



# Care Act 2014

## 2014 CHAPTER 23

### PART 3

#### HEALTH

### CHAPTER 4

#### TRUST SPECIAL ADMINISTRATION

#### **120 Powers of administrator etc.**

- (1) In section 65O of the National Health Service Act 2006 (Chapter 5A of Part 2: interpretation) (the existing text of which becomes subsection (1)) at the end insert—
- “(2) The references in this Chapter to taking action in relation to an NHS trust include a reference to taking action, including in relation to another NHS trust or an NHS foundation trust, which is necessary for and consequential on action taken in relation to that NHS trust.
- (3) The references in this Chapter to taking action in relation to an NHS foundation trust include a reference to taking action, including in relation to another NHS foundation trust or an NHS trust, which is necessary for and consequential on action taken in relation to that NHS foundation trust.”
- (2) In section 65F of that Act (administrator’s draft report), in subsection (1), for “45 working days” substitute “65 working days”.
- (3) In subsection (5)(a) of that section, for “would achieve the objective set out in section 65DA(1)(a)” substitute “—
- (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

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or NHS trust that provides services under this Act to the commissioner.”.

(4) After subsection (7) of that section insert—

“(8) Where the administrator recommends taking action in relation to another NHS foundation trust or an NHS trust, the references in subsection (5) to a commissioner also include a reference to a person to which the other NHS foundation trust or the NHS trust provides services under this Act that would be affected by the action.

(9) A service provided by an NHS foundation trust or an NHS trust is an essential service for the purposes of subsection (5) if the person making the statement in question is satisfied that the criterion in section 65DA(3) is met.

(10) Section 65DA(4) applies to the person making the statement when that person is determining whether that criterion is met.”

(5) In section 65G of that Act (consultation plan), in subsection (2), for “30 working days” substitute “40 working days”.

(6) In subsection (4)(a) of that section, for “would achieve the objective set out in section 65DA(1)(a)” substitute “—

(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.”.

(7) After subsection (6) of that section insert—

“(7) Where the administrator recommends taking action in relation to another NHS foundation trust or an NHS trust, the references in subsection (4) to a commissioner also include a reference to a person to which the other NHS foundation trust or the NHS trust provides services under this Act that would be affected by the action.”

(8) A service provided by an NHS foundation trust or an NHS trust is an essential service for the purposes of subsection (4) if the person making the statement in question is satisfied that the criterion in section 65DA(3) is met.

(9) Section 65DA(4) applies to the person making the statement when that person is determining whether that criterion is met.”

(8) In section 65H of that Act (consultation requirements), in subsection (4)—

(a) after “trust special administrator must” insert “—

(a)”,  
and

(b) at the end insert “, and

(b) in the case of each affected trust, hold at least one meeting to seek responses from staff of the trust and from such persons as the trust special administrator may recognise as representing staff of the trust.”

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(9) In subsection (7) of that section, after paragraph (b) (but before paragraph (ba) inserted by section 85(10)(a) of this Act) insert—

- “(bza) any affected trust;
- (bzb) any person to which an affected trust provides goods or services under this Act that would be affected by the action recommended in the draft report;
- (bzc) any local authority in whose area the trust provides goods or services under this Act;
- (bzd) any local authority in whose area an affected trust provides goods or services under this Act;
- (bze) any Local Healthwatch organisation for the area of a local authority mentioned in paragraph (bzc) or (bzd);”.

(10) In subsection (8) of that section, omit paragraph (e).

(11) In subsection (9) of that section—

- (a) after “trust special administrator must” insert “—  
(a)”,
- (b) after “subsection (7)(b),” (but before the insertion made by section 85(10)(b) of this Act) insert “(bzb),” and
- (c) at the end insert—
  - “(b) hold at least one meeting to seek responses from representatives of each of the trusts from which the administrator must request a written response under subsection (7)(bza), and
  - (c) hold at least one meeting to seek responses from representatives of each of the local authorities and Local Healthwatch organisations from which the administrator must request a written response under subsection (7)(bzc), (bzd) and (bze).”

(12) After subsection (11) of that section, insert—

“(11A) In this section, “affected trust” means—

- (a) where the trust in question is an NHS trust, another NHS trust, or an NHS foundation trust, which provides goods or services under this Act that would be affected by the action recommended in the draft report;
- (b) where the trust in question is an NHS foundation trust, another NHS foundation trust, or an NHS trust, which provides services under this Act that would be affected by the action recommended in the draft report.

