

Publication withdrawn

These directions were replaced on 1 July 2022 by [The NHS England \(Healthcare Safety Investigation Branch\) directions 2022](#).

DIRECTIONS

NATIONAL HEALTH SERVICE, ENGLAND

The National Health Service Trust Development Authority Directions and Revocations and the Revocation of the Imperial College Healthcare National Health Service Trust Directions 2016

The Secretary of State for Health, in exercise of the powers conferred by sections 7(1), 8(1), 272(7) and (8) and 273(1) of the National Health Service Act 2006^(a) gives the following Directions.

PART 1

Introduction

Citation, commencement and interpretation

1.—(1) These Directions may be cited as the National Health Service Trust Development Authority Directions and Revocations and the Revocation of the Imperial College Healthcare National Health Service Trust Directions 2016.

(2) These Directions come into force on 1st April 2016.

(3) These Directions are given to the National Health Service Trust Development Authority^(b).

(4) In these Directions—

“the 2006 Act” means the National Health Service Act 2006;

“the 2008 Act” means the Health and Social Care Act 2008^(c);

“the Authority” means the National Health Service Trust Development Authority;

“Care Quality Commission requirements” means requirements referred to in section 12(2) of the 2008 Act (grant or refusal of registration as a service provider) in relation to any regulated activity that an English NHS trust carries on;

“the Commission” means the Care Quality Commission^(d);

“English NHS trust” means an NHS trust all or most of whose hospitals, facilities and establishments are situated in England;

“Monitor” means the body which is continued in existence by section 61(1) of the Health and Social Care Act 2012^(e) (Monitor);

(a) 2006 c.41. By virtue of section 271(1) of the National Health Service Act 2006 (“the 2006 Act”) the functions of the Secretary of State under those sections as exercised in making these Directions are exercisable only in relation to England. Section 7 was amended by section 21 of the Health and Social Care Act 2012 (c.7) (“the 2012 Act”). Section 8 was amended by paragraph 5 of Schedule 4 to, and paragraph 3 of Schedule 14 (not yet in force) to, the 2012 Act.

(b) The National Health Service Trust Development Authority is established by the National Health Service Trust Development Authority (Establishment and Constitution) Order 2012, S.I. 2012/901, amended by S.I. 2013/235 and 2013/260.

(c) 2008 c.14.

(d) The Care Quality Commission is established under section 1 of the Health and Social Care Act 2008 (c.14).

(e) 2012 c.7.

“regulated activity” means an activity prescribed as a regulated activity for the purposes of section 8(1) of the 2008 Act (regulated activity)(a);

“relevant standards” means—

(a) the Care Quality Commission requirements; and

(b) the standards set from time to time by the Authority for English NHS trusts, in relation to the performance by those trusts of their functions, including in guidance issued by the Authority to English NHS trusts, including the guidance in the document entitled “Delivering the Five Year Forward View: NHS Planning Guidance 2016/17–2020/21”(b) which is published by the National Health Service Commissioning Board(c), Monitor, the Authority, the Commission, Public Health England(d), Health Education England(e) and the National Institute for Health and Care Excellence(f);

“significant commercial transactions” means transactions which the Secretary of State considers to be significant based on the level of financing required to complete that transaction and the nature of that transaction; and

“special trustees” has the meaning given in section 212(1) of the 2006 Act (special trustees for a university hospital or teaching hospital).

PART 2

General functions relating to improvement in the health service and designing methods and publishing guidance

Functions relating to improvement in the health service

2.—(1) The Secretary of State directs the Authority to work collaboratively with Monitor under a single leadership and operating model, including supporting work, to ensure improvement in quality of care, patient safety and financial sustainability across the health service.

(2) The Secretary of State directs the Authority to take such steps as it considers necessary and appropriate to assist and support persons providing services as part of the health service to ensure continuous improvement in the quality of the provision of such health services and their financial sustainability.

