

SCHEDULES

SCHEDULE 8

Section 70

TRUST SPECIAL ADMINISTRATORS: NHS TRUSTS AND NHS FOUNDATION TRUSTS

PART 1

AMENDMENTS ABOUT TRUST SPECIAL ADMINISTRATORS

- 1 The National Health Service Act 2006 is amended as follows.
- 2 For section 65B substitute—

“65B NHS trusts: appointment of trust special administrator

- (1) NHS England may make an order in accordance with this section authorising the appointment of a trust special administrator to exercise the functions of the chair and directors of an NHS trust to which this Chapter applies.
- (2) NHS England—
 - (a) must make an order under subsection (1) if required to do so by the Care Quality Commission, and
 - (b) may otherwise make an order under subsection (1) only if—
 - (i) NHS England considers it appropriate to do so in the interests of the health service, and
 - (ii) the Secretary of State has approved the making of the order.
- (3) The Care Quality Commission may require NHS England to make an order under subsection (1) only if it is satisfied that there is a serious failure by the NHS trust to provide services that are of sufficient quality to be provided under this Act.
- (4) Before requiring NHS England to make an order under subsection (1) the Care Quality Commission must—
 - (a) consult the Secretary of State and NHS England, and
 - (b) having done that, consult—
 - (i) the trust,
 - (ii) any integrated care board in whose area the trust has hospitals, establishments or facilities, and
 - (iii) any person to which the trust provides goods or services under this Act and which the Commission considers it appropriate to consult.
- (5) Before making an order under subsection (1) in a case where it is not required to do so by the Care Quality Commission, NHS England must consult—
 - (a) the trust,

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- (b) any integrated care board in whose area the trust has hospitals, establishments or facilities,
 - (c) any other person to which the trust provides goods or services under this Act and which NHS England considers it appropriate to consult, and
 - (d) the Care Quality Commission.
- (6) An order under subsection (1) 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.
- (7) NHS England must lay before Parliament (with the statutory instrument containing the order) a report stating the reasons for making the order.
- (8) If an order is made under subsection (1), NHS England 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.
- (9) A person appointed as a trust special administrator holds and vacates office in accordance with the terms of the appointment.
- (10) NHS England may pay remuneration and expenses to a trust special administrator appointed under this section.

65BA Care Quality Commission report on safety and quality of services

- (1) This section applies where the Care Quality Commission require NHS England to make an order under section 65B(1) in relation to an NHS trust.
- (2) The Care Quality Commission must, as soon as reasonably practicable after the making of the order, provide to NHS England and the Secretary of State a report on the safety and quality of the services that the trust provides under this Act.”

- 3 (1) Section 65D (NHS foundation trusts: appointment of trust special administrator) is amended as follows.
- (2) In subsections (1) and (1A)(b) and (c), for “the regulator”, in each place it occurs, substitute “NHS England”.
- (3) In subsection (2), for “The regulator” substitute “NHS England”.
- (4) After subsection (2) insert—
- “(2A) Where NHS England is not required to make an order under this section as a result of subsection (1A), it may do so only if the Secretary of State has approved the making of the order.”
- (5) In subsection (3), for “the regulator” substitute “NHS England”.
- (6) In subsection (3A)—
- (a) in paragraph (a), for “the regulator” substitute “NHS England”;
 - (b) in paragraph (b), omit sub-paragraph (ii) (but not the “and” at the end).
- (7) For subsection (4) substitute—

- “(4) Before making an order under this section in a case where it is not required to do so as a result of subsection (1A), NHS England must consult—
- (a) the trust,
 - (b) any person to which the trust provides services under this Act and which NHS England considers it appropriate to consult, and
 - (c) the Care Quality Commission.”
- (8) In subsection (6), for “The regulator” substitute “NHS England”.
- (9) In subsection (7), for “the regulator” substitute “NHS England”.
- (10) For subsection (12) substitute—
- “(12) NHS England may pay remuneration and expenses to a trust special administrator appointed under this section.”
- 4 (1) Section 65DA (objective of trust special administration) is amended as follows.
- (2) In subsection (4)(c), for “the regulator” substitute “NHS England”.
 - (3) In subsection (5), for “The regulator” substitute “NHS England”.
 - (4) In subsection (5A), for “the regulator” substitute “NHS England”.
 - (5) In subsection (6)—
 - (a) for “the regulator” substitute “NHS England”;
 - (b) omit paragraph (b).
 - (6) In subsection (7), for “The Board” substitute “NHS England”.
 - (7) In subsection (8), for “the Board” substitute “NHS England”.
- 5 (1) Section 65F (draft report) is amended as follows.
- (2) For subsections (1) to (3) substitute—

