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# Health and Social Care Act 2012

## 2012 CHAPTER 7

### PART 3

#### REGULATION OF HEALTH AND ADULT SOCIAL CARE SERVICES

### CHAPTER 5

#### HEALTH SPECIAL ADMINISTRATION

PROSPECTIVE

#### 128 Health special administration orders

- (1) In this Chapter “health special administration order” means an order which—
  - (a) is made by the court in relation to a relevant provider, and
  - (b) directs that the affairs, business and property of the provider are to be managed by one or more persons appointed by the court.
- (2) An application to the court for a health special administration order may be made only by [<sup>F1</sup>NHS England].
- (3) A person appointed as mentioned in subsection (1)(b) is referred to in this Chapter as a “health special administrator”.
- (4) A health special administrator of a company—
  - (a) is an officer of the court, and
  - (b) in exercising functions in relation to the company, is the company's agent.
- (5) A person is not to be the health special administrator of a company unless the person is qualified to act as an insolvency practitioner in relation to the company.
- (6) A health special administrator of a relevant provider must manage its affairs, business and property, and exercise the health special administrator's functions, so as to—

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- (a) achieve the objective set out in section 129 as quickly and as efficiently as is reasonably practicable,
  - (b) in seeking to achieve that objective, ensure that any regulated activity carried on in providing the services provided by the provider is carried on in accordance with any requirements or conditions imposed in respect of that activity by virtue of Chapter 2 of Part 1 of the Health and Social Care Act 2008,
  - (c) so far as is consistent with the objective set out in section 129, protect the interests of the creditors of the provider as a whole, and
  - (d) so far as is consistent with that objective and subject to those interests, protect the interests of the members of the provider as a whole.
- (7) In relation to a health special administration order applying to a non-GB company, references in this Chapter to the affairs, business and property of the company are references only to its affairs and business so far as carried on in Great Britain and to its property in Great Britain.
- (8) In this section—
- (a) a reference to a person qualified to act as an insolvency practitioner in relation to a company is to be construed in accordance with Part 13 of the Insolvency Act 1986 (insolvency practitioners and their qualifications);
  - (b) “regulated activity” has the same meaning as in Part 1 of the Health and Social Care Act 2008 (see section 8 of that Act).
- (9) In this Chapter—
- “business” and “property” each have the same meaning as in the Insolvency Act 1986 (see section 436 of that Act);
- “company” includes a company not registered under the Companies Act 2006;
- “court”, in relation to a company, means the court—
- (a) having jurisdiction to wind up the company, or
  - (b) that would have such jurisdiction apart from section 221(2) or 441(2) of the Insolvency Act 1986 (exclusion of winding up jurisdiction in case of companies incorporated in, or having principal place of business in, Northern Ireland);
- “member” is to be read in accordance with section 250 of the Insolvency Act 1986;
- “non-GB company” means a company incorporated outside Great Britain;
- “relevant provider” means a company which is providing services to which a condition included in the company's licence under section 97(1)(i), (j) or (k) applies;
- “wholly-owned subsidiary” has the meaning given by section 1159 of the Companies Act 2006.

#### **Textual Amendments**

**F1** Words in s. 128(2) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 74; S.I. 2022/734, reg. 2\(a\), Sch. \(with regs. 13, 29, 30\)](#)

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PROSPECTIVE

## 129 Objective of a health special administration

- (1) The objective of a health special administration is to secure—
  - (a) the continued provision of such of the health care services provided for the purposes of the NHS by the company subject to the health special administration order, at such level, as the commissioners of those services determine by applying criteria specified in health special administration regulations (see section 130), and
  - (b) that it becomes unnecessary, by one or both of the means set out in subsection (2), for the health special administration order to remain in force for that purpose.
- (2) Those means are—
  - (a) the rescue as a going concern of the company subject to the health special administration order, and
  - (b) one or more transfers falling within subsection (3).
- (3) A transfer falls within this subsection if it is a transfer as a going concern—
  - (a) to another person, or
  - (b) as respects different parts of the undertaking of the company subject to the health special administration order, to two or more other persons,of so much of that undertaking as it is appropriate to transfer for the purpose of achieving the objective of the health special administration.
- (4) The means by which a transfer falling within subsection (3) may be effected include in particular—
  - (a) a transfer of the undertaking of the company subject to the health special administration order, or of part of its undertaking, to a wholly-owned subsidiary of that company, and
  - (b) a transfer to a company of securities of a wholly-owned subsidiary to which there has been a transfer falling within paragraph (a).
- (5) The objective of a health special administration may be achieved by transfers to the extent only that—
  - (a) the rescue as a going concern of the company subject to the health special administration order is not reasonably practicable or is not reasonably practicable without such transfers,
  - (b) the rescue of the company as a going concern will not achieve that objective or will not do so without such transfers,
  - (c) such transfers would produce a result for the company's creditors as a whole that is better than the result that would be produced without them, or
  - (d) such transfers would, without prejudicing the interests of its creditors as a whole, produce a result for the company's members as a whole that is better than the result that would be produced without them.