Functions of the Authority relating to designing methods, developing and publishing guidance

3.—(1) The Secretary of State directs the Authority to take such steps as it considers necessary and appropriate, to design methods to be used by the Authority and develop and publish guidance as the Authority considers necessary, in connection with the Authority—

(a) making appointments of the chair and non-executive directors of English NHS trusts, special trustees and trustees for English NHS trusts(g) and NHS foundation trusts(h);

(a) See regulation 3 (prescribed activities) of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, S.I. 2014/2936 amended by S.I. 2015/643 and 2015/664.

(b) The document can be found at <http://www.ntda.nhs.uk/blog/2015/12/22/delivering-the-forward-view-nhs-shared-planning-guidance-201617-202021/>. A hard copy can be obtained from Room 239, Richmond House, Department of Health, 79 Whitehall, London, SW1A 2NS.

(c) See section 1H of the 2006 Act which establishes the National Health Service Commissioning Board (known as “NHS England”). Section 1H is inserted into the 2006 Act by section 9(1) of the 2012 Act.

(d) Public Health England means the executive agency of that name of the Department of Health.

(e) See section 96(1) of the Care Act 2014 which establishes Health Education England (known as “HEE”).

(f) See section 232 of the 2012 Act which establishes the National Institute for Health and Care Excellence (known as “NICE”).

(g) See section 25 of the 2006 Act. Trustees are appointed for an NHS trust to hold property on trust pursuant to paragraph 10 of Schedule 4 to the 2006 Act. Section 25 is repealed by section 179 (not yet in force) of the 2012 Act.

(h) See section 30 of the 2006 Act which is amended by section 159(1) of the 2012 Act. Trustees are appointed for an NHS foundation trust to hold property on trust pursuant to section 51 of the 2006 Act. Section 51(4) is repealed by section 179(6) of, and paragraphs (1) and (7) of Schedule 14 (not yet in force) to, the 2012 Act.

- (b) overseeing, developing and supporting English NHS trusts including in relation to clinical quality, governance and management of risk in English NHS trusts, compliance by English NHS trusts with relevant standards, and the progress of English NHS trusts as set out in direction 6(b)(i)(cc); and
- (c) working collaboratively with Monitor to oversee, develop and support providers of health services with the objective of continuing the improvement in the quality of such services.

(2) The reference in paragraph (1) to developing and publishing guidance in relation to sub-paragraphs (a) and (b) is to be read as guidance to English NHS trusts, special trustees and trustees for English NHS trusts and NHS foundation trusts.

PART 3

Functions relating to appointments

Functions of the Authority relating to the exercise of some of the Secretary of State's appointments functions

4.—(1) The Secretary of State directs the Authority—

- (a) to exercise any function of the Secretary of State to appoint—
 - (i) the chair and non-executive directors of English NHS trusts;
 - (ii) special trustees;
 - (iii) trustees for English NHS trusts and NHS foundation trusts;
 - (iv) the non-executive directors of a company appointed as trustee to—
 - (aa) an English NHS trust pursuant to an order made under paragraph 10(1) of Schedule 4 to the 2006 Act^(a) (trust funds and trustees); or
 - (bb) an NHS foundation trust pursuant to an order made under section 51(1) of the 2006 Act^(b) (trust funds and trustees);
- (b) to exercise the functions of the Secretary of State under regulations 3, 7, 9, 9A, 9C and 12 of the National Health Service Trusts (Membership and Procedure) Regulations 1990^(c) (appointment of directors, tenure of office of chairman and directors, termination of tenure of office, suspension of chairman and non-executive directors, appointment of vice chairman where chairman is suspended and cessation of disqualification) in so far as they relate to the chair and non-executive directors of English NHS trusts;
- (c) to exercise any powers of the Secretary of State in relation to the termination of the tenure of office of the trustees specified in sub-paragraph (a)(ii) and (iii);
- (d) to exercise any function of the Secretary of State in relation to the making of requests to a company appointed as trustee to an English NHS trust or NHS foundation trust under sub-paragraph (a)(iv) to terminate the tenure of office of a non-executive director of that company;
- (e) to record, update and keep information about appointments to the offices specified in sub-paragraph (a) and about applications by persons seeking appointment to such offices;
- (f) to provide advice to the chair and non-executive directors of English NHS trusts and the trustees specified in sub-paragraph (a)(ii) and (iii) with respect to the development of their role as chair, non-executive director or trustee;

^(a) Schedule 4 is repealed by section 179(2) (not yet in force) of the 2012 Act.

