

Statutory guidance for trust special administrators appointed to NHS foundation trusts

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About Monitor

As the sector regulator for health services in England, our job is to make the health sector work better for patients. As well as making sure that independent NHS foundation trusts are well led so that they can deliver quality care on a sustainable basis, we make sure: essential services are maintained if a provider gets into serious difficulties; the NHS payment system promotes quality and efficiency; and patients do not lose out through restrictions on their rights to make choices, through poor purchasing on their behalf, or through inappropriate anti-competitive behaviour by providers or commissioners.

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Monitor's role

Monitor's functions

As the sector regulator for health services in England, Monitor's main duty is to protect and promote the interests of patients. We do this by:

- making sure public providers are well led
- making sure essential services are maintained
- making sure the NHS payment system promotes quality and efficiency
- ensuring procurement, choice and competition operate in the best interests of patients.

We work closely with our partners to help ensure that the providers of NHS-funded services, and the commissioners of those services, are able to make sure that the best possible care is delivered for patients.

Find out here how we work with the Care Quality Commission, NHS England, NHS Trust Development Authority, Healthwatch and NICE for the benefit of patients.

Details of all memoranda of understanding with our partners can be found [here](#).

Further information on our role can be found on [our website](#).

Supporting commissioners in maintaining service continuity

A core part of Monitor's role is to support commissioners to ensure that, in the rare event of the failure of a healthcare provider, patients can continue to access the care that they need.

Commissioners, overseen by NHS England, have the primary responsibility for ensuring the continuity of services within their local areas. In the event of a provider becoming financially unstable or being unable to provide services of sufficient quality, commissioners will identify the services to be formally designated as so-called 'location specific services' (in this guidance also referred to as 'essential services'). These are services for which there is no alternative local provider and which therefore need to be kept running because their withdrawal would adversely impact on health or health inequalities. It will be the responsibility of the commissioners to ensure that their decisions about which services are identified as essential are consistent with the statutory obligations set out in the relevant legislation.

Our risk assessment framework sets out the criteria that we use to monitor the financial health of foundation trusts which is relevant to ensuring the continuity of their services, as well as the quality of their governance. We will step in under the

continuity of services licence conditions when there are warning signs that a provider is struggling financially, with the aim of encouraging the provider to return to financial sustainability. Where there are significant concerns about the quality of governance at a foundation trust we can take enforcement action to address the identified issues. If financial failure of a foundation trust becomes likely or if the foundation trust is unable to provide services of sufficient quality, there will be an ordered process – the trust special administrator’s regime (‘the regime’) – during which Monitor will appoint a trust special administrator to take control of the foundation trust’s affairs and work with commissioners to ensure that patients continue to have access to the high quality and safe services that they need.

The role of trust special administrators

The appointment of a trust special administrator is one way in which Monitor can take decisive action to deal with foundation trusts that are, or are likely to become, unable to pay their debts as and when they are due, or are unable to provide services of sufficient quality.

The regime, to be used in exceptional circumstances, is a transparent and robust process to resolve problems within a significantly challenged foundation trust. In addition to maintaining the provision of essential services during the time the regime is in place, the task of a trust special administrator is to develop and consult on draft recommendations before presenting their final report to Monitor. If Monitor accepts the recommendations, it will provide the report to the Secretary of State for Health, who must decide whether they are satisfied that each necessary step in the process has been completed satisfactorily. The Secretary of State is able to veto the recommendations in certain limited circumstances. This final report should state what should happen to the organisation and the services it provides so that high quality and safe services continue to be delivered to patients and service users. The public, staff and commissioners must be fully involved in the process if the regime is used.

About the guidance for trust special administrators

Who is this guidance for?

This document comprises Monitor's statutory guidance for trust special administrators appointed to foundation trusts, to which they must have regard in carrying out their duties under Chapter 5A of the National Health Service Act 2006 (the 2006 Act), known as the trust special administrator's regime (referred to in this guidance as the 'regime'). This guidance complements Monitor's enforcement guidance.

Scope of this guidance

While there are similarities in the application of the regime to NHS trusts and foundation trusts, there are also differences and the Department of Health has, in accordance with section 65N of the 2006 Act, published guidance in respect of NHS trusts entitled 'Statutory guidance for trust special administrators appointed to NHS trusts'.¹

Section 65N of the 2006 Act requires this document to include guidance on:

- the publication of certain notices and statements
- the preparation of the trust special administrator's draft report, as to persons to be consulted, factors to be taken into account and relevant publications.

1. Introduction

1.1 Context

1. The trust special administrator's regime (also known as the regime for unsustainable NHS providers) is a bespoke, time-limited process to provide a solution to intractable problems in significantly challenged foundation trusts.
2. The policy underpinning the regime is for it to be used as a measure of last resort and under specific circumstances. There are a range of other measures which can be applied before the use of the regime, including enforcement actions against the foundation trust, imposing additional licence conditions or removing, suspending or replacing directors or governors.
3. The emphasis of the regime is to ensure transparency (a process that is public facing) and objectivity. The intended outcome is to protect NHS patients and the public from financially failing or unsafe services and to ensure high quality and safe services are delivered locally for all patients.

¹ www.gov.uk/government/publications/statutory-guidance-for-trust-special-administrators-appointed-to-nhs-trusts

4. The regime was first introduced by the Health Act 2009. The Health and Social Care Act 2012 modified the way it applies to foundation trusts to reflect their greater autonomy and to make it compatible with the extended regulatory role given to Monitor to operate its licensing regime. Amendments made to the National Health Service Act 2006 (the 2006 Act) by the Care Act 2014 make further changes to the application of the regime both for NHS trusts and foundation trusts to ensure it is effective and fit for purpose.

1.2 Monitor's role in the trust special administrator's regime

5. Under the Health and Social Care Act 2012 Monitor's main duty is to protect and promote the interests of people who use healthcare services. We do this by promoting the provision of healthcare services which are economic, efficient and effective, and which maintain or improve the quality of services.
6. The licence is our key tool for carrying out the majority of our functions. It sets out a range of conditions that providers must meet, including obligations relating to Monitor's role and some specific obligations for foundation trusts.
7. The appointment of a trust special administrator is one way in which Monitor can take decisive action to deal with NHS foundation trusts that are either financially unsustainable in their current configuration or are seriously failing to deliver services of sufficient quality. For example, this might happen when repeated local attempts over a prolonged period to resolve a very significant financial crisis have failed and could increasingly impact on a foundation trust's ability to maintain clinical services of the required quality. Under such circumstances, a trust special administrator can be appointed to take over the running of the foundation trust. They will then work with key stakeholders such as local commissioners and other providers to develop recommendations about what changes could be made to that organisation and its services so that people in the local health economy have access to high quality and safe NHS services in the long term.
8. If Monitor decided to exercise its legal power to make an order authorising the appointment of a trust special administrator to an NHS foundation trust, its decision to do so would normally be informed by the use of the risk assessment framework. This framework uses transparent financial and governance metrics to assess the viability and sustainability of foundation trusts. It is expected that foundation trusts scoring poorly against the framework will be more likely to warrant the appointment of a trust special administrator than foundation trusts scoring well.
9. However, it is important to emphasise that while the risk assessment framework may inform Monitor's decision, a trust special administrator **can only be appointed by Monitor if it is satisfied that the foundation trust is, or is likely to become, unable to pay its debts as and when they are due and/or**

there is a serious failure by the foundation trust to provide services of sufficient quality. In the latter case, Monitor can be directed to appoint a trust special administrator by the Care Quality Commission (CQC). Further guidance can be found in paragraph 12 regarding the role of CQC.

10. Where Monitor triggers the regime it will make an order under section 65D of the 2006 Act authorising the appointment of a trust special administrator to an NHS foundation trust to exercise the functions of the governors, chair and directors of that trust. Before making the order Monitor is required to consult with the Secretary of State, the foundation trust, NHS England, CQC and appropriate commissioners.
11. The legislation ensures that the regime is credible and transparent, including Parliamentary scrutiny of Monitor's decision to use the regime and of its and the Secretary of State's final decision about the future of a foundation trust in administration as well as public consultation on the draft recommendations developed by the trust special administrator. Administration under NHS legislation is not the same as administration under insolvency legislation. Although a possible outcome of the regime can include dissolution of the foundation trust in administration and the transfer of services and staff to another trust, the purpose of the regime is to ensure the continued delivery of clinically and financially viable patient services which are essential to the local population.