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### **130 Health special administration regulations**

- (1) Regulations (referred to in this Chapter as “health special administration regulations”) must make further provision about health special administration orders.
- (2) Health special administration regulations may apply with or without modifications—
  - (a) any provision of Part 2 of the Insolvency Act 1986 (administration) or any related provision of that Act, and
  - (b) any other enactment which relates to insolvency or administration or makes provision by reference to anything that is or may be done under that Act.
- (3) Health special administration regulations may, in particular, provide that the court may make a health special administration order in relation to a relevant provider if it is satisfied, on a petition by the Secretary of State under section 124A of the Insolvency Act 1986 (petition for winding up on grounds of public interest), that it would be just and equitable (disregarding the objective of the health special administration) to wind up the provider in the public interest.
- (4) Health special administration regulations may make provision about—
  - (a) the application of procedures under the Insolvency Act 1986 in relation to relevant providers, and
  - (b) the enforcement of security over property of relevant providers.
- (5) Health special administration regulations may, in particular, make provision about the publication and maintenance by [F<sup>2</sup>NHS England] of a list of relevant providers.
- (6) Health special administration regulations may in particular—
  - (a) require [F<sup>3</sup>NHS England] to publish guidance for commissioners about the application of the criteria referred to in section 129(1)(a);
  - (b) confer power on [F<sup>4</sup>NHS England] to revise guidance published by virtue of paragraph (a) and require it to publish guidance so revised;
  - (c) require [F<sup>5</sup>NHS England], before publishing guidance by virtue of paragraph (a) or (b), to obtain the approval of the Secretary of State<sup>F<sup>6</sup></sup>...;
  - (d) require commissioners, when applying the criteria referred to in section 129(1)(a), to have regard to such matters as [F<sup>7</sup>NHS England] may specify in guidance published by virtue of paragraph (a) or (b);
  - (e) require [F<sup>8</sup>NHS England] to make arrangements for facilitating agreement between commissioners in their exercise of their function under section 129(1)(a);
  - (f) confer power on [F<sup>8</sup>NHS England], where commissioners fail to reach agreement in pursuance of arrangements made by virtue of paragraph (e), to exercise their function under section 129(1)(a);
  - (g) provide that, in consequence of the exercise of the power conferred by virtue of paragraph (f), the function under section 129(1)(a), so far as applying to the commissioners concerned, is to be regarded as discharged;
  - (h) require a health special administrator to carry out in accordance with the regulations consultation on the action which the administrator recommends should be taken in relation to the provider concerned.
- (7) Health special administration regulations may modify this Chapter or any enactment mentioned in subsection (8) in relation to any provision made by virtue of this Chapter.
- (8) The enactments are—

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- (a) the Insolvency Act 1986, and
  - (b) any other enactment which relates to insolvency or administration or makes provision by reference to anything that is or may be done under that Act.
- (9) The power to make rules under section 411 of the Insolvency Act 1986 (company insolvency rules) applies for the purpose of giving effect to provision made by virtue of this Chapter as it applies for the purpose of giving effect to Parts 1 to 7 of that Act.
- (10) For that purpose—
- (a) the power to make rules in relation to England and Wales is exercisable by the Lord Chancellor with the concurrence of the Secretary of State and, in the case of rules that affect court procedure, with the concurrence of the Lord Chief Justice;
  - (b) the power to make rules in relation to Scotland is exercisable by the Secretary of State;
  - (c) references in section 411 of that Act to those Parts are to be read as including a reference to this Chapter.
- (11) Before making health special administration regulations the Secretary of State must consult [<sup>F9</sup>such persons as the Secretary of State considers appropriate].

