 6 **E+W**

### MISCELLANEOUS

#### *<sup>F351</sup>Consolidated accounts*

##### Textual Amendments

**F351** S. 65Z4 and cross-heading inserted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 14, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 15, 29, 30)

#### **65Z4 Consolidated accounts for NHS trusts and NHS foundation trusts **E+W****

- (1) NHS England must, in respect of each financial year, prepare a set of accounts that consolidates the annual accounts of—
  - (a) all NHS trusts established under section 25, and
  - (b) all NHS foundation trusts.
- (2) The Secretary of State may give NHS England directions as to—
  - (a) the content and form of the consolidated accounts, and
  - (b) the methods and principles to be applied in preparing them.
- (3) NHS England must, within such period as the Secretary of State may direct, send a copy of the consolidated accounts to—
  - (a) the Secretary of State, and
  - (b) the Comptroller and Auditor General.
- (4) The accounts must be accompanied by such reports or other information as the Secretary of State may direct.
- (5) The Comptroller and Auditor General must—
  - (a) examine, certify and report on the consolidated accounts, and
  - (b) send a copy of the report to the Secretary of State and NHS England.
- (6) NHS England must lay before Parliament a copy of—
  - (a) the consolidated accounts, and
  - (b) the Comptroller and Auditor General's report on them.]

#### *<sup>F352</sup>Joint working arrangements and delegation*

##### Textual Amendments

**F352** Ss. 65Z5-65Z7 and cross-heading inserted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 71(2), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

#### **65Z5 Joint working and delegation arrangements **E+W****

- (1) A relevant body may arrange for any functions exercisable by it to be exercised by or jointly with any one or more of the following—
  - (a) a relevant body;

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- (b) a local authority (within the meaning of section 2B);
  - (c) a combined authority.
  - [ a combined county authority.]
  - <sup>F353</sup>(d)
- (2) In this section “relevant body” means—
- (a) NHS England,
  - (b) an integrated care board,
  - (c) an NHS trust established under section 25,
  - (d) an NHS foundation trust, or
  - (e) such other body as may be prescribed.
- (3) Regulations may—
- (a) provide that the power in subsection (1) does not apply, or applies only to a prescribed extent, in relation to prescribed functions;
  - (b) impose conditions on the exercise of the power.
- (4) Arrangements under this section may be made on such terms as may be agreed between the parties, including—
- (a) terms as to payment;
  - (b) terms prohibiting or restricting a body from making delegation arrangements in relation to a function that is exercisable by it by virtue of arrangements under this section.
- (5) In subsection (4)(b) “delegation arrangements” means arrangements made by a body for the exercise of a function by someone else.
- (6) Any rights acquired, or liabilities (including liabilities in tort) incurred, in respect of the exercise by a body of any function by virtue of this section are enforceable by or against that body (and no other person).

#### Textual Amendments

**F353** S. 65Z5(1)(d) inserted (26.12.2023) by [Levelling-up and Regeneration Act 2023 \(c. 55\), s. 255\(2\)\(c\), Sch. 4 para. 166](#) (with s. 247)

#### Modifications etc. (not altering text)

**C3** S. 65Z5(1) restricted (1.7.2022) by [The National Health Service \(Joint Working and Delegation Arrangements\) \(England\) Regulations 2022 \(S.I. 2022/642\), regs. 1\(2\), 2](#)

**C4** S. 65Z5(1) restricted by [S.I. 2022/642, reg. 3](#) (as inserted (10.4.2023) by [The National Health Service \(Joint Working and Delegation Arrangements\) \(England\) \(Amendment\) Regulations 2023 \(S.I. 2023/223\), regs. 1\(2\), 2\(4\)](#) (with reg. 3))

### 65Z6 Joint committees and pooled funds **E+W**

- (1) This section applies where a function is exercisable jointly (by virtue of section 65Z5 or otherwise) by a relevant body and any one or more of the following—
- (a) a relevant body;
  - (b) a local authority (within the meaning of section 2B);
  - (c) a combined authority;
  - [ a combined county authority.]