^(b) Section 51(4) is repealed by section 179 of, and paragraphs 1 and 7 of Schedule 14 (not yet in force) to, the 2012 Act.

^(c) S.I. 1990/2024; Regulations 9A and 9C were inserted by S.I. 2008/1269, and these cited regulations are otherwise amended by S.I. 1996/1755, 1997/2990, 2001/3786, 2006/1722, 2008/1269 and 2010/720.

- (g) to secure that the chair and non-executive directors of English NHS trusts and the trustees specified in sub-paragraph (a)(ii) and (iii) receive training and other assistance with respect to the performance of their functions as chair, non-executive director or trustee;
 - (h) to develop procedures for appraising the performance of the chair and non-executive directors of English NHS trusts and of trustees specified in sub-paragraph (a)(ii) and (iii), and for carrying out those appraisals as required under those procedures; and
 - (i) to carry out the appraisals of the chair and non-executive directors of English NHS trusts and of trustees specified in sub-paragraph (a)(ii) and (iii) as required under the procedures developed under sub-paragraph (h).
- (2) In exercising the functions in paragraph (1)(a) the Authority must—
- (a) develop—
 - (i) descriptions of the duties and role of the offices specified in paragraph (1)(a); and
 - (ii) criteria for appointment to those offices;
 - (b) use and have regard to the descriptions and criteria developed under paragraph (2)(a);
 - (c) ensure that the procedures for appointment operated by the Authority are open, transparent and comply with the Code of Practice given by the Commissioner for Public Appointments(a);
 - (d) have regard to the need to maintain public confidence in the process of public appointments; and
 - (e) consult, when exercising the function—
 - (i) in paragraph (1)(a)(ii), the chair of the body which manages the hospital for which the special trustee is appointed; and
 - (ii) in paragraph (1)(a)(iii), the chair of the English NHS trust or NHS foundation trust concerned.

PART 4

Functions relating to the exercise of English NHS trusts

General objective of the Authority when exercising functions relating to English NHS trusts

5.—(1) The Authority must exercise its functions with the objective of ensuring that English NHS trusts are able to comply with their duty under section 26 of the 2006 Act (b)(general duty of NHS trusts) to exercise their functions efficiently, economically and effectively by, for example, the English NHS trust establishing and maintaining best practice corporate governance arrangements and financial management standards, and effectively implementing systems and processes.

(2) In exercising its functions with the objective referred to in paragraph (1), the Authority may, in particular, have regard to the extent to which the participation of English NHS trusts in new models and arrangements in respect of the provision of health services as part of the health service may contribute to the compliance by those trusts with their duty under section 26 of the 2006 Act.

Functions of the Authority

6. The Secretary of State directs the Authority—

- (a) to, where it considers it to be appropriate, give directions to English NHS trusts about their exercise of any of their functions;

(a) The Code of Practice is available at <http://publicappointmentscommissioner.independent.gov.uk/the-code-of-practice>. A hard copy can be obtained from Room 239, Richmond House, Department of Health, 79 Whitehall, London, SW1A 2NS

(b) Section 26 is repealed by section 179(2) (not yet in force) of the 2012 Act.