“(1) A trust special administrator appointed in relation to an NHS trust must, within the period of 65 working days beginning with the day on which the administrator’s appointment takes effect—

 - (a) provide NHS England and the Secretary of State with a draft report recommending any action that NHS England or the Secretary of State should take in relation to the trust, and
 - (b) publish a copy of that draft report.

(1A) A trust special administrator appointed in relation to an NHS foundation trust must, within the period of 65 working days beginning with the day on which the administrator’s appointment takes effect—

 - (a) provide NHS England with a draft report recommending the action that NHS England should take in relation to the trust, and
 - (b) publish a copy of that draft report,

unless unable to obtain the statements required by subsections (1B) and (1C).

(1B) A trust special administrator may not provide a draft report under subsection (1A)—

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- (a) without having obtained a statement from each commissioner that the commissioner considers that the recommendation in the draft report—
 - (i) would achieve the objective set out in section 65DA(1)(a), and
 - (ii) would do so without harming essential services provided for the purposes of the NHS by any other NHS foundation trust or NHS trust that provides services under this Act to the commissioner, or
 - (b) where the administrator is unable to obtain a statement to that effect from one or more of the commissioners (other than NHS England), without having obtained a statement to that effect from NHS England.
- (1C) A trust special administrator may not provide a draft report under subsection (1A) without having obtained a statement from the Care Quality Commission that it considers that the recommendation in the draft report would achieve that part of the objective set out in section 65DA(1)(aa).
- (2) When preparing a draft report under subsection (1) or (1A), the administrator must consult—
- (a) any person to which the trust provides goods or services under this Act and which NHS England directs the administrator to consult, and
 - (b) the Care Quality Commission.
- (3) After receiving a draft report under subsection (1) or (1A), NHS England must lay it before Parliament.”
- (3) Omit subsections (4), (5) and (5A).
- (4) For subsection (6) substitute—
- “(6) Where NHS England decides not to provide to the administrator a statement to the effect mentioned in subsection (1B)(b), NHS England must—
- (a) give a notice of the reasons for its decision to the administrator,
 - (b) publish the notice, and
 - (c) lay a copy of it before Parliament.
- (6A) Where the Care Quality Commission decides not to provide to the administrator a statement to the effect mentioned in subsection (1C), the Commission must—
- (a) give a notice of the reasons for its decision to the administrator and to NHS England,
 - (b) publish the notice, and
 - (c) lay a copy of it before Parliament.”
- 6 (1) Section 65G (consultation plan) is amended as follows.
- (2) In subsection (4)(b) for “the Board”, in both places it occurs, substitute “NHS England”.
- (3) For subsection (5) substitute—

“(5) Where NHS England decides not to provide to the administrator a statement to the effect mentioned in subsection (4)(b), NHS England must—

- (a) give a notice of the reasons for its decision to the administrator,
- (b) publish the notice, and
- (c) lay a copy of it before Parliament.

(5A) Where the Care Quality Commission decides not to provide to the administrator a statement to the effect mentioned in subsection (4A), the Commission must—

- (a) give a notice of the reasons for its decision to the administrator and to NHS England,
- (b) publish the notice, and
- (c) lay a copy of it before Parliament.”

7 (1) Section 65H (consultation requirements) is amended as follows.

(2) In subsection (7)—

- (a) omit paragraph (za);
- (b) in paragraph (b), omit “other”;
- (c) for paragraphs (c) and (d) substitute—
 - “(c) the member of Parliament for any constituency, if required by directions given by NHS England;
 - (d) any other person specified in a direction given by NHS England.”