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F354(d)

- (2) The bodies by whom the function is exercisable jointly may—
  - (a) arrange for the function to be exercised by a joint committee of theirs;
  - (b) arrange for one or more of the bodies, or a joint committee of the bodies, to establish and maintain a pooled fund.
- (3) A pooled fund is a fund—
  - (a) which is made up of payments received in accordance with the arrangements from relevant bodies that are party to the arrangements, and
  - (b) out of which payments may be made in accordance with the arrangements towards expenditure incurred in the exercise of functions in relation to which the arrangements are made.
- (4) Arrangements under this section may be made on such terms as may be agreed between the parties, including terms as to payment.
- (5) In this section “relevant body” has the meaning given by section 65Z5(2).

#### Textual Amendments

F354 S. 65Z6(1)(d) inserted (26.12.2023) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), s. 255(2)(c), [Sch. 4 para. 167](#) (with s. 247)

### 65Z7 Joint working and delegation: guidance by NHS England **E+W**

- (1) NHS England may publish guidance for relevant bodies about the exercise of their powers under sections 65Z5 and 65Z6.
- (2) A relevant body must have regard to any guidance published under this section.
- (3) In this section “relevant body” has the meaning given by section 65Z5(2).]

#### *Intervention orders and default powers*

### 66 Intervention orders **E+W**

- [<sup>F355</sup>(1) This section applies to—
- (a) NHS trusts, and
  - (b) Special Health Authorities.]
- (2) If the Secretary of State—
    - (a) considers that a body to which this section applies is not performing one or more of its functions adequately or at all, or that there are significant failings in the way the body is being run, and
    - (b) is satisfied that it is appropriate for him to intervene under this section, he may make an order under this section in respect of the body (an “intervention order”).
  - (3) An intervention order may make any provision authorised by section 67 (including any combination of such provisions).

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### Textual Amendments

**F355** S. 66(1) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 21 para. 8(1)** (with Sch. 21 para. 8(2)(3)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

### Modifications etc. (not altering text)

**C5** S. 66 modified (temp.) (11.7.2012) by The Health and Social Care Act 2012 (Commencement No.2 and Transitional, Savings and Transitory Provisions) Order 2012 (S.I. 2012/1831), **art. 13(3)-(5)**

**C6** S. 66(1) modified (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 21 para. 8(2)(3); S.I. 2013/160, art. 2(2) (with arts. 7-9)

## 67 Effect of intervention orders **E+W**

- (1) In this section—
  - (a) “member” means a member of a <sup>F356</sup> ... <sup>F357</sup> ... Special Health Authority <sup>F358</sup> ...,
  - (b) “employee member” means a member of a <sup>F359</sup> ... <sup>F360</sup> ... Special Health Authority <sup>F361</sup> ... who is an officer of the body, <sup>F362</sup> ....
- (2) An intervention order may provide for the removal from office of—
  - (a) all the members, or
  - (b) those specified in the order,
 and for their replacement with individuals specified in or determined in accordance with the order (who need not be the same in number as the removed individuals).
- (3) An intervention order may provide for the suspension (either wholly, or in respect only of powers and duties specified in or determined in accordance with the order) of—
  - (a) all the members, or
  - (b) those specified in the order,
 and for the powers of the suspended members to be exercised, and their duties performed, during their suspension by individuals specified in or determined in accordance with the order (who need not be the same in number as the suspended individuals).
- (4) The powers and duties referred to in subsection (3) are, in the case of an employee member, only those which he has in his capacity as a member.
- (5) An intervention order may contain directions to the body to which it relates to secure that a function of the body specified in the directions—
  - (a) is performed, to the extent specified in the directions, on behalf of the body and at its expense, by such person as is specified in the directions, and
  - (b) is so performed in such a way as to achieve such objectives as are so specified, and the directions may require that any contract or other arrangement made by the body with that person contains such terms and conditions as may be so specified.
- (6) If the person referred to in subsection (5)(a) is a body to which section 66 applies, the functions of that body include the performance of the functions specified in the directions under subsection (5).
- (7) Subsection (8) applies in relation to any provision in this Act, or in any order or regulations made, or directions given, under this Act, relating to—
  - (a) the membership of the body to which an intervention order relates <sup>F363</sup> ..., or

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- (b) the procedure of the body.
- (8) The intervention order may provide in relation to any provision specified in the order—
  - (a) that it does not apply in relation to the body while the order remains in force, or
  - (b) that it applies in relation to the body, while the order remains in force, with modifications specified in the order.
- (9) An intervention order may contain such supplementary directions to the body to which it relates as the Secretary of State considers appropriate for the purpose of giving full effect to the order.

