



# Health and Social Care Act 2012

## 2012 CHAPTER 7

### PART 4

#### NHS FOUNDATION TRUSTS & NHS TRUSTS

##### *Failure*

#### **175 Objective of trust special administration**

(1) After section 65D of the National Health Service Act 2006 insert—

##### **“65DA Objective of trust special administration**

- (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
  - (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.

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*Status: This is the original version (as it was originally enacted).*

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- (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 the regulator.
- (5) The regulator may revise guidance under subsection (4)(c) and, if it does so, must publish the guidance as revised.
- (6) Before publishing guidance under subsection (4)(c) or (5), the regulator must obtain the approval of—
  - (a) the Secretary of State;
  - (b) the Board.
- (7) The Board 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), the Board 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.”
- (2) If, at any time before section 9 comes into force, Monitor obtains the approval of the NHS Commissioning Board Authority to publish guidance under section 65DA(4)(c) or (5) of the National Health Service Act 2006, that approval is to be treated for the purposes of subsection (6)(b) of that section as approval obtained from the National Health Service Commissioning Board.