(3) Omit subsection (8).

(4) In subsection (9)(a), omit “the Board and”.

(5) After subsection (9) insert—

“(9A) NHS England may direct the administrator to hold a meeting to seek a response from any person.”

(6) For subsection (10) substitute—

“(10) The Secretary of State may direct NHS England as to the persons from whom it should direct the administrator to—

- (a) request a written response (for NHS England’s powers of direction, see subsection (7)(c) and (d));
- (b) seek a response by holding a meeting (for NHS England’s power of direction, see subsection (9A)).”

(7) Omit subsection (10A).

(8) In subsection (12), omit paragraph (b) and the “and” before it.

(9) Omit subsection (13).

8 (1) Section 65I (final report) is amended as follows.

(2) For subsection (1) substitute—

“(1) A trust special administrator appointed in relation to an NHS trust must, within the period of 15 working days beginning with the end of the

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consultation period, provide NHS England and the Secretary of State with a final report stating any action that the administrator recommends that NHS England or Secretary of State should take in relation to the trust.

(1A) A trust special administrator appointed in relation to an NHS foundation trust must, within the period of 15 working days beginning with the end of the consultation period, provide NHS England with a final report stating the action that the administrator recommends that NHS England should take in relation to the trust.”

- (3) In subsection (2), after “the final report” insert “mentioned in subsection (1) or (1A)”.
 - (4) In subsection (3), for “the Secretary of State” substitute “NHS England”.
 - (5) Omit subsection (4).
- 9 (1) Section 65J (power to extend time) is amended as follows.
- (2) In subsection (1)—
 - (a) in paragraph (a) after “section 65F(1)” insert “or (1A)”;
 - (b) in paragraph (c), after section “65I(1)” insert “or (1A)”.
 - (3) In subsection (2), for “the Secretary of State”, in both places it occurs, substitute “NHS England”.
 - (4) Omit subsection (5).
- 10 In the italic heading before section 65K for “the regulator” substitute “NHS England”.
- 11 For section 65K substitute—

“65K Decision of NHS England or Secretary of State in case of NHS trust

- (1) Within the period of 20 working days beginning with the day on which NHS England receives a final report under section 65I relating to an NHS trust, NHS England must decide what (if any) action to take in relation to the trust.
 - (2) Within the period of 20 working days beginning with the day on which the Secretary of State receives a final report under section 65I relating to an NHS trust, the Secretary of State must decide what (if any) action to take in relation to the trust.
 - (3) NHS England and the Secretary of State must consult one another before taking the decision under subsection (1) or (2).
 - (4) After taking a decision under subsection (1) or (2) NHS England or the Secretary of State (as the case may be) 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.”
- 12 (1) Section 65KA (regulator’s decision in case of NHS foundation trust) is amended as follows.
- (2) In the heading for “Regulator’s” substitute “NHS England’s”.

- (3) In each of subsections (1) and (3) to (5), for “the regulator”, in each place it occurs, substitute “NHS England”.
- (4) In subsection (6), for “The regulator” substitute “NHS England”.
- 13 (1) Section 65KB (Secretary of State’s response to regulator’s decision) is amended as follows.
- (2) In the heading for “regulator’s” substitute “NHS England’s”.
- (3) In subsections (1)(c) and (2)(b), for “the regulator” substitute “NHS England”.
- 14 In section 65KC (action following Secretary of State’s rejection of final report), in subsections (1) and (2), for “the regulator” substitute “NHS England”.
- 15 (1) In section 65KD (Secretary of State’s response to resubmitted report) is amended as follows.
- (2) In subsection (3), for “(4) to” substitute “(5), (6) and”.
- (3) Omit subsection (4).
- (4) For subsections (5) and (6) substitute—
- “**(5)** If the notice states that an integrated care 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,
- (b) the Secretary of State may exercise the functions of NHS England under section 14Z61(2), (3)(a) and (5)(a), and
- (c) NHS England may not exercise any of its functions under section 14Z61.
- (6)** Where, by virtue of subsection (5)(b), the Secretary of State exercises the function of NHS England under section 14Z61(3)(a), the integrated care board to which the direction is given must cooperate with the Secretary of State.”
- (5) Omit subsections (7) and (8).
- 16 (1) Section 65L (trusts coming out of administration) is amended as follows.
- (2) For subsections (1) to (2B) substitute—
- “(1) Subsection (2) applies, in relation to an NHS trust, if NHS England and the Secretary of State both decide under section 65K not to dissolve the trust.
- (2) NHS England must make an order specifying a date when the following come to an end—
- (a) the appointment of the trust special administrator, and
- (b) the suspension of the chair and directors of the trust.
- (2A) Subsection (2B) applies, in relation to an NHS foundation trust, if—
- (a) the Secretary of State decides under section 65KD(9) not to dissolve the trust, or
- (b) the Secretary of State decides under section 65KB(1) or 65KD(1) that the Secretary of State is satisfied of the matters mentioned there,