#### Textual Amendments

- F356** Words in s. 67(1)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 16(a)(i); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F357** Words in s. 67(1)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 16(a)(ii); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F358** Words in s. 67(1)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 21 para. 9(2)(a) (with s. 179(5)(c)); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F359** Words in s. 67(1)(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 16(b)(i); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F360** Words in s. 67(1)(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 16(b)(i)(ii); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F361** Words in s. 67(1)(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 21 para. 9(2)(b)(i) (with s. 179(5)(c)); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F362** Words in s. 67(1)(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 21 para. 9(2)(b)(ii) (with s. 179(5)(c)); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F363** Words in s. 67(7)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 21 para. 9(3) (with s. 179(5)(c)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

## 68 Default powers **E+W**

- [<sup>F364</sup>(1) This section applies to—
- (a) NHS trusts established under section 25, and
  - (b) Special Health Authorities.]
- (2) If the Secretary of State considers that a body to which this section applies—
- (a) has failed to carry out any functions conferred or imposed on it by or under this Act, or
  - (b) has in carrying out those functions failed to comply with any regulations or directions relating to those functions,
- he may after such inquiry as he considers appropriate make an order declaring it to be in default.
- (3) The members of the body in default must immediately vacate their office, and the order—
- (a) must provide for the appointment, in accordance with the provisions of this Act, of new members of the body, and

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- (b) may contain such provisions as seem to the Secretary of State expedient for authorising any person to act in the place of the body pending the appointment of new members.
- (4) An order under this section may contain such supplementary and incidental provisions as appear to the Secretary of State to be necessary or expedient, including—
- (a) provision for the transfer to the Secretary of State of property and liabilities of the body in default, and
  - (b) where any such order is varied or revoked by a subsequent order, provision in the subsequent order for the transfer to the body in default of any property or liabilities acquired or incurred by the Secretary of State in discharging any of the functions transferred to him.

#### Textual Amendments

**F364** S. 68(1) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 21 para. 10\(1\)](#) (with [Sch. 21 para. 9\(2\)\(3\)](#)); S.I. 2013/160, art. 2(2) (with arts. 7-9)

#### Modifications etc. (not altering text)

**C7** S. 68 modified (temp.) (11.7.2012) by [The Health and Social Care Act 2012 \(Commencement No.2 and Transitional, Savings and Transitory Provisions\) Order 2012 \(S.I. 2012/1831\)](#), [art. 13\(3\)-\(5\)](#)

**C8** S. 68(1) modified (temp.) (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 21 para. 10\(2\)\(3\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)

### *[<sup>F365</sup>Reconfiguration of NHS services*

#### Textual Amendments

**F365** S. 68A and cross-heading inserted (31.1.2024) by [Health and Care Act 2022 \(c. 31\)](#), [ss. 46\(1\)](#), 186(6); S.I. 2023/1431, [reg. 4\(a\)](#)

## **68A Reconfiguration of NHS services** E+W

Schedule 10A confers intervention powers on the Secretary of State in relation to the reconfiguration of NHS services.]

### *Protection of members and officers of health service bodies*

## **69 Protection from personal liability** E+W

- (1) Section 265 of the Public Health Act 1875 (c. 55) (which relates to the protection of members and officers of certain authorities) has effect as if there were included in the authorities referred to in that section a reference to an NHS body.
- (2) Any reference in that section to the Public Health Act 1875 has effect as if it included a reference to this Act and the National Health Service (Wales) Act 2006 (c. 42).