1.3 CQC's role in the trust special administrator's regime

12. CQC has a vital role in regulating quality and safety in the NHS and will be a key source of information for Monitor. As such, Monitor will work closely with CQC, and will consult with CQC before deciding to appoint a trust special administrator, in accordance with section 65D of the National Health Service Act 2006 (the 2006 Act).
13. Under the legislative changes brought into effect by the Care Act 2014, CQC now has the power to require Monitor to make an order authorising the appointment of a trust special administrator. This additional provision makes it even more important to ensure Monitor and CQC work together closely.
14. CQC will only recommend that a trust goes into special administration in extreme circumstances. The criteria include a trust having a rating of 'inadequate overall' and where it has failed to make sufficient improvement within a timescale set by the Chief Inspector of Hospitals. Such a recommendation would only be made if special administration was deemed to be the most appropriate strategy given the specific case, and where other regulatory measures have failed to deliver adequate improvements. Where CQC uses its powers to force improvement or reduce risk, this will be coordinated with Monitor and commissioners as appropriate.

15. In responding to recommendations from the trust special administrator, CQC will assess whether the proposals provide for services whose continuous provision if secured are of sufficient safety and quality.²
16. In making this assessment CQC will want assurance that the recommendations allow for full compliance with the legislation, in conjunction with its existing registration requirements. This judgment may include requirements for monitoring, imposition of conditions on the providers' registration, or other measures if necessary to fully ensure feasibility and sustainability. The detail of what is required will reflect the specific situation and proposals.
17. CQC will have regard to the guidance it has published which sets out the characteristics describing what 'outstanding', 'good', 'requires improvement' and 'inadequate' care looks like in order to inform a proportionate assessment of the recommendations from a trust special administrator.

1.4 The purpose of the trust special administrator's regime

18. A key element of the regime is to ensure patients continue to be able to access essential health services. How these services are delivered, by whom, and from where could, however, change once the trust special administrator has made their recommendations and the solution is implemented.
19. In addition to maintaining the provision of essential services during the time the regime is in place, the main function of a trust special administrator appointed to a foundation trust is to develop and consult locally on a draft report, before making recommendations to Monitor in a final report. This report should state what action should be taken in relation to the trust and the services it provides so that high quality and safe services continue to be delivered to patients where these are essential to the local population.
20. Once the final report has been submitted it is expected that the trust special administrator will continue to operate the trust on a 'business as usual' basis and continue working towards the implementation phase.

1.5 Summary of the regime

21. The regime, up to the date Monitor responds to the final report, is time-limited at 146 working days (unless an extension of time order is made). Within this period:
 - the trust special administrator must develop and consult on a draft report setting out their recommendations

² Care Act 2014 Section 65DA (1) (AA)

- Monitor must determine whether it is satisfied that the recommended action fulfils the objectives of trust special administration and that the trust special administrator has carried out their duties
 - if Monitor is satisfied, the Secretary of State must determine whether they intend to exercise their limited grounds for veto.
22. This will avoid prolonged periods of uncertainty about the future of the foundation trust under administration. The statutory timescales do not take into account the implementation of the recommendations, which commences after the recommendations are approved and which adds time to the overall process.
23. There are six overall stages to the regime as it applies to foundation trusts:
- **Appointment:** The appointment of a trust special administrator or administrators is authorised by an order made by Monitor. Monitor will then proceed to appoint persons under specified terms of appointment. The administrator has a dual role. First, they exercise the functions of the chair, directors and governors of the trust (who are suspended by the legislation on the administrator's appointment taking effect), taking charge of the day-to-day running of the organisation for the period they are appointed and securing the provision of services for people who use its health services. Second, the trust special administrator, who is independent of Monitor, the Secretary of State, Department of Health and any other government entity, must develop recommendations in relation to the action Monitor and others should take to secure the continued provision of services which are of sufficient safety and quality and which are essential for the local population.
 - **Draft report:** The trust special administrator must assess the issues facing the trust in the context of its local health economy, engage with key stakeholders such as commissioners, other providers, NHS staff, patients, the public and CQC, and develop draft recommendations about the future of the trust and its services. The trust special administrator must publish a draft report containing those recommendations within 65 working days of their appointment taking effect.³ Monitor must lay a copy of the report before Parliament.
 - **Consultation on draft report:** There is a statutory period for consultation on the draft report, including with the wider public and NHS staff. This must run for 40 working days.⁴

³ Section 65F(1) of the NHS Act 2006, as amended by section 120 of the Care Act 2014. The previous time period was 45 working days.

⁴ Section 65G(2) of the NHS Act 2006, as amended by section 120 of the Care Act 2014. The previous time period was 30 working days.

- **Final report:** Following the consultation, and within 15 working days, the trust special administrator must produce a final report with their recommendations about the NHS foundation trust in administration and its services and submit it to Monitor. Monitor must lay the report before Parliament and publish it.
- **Decision:** On receipt of the final report, Monitor has 20 working days to decide whether it is satisfied that the action recommended in the final report would achieve the objective of the continued delivery of high quality and safe essential services, and that the trust special administrator has carried out the administration duties. If Monitor is satisfied with the report it must provide the report, together with the report provided to Monitor by CQC, to the Secretary of State as soon as reasonably practicable. If Monitor is not satisfied, it must notify the trust special administrator, publish a notice of its decision and lay the notice before Parliament.
- **Secretary of State's response:** Once they receive the report from Monitor, the Secretary of State has a further 30 working days to decide whether or not they are satisfied with the recommendations. If the Secretary of State is not satisfied, the trust special administrator has a further 20 working days to provide to Monitor a revised final report. Monitor has 10 working days to consider the re-submitted report and the Secretary of State then has a further 30 working days to make a final decision on it.

2. Appointment, objective and role of the trust special administrator

2.1 Pre-appointment phase

24. Prior to the appointment of a trust special administrator, in many circumstances, a contingency planning team will be sent to a foundation trust which is considered to have a high probability of entering the regime.
25. The objective of the contingency planning team is to work with local commissioners to assess the local health economy and to identify those services to be classified as essential in the event that a trust special administrator is appointed. This work will not bind the trust special administrator, but they may use it to inform their own work. The contingency planning team will wind up its activities and 'hand over' to the trust special administrator when the appointment is finalised. It is essential for the trust special administrator to have full access to all work undertaken by the contingency planning team.
26. In having the objective to secure the provision of essential services, the trust special administrator must consult the list of services which local commissioners or NHS England have agreed and meet the criteria for essential services as outlined in the 2006 Act.

27. In some situations Monitor may have to appoint a trust special administrator directly without the prior deployment of a contingency planning team (an 'emergency situation'). Such situations could arise where there is a clear and immediate risk of a foundation trust becoming insolvent due to an unexpected event or a sudden and widespread failing in quality of service provision or if CQC directed Monitor to do so. In this case, there may be insufficient time to appoint a contingency planning team prior to the appointment of a trust special administrator. In such cases, the trust special administrator (rather than a contingency planning team) will be responsible for working with commissioners to define the list of essential services.
28. In any case, it will be important for the trust special administrator to have appropriate clinical and financial data available in order to begin work. Monitor will request the production of data (not already held by Monitor) by the commissioners, the foundation trust and other NHS bodies as are appropriate and relevant to the task.

2.2 Appointment of an administrator to an NHS foundation trust

29. If Monitor is considering triggering the regime, and prior to a decision being made on whether or not to do so, it must consult first the Secretary of State and, thereafter, the NHS foundation trust in question, NHS England, CQC and commissioners which Monitor considers it appropriate to consult.
30. Before CQC can require Monitor to appoint a trust special administrator, it must first have consulted the Secretary of State and Monitor, and having done that, must consult the foundation trust, NHS England and any commissioners which CQC considers it appropriate to consult.
31. If, following consultation, CQC concludes that there is a serious failure by the foundation trust to provide services that are of sufficient quality and that it is appropriate to trigger the regime, it must inform Monitor of this decision and provide Monitor with the reasons for this decision.
32. Where Monitor considers it appropriate to appoint a trust special administrator, or if CQC requires Monitor to make such an appointment, Monitor must:
 - make an order authorising the appointment
 - specify the date on which the appointment is to take effect (which must be within five working days beginning with the day on which the order is made)
 - lay before Parliament (with the statutory instrument containing the order) a report stating the reasons for making the order
 - publish the name of the person(s) appointed as the trust special administrator

- appoint the trust special administrator on the date specified in the order by way of the terms of appointment.

33. As soon as is reasonably practicable after Monitor has made an order authorising the appointment of a trust special administrator, CQC must provide a report to Monitor on the safety and quality of the services that the NHS foundation trust provides.