(11B) In this section, a reference to a local authority includes a reference to the council of a district only where the district is comprised in an area for which there is no county council.”

(13) In subsection (12)(a) of that section, after “subsection (7)(b)”, insert “, (bzb), (bzc) and (bzd)”.

(14) In section 65N of that Act (guidance), after subsection (1) insert—

“(1A) It must, in so far as it applies to NHS trusts, include guidance about—

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- (a) seeking the support of commissioners for an administrator’s recommendation;
  - (b) involving the Board in relation to finalising an administrator’s report or draft report.”
- (15) In section 13Q of that Act (public involvement and consultation by NHS Commissioning Board), at the end insert—
- “(4) This section does not require the Board to make arrangements in relation to matters to which a trust special administrator’s report or draft report under section 65F or 65I relates before the Secretary of State makes a decision under section 65K(1), is satisfied as mentioned in section 65KB(1) or 65KD(1) or makes a decision under section 65KD(9) (as the case may be).”
- (16) In section 14Z2 of that Act (public involvement and consultation by clinical commissioning groups), at the end insert—
- “(7) This section does not require a clinical commissioning group to make arrangements in relation to matters to which a trust special administrator’s report or draft report under section 65F or 65I relates before the Secretary of State makes a decision under section 65K(1), is satisfied as mentioned in section 65KB(1) or 65KD(1) or makes a decision under section 65KD(9) (as the case may be).”
- (17) In section 242 of that Act (public involvement and consultation by NHS trusts and foundation trusts), in subsection (6)—
- (a) for “65I, 65R or 65U” substitute “or 65I”, and
  - (b) for the words from “the decision” to the end substitute “the Secretary of State makes a decision under section 65K(1), is satisfied as mentioned in section 65KB(1) or 65KD(1) or makes a decision under section 65KD(9) (as the case may be).”
- (18) In Schedule 14 to the Health and Social Care Act 2012 (abolition of NHS trusts in England: consequential amendments)—
- (a) after paragraph 4 insert—
    - “4A In section 13Q(4) (public involvement and consultation by Board), omit “makes a decision under section 65K(1),”.
    - 4B In section 14Z2 (public involvement and consultation by clinical commissioning groups), omit “makes a decision under section 65K(1),”.
  - (b) in paragraph 15(4), in the new subsection (2A) to be inserted into section 65F of the National Health Service Act 2006, in paragraph (a), for “would achieve the objective set out in section 65DA(1)(a)” substitute “—
    - (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 that provides services under this Act to the commissioner,”
  - (c) in paragraph 15(4), after the new subsection (2C) to be inserted into that section, insert—

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- “(2D) Where the administrator recommends taking action in relation to another NHS foundation trust, the references in subsection (2A) to a commissioner also include a reference to a person to which the other NHS foundation trust provides services under this Act that would be affected by the action.
- (2E) A service provided by an NHS foundation trust is an essential service for the purposes of subsection (2A) if the person making the statement in question is satisfied that the criterion in section 65DA(3) is met.
- (2F) Section 65DA(4) applies to the person making the statement when that person is determining whether that criterion is met.”,
- (d) in paragraph 15, after sub-paragraph (7) insert—
- “(8) Omit subsections (8) to (10).”,
- (e) in paragraph 16 (the text of which becomes sub-paragraph (1)) at the end insert—
- “(2) In subsection (4)(a)(ii) of that section, omit “or NHS trust”.
- (3) In subsection (7) of that section, omit “or an NHS trust” and “or the NHS trust”.
- (4) In subsection (8) of that section, omit “or an NHS trust”.
- (f) in paragraph 17, in sub-paragraph (2)(a), for “paragraph (b)” substitute “paragraphs (b), (bzb), (bzc) and (bzd)”,
- (g) in that paragraph, after sub-paragraph (4) insert—
- “(4A) In subsection (11A)—
- (a) omit paragraph (a), and
- (b) in paragraph (b), omit “where the trust in question is an NHS foundation trust,” and “, or an NHS trust.”,
- (h) in paragraph 24, after sub-paragraph (2) insert—
- “(2A) Omit subsection (1A).”,
- (i) after that paragraph insert—
- “24A In section 65O (interpretation)—
- (a) omit subsection (2), and
- (b) in subsection (3), omit “or an NHS trust.”, and
- (j) in paragraph 35, omit the “and” preceding paragraph (d) and after that paragraph insert “, and
- (e) in subsection (6), omit “makes a decision under section 65K(1).”.