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## *f<sup>366</sup>* Transfer schemes

### Textual Amendments

**F366** S. 69A and cross-heading inserted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 69, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

### **69A** Transfer schemes: NHS trusts and NHS foundation trusts **E+W**

- (1) NHS England may make one or more schemes for the transfer of property, rights and liabilities from a relevant NHS body to another relevant NHS body on an application made to it under this section.
- (2) The application must—
  - (a) be made jointly by the relevant NHS bodies, and
  - (b) state the property, rights or liabilities to be transferred.
- (3) NHS England may grant an application under this section only if it is satisfied that such steps as are necessary to prepare for the transfer have been taken.
- (4) The things that may be transferred under a transfer scheme include—
  - (a) property, rights and liabilities that could not otherwise be transferred;
  - (b) property acquired, and rights and liabilities arising, after the making of the scheme;
  - (c) criminal liabilities.
- (5) A transfer scheme may—
  - (a) create rights, or impose liabilities, in relation to property or rights transferred;
  - (b) make provision about the continuing effect of things done by the transferor in respect of anything transferred;
  - (c) make provision about the continuation of things (including legal proceedings) in the process of being done by, on behalf of or in relation to the transferor in respect of anything transferred;
  - (d) make provision for references to the transferor in an instrument or other document in respect of anything transferred to be treated as references to the transferee;
  - (e) make provision for the shared ownership or use of property;
  - (f) make provision which is the same as or similar to the TUPE regulations;
  - (g) make other consequential, supplementary, incidental or transitional provision.
- (6) A transfer scheme may provide—
  - (a) for modifications by agreement;
  - (b) for modifications to have effect from the date when the original scheme came into effect.
- (7) In this section—
  - (a) references to rights and liabilities include rights and liabilities relating to a contract of employment;
  - (b) references to the transfer of property include the grant of a lease.
- (8) In this section—

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“relevant NHS body” means—

- (a) an NHS trust established under section 25;
- (b) an NHS foundation trust;

“the TUPE regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246).]

### *Transfer of residual liabilities*

## 70 **Transfer of residual liabilities [F367 of certain health service bodies] E+W**

- (1) If <sup>F368</sup> ... <sup>F369</sup> ... an NHS trust or a Special Health Authority ceases to exist, the Secretary of State must exercise his functions so as to secure that all of the body's liabilities (other than any criminal liabilities) are dealt with.
- (2) A liability is dealt with by being transferred to an NHS body, the Secretary of State or the Welsh Ministers.

### **Textual Amendments**

**F367** Words in s. 70 heading inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 17(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

**F368** Words in s. 70(1) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 17(a)(i)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

**F369** Words in s. 70(1) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 17(a)(ii)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

### *Losses and liabilities of certain health service bodies*

## 71 **Schemes for meeting losses and liabilities etc of certain health service bodies E+W**

- (1) The Secretary of State may by regulations made with the consent of the Treasury establish a scheme whereby any of the bodies [<sup>F370</sup> or other persons] specified in subsection (2) may make provision to meet—
  - (a) expenses arising from any loss of or damage to their property, and
  - (b) liabilities to third parties for loss, damage or injury arising out of the carrying out of the functions of the bodies [<sup>F370</sup> or other persons] concerned.
- (2) The bodies [<sup>F371</sup> and other persons ] referred to in subsection (1) are—
  - [<sup>F372</sup>(za) [<sup>F2</sup>NHS England],
  - [<sup>F373</sup>(zb) integrated care boards,]]
  - <sup>F374</sup>(a) .....
  - <sup>F375</sup>(b) .....
  - (c) NHS trusts,
  - (d) Special Health Authorities,
  - [<sup>F376</sup>(da) NICE,]
  - <sup>F377</sup>(db) .....
  - <sup>F378</sup>(dc) .....
  - (e) NHS foundation trusts,