#### Textual Amendments

- F2** Words in s. 130(5) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 75(2)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F3** Words in s. 130(6)(a) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 75(3)(a)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F4** Words in s. 130(6)(b) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 75(3)(a)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F5** Words in s. 130(6)(c) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 75(3)(b)(i)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F6** Words in s. 130(6)(c) omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 75(3)(b)(ii)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F7** Words in s. 130(6)(d) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 75(3)(c)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F8** Words in s. 130 substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 1 para. 1(1)(2); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F9** Words in s. 130(11) substituted for s. 130(11)(a)(b) (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 75(4)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

#### Commencement Information

- I1** S. 130 partly in force; s. 130 in force for specified purposes at Royal Assent, see s. 306(1)(d)

## 131 Transfer schemes

- (1) Health special administration regulations may make provision about transfer schemes to achieve the objective of a health special administration (see section 129).
- (2) Health special administration regulations may, in particular, include provision—
  - (a) for the making of a transfer scheme to be subject to the consent of [<sup>F10</sup>NHS England] and the person to whom the transfer is being made,

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- (b) for [F11NHS England] to have power to modify a transfer scheme with the consent of parties to the transfers effected by the scheme, and
  - (c) for modifications made to a transfer scheme by virtue of paragraph (b) to have effect from such time as [F12NHS England] may specify (which may be a time before the modifications were made).
- (3) Health special administration regulations may, in particular, provide that a transfer scheme may include provision—
- (a) for the transfer of rights and liabilities under or in connection with a contract of employment from a company subject to a health special administration order to another person,
  - (b) for the transfer of property, or rights and liabilities other than those mentioned in paragraph (a), from a company subject to a health special administration order to another person,
  - (c) for the transfer of property, rights and liabilities which would not otherwise be capable of being transferred or assigned,
  - (d) for the transfer of property acquired, and rights and liabilities arising, after the making of the scheme,
  - (e) for the creation of interests or rights, or the imposition of liabilities, and
  - (f) for the transfer, or concurrent exercise, of functions under enactments.

#### Textual Amendments

- F10** Words in s. 131(2)(a) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 76](#); [S.I. 2022/734](#), [reg. 2\(a\)](#), [Sch.](#) (with [regs. 13, 29, 30](#))
- F11** Words in s. 131(2)(b) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 76](#); [S.I. 2022/734](#), [reg. 2\(a\)](#), [Sch.](#) (with [regs. 13, 29, 30](#))
- F12** Words in s. 131(2)(c) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 76](#); [S.I. 2022/734](#), [reg. 2\(a\)](#), [Sch.](#) (with [regs. 13, 29, 30](#))

#### Commencement Information

- I2** [S. 131](#) partly in force; [s. 131](#) in force for specified purposes at Royal Assent, see [s. 306\(1\)\(d\)](#)

## 132 Indemnities

Health special administration regulations may make provision about the giving by [F13NHS England] of indemnities in respect of—

- (a) liabilities incurred in connection with the discharge by health special administrators of their functions, and
- (b) loss or damage sustained in that connection.

#### Textual Amendments

- F13** Words in s. 132 substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 77](#); [S.I. 2022/734](#), [reg. 2\(a\)](#), [Sch.](#) (with [regs. 13, 29, 30](#))

#### Commencement Information

- I3** [S. 132](#) partly in force; [s. 132](#) in force for specified purposes at Royal Assent, see [s. 306\(1\)\(d\)](#)

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### **133 Modification of this Chapter under Enterprise Act 2002**

- (1) The power to modify or apply enactments conferred on the Secretary of State by each of the sections of the Enterprise Act 2002 mentioned in subsection (2) includes power to make such consequential modifications of provision made by virtue of this Chapter as the Secretary of State considers appropriate in connection with any other provision made under that section.
- (2) Those sections are—
  - (a) sections 248 and 277 (amendments consequential on that Act), and
  - (b) section 254 (power to apply insolvency law to foreign companies).

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#### **Commencement Information**

**I4** S. 133 partly in force; s. 133 in force for specified purposes at Royal Assent, see s. 306(1)(d)

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**Changes and effects yet to be applied to :**

- 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\(5\)](#)