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and the action recommended in the final report is to do something other than dissolve the trust.

(2B) NHS England must make an order specifying a date when the following come to an end—

- (a) the appointment of the trust special administrator, and
- (b) the suspension of the governors, chair and directors of the trust.”

(3) In subsection (7), for “the regulator”, in both places it occurs, substitute “NHS England”.

17 In section 65LA (trusts to be dissolved), in subsection (3), for “The regulator” substitute “NHS England”.

18 (1) Section 65M (replacement of trust special administrator) is amended as follows.

(2) For subsection (1) substitute—

“(1) If a trust special administrator ceases to hold office for any reason before an order is made under section 65L(2) or (2B) or the trust is dissolved, NHS England must—

- (a) appoint another person as the trust special administrator, and
- (b) publish the name of the person appointed.”

(3) In subsection (2), for “the Secretary of State” substitute “NHS England”.

(4) Omit subsection (3).

19 (1) Section 65N (guidance) is amended as follows.

(2) In subsection (1), for “the Secretary of State” substitute “NHS England”.

(3) In subsection (1A), omit paragraph (b).

(4) In subsection (3A), for “the Secretary of State” substitute “NHS England”.

(5) Omit subsection (4).

20 In section 65O (interpretation of Chapter), in subsection (1), in the definition of “trust special administrator”, for “65B(6)(a)” substitute “65B(8)(a)”.

21 In section 272 (orders, regulations, rules and directions), in subsection (5)(ab), after “65L(2)” insert “, (2B)”.

PART 2

CONSEQUENTIAL AMENDMENTS

National Health Service Act 2006

22 The National Health Service Act 2006 is amended as follows.

23 In section 13Q (public involvement and consultation by NHS England), for subsection (4) substitute—

“(4) This section does not require NHS England to make arrangements in relation to matters to which a trust special administrator’s draft or final report under section 65F or 65I relates before—

- (a) in a case where the administrator’s report relates to an NHS trust, NHS England and the Secretary of State have made their decisions under section 65K(1) and (2), or
- (b) in a case where the administrator’s report relates to an NHS foundation trust, the Secretary of State is satisfied as mentioned in section 65KB(1) or 65KD(1) or makes a decision under section 65KD(9).”

24 In section 242 (public involvement and consultation by NHS trusts), for subsection (6) substitute—

“(6) This section does not require a body to make arrangements in relation to matters to which a trust special administrator’s draft or final report under section 65F or 65I relates before—

- (a) in a case where the administrator’s report relates to an NHS trust, NHS England and the Secretary of State have made their decisions under section 65K(1) and (2), or
- (b) in a case where the administrator’s report relates to an NHS foundation trust, the Secretary of State is satisfied as mentioned in section 65KB(1) or 65KD(1) or makes a decision under section 65KD(9).”

Health and Social Care Act 2008

25 In section 29A of the Health and Social Care Act 2008 (warning notice: quality of health care), in subsection (5), for paragraph (b) substitute—

- “(b) must consider in particular whether to require NHS England to make an order under section 65B(1) or 65D(2) of the National Health Service Act 2006 (appointment of trust special administrator).”