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- (f) [<sup>F379</sup>the Care Quality Commission] , and
- <sup>F380</sup>(fa) the Health Research Authority;]
- <sup>F381</sup>(fb) the Health Services Safety Investigations Body,]
- <sup>F382</sup>(g) .....
- <sup>F383</sup>(ga) the Commissioner for Patient Safety,]
- <sup>F384</sup>(h) the Secretary of State,
- [ a company formed under section 223 and wholly or partly owned by the
- <sup>F385</sup>(ha) Secretary of State or [<sup>F2</sup>NHS England],
- (hb) a subsidiary of a company which is formed under that section and wholly owned by the Secretary of State,] and
- (i) a body or other person (other than a body or other person within any of [<sup>F386</sup>paragraphs (za) to (hb)] ) providing, or arranging the provision of, health services whose provision is the subject of arrangements with a body or other person within any of [<sup>F387</sup>paragraphs (za) to (h)] .]
- but a scheme under this section may limit the class or description of bodies which [<sup>F388</sup>, or other persons who, ] are eligible to participate in it.
- <sup>F389</sup>(2A) In subsection (1)(b) “functions”—
- (a) in relation to the Secretary of State, means the Secretary of State's functions in connection with the health service;
- [ in relation to a company within paragraph (ha) or (hb) of subsection (2), means
- <sup>F390</sup>(ab) the company's activities in providing facilities or services to any person or body;]
- (b) in relation to a body or other person within paragraph (i) of subsection (2), means the body's or person's functions of providing, or arranging the provision of, health services whose provision is the subject of arrangements with a body or other person within any of [<sup>F391</sup>paragraphs (za) to (h)] of that subsection.]
- (3) A scheme under this section may, in particular—
- (a) provide for the scheme to be administered by the Secretary of State [<sup>F392</sup>or [<sup>F2</sup>NHS England]] or by a <sup>F393</sup>... <sup>F394</sup>...NHS trust, Special Health Authority or NHS foundation trust specified in the scheme,
- (b) require any body which [<sup>F395</sup>, or other person who,] participates in the scheme to make payments in accordance with the scheme, and
- (c) provide for the making of payments for the purposes of the scheme by the Secretary of State [<sup>F396</sup> (whether or not a participator in the scheme and, if a participator, whether or not required to make payments as a participator) ].
- (4) If the Secretary of State so directs, a body which is eligible to participate in a scheme must do so.
- <sup>F397</sup>(5) The Secretary of State may make a direction under subsection (4) in respect of a body only if the body is within any of paragraphs [<sup>F398</sup>(c), (d)] [<sup>F399</sup>and (f)] of subsection (2).]
- (6) Where a scheme provides for the scheme to be administered by the Secretary of State, [<sup>F400</sup>[<sup>F2</sup>NHS England] or] a <sup>F401</sup>... <sup>F402</sup>... NHS trust, Special Health Authority or NHS foundation trust must carry out such functions in connection with the administration of the scheme by the Secretary of State as he may direct.
- (7) Subsections (4) and (6) do not affect any other power of direction of the Secretary of State.



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- (8) A person or body administering a scheme under this section does not require permission under any provision of the Financial Services and Markets Act 2000 (c. 8) as respects activities carried out under the scheme.
- [<sup>F403</sup>(9) In subsection (2)(i), the reference to a person providing health services does not include a person providing health services under a contract of employment.
- (10) In this section “health services” means services provided as part of the health service. ]

### Textual Amendments

- F2** Words in Act substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 1 para. 1(1)(2); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F370** Words in s. 71(1) inserted (1.10.2008) by Health and Social Care Act 2008 (c. 14), ss. 142(2), 170(3)(4); S.I. 2008/2497, art. 5
- F371** Words in s. 71(2) inserted (1.10.2008) by Health and Social Care Act 2008 (c. 14), ss. 142(3)(a), 170(3)(4); S.I. 2008/2497, art. 5
- F372** S. 71(2)(za)(zb) inserted (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 18(2)(a); S.I. 2012/1831, art. 2(2)
- F373** S. 71(2)(zb) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 4 para. 101; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F374** S. 71(2)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 18(2)(b); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F375** S. 71(2)(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 18(2)(c); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F376** S. 71(2)(da) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 17 para. 10(3); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F377** S. 71(2)(db) omitted (1.2.2023) by virtue of The Health and Social Care Information Centre (Transfer of Functions, Abolition and Transitional Provisions) Regulations 2023 (S.I. 2023/98), reg. 1(2), Sch. para. 10(4) (with reg. 3)
- F378** S. 71(2)(dc) omitted (1.4.2023) by virtue of The Health Education England (Transfer of Functions, Abolition and Transitional Provisions) Regulations 2023 (S.I. 2023/368), reg. 1(2), Sch. 1 para. 9(12) (with reg. 7)
- F379** Words in s. 71(2)(f) substituted (1.4.2009) by Health and Social Care Act 2008 (c. 14), s. 170(3)(4), Sch. 5 para. 85; S.I. 2009/462, art. 2(1), Sch. 1 para. 35(bb)
- F380** S. 71(2)(fa) inserted (1.1.2015) by Care Act 2014 (c. 23), s. 127(1), Sch. 7 para. 18(9); S.I. 2014/2473, art. 5(m)
- F381** S. 71(2)(fb) inserted (1.10.2023) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 15 para. 8(3); S.I. 2023/1035, reg. 2(c)
- F382** S. 71(2)(g) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 7 para. 19(a); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F383** S. 71(2)(ga) inserted (11.4.2021) by Medicines and Medical Devices Act 2021 (c. 3), s. 50(2)(a), Sch. 1 para. 5(4) (with Sch. 1 para. 3(4))
- F384** S. 71(2)(h)(i) inserted (1.10.2008) by Health and Social Care Act 2008 (c. 14), ss. 142(3)(b), 170(3)(4); S.I. 2008/2497, art. 5
- F385** S. 71(2)(ha)(hb) inserted (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 18(2)(d); S.I. 2012/1831, art. 2(2)
- F386** Words in s. 71(2)(i) substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 18(2)(e)(i); S.I. 2012/1831, art. 2(2)
- F387** Words in s. 71(2)(i) substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), Sch. 4 para. 18(2)(e)(ii); S.I. 2012/1831, art. 2(2)
- F388** Words in s. 71(2) inserted (1.10.2008) by Health and Social Care Act 2008 (c. 14), ss. 142(3)(c), 170(3)(4); S.I. 2008/2497, art. 5