2.3 Terms of appointment

34. The circumstances that lead to a position where an NHS foundation trust is, or is likely to become, unable to pay its debts as and when they are due or where there is a serious failure to provide services which are of sufficient quality, are numerous and complex and the specific characteristics of each foundation trust will differ from case to case. Consequently, terms of appointment will be provided to each trust special administrator to ensure that they recognise the individual requirements of each situation.

35. Monitor will set the terms of appointment for a trust special administrator as it considers appropriate.

36. Monitor may arrange for a support team to assist the trust special administrator.⁵ The arrangements for funding a trust special administrator and a support team will be agreed with the Department of Health. Monitor is likely to set conditions to limit overall expenditure on expenses and ensure the trust special administrator and support team are responsible for demonstrating value for money.

37. The trust special administrator will also be appointed as the accounting officer of the trust in administration, will be responsible for specific duties as set out under Schedule 7 of the NHS Act 2006 and is specifically responsible to Parliament for the resources under its control. Further details are set out in [this document](#).

2.4 Suspension of the board, governors and directors

38. When the appointment of the trust special administrator takes effect, the NHS foundation trust's governors, chair and executive and non-executive directors are suspended from office. However, the appointment of a trust special administrator does not affect the employment of the executive directors and they will continue to fulfil their respective executive functions. The executive directors will lose their positions on the board but the suspension does not affect their ability to remain as members of any committee or sub-committee of the foundation trust. Monitor will send letters to the governors, chair and executive

⁵ Section 65D(12) of the NHS Act 2006

and non-executive directors to inform them of their suspension and to explain their role (if any) during the regime and afterwards.

39. Following their appointment the trust special administrator will exercise the functions of the governors, the chair and the directors of the NHS foundation trust. The trust special administrator will, during the period of appointment, continue to be responsible for the provision of all essential services offered by the NHS foundation trust and should run the NHS foundation trust on a business as usual basis.
40. Close collaboration of the suspended executive directors with the trust special administrator is vital to the success of the regime. If appropriate, it is anticipated that during the administration a trust special administrator will wish to continue to work closely with the director of finance, the medical director and the director of nursing in particular in their capacity as employees. Other directors may be consulted as appropriate. On appointment, the trust special administrator should plan to have an early conversation with the directors about matters such as:
 - what changes to existing governance arrangements might be necessary as part of the trust special administrator taking over responsibility for the provision of services by the trust
 - the changes to the directors' roles and the implications in terms of their responsibilities, accountability and leadership functions
 - the need for directors to demonstrate leadership, support staff morale and maintain a focus on the quality and safety of clinical services during those periods that the trust special administrator is unable to spend at the trust: for example, when attending public consultation events
 - whether directors would be expected to input into the strategic work of the trust special administrator.
41. The trust special administrator will also be mindful that foundation trusts in trust special administration may also have non-NHS activities which will need to be considered.

2.5 Objective of the trust special administrator

42. Having assumed the functions of the governors, chair and executive and non-executive directors, the trust special administrator must exercise these functions in accordance with the following objective:
 - to secure the continued provision of essential services provided by the NHS foundation trust at such levels as the commissioners of those services determine

- that these services are of sufficient safety and quality
 - that it becomes unnecessary for the appointment of the trust special administrator to remain in force.
43. These requirements constitute the objective of the trust special administrator and the recommendations it makes are required to meet them.
44. In achieving their objective the trust special administrator may set up special advisory groups (eg financial, procurement, clinical, public engagement) to support their activities.
45. It is expected that the trust special administrator in securing the continued provision of essential services should have due regard to the following:
- to reduce the trust's forecast deficit to zero or bring it to surplus
 - to ensure the trust is sustainable financially, clinically and operationally.

2.6 Essential services

46. The objective set out above applies only to the services termed 'essential services' (in the context of the trust special administrator's regime also referred to as 'location specific services'). These are services whose withdrawal would be likely to:
- have a significant adverse impact on the health of persons in need of the service or significantly increase health inequalities
 - cause a failure to prevent or ameliorate either a significant adverse impact on the health of such persons or a significant increase in health inequalities.
47. Commissioners must have regard to the guidance provided by Monitor in determining which services are to be designated essential services. Care should be taken to avoid the duplication and consequent inefficiency if there is over-designation of essential services to the local health economy. Decisions should be based on the best available evidence but recognise (a) for some new models evidence might be lacking and (b) the evidence may not take the effects of access into account.
48. NHS England may make arrangements for facilitating agreement between commissioners in determining to which services the objective applies and, in the event that commissioners are unable to agree, will make a final determination. [This Monitor publication](#) provides further guidance for commissioners.
49. Individual commissioners operate within finite financial resources and the financial implications of providing essential services are their responsibility. It is also their responsibility to ensure that their financial resources and expenditure

plans are used to deliver the highest positive impact for their local population. While it is for commissioners to decide upon what are the essential services of the NHS foundation trust in administration, Monitor expects a trust special administrator to work closely with them in order to comment on the economic effect of their proposals for the identification of such services.

50. The trust special administrator will also be expected to evaluate options that provide for the continued provision of essential services following the cessation of their appointment at the trust, subject to future commissioning decisions. Options should ensure that the provision of such services satisfies the principles of effectiveness, efficiency and economy.
51. It is envisaged that by working in conjunction with NHS England and the trust special administrator, commissioners of the foundation trust in administration are likely to want to ensure that their designation of NHS services which are essential is realistic and justifiable, and not over-stated.

2.7 Services not designated as essential

52. The trust special administrator will be required to present proposals for all services. For services which are not designated as essential, it may be optimal for the foundation trust to continue to provide them in any case because it would be prudent financially or clinically. Alternatively, if it would be better that other providers deliver these services, local commissioners will need to reach an agreement with those other providers to ensure that, where necessary, these services continue to be available for patients. The commissioners are responsible for these decisions and also for agreeing any implementation plans or funding that might be required as a result of any service transfer.
53. Unless it becomes clinically unsafe to continue services, no changes to or closures of services provided by a foundation trust should be made by the trust special administrator until the Secretary of State has determined whether or not to exercise their veto in relation to the trust special administrator's final proposals (see Chapter 7: What happens next?).

2.8 Continuity of service provision during administration

54. The trust special administrator will, during the period of administration, continue to provide all services offered by the NHS foundation trust provided that it would be clinically safe to do so. This will continue until the end of the decision-making process; that is, until the Secretary of State has determined whether or not to exercise their veto over the trust special administrator's recommendations in the final report and, if this is exercised once, until such time as they are satisfied with the revised report, or if exercised twice, until they have made a final decision. For the avoidance of doubt, the trust special administrator should continue to run the foundation trust on a 'business as usual' basis while they are

in post. The trust special administrator should seek assurance from both commissioners and CQC that the continued provision of services is of sufficient safety and quality. In the event that specific services are identified as clinically unsafe the trust special administrator should follow the same protocols as would apply outside of trust special administration.

2.9 Considerations when developing recommendations

55. The trust special administrator should ensure that the overall plan for essential services, and those services not designated as such, is developed within the context of the specific needs and constraints of the local health economy. The trust special administrator's proposals should be supported by clear clinical evidence and guidance from clinicians, insofar as it is available, such that the rationale for the proposals may be understood by wider stakeholders.
56. Importantly, if the trigger (or one of the triggers) for the regime was the inability of the foundation trust to pay its debts as and when they are due, the trust special administrator is expected to develop a recommendation for the trust's services which will deliver a substantial reduction in its annual running costs and which will aim to reduce the trust's forecast deficit to zero or bring it to surplus.
57. The trust special administrator will also need to determine if the trust is currently delivering acceptable levels of clinical performance, and whether this level of performance is likely to be maintained in the longer term. The key areas the trust special administrator should consider include whether:
 - current clinical performance is of an acceptable standard when compared with standard performance metrics
 - the trust is serving a catchment population that is in line with national guidelines for a hospital that delivers the full range of acute services
 - the trust has sufficient consultants established across all services to maintain a 24/7 service, in line with government direction and policy
 - the trust is able to recruit and retain appropriate clinical staff to meet the established consultant levels.
58. The trust special administrator's recommendations should provide an appropriate balance between clinical sustainability of service provision and realistic financial savings.
59. If the trigger for the regime was a serious failure by the foundation trust to provide services of sufficient quality, the trust special administrator is expected to develop a solution which will ensure local access to essential, high quality and clinically safe NHS services as well as having due regard to clinical financial sustainability.

60. NHS foundation trusts are subject to choice and competition rules under the NHS provider licence, the Competition Act 1998 and the Enterprise Act 2002. The trust special administrator must ensure that their recommendations are consistent with these rules (see Chapter 4: Choice and competition considerations).
61. The principles of the Secretary of State's four tests for reconfiguration of NHS trusts are not applicable to the trust special administrator when considering their recommendations, except in so far as their content is effected elsewhere in this guidance.