- (b) to oversee, develop and support English NHS trusts including by—
 - (i) assessing—
 - (aa) clinical quality, governance and management of risk, including financial risk, in English NHS trusts;
 - (bb) English NHS trusts’ compliance with relevant standards; and
 - (cc) the progress of English NHS trusts towards being able to satisfy Monitor of the matters specified in section 35(2) of the 2006 Act^(a) (authorisation of NHS foundation trusts) as to which Monitor must be satisfied prior to giving an authorisation as an NHS foundation trust under that section; and
 - (ii) where the Authority considers improvements in clinical quality, governance and management of risk, including financial risk, could be made, or where English NHS trusts are not meeting relevant standards, or where suitable progress is not, in the Authority’s opinion, being made under sub-paragraph (i)(cc)—
 - (aa) assisting those trusts to make improvements, meet such standards, or make such progress by providing advice, support, help or guidance; and
 - (bb) giving directions to those trusts to require them to take such steps as the Authority considers appropriate;
- (c) to ensure that English NHS trusts comply with such conditions which are equivalent to the conditions of any licence issued by Monitor under Chapter 3 of Part 3 of the Health and Social Care Act 2012^(b) (licensing) as the Authority deems appropriate to apply to English NHS trusts, which may be by setting these conditions out in relevant standards or by giving directions to an English NHS trust where necessary;
- (d) to, in exercising the functions in sub-paragraph (c), seek and consider advice from Monitor, including advice on what steps an English NHS trust should take to ensure compliance by that English NHS trust with such conditions;
- (e) to continue to provide advice to English NHS trusts to assist those trusts to prepare plans for each financial year as to how those trusts will exercise their functions;
- (f) to scrutinise the plans prepared by English NHS trusts referred to in sub-paragraph (e) and where the Authority considers that those plans could be improved—
 - (i) to provide feedback on the plans to those trusts; and
 - (ii) to assist those trusts to amend those plans to take that feedback into account;
- (g) to oversee, develop and support English NHS trusts to assist those trusts to become sustainable organisations including by—
 - (i) supporting English NHS trusts to comply with their duty under section 26 of the 2006 Act^(c) to exercise their functions effectively, efficiently and economically, in particular by providing advice and support in respect of the efficient management of their estates including the achievement of efficiency savings and reduced running costs and the identification and disposal of surplus land;
 - (ii) supporting English NHS trusts to ensure they are in a position to make an application for authorisation under section 33 of the 2006 Act^(d) (applications by NHS trusts) as an NHS foundation trust under section 35 of the 2006 Act^(e) (authorisation of NHS foundation trusts);

(a) Section 35(2) is amended by section 151(9) and 159(3) of the 2012 Act and is repealed by section 180 (not yet in force) of the 2012 Act.

(b) 2012 c.7. Chapter 3 of Part 3 is amended by section 114 (not in force) of the 2012 Act and sections 26 and 51 of, and paragraphs 127 to 130 of Schedule 6 to, and paragraphs 20 to 22 of Schedule 14 to, the Enterprise and Regulatory Reform Act 2013 (c.24), section 83 of the Care Act 2014 (c.23) and article 2 of, and Schedule 1 to, S.I. 2014/892.

(c) Section 26 is repealed by section 179 (not yet in force) of the 2012 Act.

(d) Section 33 is amended by section 151(9) and 159(2) of the 2012 Act and repealed by section 180 (not yet in force) of the 2012 Act.

(e) Section 35 is amended by sections 151, 159 (paragraph (4) of section 159 is not yet in force) and 160 of the 2012 Act, section 95 of, and paragraph 83 of Schedule 5 to, the Health and Social Care Act 2008 and section 241 of, and Schedule 18

