



Health and Social Care Act 2012

2012 CHAPTER 7

PART 4

NHS FOUNDATION TRUSTS & NHS TRUSTS

Failure

177 Action following final report

- (1) In section 65K of the National Health Service Act 2006 (Secretary of State's decision on what action to take), in subsection (1), after “a final report under section 65I” insert “relating to an NHS trust”; and in consequence of that, for the title to that section substitute “Secretary of State's decision in case of NHS trust”.
- (2) After that section insert—

“65KA Regulator's decision in case of NHS foundation trust

- (1) Within the period of 20 working days beginning with the day on which the regulator receives a final report under section 65I relating to an NHS foundation trust, the regulator 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 the regulator is satisfied as mentioned in subsection (1), it must as soon as reasonably practicable provide to the Secretary of State—

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- (a) the final report, and
 - (b) the report provided to the regulator by the Care Quality Commission under section 65D(3).
- (4) If the regulator 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 the regulator gives a notice under subsection (4), sections 65F to 65J apply in relation to the trust to such extent, and with such modifications, as the regulator may specify in the notice.
- (6) The regulator 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.

65KB Secretary of State's response to regulator's decision

- (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 the regulator 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 the regulator;
 - (c) publish the notice;
 - (d) lay a copy of it before Parliament.

65KC Action following Secretary of State's rejection of final report

- (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 the regulator 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).

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- (2) Where the administrator provides to the regulator 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.

65KD Secretary of State's response to re-submitted final report

- (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 (4) to (8) apply.
- (4) If the notice states that the Board has failed to discharge a function—
 - (a) the Board 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 13Z2 applies accordingly).
- (5) If the notice states that a clinical commissioning group has failed to discharge a function—
 - (a) the group 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 the Board under section 14Z21(2), (3)(a) and (8)(a), and
 - (c) the Board may not exercise any of its functions under section 14Z21.
- (6) Where, by virtue of subsection (5)(b), the Secretary of State exercises the function of the Board under subsection (3)(a) of section 14Z21, subsection (9)

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- (a) of that section applies but with the substitution for the references to the Board of references to the Secretary of State.
- (7) If the notice states that the trust special administrator has failed to discharge the administration duties (within the meaning of section 65KA(1)(b))—
 - (a) the administration duties are to be treated for the purposes of this Act as functions of the regulator,
 - (b) the regulator is to be treated for the purposes of this Act as having failed to discharge those functions, and
 - (c) the failure is to be treated for those purposes as significant (and section 71 of the Health and Social Care Act 2012 applies accordingly, but with the omission of subsection (3)).
- (8) If the notice states that the regulator has failed to discharge a function—
 - (a) the regulator 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 71 of the Health and Social Care Act 2012 applies accordingly, but with the omission of subsection (3)).
- (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.”
- (3) In section 65L of that Act (trusts coming out of administration), after subsection (2) insert—
 - “(2A) For the purposes of subsection (1) in its application to the case of an NHS foundation trust, the reference to section 65K is to be read as a reference to section 65KD(9); and this section also applies in the case of an NHS foundation trust if—
 - (a) the Secretary of State is satisfied as mentioned in section 65KB(1) or 65KD(1) in relation to the trust, and
 - (b) the action recommended in the final report is to do something other than dissolve the trust.
 - (2B) For the purposes of subsection (2) in its application to the case of an NHS foundation trust—
 - (a) the reference to the Secretary of State is to be read as a reference to the regulator, and
 - (b) the reference to the chairman and directors of the trust is to be read as including a reference to the governors.”
- (4) Omit subsections (3) to (5) of that section.
- (5) At the end of that section insert—
 - “(6) Subsection (7) applies in the case of an NHS foundation trust.
 - (7) If it appears to the regulator to be necessary in order to comply with Schedule 7, the regulator may by order—

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- (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.”
- (6) After that section insert—

“65LA Trusts to be dissolved

- (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.
- (2) This section also applies if the Secretary of State decides under section 65KD(9) to dissolve the NHS foundation trust in question.
- (3) The regulator may make an order—
- (a) dissolving the trust, and
 - (b) transferring, or providing for the transfer of, the property and liabilities of the trust—
 - (i) to another NHS foundation trust or the Secretary of State, or
 - (ii) between another NHS foundation trust 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 to an NHS foundation trust by virtue of subsection (3)(b) include criminal liabilities.”
- (7) For the cross-heading preceding section 65K substitute “Action by the Secretary of State and the regulator”.

Commencement Information

- I1** S. 177 partly in force; s. 177 in force for specified purposes at Royal Assent, see s. 306(1)(d)
- I2** S. 177 in force at 1.11.2012 in so far as not already in force by [S.I. 2012/2657](#), [art. 2\(2\)](#)

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Changes and effects yet to be applied to :

- s. 177(1) omitted by [2012 c. 7 Sch. 14 para. 20\(2\)](#)
- s. 177(3) omitted by [2012 c. 7 Sch. 14 para. 22\(5\)](#)
- 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\(5\)](#)