2.10 Impact on other providers

62. It is possible that other providers of healthcare services (NHS foundation trusts, NHS trusts, independent providers, or primary medical or community care providers) will form part of any recommendation by the trust special administrator. Other providers will need to work to the statutory timescales set out in the Health and Social Care Act 2012.
63. Where the trust special administrator considers that action may be needed in relation to the NHS foundation trust under administration which affects services of other trusts (foundation trusts or NHS trusts; see Chapter 4: Preparing the draft report), commissioners of such other affected services provided by trusts should be consulted by the trust special administrator and asked to identify what they consider to be the essential services they commission from other trusts potentially affected.
64. In so far as the trust special administrator's recommendations may impact on other NHS provider trusts, they are expected to make an assessment of the capacity and capabilities of those providers potentially affected. There are various types of potential impacts upon other trusts. For example, it may be recommended that other trusts acquire sites or services of the NHS foundation trust in administration upon its dissolution, and that those trusts expand their capacity to deliver particular services or reduce some of their services. The trust special administrator may only make recommendations relating to other trusts if it is necessary and consequential on the action recommended in relation to the foundation trust in trust special administration. Such recommendations must not harm essential services and should be financially sustainable and improve or maintain clinical standards.

2.11 Who to engage with and how

65. The trust special administrator should have an effective communications operation and strategy in place to ensure that they actively seek representation and the engagement of staff, patients and the public and other key stakeholders in their work. An effective communications strategy should ensure appropriate

ways to engage vulnerable and hard to reach patient groups in the local health economy have been fully addressed.

66. Trust special administrators should plan regular, ongoing and proactive communication with public representatives, including local Members of Parliament, local authorities, patient representative groups and local Healthwatch. Regular communications can take place by telephone or email but significant steps should be communicated in meetings in order to gauge the views of these stakeholders and ensure that their questions are fully answered. It may be advisable to hold a public meeting early in the process to set out the work they are doing and why they are doing it. The trust special administrator should consider attending meetings and events when invited.
67. The trust special administrator must be prepared to speak to the local media, issuing statements when significant steps are taken and answering questions when this is appropriate. If they are regularly asked to undertake broadcast interviews they should consider taking the opportunity to explain their work and clarify any areas of confusion. The trust special administrator should make sure that they are aware of developing opinion in the local area, through monitoring the local media, discussions with stakeholders and attending public meetings.
68. In order to ensure effective communication gateways are available it is recommended that the trust special administrator should set up a website portal. This will enable interested parties to communicate with the trust special administrator and for them to communicate with external parties.
69. Although not a legal requirement for the trust special administrator, it would be prudent for all creditors to be formally advised by letter of the appointment of the administrator and plans for payment of debts relating to the trust in administration. Further information has been provided by the Department of Health.⁶

2.12 Engagement with the suspended board and staff

70. Although there is no legal requirement for the trust special administrator to consult specifically with the suspended governors and directors, they should consider how best to engage with them as they can provide expertise and experience and be a valuable source of information.
71. The trust special administrator should recognise that trust staff will know the patients and the services best and their knowledge will be invaluable for the trust special administrator as they go about their work. The trust special

⁶ NHS trust and NHS foundation trust special administration: guide for unsecured creditors
www.dh.gov.uk/health/2013/03/tsa-unsecured-creditors/

administrator should take steps to make sure that staff members are engaged from the beginning of the process.

72. The trust special administrator should be aware that it is a time of uncertainty for staff working at the trust and it is important to be as transparent as possible with them so that they know what is happening and can continue to undertake their duties during the trust special administration process.
73. During the trust special administrator's statutory consultation (see Chapter 5: Consultation on the draft report), the trust special administrator must hold at least one meeting with staff of the foundation trust in administration (including with persons representing staff such as union representatives). The trust special administrator should consider increasing engagement with staff just prior to or on the day of the publication of the draft and final reports so that they can explain the recommendations.
74. Where a trust special administrator's draft recommendations have implications for and affect other providers, the challenges around staff engagement will be even greater. The trust special administrator should consider how to engage with staff at those providers that may be affected by their recommendations, such as other NHS trusts and NHS foundation trusts. In any event, for each affected trust, at least one meeting must be held to seek responses from staff or their recognised representatives.

2.13 Engagement with other key stakeholders

75. Securing support from key stakeholders for the recommendations of the trust special administrator can be challenging. While all recommendations may not have universal support, the process of the trust special administrator should command the confidence of stakeholders.
76. In particular, the involvement of commissioners is critical, and the trust special administrator should work closely with them in developing draft and final recommendations because of and due to their responsibility for ensuring high quality health services for their populations. A collaborative approach will help to ensure that commissioners feel able to support the recommendations that are proposed.
77. It would be prudent for the trust special administrator to engage as early as possible with the local Healthwatch and local authority, which will both hold valuable information and have a unique insight into the local health economy. Therefore it is essential when developing recommendations to engage early and take account of expert opinion.

2.14 Engaging with patients and the local population

78. Local residents must be able to understand what is happening and why it is necessary. The trust special administrator should take steps to reassure and be active in communicating to patients and service users that a full range of services will continue to be available for them during the period of trust special administration. As the likely structure of services becomes clear, patients should be kept informed about the implications of the new arrangements on how they access healthcare in their area.
79. The trust special administration process should be undertaken in partnership with and mindful of the views of the local community. The NHS Constitution states that NHS services must reflect the needs and preferences of patients, their families and their carers. If people are concerned about what will happen to services, or if they have objections based on a misunderstanding of the planned approach, it will be more difficult for the trust special administrator to gain support from commissioners and other local providers for any changes they propose.
80. Engagement with the local population should start as soon as the trust special administrator takes up their post and continue throughout the trust special administration process.
81. Information about how to conduct the public consultation is included later in this guidance document. The trust special administrator must engage with the local population and patients on a regular basis before the public consultation stage is reached because it is important that they draw up plans with the views and concerns of patients and the local population in mind.

2.15 Accountability

82. All trust special administrators are accountable to Monitor and ultimately the Secretary of State. Monitor must be satisfied that the trust special administrator has carried out their administration duties in accordance with s65KA(1)(b) of the 2006 Act, which comprise:
 - duties imposed on the trust special administrator under the trust special administration provisions of the 2006 Act (eg the duties in connection with the preparation of the draft and final reports)
 - any requirements imposed by a direction issued by Monitor under the trust special administration provisions of the 2006 Act (eg a direction as to whom to seek written responses from in connection with the consultation on the draft report)
 - the trust special administrator's terms of appointment.

In addition, the trust remains accountable to Monitor in respect of its business-as-usual activities and to CQC in relation to those activities they are registered to provide.

2.16 Removing and replacing the administrator

83. A trust special administrator appointed to a foundation trust holds and vacates office in accordance with the terms of appointment issued by Monitor. They can therefore be instructed to vacate office by Monitor in the circumstances set out in those terms.
84. Monitor must appoint a new trust special administrator if the existing administrator ceases to hold office for any reason during the period of appointment, for example, due to serious illness. Where a replacement trust special administrator is appointed, the legislation provides that anything done by or in relation to the previous administrator has effect as if done by or in relation to the new administrator,⁷ unless Monitor directs that certain actions by the previous administrator do not have that effect. This allows a new trust special administrator to pick up where the previous administrator left off.