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- F389** S. 71(2A) inserted (1.10.2008) by Health and Social Care Act 2008 (c. 14), **ss. 142(4)**, 170(3)(4); S.I. 2008/2497, art. 5
- F390** S. 71(2A)(ab) inserted (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 18(3)(a)**; S.I. 2012/1831, art. 2(2)
- F391** Words in s. 71(2A)(b) substituted (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 18(3)(b)**; S.I. 2012/1831, art. 2(2)
- F392** Words in s. 71(3)(a) inserted (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 18(4)(a)**; S.I. 2012/1831, art. 2(2)
- F393** Words in s. 71(3)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 18(4)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F394** Words in s. 71(3)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 18(4)(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F395** Words in s. 71(3)(b) inserted (1.10.2008) by Health and Social Care Act 2008 (c. 14), **ss. 142(5)(a)**, 170(3)(4); S.I. 2008/2497, art. 5
- F396** Words in s. 71(3)(c) inserted (1.10.2008) by Health and Social Care Act 2008 (c. 14), **ss. 142(5)(b)**, 170(3)(4); S.I. 2008/2497, art. 5
- F397** S. 71(5) substituted (1.10.2008) by Health and Social Care Act 2008 (c. 14), **ss. 142(6)**, 170(3)(4); S.I. 2008/2497, art. 5
- F398** Words in s. 71(5) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 18(5)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F399** Words in s. 71(5) substituted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 7 para. 19(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F400** Words in s. 71(6) inserted (1.10.2012) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 18(6)(a)**; S.I. 2012/1831, art. 2(2)
- F401** Words in s. 71(6) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 18(6)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F402** Words in s. 71(6) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 18(6)(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F403** S. 71(9)(10) inserted (1.10.2008) by Health and Social Care Act 2008 (c. 14), **ss. 142(7)**, 170(3)(4); S.I. 2008/2497, art. 5

**Modifications etc. (not altering text)**

- C9** S. 71(2) modified (temp.) (1.10.2008) by Health and Social Care Act 2008 (Consequential Amendments and Transitory Provisions) Order 2008 (S.I. 2008/2250), arts. 1(1), **3(15)**

*Co-operation between NHS bodies*

**72 Co-operation between NHS bodies** **E+W**

[<sup>F404</sup>(1)] It is the duty of NHS bodies to co-operate with each other in exercising their functions.

[<sup>F405</sup>(1A) The Secretary of State may publish guidance on the discharge of the duty under subsection (1) in relation to England.

(1B) An NHS body other than a Welsh NHS body must have regard to any guidance published under subsection (1A).]

[<sup>F406</sup>(2) For the purposes of this section, NICE is an NHS body.]

