

HEALTH AND SOCIAL CARE ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4 – NHS foundation trusts and NHS trusts

Failure

Section 174 – Trust special administrators

1065. This section, and subsequent sections, amend the trust special administration provisions in Chapter 5A of Part 2 of the NHS Act (as amended by the Health Act 2009), provisions which have yet to be applied in practice. The amendments provide for a new role for Monitor to appoint a trust special administrator to oversee an unsustainable foundation trust, on Monitor's behalf, to secure continuity of NHS services in line with the requirements determined by commissioners. The Act provides specific grounds for the Secretary of State to exercise a right to veto the action recommended for a foundation trust by the trust special administrator in individual cases.
1066. This section provides for the trust special administration provisions to apply to NHS trusts separately from foundation trusts. In the case of an NHS trust the process would remain unchanged from the previous legislation.
1067. The section amends Section 65D of the NHS Act to:
- Allow Monitor to appoint a trust special administrator to take control of a foundation trust's affairs, on Monitor's behalf, and to work with commissioners to secure continuity of NHS services without the foundation trust being de-authorised;
 - Changes the statutory test that would trigger trust special administration for a foundation trust to a test based on whether the trust is clinically and/or financially sustainable in its current form; and
 - Provide for the trust special administrator to carry out the functions of the council of governors and the board of directors, who would be suspended whilst the trust special administrator is in post. This suspension would not affect the employment of the executive directors and their membership of any committee or sub-committee of the trust. Monitor may indemnify the trust special administrator as it considers appropriate. This is to allow the administrator to retain certain essential personnel, such as the Medical Director, to help him or her manage the foundation trust.
1068. The effect of this section is that if Monitor is satisfied that a foundation trust has become, or is likely to become, clinically or financially unsustainable such that it would be unable to meet current liabilities, the process is as follows:
- Monitor makes an order appointing a trust special administrator to exercise the functions of the chairman, directors and governors of the trust and publishes a report setting out its reason for doing so. Before making such an order, Monitor must consult the Secretary of State. They must then consult the trust, the NHS Commissioning Board, the Care Quality Commission and commissioners of NHS

*These notes refer to the Health and Social Care Act 2012
(c.7) which received Royal Assent on 27 March 2012*

services provided by the foundation trust as they consider appropriate. The appointment of the trust special administrator takes effect within 5 working days of the date on which the order is made;

- After the order is made, the Care Quality Commission must provide Monitor with a report on the quality and safety of the services provided by the trust;
- The administrator appointed manages the foundation trust's affairs, business and property, and exercises their functions in order to secure the continuity of NHS services, as required by commissioners, until these requirements are met.