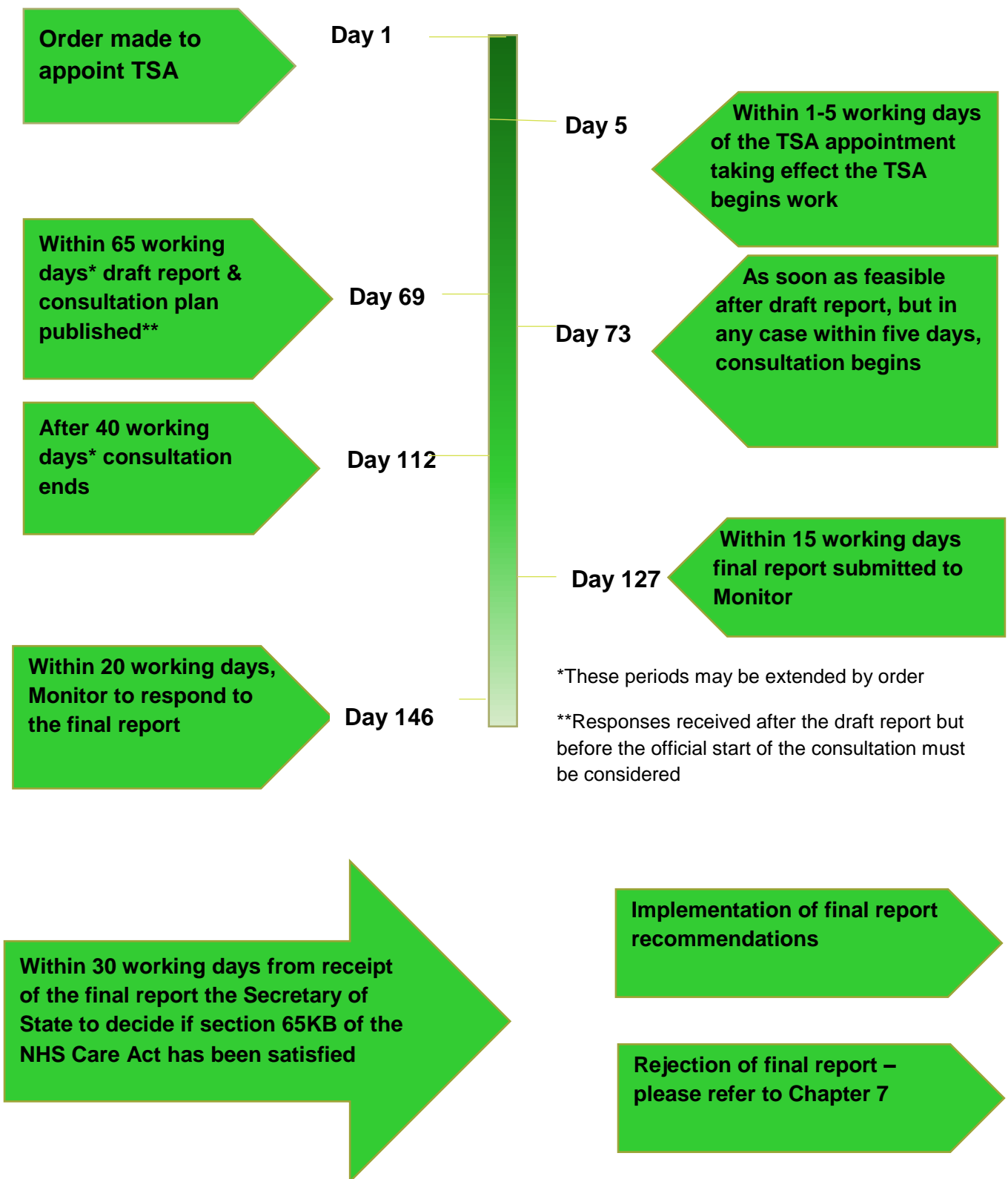
3. Timescales

3.1 Statutory timescales

85. Every case where an NHS foundation trust enters the regime will be different due to differing local circumstances. However, the principal benefits of the trust special administrator's regime arise from the time-limited resolution of the clinical and/or financial difficulties of that foundation trust. There are legal safeguards to ensure that the regime is transparent and credible and that there is consultation on the development of the trust special administrator's recommendations to Monitor. The trust special administrator's advice remains independent. The legal safeguards also set out a clear structure to allow Parliamentary scrutiny of any decision by the Secretary of State to exercise their veto.
86. The legal framework sets out requirements that aim to complete the regime within 146 working days, unless an order is made by Monitor to extend certain time periods, Monitor is not satisfied with the final report or the Secretary of State is not satisfied with the final report. Monitor may extend the time periods relating to either the production of the draft report or final report or the consultation period, or all three, as illustrated by the diagram below.

⁷ Section 65M(2) of the NHS 2006 Act.

Trust special administrator timeline: a typical timeframe



87. There are three distinct stages that the trust special administrator must complete. Each stage has a dedicated chapter in this guidance, which sets out the legal requirements placed on the trust special administrator:

- Chapter 4: Preparing the draft report
- Chapter 5: Consultation on the draft report
- Chapter 6: Preparing the final report.

3.2 Extension of time

88. The legal framework allows Monitor to extend certain periods within the 146-working day limit of the regime if it is considered unreasonable for the trust special administrator to complete the duties within the statutory timeframe. An extension would take place in exceptional circumstances, for example, where the scale and complexity of the issues facing a foundation trust are such that it would require more time to develop options for a viable solution. In such circumstances, Monitor can make an order extending the period of time in any of the following periods:

- the period during which the trust special administrator must prepare the draft report (which, without an extension, must be completed within 65 working days)
- the statutory consultation period on the draft report (which without an extension must last 40 working days)
- the period during which the trust special administrator must develop and send their final report to Monitor (which, without an extension, must be done within 15 working days).

89. If Monitor makes an order providing for an extension of a particular time period, the trust special administrator must publish a notice stating the new date on which that time period will expire.

90. The notice could be published in local or national newspapers, via local or national radio stations, on the internet or on posters placed in public spaces. A combination of different levels of media communications will be adopted and these are not limited to local or national media, the internet or posters.

91. Should an extension to the consultation period be provided for, then the notice must include the means by which the trust special administrator will seek responses to the draft report during the new consultation period.

3.3 The role of Parliament

92. Certain key documents produced during the regime must be laid before Parliament. This applies to the report produced by Monitor which sets out the rationale for using the regime and the duty of Monitor to lay the draft and final reports of the trust special administrator.⁸ The reports cannot be laid during Parliamentary recess, therefore the trust special administrator and Monitor will need to discuss publication where this falls in or close to recess.
93. Where in the case of the laying of the draft report, the date falls during recess, Monitor would seek to extend the draft report stage. The dates of Parliamentary recess can be found [here](#).
94. Both Monitor and the trust special administrator should be aware if, during the trust special administration regime, there is a period whereby Parliament will be dissolved (ie an election is being held) and plan accordingly.

4. Preparing the draft report

4.1 Context

95. Preparing the report is the longest distinct stage of the regime, during which the trust special administrator will have to assess the issues facing the foundation trust, engage with staff and develop recommendations on the future of the organisation and the services it provides.
96. The draft report by the trust special administrator must produce recommendations on how to ensure the provision of safe and high quality services. In developing the recommendations, the trust special administrator must ensure that any changes to the provision of regulated activities meet CQC's registration requirements and standards.
97. Possible recommendations by the trust special administrator include the reconfiguration of some or all of the services within the existing foundation trust, a merger, divestment, transaction or the dissolution of the foundation trust. Where dissolution is the recommendation, the trust special administrator may recommend that the assets and liabilities of the foundation trust can be transferred to those of another foundation trust, transferred to the Secretary of State (for onward transfer) or split between another foundation trust and the Secretary of State (for onward transfer).

⁸ Sections 65D(6) 65F(3) and 65I(3) of the NHS Act 2006 respectively.

4.2 Remit of the trust special administrator

98. A trust special administrator cannot always make recommendations about an unsustainable foundation trust without proposing some that affect other providers. This is because some problems affecting individual trusts are experienced not in isolation but across the wider local health economy and beyond, and clinical and financial problems often cross organisational boundaries.
99. The Care Act 2014 extends the scope of the trust special administrator's remit to allow the administrator appointed to an NHS foundation trust to make, and respectively Monitor and/or the Secretary of State to accept, recommendations that may affect other trusts and their services.⁹ Wider recommendations must be "necessary for and consequential on" the action recommended for the NHS foundation trust in administration and would be in the context of the circumstances the trust special administrator was faced with in any given special administration.
100. For example, a trust special administrator may find they cannot make a foundation trust in administration sustainable on a stand-alone basis. This could be the case if the foundation trust would be unable to deliver high quality and safe services on a stand-alone basis or if the trust was unable to operate on a financially sustainable basis on its own, even after realistic financial support was provided. The trust special administrator may therefore recommend dissolution of the foundation trust and the acquisition of its sites and services by other neighbouring foundation trusts or NHS trusts. Addressing issues of over-supply in the local health economy may in turn mean that recommendations affecting services at those other trusts and services not provided by trusts are necessary for and consequential on the primary recommendations about the failing trust in administration. Ultimately, the aim would be to deliver a lasting solution for the failing NHS foundation trust and its services, and a clinically and financially sustainable and safe service model across that local health economy.
101. At the outset of the trust special administrator's process, they cannot always anticipate which other trusts and which other commissioners may be affected by their draft recommendations. Nevertheless, the trust special administrator is expected to engage from the outset with other commissioners and providers in the wider area to develop a better understanding of the local health economy. If the trust special administrator considers wider recommendations potentially affecting other trusts they should take active steps at that point to determine what affected commissioners of these trusts reasonably identify as being essential NHS services. Essential services at other affected trusts would be

⁹ Section 65O of the NHS Act 2006, as amended most recently by section 120 of the Care Act 2014.

defined according to the same criteria and guidelines that apply to commissioners of the NHS foundation trust in administration as set out in Chapter 2. The aim is that essential NHS services should be equally protected under the regime irrespective of where they are provided.