- (iii) exercising, where an English NHS trust makes such an application for authorisation as an NHS foundation trust, the Secretary of State's function under section 33(1) of the 2006 Act (applications by NHS trusts);
- (iv) assessing proposals of English NHS trusts to—
 - (aa) dissolve and transfer property and liabilities to other English NHS trusts or NHS foundation trusts;
 - (bb) make an application to Monitor under section 56 of the 2006 Act **(a)** (mergers);
 - (cc) make an application to Monitor under section 56A of the 2006 Act **(b)** (acquisitions); or
 - (dd) be a receiver of property and liabilities arising from dissolutions, mergers or acquisitions of other English NHS trusts or NHS foundation trusts or separations of NHS foundation trusts;
- (v) preparing a written report to the Secretary of State as to whether he should support any proposals assessed by the Authority under sub-paragraph (g)(iii);
- (vi) making recommendations to English NHS trusts where in the opinion of the Authority, such trusts should—
 - (aa) dissolve and transfer property and liabilities to other English NHS trusts or NHS foundation trusts;
 - (bb) merge with an NHS foundation trust under section 56 of the 2006 Act (mergers);
 - (cc) be acquired by an NHS foundation trust under section 56A of the 2006 Act (acquisitions); or
 - (dd) be a receiver of property and liabilities arising from dissolutions, mergers or acquisitions of other English NHS trusts or NHS foundation trusts or separations of NHS foundation trusts;
- (vii) negotiating and liaising with other English NHS trusts or NHS foundation trusts in order to make recommendations in sub-paragraph (g)(vi) and facilitating such dissolutions, transfers, acquisitions and mergers; and
- (viii) taking any other steps which the Authority considers necessary;
- (h) to produce a report to the Secretary of State when, in the opinion of the Authority, it is appropriate for the Secretary of State to make an order under section 66 of the 2006 Act **(c)** (intervention powers) as a result of an English NHS trust not performing one or more of its functions adequately or at all, or there being significant failings in the way the body is run, such report to contain the reasons for its opinion and advice on appropriate provisions for any such order;
- (i) to produce a report to the Secretary of State when, in the opinion of the Authority, the Secretary of State should make an order under section 68 of the 2006 Act **(d)** (default powers) as a result of an English NHS trust failing to carry out its functions or, in carrying out its functions failing to comply with any regulations or directions relating to those functions, such report to contain the reasons for its opinion and advice on appropriate provisions for any such order;

to, the Local Government and Public Involvement in Health Act 2007. Section 35 is repealed by 180 (not yet in force) of the 2012 Act.

- (a)** Section 56 is amended by sections 168, 179 of, and paragraphs 1 and 2 (not yet in force) of Schedule 14 to, the 2012 Act.
- (b)** Section 56A was inserted by section 169 of the 2012 Act, and amended by paragraph 9 (not yet in force) of Schedule 14 to, the 2012 Act and section 96 of the Deregulation Act 2015 (c.20).
- (c)** Section 66 was amended by sections 179 and 279 of, and paragraphs 1 and 25 of Schedule 14 and paragraphs 5 and 8(1) of Schedule 21 to, the 2012 Act. None of the aforementioned amending provisions are yet in force.
- (d)** Section 68 was amended by sections 179 and 297 of, and paragraphs 1 and 26 of Schedule 14 and paragraphs 5 and 10(1) of Schedule 21 to, the 2012 Act. None of the aforementioned amending provisions are yet in force.

- (j) where the Authority produces a report under paragraph (i), to carry out such inquiry as the Secretary of State considers appropriate pursuant to section 68(2) of the 2006 Act, and report to the Secretary of State with the results of its inquiry;
- (k) where an English NHS trust has proposals involving capital investment or significant commercial transactions under consideration—
 - (i) where such proposals do not exceed financial limits set by the Secretary of State from time to time^(a) and where such proposals are not, in the opinion of the Secretary of State, novel, contentious or repercussive to—
 - (aa) determine which proposals do not require approval of the Authority; and
 - (bb) assess and approve proposals not falling within sub-paragraph (k)(i)(aa); or
 - (ii) where such proposals exceed those financial limits or are, in the opinion of the Secretary of State, novel, contentious or repercussive, to assist the Secretary of State in assessing and approving such proposals;
- (l) to request information, which the Authority requires in order to carry out its functions, from English NHS trusts; and
- (m) to designate the Chief Executive of each English NHS trust as its Chief Accountable Officer.