<sup>F407</sup>(3) . . . . .

<sup>F408</sup>(4) . . . . .

[<sup>F409</sup>(5) In this section “Welsh NHS body” means—

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- (a) an NHS trust established under the National Health Service (Wales) Act 2006,
- (b) a Special Health Authority established under that Act, or
- (c) a Local Health Board.]

#### Textual Amendments

- F404** S. 72(1): s. 72 renumbered as s. 72(1) (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 17 para. 10\(4\)\(a\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F405** S. 72(1A)(1B) inserted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), [ss. 75\(2\)\(a\)](#), 186(6); S.I. 2022/734, reg. 2(a), [Sch.](#) (with regs. 13, 29, 30)
- F406** S. 72(2) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 17 para. 10\(4\)\(b\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F407** S. 72(3) omitted (1.2.2023) by virtue of [The Health and Social Care Information Centre \(Transfer of Functions, Abolition and Transitional Provisions\) Regulations 2023 \(S.I. 2023/98\)](#), reg. 1(2), [Sch. para. 10\(5\)](#) (with reg. 3)
- F408** S. 72(4) omitted (1.4.2023) by virtue of [The Health Education England \(Transfer of Functions, Abolition and Transitional Provisions\) Regulations 2023 \(S.I. 2023/368\)](#), reg. 1(2), [Sch. 1 para. 9\(13\)](#) (with reg. 7)
- F409** S. 72(5) inserted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), [ss. 75\(2\)\(b\)](#), 186(6); S.I. 2022/734, reg. 2(a), [Sch.](#) (with regs. 13, 29, 30)

*[<sup>F410</sup>NHS trusts and foundation trusts: exemption from merger legislation*

#### Textual Amendments

- F410** S. 72A and cross-heading inserted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), [ss. 83\(1\)](#), 186(6); S.I. 2022/734, reg. 2(a), [Sch.](#) (with regs. 13, 29, 30)

### 72A Exemption from Part 3 of the Enterprise Act 2002 E+W

- (1) For the purposes of Part 3 of the Enterprise Act 2002 (mergers), a relevant merger situation is not to be treated as having been created where two or more relevant NHS enterprises cease to be distinct enterprises.
- (2) But subsection (1) does not apply to a case where two or more relevant NHS enterprises and one or more enterprises that are not relevant NHS enterprises cease to be distinct enterprises.
- (3) In this section “relevant NHS enterprise” means the activities, or part of the activities, of—
  - (a) an NHS trust established under section 25;
  - (b) an NHS foundation trust.]

*Directions and regulations under this Part*

### 73 Directions and regulations under this Part E+W

- (1) This section applies to directions and regulations under any of—
  - (a) section 7,

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- [<sup>F411</sup>(aa) section 7B,]
- [<sup>F412</sup>(ab) section 7C,]
- (b) section 8,
- [<sup>F413</sup>(ba) section 13YB,]
- [<sup>F414</sup>(bb) section 27B,]
- <sup>F415</sup>(c) .....
- <sup>F415</sup>(d) .....
- <sup>F415</sup>(e) .....
- <sup>F415</sup>(f) .....
- (g) section 29.

- (2) Except in prescribed cases, the directions and regulations must not preclude a person or body by whom the function is exercisable apart from the directions or regulations from exercising the function.