102. The legislation also extends the scope of the trust special administrator's remit to allow them to make wider recommendations that may apply beyond the foundation trust in administration, and beyond foundation trusts and NHS trusts in general.¹⁰ For example, a trust special administrator may need to look more creatively at service delivery beyond the trust to those delivered by primary and community services subject to the recommended action being "necessary for and consequential on" the actions recommended for the foundation trust in administration.

103. The view of NHS England, with the overview it holds of the local health economy and the wider interest of the health service, is determinative for the trust special administrator in the event of disagreement between local commissioners in relation to the publication of the draft report.

4.3 Choice and competition considerations

104. The trust special administrator and commissioners should work together to ensure that the trust special administrator's recommendations are consistent with commissioners' obligations under the National Health Service (Procurement, Patient Choice and Competition) (No.2) Regulations 2013.

105. We expect that the trust special administrator will only recommend a transaction if it does not have an adverse effect on patients arising from a loss of competition, or if the benefits of the transaction are likely to outweigh these adverse effects. Where a trust special administrator recommends a merger, acquisition or other transaction that would be a relevant merger situation under the Enterprise Act 2002, we recommend that the trust special administrator engages early with Monitor and/or the Competition and Markets Authority.

106. Guidance on choice and competition can be found [here](#) and [here](#).

4.4 Equalities

107. Throughout their work, the trust special administrator will be required to observe equality legislation and principles. They must undertake an equality impact assessment to demonstrate that due regard has been paid to the Public Sector Equality Duty under the Equality Act 2010 to:

¹⁰ Section 65O of the NHS Act 2006, as amended most recently by section 120 of the Care Act 2014.

- eliminate discrimination, harassment and victimisation and any other conduct prohibited under the 2010 Act
- advance equality of opportunity between people who share a protected characteristic and those who do not
- foster good relations between people who share a protected characteristic and those who do not.

108. The equality impact assessment itself should apply in particular to patients, public and staff. It is recommended that the development of a draft equality assessment should begin from early in the regime to allow the trust special administrator to identify, for example, groups with protected characteristics that may be affected and which the administrator's draft report may take into account. The trust special administrator should consider which other relevant stakeholders, such as local Healthwatch organisations, should be involved in this work.

4.5 Clinical guidance

109. The trust special administrator should ensure that their recommendations would deliver safe and effective care and that this is supported by clear clinical evidence. It is recommended that the trust special administrator engages senior clinical expertise at an early stage and ensures that the development of recommendations routinely draws upon this expertise.

110. The trust special administrator may choose to establish a clinical advisory or reference group at the start of their process, with local and national medical and nursing experts (including from the medical Royal Colleges and professional bodies) to assess the clinical sustainability of emerging recommendations. In particular, where very specialist clinical expertise is required - for example, on the safety of particular models of care - this may need to be sought from national experts rather than local clinicians. However, representation by chairs of relevant commissioners (ie individual clinical commissioning groups) will be helpful in receiving local perspectives and priorities and in seeking their support for the trust special administrator's recommendations. The group could provide advice on the basis of available evidence, standards and current practice nationally for ensuring the safety and quality of clinical services for the benefit of patients.

111. Ultimately, the trust special administrator should aim to develop final recommendations that are likely to improve clinical standards and outcomes. While developing the recommendations they might want to consider clinical guidelines such as those issued by the medical Royal Colleges and professional bodies.

4.6 Commissioner support

112. Local service changes can be a very effective means of delivering higher quality care, better health outcomes and improved health for the population across a wider health economy. Under the exceptional and difficult circumstances where a trust special administrator is appointed, Monitor, the Secretary of State and NHS England therefore expect clinical commissioning groups to work closely and constructively with the trust special administrator in view of their responsibility to act consistently with wider NHS imperatives.¹¹
113. A trust special administrator at a foundation trust should demonstrate excellent leadership, close collaborative working and extensive and comprehensive engagement with clinical commissioning groups in developing their recommendations. The effective engagement of commissioners and securing their support are some of the most critical activities for any trust special administrator, particularly as their recommendations could lead to changes in the configuration of services.
114. The administrator should ensure clinical evidence and standards are communicated to all affected commissioners as part of determining what services are to be designated as essential.
115. Before providing their draft to Monitor, the trust special administrator should first establish with each commissioner of the NHS foundation trust in administration and the commissioners of other affected trusts that they consider the recommendations in the draft report to achieve the policy objective of the trust special administration. Further, the administrator should establish from commissioners of services at other affected trusts that they believe the recommendations meet that objective without harming essential NHS services at those trusts.
116. In the event that support is not established from one or more CCGs, on the grounds that the recommendations do not achieve continued provision of those essential services provided by the trust in administration, the trust special administrator may provide their draft report to Monitor, providing they are able to establish a statement of support from NHS England that the recommendations in that report would achieve the policy objective of the trust special administration.
117. The trust special administrator should also obtain a statement of support from NHS England regarding the impact of their recommendations on essential

¹¹ Under the NHS Act 2006, clinical commissioning groups have a duty to act consistently with the duty of the Secretary of State and NHS England to promote a comprehensive health service for the people of England.

services at other affected trusts. NHS England may consider if the essential services at other trusts are suitably identified by commissioners as essential and also whether such services would be harmed by the recommendations. In doing so, NHS England will be able to take into account the views of the commissioners who felt the recommendations would harm the essential services they commission, and decide if the argument is convincing or otherwise.

118. In either case, Monitor would expect the trust special administrator to make a note of the reasons for any disagreement in their draft report.

4.7 Legal requirements

119. The trust special administrator must provide to Monitor, and publish, the draft report within 65 working days beginning with the day on which a trust special administrator's appointment takes effect. This timeframe is set out in legislation to encourage resolution of the problems as quickly as possible so as to reduce risk to the quality and safety of the services being provided to patients and without harming essential services provided by the foundation trust. The draft report must contain recommendations as to the actions that the trust special administrator believes Monitor should take in relation to the foundation trust. After receiving the draft report, Monitor must lay it before Parliament.

120. The trust special administrator must, when preparing the draft report, consult:

- NHS England
- CQC
- any other commissioner to whom the foundation trust provides services under the 2006 Act and whom Monitor may direct the trust special administrator to consult.

121. However, while these are the only parties that must be legally consulted at this stage, the trust special administrator must use their judgment concerning who else it might be appropriate to engage with. For example, the trust special administrator should consider engaging with national clinical advisory groups, staff and the public in developing their draft report as well as neighbouring NHS foundation trusts or NHS trusts. It should be noted that it is not the role of the trust special administrator to advise interested parties during this process but they should seek independent legal advice on the impact of the proposals if necessary.

122. The trust special administrator may not provide their report to Monitor without having first obtained a statement from CQC, each commissioner of the foundation trust under administration and the commissioners of other affected trusts, that they consider the recommendation(s) in the draft report would

achieve the objective of the trust special administration. In the event that one or more commissioners do not provide such a statement, then the trust special administrator may nevertheless provide their report to Monitor, providing that they have a statement from NHS England that the recommendation(s) in the draft report would achieve the objective. The trust special administrator may not provide their report to Monitor without having first obtained a statement from CQC that the recommendations would secure the provision of the essential services at a sufficient level of safety and quality. If a statement cannot be issued to this effect by NHS England or CQC, then they must provide reasons for this to both the trust special administrator and Monitor, publish a notice disclosing their decision and lay a copy of this before Parliament.

123. A consultation plan must be published at the same time as the draft report. The plan must give details of (i) how people will be able to respond to the consultation and (ii) the dates on which the 40-working day consultation will start and end. Chapter 5 sets out the consultation process to be undertaken by the trust special administrator.

4.8 Checklist for trust special administrators: preparing the draft report

- Produce and publish the draft report within 65 working days of the appointment of the trust special administrator and provide this report to Monitor; it must include recommendations for Monitor in relation to the foundation trust.
- Consult NHS England and any other commissioners as directed by Monitor.
- Consult CQC.
- Consider consulting any affected provider.
- Consider consulting local Healthwatch and local authority of any affected provider.
- Consider the need to engage others: for example, national clinical advisory groups, the public and staff.
- Obtain a statement from all commissioners (of the foundation trust under administration as well as all other affected trusts) and/or NHS England that the recommendation(s) in the draft report would achieve the objective of the trust special administration.
- Obtain a statement from CQC that the recommendation(s) detailed in the draft report would achieve the objective of the trust special administration as regards safety and quality.
- Publish a consultation plan.

