

Health Special Administration (HSA) consultation

When did the Health Special Administration consultation begin? When does it close?

- The Health Special Administration consultation began on Thursday 1 November 2012. It closes on 4 January 2013.

What is Health Special Administration (HSA)?

- Health Special Administration is based on the 'ordinary' insolvency process of administration. It is a procedure designed to make sure that NHS-funded services are not interrupted if a company providing them gets into financial difficulties.
- Similar types of 'special' administration already exist in a number of regulated sectors., They are designed to ensure the continued provision of essential public supplies and services if a company becomes insolvent.
- Health Special Administration is specific to the health care sector.

Which organisations could be subject to Health Special Administration?

- Health Special Administration will cover those companies which provide NHS-funded services and which are subject to specific licence conditions on continuity of service. This licensing is managed by the public body, Monitor (see 'What is Monitor's role?')
- Health Special Administration only covers companies. This includes public limited companies, private limited companies, companies limited by guarantee, community interest companies and overseas companies.
- Those commissioning local health services will decide which services need protecting by licence conditions.
- Commissioners will make decisions based on whether they think stopping a service would have a significant impact on patients' health or on equal access to treatment.
- They will do this based on criteria in the legislation and by following guidance issued by Monitor.
- Health Special Administration will not apply to NHS trusts or NHS foundation trusts. There will be separate arrangements

for any NHS trusts and NHS foundation trusts in financial difficulties. Those arrangements are not based on insolvency law.

What does the Health Special Administration consultation cover?

- The Health and Social Care Act 2012 provides for detailed regulations on Health Special Administration.
- This consultation explains, and seeks views on, draft regulations.
- The draft regulations are based on existing insolvency law, adapted to suit the health sector.
- The consultation includes a copy of the draft regulations and explains how these differ from the 'ordinary' administration process.

Why are these provisions required?

- There are currently no special legal arrangements in place to ensure the continuity of NHS-funded services if a company providing those services fails.
- For the first time, these regulations will protect continuity of service for patients receiving NHS-funded care from companies. Previously, this protection has only been available to patients of NHS trusts and foundation trusts.

What will trigger Health Special Administration?

- Health Special Administration is designed as a last resort. It will protect patients' interests when interventions under Monitor's licensing arrangements have not succeeded or where such interventions would not best protect patients' interests and the company is insolvent.
- Under the proposals, Health Special Administration could only start by court order.
- In most cases, this would follow an application to the court made by Monitor.

Who would act as the administrator?

- Under the Health and Social Care Act 2012, only a qualified insolvency practitioner could act as the health special administrator.

- Insolvency practitioners are usually accountants or solicitors who are qualified and authorised to accept insolvency appointments.

What happens if a company goes into Health Special Administration?

- The administrator would take control of the company and would be able to remove or appoint directors.
- Creditors and others would not be able to take action against the company or its property without the agreement of the administrator or the permission of the court.
- Commissioners would decide which NHS-funded services must be protected.
- The administrator would agree what to do with local commissioners and with Monitor.
- The administrator would take action to rescue the company as a going concern (this could involve the reorganisation of the business) or transfer services to other providers.
- Health Special Administration would end as soon as services have been protected.

How does an organisation come out of Health Special Administration?

- Health Special Administration is a flexible procedure. It is designed to find the best outcome in each circumstance.
- As soon as the company has been rescued as a going concern, or the protected services have been transferred to other providers, Health Special Administration would be brought to an end.
- Health Special Administration will not end until NHS-funded services have been protected as required by commissioners.
- A number of outcomes are possible for the company itself. The company might continue in business as a going concern or could be moved to ordinary insolvency proceedings to distribute assets to creditors.

What is the role of commissioners?

- The draft regulations propose that:
 - commissioners determine which health services the administrator must protect, based on criteria in the regulations and guidance from Monitor

- commissioners (with Monitor) agree the administrator's proposals for protecting services and agree any changes to those plans
- the NHS Commissioning Board will help Clinical Commissioning Groups and the administrator agree these plans, if required.

What is Monitor's role?

- Monitor is the public body responsible for protecting patients' interests.
- Monitor also supports commissioners in:
 - making sure patients have access to essential services
 - developing services which are sustainable, high quality and efficient.
- The Health and Social Care Act 2012 requires Monitor to assess the risk of providers becoming unsustainable and to step in if that risk gets too high. It gives Monitor various options for swift action, such as:
 - applying additional licence conditions where a provider is close to becoming unsustainable
 - modifying the prices a provider is paid if they can prove that they are not being paid enough to cover the cost of providing the service, despite doing so efficiently
 - requiring a provider to co-operate with commissioners and a Pre-failure Planning Team, appointed by Monitor, to prepare for the possibility of financial failure.
- If necessary, Monitor can appoint an administrator to take control of an insolvent foundation trust's affairs, or in the case of an insolvent company, seek the appointment of a health special administrator by the court.

What is the role of the Department of Health?

- The draft regulations do not give the Department a specific role. However, the Secretary of State remains accountable to Parliament for the NHS. The Health and Social Care Act 2012 gives the Secretary of State powers to intervene if

Monitor and commissioners have significantly failed to perform their functions.

What happens next?

- The Department of Health will consider responses to the consultation and make changes to the regulations where necessary.
- The Health Special Administration regulations need to be approved by both Houses of Parliament. We expect proposals to be put to Parliament in April 2013.
- Health Special Administration will come into effect from April 2014 following the introduction of further secondary legislation ('rules'). These will set out details of how HSA will work in practice.

What if I have further queries on this consultation?

- Please contact: hsa.consultation@dh.gsi.gov.uk