



# Health Act 2009

## 2009 CHAPTER 21

### PART 2

#### POWERS IN RELATION TO HEALTH BODIES

### CHAPTER 1

#### POWERS IN RELATION TO FAILING NHS BODIES IN ENGLAND

#### *Trust special administrators*

#### **16 Trust special administrators: NHS trusts and NHS foundation trusts**

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

#### **“CHAPTER 5A**

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

#### *Application*

#### **65A Application**

(1) This Chapter applies to—

- (a) an NHS trust all or most of whose hospitals, establishments and facilities are in England;
- (b) an NHS foundation trust authorised under section 35 on an application under section 33;
- (c) an NHS foundation trust established under section 56 to which subsection (2) applies.

---

**Changes to legislation:** *Health Act 2009, Section 16 is up to date with all changes known to be in force on or before 27 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*

---

- (2) This subsection applies to an NHS foundation trust if—
- (a) at least one of the trusts on whose application the NHS foundation trust was established was an NHS trust within subsection (1)(a) or an NHS foundation trust within subsection (1)(b), or
  - (b) the NHS foundation trust is the result of a succession of mergers under section 56, any of which involved an NHS trust within subsection (1)(a) or an NHS foundation trust within subsection (1)(b).

### *Appointment*

#### **65B Appointment of trust special administrator**

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

#### **65C Suspension of directors**

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

---

**Changes to legislation:** Health Act 2009, Section 16 is up to date with all changes known to be in force on or before 27 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

---

### *De-authorisation of NHS foundation trusts*

#### **65D NHS foundation trusts: regulator's notice**

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

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

- (1) If the regulator gives notice under section 65D in relation to a trust, the Secretary of State must make an order for it to cease to be an NHS foundation trust.
- (2) An order made under subsection (1) must specify the date when it is to take effect, which must be within the period of 5 working days beginning with the day on which it is made.
- (3) The Secretary of State must lay before Parliament (with the statutory instrument containing the order) the regulator's report under section 65D(3).
- (4) On an order under subsection (1) taking effect in relation to a body, it ceases to be an NHS foundation trust and a public benefit corporation and becomes a National Health Service trust.
- (5) Schedule 8A makes further provision about trusts in respect of which an order is made under subsection (1).
- (6) Where an order is made under subsection (1) in relation to a trust, the Secretary of State must also make an order under section 65B(1) authorising the appointment of a trust special administrator in relation to the trust.
- (7) The order under section 65B(1) must provide for the appointment to take effect at the same time as the order under this section.

---

**Changes to legislation:** *Health Act 2009, Section 16 is up to date with all changes known to be in force on or before 27 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) Section 65B(2), (4) and (5) do not apply in relation to the order under section 65B(1).

### *Consultation and report*

#### **65F Draft report**

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

#### **65G Consultation plan**

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

#### **65H Consultation requirements**

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

---

**Changes to legislation:** Health Act 2009, Section 16 is up to date with all changes known to be in force on or before 27 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

---

- (6) Notices under subsections (2) and (5) must be published at least once in the first 5 working days of the consultation period.
- (7) The trust special administrator must request a written response from—
  - (a) any Strategic Health Authority in whose area the trust has hospitals, establishments or facilities;
  - (b) any other person to which the trust provides goods or services under this Act, if required by directions given by the Secretary of State;
  - (c) any person within subsection (8), if required by directions given by the Secretary of State.
- (8) The persons within this subsection are—
  - (a) an overview and scrutiny committee of any authority to which section 244 applies;
  - (b) a committee of a local authority operating alternative arrangements under Part 2 of the Local Government Act 2000 which exercises functions corresponding to those of an overview and scrutiny committee under section 21(2)(f) of that Act;
  - (c) a joint overview and scrutiny committee;
  - (d) a committee established under section 247(1);
  - (e) a person carrying on, in pursuance of arrangements made by any local authority under subsection (1) of section 221 of the Local Government and Public Involvement in Health Act 2007, activities specified in subsection (2) of that section (local involvement networks);
  - (f) the member of Parliament for any constituency.
- (9) The trust special administrator must hold at least one meeting to seek responses from representatives of each of the persons from whom the administrator must request a written response under subsection (7)(a) or (b).
- (10) The Secretary of State may direct an administrator to—
  - (a) request a written response from any person;
  - (b) hold a meeting to seek a response from any person.
- (11) In subsection (4) “staff of the trust” means persons employed by the trust or otherwise working for the trust (whether as or on behalf of a contractor, as a volunteer or otherwise).

### **65I Final report**

- (1) Within the period of 15 working days beginning with the end of the consultation period, the trust special administrator must provide to the Secretary of State a final report stating the action which the administrator recommends that the Secretary of State should take in relation to the trust.
- (2) The administrator must attach to the final report a summary of all responses to the draft report which were received by the administrator in the period beginning with the publication of the draft report and ending with the last day of the consultation period.
- (3) After receiving the administrator's final report, the Secretary of State must publish it and lay it before Parliament.

---

*Changes to legislation: Health Act 2009, Section 16 is up to date with all changes known to be in force on or before 27 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*

---

### **65J Power to extend time**

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

#### *Action by the Secretary of State*

### **65K Secretary of State's decision**

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

### **65L Trusts coming out of administration**

- (1) This section applies if the Secretary of State decides under section 65K not to dissolve the trust.
- (2) The Secretary of State must make an order specifying a date when the appointment of the trust special administrator and the suspension of the chairman and directors of the trust come to an end.
- (3) Subsections (4) and (5) apply in the case of a trust which is an NHS trust by virtue of an order made under section 65E(1).
- (4) The Secretary of State must make an order specifying, in relation to the trust, the matters mentioned in paragraph 5(1)(a) to (c) of Schedule 4 and, where the trust

---

**Changes to legislation:** Health Act 2009, Section 16 is up to date with all changes known to be in force on or before 27 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

---

has a significant teaching commitment, the matters mentioned in paragraph 5(1)(d).

- (5) If it appears to the Secretary of State to be necessary in order to comply with provision made under subsection (4), or made by regulations under paragraph 4 of Schedule 4, the Secretary of State may by order—
- (a) terminate the office of any executive or non-executive director of the trust;
  - (b) appoint a person to be an executive or non-executive director of the trust.

### Supplementary

#### 65M Replacement of trust special administrator

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

#### 65N Guidance

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

#### 65O Interpretation of this Chapter

In this Chapter—

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

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

---

#### Commencement Information

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

**Changes to legislation:**

Health Act 2009, Section 16 is up to date with all changes known to be in force on or before 27 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.

[View outstanding changes](#)

**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. 2(6)(ca) inserted by [2022 c. 31 Sch. 3 para. 57\(b\)](#)
- s. 2(6)(ea) inserted by [2022 c. 31 Sch. 3 para. 57\(c\)](#)

**Commencement Orders yet to be applied to the Health Act 2009**

Commencement Orders bringing provisions within this Act into force:

- [S.I. 2011/1255 art. 2](#) amendment to earlier commencing SI 2010/1068 art. 2