#### Textual Amendments

- F411** S. 73(1)(aa) inserted (1.7.2022) by Health and Care Act 2022 (c. 31), **ss. 43(3)**, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F412** S. 73(1)(ab) inserted (1.7.2022) by Health and Care Act 2022 (c. 31), **ss. 44(3)**, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F413** S. 73(1)(ba) inserted (1.4.2023) by Health and Care Act 2022 (c. 31), **ss. 13(3)**, 186(6); S.I. 2023/371, reg. 2(a)
- F414** S. 73(1)(bb) inserted (1.7.2022) by Health and Care Act 2022 (c. 31), **ss. 55(3)**, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F415** S. 73(1)(c)-(f) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 4 para. 19**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- Pt. 2 Ch. 3 repealed by [2012 c. 7 s. 179\(2\)](#)
- s. 33 cross-heading substituted by [2012 c. 7 s. 180\(5\)](#)
- s. 65KA cross-heading inserted by [2012 c. 7 Sch. 14 para. 21\(5\)](#)
- s. 65K and cross-heading omitted by [2012 c. 7 Sch. 14 para. 20\(1\)](#)
- Sch. 4 para. 24 and cross-heading substituted by [2022 c. 31 Sch. 3 para. 54](#)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 3B(1)(aa) inserted by [2022 c. 31 Sch. 3 para. 2\(b\)](#)
- s. 3B(1)(za) inserted by [2022 c. 31 Sch. 3 para. 2\(a\)](#)
- s. 13G(4) words omitted by virtue of [2012 c. 7, Sch. 14 para. 4A](#) (as inserted) by [2014 c. 23 s. 120\(18\)\(a\)](#)
- s. 35(3A)(3B) inserted by [2012 c. 7 s. 159\(4\)](#)
- s. 35(3A) words substituted by [2022 c. 31 Sch. 5 para. 12\(4\)](#) (This amendment not applied to [legislation.gov.uk](#). The insertion of s. 35(3A) by [2012 c. 7 s. 159\(4\)](#) not yet in force.)
- s. 40(4)-(4B) substituted for s. 40(4) by [2012 c. 7 Sch. 14 para. 5](#)
- s. 42(1A) inserted by [2012 c. 7 Sch. 14 para. 6](#)
- s. 65F(2A)-(2F) inserted by [2012 c. 7 Sch. 14 para. 15\(4\)](#) (This amendment is itself amended before it comes into force by [2014 c. 23, ss. 85\(15\), 120\(18\)\(b\)\(c\), 127\(1\); S.I. 2014/1714, art. 3\(2\)\(b\)\(c\)](#))
- s. 65H(10A) inserted by [2012 c. 7 Sch. 14 para. 17\(4\)](#)
- s. 65H(10A) omitted by [2022 c. 31 Sch. 8 para. 7\(7\)](#) (This amendment not applied to [legislation.gov.uk](#). [2012 c. 7 Sch. 14](#) revoked at 1.7.2022 by [2022 c. 31, s. 186\(6\), Sch. 7 para. 13](#) before the insertion of s. 65H(10A) could come into effect.)
- s. 82A-83A and cross-heading substituted for s. 83 and cross-heading by [2022 c. 31 Sch. 3 para. 3](#)
- s. 84(4)-(4B) substituted for s. 84(4) by [2022 c. 31 Sch. 3 para. 4\(4\)](#)
- s. 92(5A) inserted by [2022 c. 31 Sch. 3 para. 9\(4\)](#)
- s. 94(3)(ca)(cb) substituted for s. 94(3)(ca) by [2022 c. 31 Sch. 3 para. 11\(3\)](#)
- s. 98A98B substituted for s. 98A by [2022 c. 31 Sch. 3 para. 14](#)
- s. 98BC-99B and cross-heading substituted for s. 99 and cross-heading by [2022 c. 31 Sch. 3 para. 15](#)
- s. 100(3A)(3B) inserted by [2022 c. 31 Sch. 3 para. 16\(4\)](#)
- s. 109(3)(ca)(cb) substituted for s. 109(3)(ca) by [2022 c. 31 Sch. 3 para. 23\(3\)](#)
- s. 112(1)(za) inserted by [2022 c. 31 Sch. 3 para. 24\(2\)\(b\)](#)
- s. 114A114B substituted for s. 114A by [2022 c. 31 Sch. 3 para. 26](#)
- s. 114C and cross-heading inserted by [2022 c. 31 Sch. 3 para. 27](#)
- s. 116A116B and cross-heading inserted by [2022 c. 31 Sch. 3 para. 30](#)
- s. 117(4)(4A) substituted for s. 117(4) by [2022 c. 31 Sch. 3 para. 31\(4\)](#)
- s. 125A125B substituted for s. 125A by [2022 c. 31 Sch. 3 para. 39](#)
- s. 223C(1)(c)(d) inserted by [2022 c. 31 s. 28](#)
- s. 223LA inserted by [2022 c. 31 s. 30\(3\)](#)
- Sch. 15 para. 4(1)(b) and word omitted by [2012 c. 7 Sch. 14 para. 39\(3\)](#)