



# National Health Service Act 2006

## 2006 CHAPTER 41

### PART 2

#### HEALTH SERVICE BODIES

#### CHAPTER 6

##### MISCELLANEOUS

##### *Intervention orders and default powers*

#### 66 Intervention orders

[<sup>F1</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).

#### Textual Amendments

- F1** 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)

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

- C1** 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)**
- C2** 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**

- (1) In this section—
- (a) “member” means a member of a <sup>F2</sup>... <sup>F3</sup>... Special Health Authority <sup>F4</sup>...,
  - (b) “employee member” means a member of a <sup>F5</sup>... <sup>F6</sup>... Special Health Authority <sup>F7</sup>... who is an officer of the body, <sup>F8</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>F9</sup>..., or
  - (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

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- (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

- F2** 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)
- F3** 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)
- F4** 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)
- F5** 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)
- F6** 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)
- F7** 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)
- F8** 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)
- F9** 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

- [<sup>F10</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
  - (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

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- (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

- F10** 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)

- C3** 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\(3\)-\(5\)](#)
- C4** 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)

### *Protection of members and officers of health service bodies*

#### **69 Protection from personal liability**

- (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).

### *Transfer of residual liabilities*

#### **70 Transfer of residual liabilities [<sup>F11</sup>of certain health service bodies]**

- (1) If <sup>F12</sup>...<sup>F13</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

- F11** 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)
- F12** 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)
- F13** 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)

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### *Losses and liabilities of certain health service bodies*

## **71 Schemes for meeting losses and liabilities etc of certain health service bodies**

(1) The Secretary of State may by regulations made with the consent of the Treasury establish a scheme whereby any of the bodies [<sup>F14</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>F14</sup>or other persons] concerned.

(2) The bodies [<sup>F15</sup> and other persons ] referred to in subsection (1) are—

- [<sup>F16</sup>(za) the Board,
- (zb) clinical commissioning groups,]
- [<sup>F17</sup>(a) .....
- [<sup>F18</sup>(b) .....
- (c) NHS trusts,
- (d) Special Health Authorities,
- [<sup>F19</sup>(da) NICE,]
- [<sup>F20</sup>(db) the Health and Social Care Information Centre,]
- (e) NHS foundation trusts,
- (f) [<sup>F21</sup>the Care Quality Commission] , and
- [<sup>F22</sup>(g) .....
- [<sup>F23</sup>(h) the Secretary of State,
- [ a company formed under section 223 and wholly or partly owned by the
- [<sup>F24</sup>(ha) Secretary of State or the Board,
- (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>F25</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>F26</sup>paragraphs (za) to (h)] , ]

but a scheme under this section may limit the class or description of bodies which [<sup>F27</sup>, or other persons who, ] are eligible to participate in it.

[<sup>F28</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>F29</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>F30</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>F31</sup>or the Board] or by a [<sup>F32</sup>... <sup>F33</sup>...NHS trust, Special Health Authority or NHS foundation trust specified in the scheme,

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- (b) require any body which [<sup>F34</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>F35</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>F36</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>F37</sup>(c), (d)][<sup>F38</sup>and (f)] of subsection (2).]
- (6) Where a scheme provides for the scheme to be administered by the Secretary of State, [<sup>F39</sup>the Board or] a <sup>F40</sup> ... <sup>F41</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.
- (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>F42</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

- F14** 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
- F15** 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
- F16** 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)
- F17** 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)
- F18** 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)
- F19** 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)
- F20** S. 71(2)(db) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), **Sch. 19 para. 9(3)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F21** 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)
- F22** 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)
- F23** 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
- F24** 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)
- F25** 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)

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- F26** 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)
- F27** 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
- F28** 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
- F29** 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)
- F30** 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)
- F31** 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)
- F32** 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)
- F33** 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)
- F34** 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
- F35** 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
- F36** 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
- F37** 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)
- F38** 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)
- F39** 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)
- F40** 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)
- F41** 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)
- F42** 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)**

- C5** 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**

[<sup>F43</sup>(1)] It is the duty of NHS bodies to co-operate with each other in exercising their functions.

[<sup>F44</sup>(2) For the purposes of this section, NICE is an NHS body.]

[<sup>F45</sup>(3) For the purposes of this section, the Health and Social Care Information Centre is an NHS body.]

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**Textual Amendments**

- F43** 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)
- F44** 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)
- F45** S. 72(3) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 19 para. 9\(4\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)

*Directions and regulations under this Part*

**73 Directions and regulations under this Part**

- (1) This section applies to directions and regulations under any of—
  - (a) section 7,
  - (b) section 8,
  - <sup>F46</sup>(c) .....
  - <sup>F46</sup>(d) .....
  - <sup>F46</sup>(e) .....
  - <sup>F46</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**

- F46** 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)



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