5. Consultation on the draft report

5.1 Context

124. After the draft report is published, there is a 40-working day consultation period. Monitor will only consider extending this period in exceptional circumstances.
125. To ensure that the public has confidence in the outcome, it is vital that the consultation is credible and genuinely engages all relevant stakeholders including commissioners, staff, the public and patients. The trust special administrator should carefully consider how to engage the local population including how they might be reached, whether there are particular groups or channels they should use and what obstacles might exist to obtaining a full response from stakeholders.
126. There are a number of duties placed on the trust special administrator during the consultation period to ensure that staff, the public and others are given the opportunity to share their views. It will also be important for the trust special administrator to engage with public sector NHS providers and providers from other sectors during the regime, including at the consultation stage, so that they may contribute to potential solutions for the continued delivery of safe and high quality essential services for patients.

5.2 Processes that do not apply

127. For foundation trusts under special administration, the usual statutory processes for consultation by foundation trusts, NHS England and commissioners on services in the NHS Act 2006, including service reconfiguration, do not apply but are replaced with the consultation requirements for the regime as set out in this guidance. This is the case until Monitor has made its decision and the Secretary of State has chosen not to veto the proposed action in the final report of the trust special administrator.¹²
128. Regulations also provide that the ordinary right of a local authority to be consulted about substantial developments or changes to health services does not apply to recommendations in a trust special administrator's report. Accordingly, the local authority may not refer contested service change proposals to the Secretary of State.¹³ Local authorities must, however, be

¹² See the following sections in the NHS Act 2006, as amended: sections 13Q(4) in relation to NHS England's consultation duties, 14Z2(7) in relation to CCGs and 242(6) in relation to foundation trusts.

¹³ See regulation 23 of the 'Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 (SI 2013/218)' and regulation 24, which provides exemptions in relation to proposals contained in a trust special administrator's draft or final report.

consulted as part of the trust special administration consultation as set out below.

5.3 Objectives of the consultation

129. Monitor expects trust special administrators to pursue the following standards when undertaking their statutory consultation:

- the trust special administrator should regard consultation as an important opportunity to validate and improve, where necessary, their recommendations in the draft report
- the trust special administrator should ensure the process is credible and genuinely engages all key stakeholders including patients, the public and staff, whose views will be a critical aspect of the regime.

130. An involved and meaningful consultation process will help to ensure that all stakeholders can have confidence in the outcome of the regime. The trust special administrator must be satisfied that, after the consultation and having considered the full range of responses, there is a basis on which to revise the draft recommendations if needed.

131. The NHS is accountable to the public, communities and patients that it serves. It has a responsibility to involve patients and the public about any plans to change how their services are delivered. The trust special administrator's consultation must be an open and transparent process. All the recommendations in the trust special administrator's draft report, including the rationale and evidence to support them, should be clearly set out in the consultation document. Ultimately, the intended audience of the consultation document is the general public, and the trust special administrator should consider producing a separate, easy-read version of the document.

132. The trust special administrator should make every effort to consider carefully how to engage the local population, including considering different ways in which they might be reached, whether there are particular groups or channels they should use and what obstacles might exist to getting a response from all relevant stakeholders, including seldom heard groups. In addition to traditional written consultation documents and leaflets (which could be distributed across the local health economy, including at GP surgeries, hospitals, town halls and libraries) and public events, the trust special administrator should consider using a bespoke website for publishing all materials and updates such as stakeholder bulletins and modern digital communications such as social media, which provide opportunities for the administrator to have interactive dialogues with different groups of service users. Any material produced by a trust special administrator should contain specific, relevant and clear information presented

in languages and formats that are accessible and will enable patients and service users to give their views.

133. The launch of the consultation should not come as a surprise to the local population and other key stakeholders. As set out in Chapter 2, engagement with key stakeholders should begin soon after the trust special administrator takes up their post and continue during the development of the draft recommendations leading to the statutory consultation. The local population must be able to understand the basis for the recommendations so that they can provide feedback, including any objections, to the trust special administrator. However, they will need to understand that the statutory consultation is not a poll on whether to go ahead with the recommendations but a means of seeking views for consideration by the trust special administrator in developing final recommendations for Monitor.
134. The trust special administrator should be responsive to consultation evidence and other feedback from those consulted, and reflect their analysis of that feedback in the final report.

5.4 Legal requirements

135. The 40-working day consultation period must begin as soon after the publication of the draft report as feasible and no later than five working days after the draft report is published. In the avoidance of doubt, responses to the draft report received before the start of the consultation period must be considered.
136. Within the first five working days of the consultation period, the trust special administrator must publish two notices:
- one stating that the trust special administrator is seeking responses to the draft report and detailing how people can give their responses (this must include details about how responses can be given in writing, eg via email or postal correspondence)
 - another giving the date, time and venue of the public meeting(s) the trust special administrator must hold.
137. The notices could be published in local newspapers, via local radio stations, on the trust special administrator's website or on posters placed in public spaces. A combination of these communications media is likely to be desirable.
138. The trust special administrator must request written responses from:
- NHS England
 - any commissioner that commissions services from the foundation trust in administration

- any other NHS trust or foundation trust that would be affected by the action recommended in the administrator's draft report
- any commissioner of any other NHS trust or foundation trust that would be affected by the action recommended in the administrator's draft report
- any local authority in whose area the foundation trust in administration and any other affected NHS trust or foundation trust provide services
- any local Healthwatch organisation for the area of a local authority mentioned above
- CQC
- the MP for any constituency if required by directions given by Monitor
- any other person specified by Monitor.

139. Monitor may direct the trust special administrator to request a written response and/or to meet additional people or organisations to seek their responses during the consultation. The Secretary of State may also direct Monitor as to the persons it should direct the trust special administrator to request or seek a response from (written response or a meeting).

140. The legislation sets out specific meetings the trust special administrator must hold during the consultation period:

- at least one meeting with staff and with those whom the trust special administrator may recognise as representing staff of the foundation trust under administration (eg unions)
- in the case of each of any other affected NHS trust(s) or foundation trust(s), at least one meeting with staff and those whom the trust special administrator may recognise as representing staff of each such trust
- at least one public meeting to allow anyone with an interest and who wishes to attend to give their views
- at least one meeting with the following persons to seek their response: any person to whom the trust provides goods and services under the Act; any person to whom an affected trust provides goods or services who may be affected by any action recommended in the draft report; CQC; any persons from whom Monitor has directed the trust special administrator to seek a written response; any commissioner to whom the foundation trust provides goods or services; and any commissioner of any affected NHS trust(s) or foundation trust(s)

- at least one meeting with representatives of any other affected NHS trust or foundation trust
- at least one meeting with representatives of any local authority in whose area the foundation trust in administration and any other affected trust provide services, and any local Healthwatch organisation in those areas.

141. These are the minimum legal requirements, and it is expected that trust special administrators will use their judgment in choosing to consult other organisations or persons. Trust special administrators must exercise discretion about whom they should consult to ensure there is meaningful and effective engagement during the consultation on the draft report.

5.5 Checklist for trust special administrators: consultation

- A statement must be published alongside the draft report, setting out the means by which the trust special administrator will seek responses to it and when the 40-working day consultation period will start and end.
- The 40-working day consultation period must start within five working days of the publication of the draft report, beginning with the day of publication of the draft report.
- Publish, within the first five working days of the consultation period, a notice stating that the trust special administrator is seeking responses to the draft report and describing how people can give their responses, including how they can be given in writing.
- Hold at least one public meeting during the consultation period; during the first five days of the consultation period, the trust special administrator must publish a notice of a public meeting on the draft report, with the date and venue of the meeting.
- Hold at least one meeting with staff and staff representatives during the consultation period, as well as at least one meeting with staff and staff representatives of each trust that would be affected by the action recommended in the administrator's draft report.
- Request a written response from the organisations and persons referred to in paragraph 132.
- Hold at least one meeting with representatives of the organisations referred to in paragraph 134.
- Consider the need to consult staff, the public or any other stakeholders further.

