



Health and Social Care Act 2012

2012 CHAPTER 7

PART 4

NHS FOUNDATION TRUSTS & NHS TRUSTS

Failure

176 Procedure etc.

- (1) In section 65F of the National Health Service Act 2006 (administrator's draft report), in subsection (2)—
 - (a) before paragraph (a) insert—

“(za) the Board,” and
 - (b) omit paragraph (a) (but not the following “and”).
- (2) At the end of that section insert—
 - “(4) For the purposes of this section in its application to the case of an NHS foundation trust, the references to the Secretary of State are to be read as references to the regulator.
 - (5) In the case of an NHS foundation trust, the administrator may not provide the draft report to the regulator under subsection (1)—
 - (a) without having obtained from each commissioner a statement that the commissioner considers that the recommendation in the draft report would achieve the objective set out in section 65DA, or
 - (b) where the administrator does not obtain a statement to that effect from one or more commissioners (other than the Board), without having obtained a statement to that effect from the Board.
 - (6) Where the Board decides not to provide to the administrator a statement to that effect, the Board must—
 - (a) give a notice of the reasons for its decision to the administrator and to the regulator;

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- (b) publish the notice;
 - (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.”
- (3) At the end of section 65G of that Act (consultation plan) insert—
 - “(4) In the case of an NHS foundation trust, the administrator may not make a variation to 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 would achieve the objective set out in section 65DA, or
 - (b) where the administrator does not obtain a statement to that effect from one or more commissioners (other than the Board), without having obtained a statement to that effect from the Board.
 - (5) Where the Board decides not to provide to the administrator a statement to that effect, the Board must—
 - (a) give a notice of the reasons for its decision to the administrator and to the regulator;
 - (b) publish the notice;
 - (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.”
- (4) In section 65H of that Act (consultation requirements), in subsection (7)—
 - (a) before paragraph (a) insert—
 - “(za) the Board,”
 - (b) omit paragraph (a),
 - (c) in paragraph (b), omit “, if required by directions given by the Secretary of State”, and
 - (d) after paragraph (c) insert “;
 - (d) any other person specified in a direction given by the Secretary of State.”
- (5) In subsection (8) of that section, omit paragraphs (a) to (d).
- (6) In subsection (9) of that section—
 - (a) after “representatives of” insert “the Board and”, and
 - (b) for “(7)(a) or (b)” substitute “(7)(b), (c) or (d)”.
- [^{F1}(7) At the end of that section insert—
 - “(12) For the purposes of this section in its application to the case of an NHS foundation trust—
 - (a) in subsection (7)(b), the words “goods or” are to be ignored, and
 - (b) in subsections (7)(c) and (d) and (10), the references to the Secretary of State are to be read as references to the regulator.
 - (13) In the case of an NHS foundation trust, the Secretary of State may direct the regulator as to persons from whom it should direct the administrator under subsection (10) to request or seek a response.”]

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(8) At the end of section 65I of that Act (administrator's final report) insert—

“(4) For the purposes of this section in its application to the case of an NHS foundation trust, the references to the Secretary of State are to be read as references to the regulator.”

(9) At the end of section 65J of that Act (power to extend time limits for preparing reports and carrying out consultation) insert—

“(5) For the purposes of this section in its application to the case of an NHS foundation trust, the references to the Secretary of State are to be read as references to the regulator.”

Textual Amendments

F1 S. 176(7) omitted (27.3.2012 for specified purposes) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(1)(d)(4), [Sch. 14 para. 17\(6\)](#) (with s. 179(5)(b))

Commencement Information

I1 S. 176 partly in force; s. 176 in force for specified purposes at Royal Assent, see s. 306(1)(d)
I2 S. 176 in force at 1.11.2012 in so far as not already in force by [S.I. 2012/2657](#), [art. 2\(2\)](#)

Changes to legislation:

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Changes and effects yet to be applied to :

- s. 176(2) omitted by [2012 c. 7 Sch. 14 para. 15\(7\)](#)
- s. 176(8) omitted by [2012 c. 7 Sch. 14 para. 18\(5\)](#)
- s. 176(9) omitted by [2012 c. 7 Sch. 14 para. 19\(4\)](#)
- specified provision(s) amendment to earlier commencing SI 2012/1831 art. 10 by [S.I. 2012/2657 art. 15](#)

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):

- Pt. 9 Ch. 1B inserted by [2022 c. 31 s. 96](#)
- s. 102(4)(ba) inserted by S.I. 2019/93, Sch. 1 para. 13(3) (as substituted) by [S.I. 2019/1245 reg. 28](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 105(3A)(3B) inserted by [2013 c. 24 Sch. 14 para. 21](#)
- s. 106(3A)(3B) inserted by [2013 c. 24 Sch. 14 para. 22](#)
- s. 250(2)-(2B) substituted for s. 250(2) by [2022 c. 31 s. 95\(2\)\(a\)](#)
- s. 250(6)-(6D) substituted for s. 250(6) by [2022 c. 31 s. 95\(2\)\(d\)](#)
- s. 251251ZA substituted for s. 251 by [2022 c. 31 s. 95\(3\)](#)
- s. 251C(6A) inserted by [2022 c. 31 s. 95\(4\)\(a\)](#)
- s. 259(1)(aa)(b) substituted for s. 259(1)(b) by [2022 c. 31 s. 98\(b\)](#)
- s. 259(1)(aa) words substituted by [S.I. 2023/98 Sch. para. 17\(11\)\(a\)\(iii\)](#) (This amendment comes in force at the same time as 2022 c. 31, s. 98 comes into force)
- s. 259(10A)(10B) inserted by [2022 c. 31 s. 98\(h\)](#)
- s. 304(5)(ja) inserted by [2022 c. 31 s. 95\(5\)](#)