PART 5

Functions relating to trust special administrator

Functions of the Authority relating to trust special administrator

- 7.—(1) The Secretary of State directs the Authority to produce a report to the Secretary of State when, in the opinion of the Authority, it is in the interests of the health service that the Secretary of State makes an order under section 65B(1) of the 2006 Act^(b) (NHS trusts: appointment of trust special administrator) to authorise the appointment of a trust special administrator to an English NHS trust, such report to contain the reasons for its opinion.
- (2) The Authority may form its opinion under paragraph (1)—
- (a) on the basis of the exercise of its functions; or
 - (b) when—
 - (i) the Commission has informed the Authority that the Commission is satisfied that there is a serious failure by an English NHS trust to provide services that are of a sufficient quality to be provided under the 2006 Act; and
 - (ii) the Authority and the Commission have discussed and agreed that recommending to the Secretary of State that the appointment of a trust special administrator is in the interests of the health service because of that serious failure.
- (3) The Authority must inform the Commission if, when exercising the Authority's other functions, it becomes aware that there has been or may be a serious failure by an English NHS Trust to provide services that are of a sufficient quality to be provided under the 2006 Act.

(a) See Annex C of the Framework Agreement between the Department of Health and the National Health Service Trust Development Authority that can be found on <http://www.ntda.nhs.uk/wp-content/uploads/2014/03/DH-TDA-Annex-C-Finance-and-accounting-POC.pdf>. A hard copy of that Framework and the Schedule of delegations set by the Secretary of State can be obtained from the Director of Group Financial Management, 2nd Floor, Quarry House, Quarry Hill, Leeds, LS2 7UE.

(b) Section 65B was inserted into the 2006 Act by section 16 of the Health Act 2009 and amended by section 174 of the 2012 Act. Section 65B is repealed by section 179 (not yet in force) of the 2012 Act.

PART 6

Miscellaneous Provisions

Reports

8. The Authority must—

- (a) furnish to the Commissioner for Public Appointments such information relating to the appointments for which it is responsible under paragraph (1)(a) of direction 4 as the Commissioner may from time to time require;
- (b) prepare an annual report of its activities in each financial year and provide a copy to the Secretary of State by a date to be determined by the Secretary of State; and
- (c) provide such information to the Secretary of State as the Secretary of State may require on a date to be determined by the Secretary of State.

Exercise of functions

9. In exercising the functions set out in these Directions, the Authority is to have regard to any guidance issued by the Secretary of State from time to time to the Authority.

Arrangements for the exercise of functions

10. Pursuant to regulation 11 of the National Health Service Trust Development Authority Regulations 2012(**a**)(arrangements for the exercise of functions), the Secretary of State directs that the role of the Chief Accountable Officer of the Authority is to be performed by the Chief Executive of the Authority.

PART 7

Revocations

Revocations

11. The following Directions(**b**) are revoked—

- (a) the Imperial College Healthcare National Health Service Trust Directions 2012(**c**);
- (b) the Imperial College Healthcare National Health Service Trust (Amendment) Directions 2012(**d**);
- (c) the National Health Service Trust Development Authority Directions 2013(**e**);
- (d) the National Health Service Trust Development Authority (Amendment) Directions 2014(**f**); and

(a) S.I. 2012/922, to which there are no relevant amendments.
(b) A hard copy of all the Directions listed in direction 11 can be obtained from Room 239, Richmond House, Department of Health, 79 Whitehall, London, SW1A 2NS.
(c) These Directions were signed on 30th March 2012.
(d) These Directions were signed on 28th May 2012.
(e) These Directions were signed on 21st March 2013 and a copy can also be found on https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/175350/NTDA_Directions_2013.pdf.
(f) These Directions were signed on 10th December 2014 and a copy can also be found on https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/386054/Directions.pdf.

(e) the National Health Service Trust Development Authority (Amendment) Directions 2015(a).

Signed by authority of the Secretary of State for Health

A handwritten signature in black ink, appearing to be 'T. S.' with a horizontal line underneath.

Date 24/3/16

Name
Member of the Senior Civil Service
Department of Health

(a) These Directions were signed on 16th September 2015 and a copy can also be found on https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/461411/TDA_Amendment_Directions_2015.pdf.