6. Preparing the final report

6.1 Context

142. After the consultation period ends, the trust special administrator will have to use the consultation responses to inform the recommendations set out in the final report to Monitor. To ensure transparency, the trust special administrator is legally required to produce a summary of all responses to the consultation and submit it alongside the final report.
143. Following the statutory consultation, the trust special administrator may not amend the draft report before first establishing from each commissioner of the foundation trust in administration and commissioners of other affected trusts that they consider the recommendations in the final report to achieve the statutory objective of the trust special administration. This includes establishing from commissioners of other affected trusts that they believe the recommendations meet that objective without harming essential NHS services provided by those other trusts.
144. In the event that support is not established from one or more CCG, the trust special administrator may provide their final report to Monitor if they are able to establish from NHS England that the recommendations in that report would achieve the policy objective of the trust special administration. The administrator should also obtain the support of NHS England in respect of the trust special administrator's recommendations relating to essential services at other affected trusts.
145. The trust special administrator may not make a variation to the draft report after the consultation period without having obtained a statement from CQC that the report as varied would achieve the objective of the regime as regards safety and quality.
146. The trust special administrator should consider how to brief staff, commissioners and others on the contents of the final report once it has been laid before Parliament. This is important to ensure that staff morale and local opinion are not unduly affected. The trust special administrator should brief the suspended chair, governors, executive and non-executive directors and members.
147. In making its decision, Monitor will also consider the trust special administrator's assessment of the wider impact of their recommendations on health and equality in satisfying Monitor's public sector equality duty.
148. The trust special administrator must take into consideration the results of the health equality impact assessment in determining the consequences of their

recommendations, thereby considering the impact on health and health inequalities of the people in the local health economy.

6.2 Legal requirements

149. Beginning with the end of the consultation period, the trust special administrator has 15 working days to produce and submit the final report together with a summary of consultation responses to Monitor. This still applies even if variations need to be made and statements need to be obtained. Monitor will only extend this period in exceptional circumstances. This final report must state the action which the trust special administrator recommends that Monitor should take in relation to the foundation trust and should set out how the recommendations meet the objective of the regime. The trust special administrator will be responsible for determining the format of the report and any other content.

150. Monitor must then publish the final report and lay it before Parliament.

6.3 Checklist for trust special administrators: final report

- Produce the final report containing the recommendations for Monitor on the future of the organisation; where amendments have been made since the draft report, obtain statements from commissioners and CQC.
- Compile a summary of all the responses received during the consultation period.
- Submit the final report and consultation summary to Monitor within 15 working days beginning with the end of the consultation period.

7. What happens next?

7.1 Context

151. Once the trust special administrator has submitted their final report, it is for Monitor to make a decision¹⁴ about whether it is satisfied that the recommended actions would meet the trust special administration objective. Monitor may take its own advice in evaluating the clinical, financial and other considerations of a trust special administrator's recommendations.

7.2 Legal requirements

152. After the trust special administrator has submitted their final report to Monitor, there are legal requirements in place to ensure that transparency is maintained

¹⁴ Notwithstanding the Secretary of State's ability to veto Monitor's decision.

in the decision-making process and to ensure that this process is completed without undue delay.

153. Within 20 working days from the day of receipt of the final report, Monitor must decide whether it is satisfied that:
- the action recommended in the final report would achieve the objective of trust special administration, set out in section 65DA of the Act
 - the trust special administrator has carried out their administrative duties.
154. If Monitor is not satisfied it must as soon as is reasonably practicable give a notice of that decision to the trust special administrator. Monitor must also publish the notice and lay it before Parliament as soon as is reasonably practicable. The notices could be published in local or national newspapers, via local or national radio stations, on the internet or on posters placed in public spaces.
155. Following receipt of the notice the trust special administrator will be required to produce a new draft report, reconsult and submit a revised final report to Monitor. The same regulations and timescales for the production and consultation of the initial report apply, unless Monitor specifies any modifications to the process and timescales in its notice.
156. Alternatively, if Monitor is satisfied with the original final report, or it is then satisfied on receipt of any subsequent revised final report, it must as soon as is reasonably practicable provide it to the Secretary of State along with CQC's report that the recommendations made by the trust special administrator would be achieved.
157. Within 30 working days from the receipt of the final report and CQC report, the Secretary of State must decide if they are satisfied that:
- the persons to which the NHS foundation trust in question provides services have discharged their functions
 - the trust special administrator has carried out the administration duties
 - Monitor has discharged its functions for the purposes of the trust special administration
 - CQC has discharged its function for the purpose of the trust special administrator
 - the action recommended in the final report would secure the continued provision of essential services

- the recommended action would secure the provision of services that are of sufficient safety and quality
- the recommended action would provide good value for money.

158. If the Secretary of State is not satisfied on any of these grounds then they must, as soon as is reasonably practicable, give notice of that decision and the reasons for it to the trust special administrator, Monitor and CQC, publish that notice and lay a copy of it before Parliament.

159. In the event that the Secretary of State provides such a notice to the trust special administrator that they are not satisfied with the final report, ie if they exercise their veto, the trust special administrator must, within 20 working days, provide to Monitor a further (amended) report so far as it is considered necessary to ensure that the Secretary of State is satisfied. If the Secretary of State considers that 20 working days is insufficient for the trust special administrator to achieve this, they may by order extend the period. If this happens, the trust special administrator must:

- publish a notice stating the date on which the period will expire
- the trust special administrator is proposing to carry out consultation in response to the (new) notice, publish a statement setting out the means by which they will consult during the extended period.

160. Within 10 working days of receipt of the revised final report, Monitor will determine whether it considers that the trust special administrator has completed their duties satisfactorily and that the action recommended in the revised final report would achieve the objective of the trust special administration. If Monitor is thus satisfied with the revised final report, it must as soon as is reasonably practicable provide it to the Secretary of State.

161. If the Secretary of State remains unsatisfied as to the matters set out above in the revised report, they must publish a notice of this decision and the reasons for it and lay a copy of the notice before Parliament. The Secretary of State must then decide what action to take in relation to the foundation trust within 60 working days, beginning with the date of publication of that notice.

7.3 Potential outcomes

162. It is the duty of the trust special administrator to make final recommendations to Monitor. Possible outcomes include:

- a restructuring of the foundation trust such that it leaves administration to continue in its restructured form

- acquisition by, or merger with, another foundation trust (following consultation with and the agreement of the proposed merger partner)
- the dissolution of the foundation trust in administration and the transfer of its services and staff to another foundation trust and/or to the Secretary of State (for onwards transfer).

7.4 Dissolution

163. If Monitor approves (and the Secretary of State does not veto) a recommendation to dissolve the foundation trust, or the Secretary of State having exercised the veto twice decides to dissolve the foundation trust, Monitor must make an order dissolving it and transferring, or providing for the transfer of, the properties, rights and liabilities of the NHS foundation trust to another NHS body and/or to the Secretary of State.

164. Work leading to the implementation of the recommendations will be required up until the point of dissolution by a trust special administrator, whose role will be to:

- ensure the trust continues to run on a business-as-usual basis
- prepare the trust for dissolution.

165. If a trust special administrator ceases to hold office before the trust has been dissolved, Monitor will appoint a further trust special administrator to carry out the dissolution of the trust.

166. The trust special administrator overseeing the implementation of the dissolution of the trust may not be the same person appointed as the trust special administrator under section 65D on day zero of the regime. However, it is expected that all trust special administrators should work together to ensure an orderly handover.

7.5 End of special administration

167. If Monitor approves (and the Secretary of State does not veto) a recommendation not to dissolve the foundation trust in administration, or the Secretary of State after having exercised the veto twice decides not to dissolve the foundation trust, then Monitor must make an order specifying a date when the appointment of the trust special administrator, as well as the suspension of the chair, directors and governors of the foundation trust, will come to an end. Monitor may at that time terminate the office of any governor, or executive or non-executive director or appoint another person in their place by way of a statutory order.

168. If the trust special administrator were to be required for this purpose, this will be discussed with the trust special administrator by Monitor at the appropriate point. In such a case, it may be that the foundation trust remains in trust special administration for a period following acceptance of the final report by Monitor and the Secretary of State, to enable the restructuring to take place.

7.6 Implementation

169. The recommendations of the trust special administrator and the decisions taken in relation to them are likely to be complex. Consequently, it must be expected that they will take time to implement. It is recommended that the trust special administrator should include an implementation plan in their final report, incorporating information relating to:

- the costs of the transition
- key risks to delivery and high-level mitigating actions.

170. The plan should aim to ensure the continuing provision of safe clinical services to patients during the implementation phase, and that clinical, operational and financial sustainability are achieved following this as quickly as possible. Monitor and the Secretary of State's expectation of a trust special administrator is that they should have established consensus about the plan with key stakeholders responsible for the implementation of the recommendations, such as commissioners.

171. The trust special administrator's appointment continues past the delivery of the final report, Monitor's decision and the Secretary of State's veto period until such date as is specified in the orders referred to above. This means that the trust special administrator may assist in implementing that decision, for example, for an interim period until any transfer, governance and leadership recommendations made in the approved final report have been given effect.



Making the health sector
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