**Statutory Guidance to Trust Special Administrators**

Department of Health written statement – made on 12th February 2015.

**Jeremy Hunt The Secretary of State for Health 12th February 2015**

I am today publishing revised *Statutory Guidance to Trust Special Administrators appointed to NHS Trusts,* in accordance with section 65N of the National Health Service Act 2006 (the 2006 Act). The document comprises guidance for Trust Special Administrators (TSAs) to which they must have regard in carrying out their duties under Chapter 5A of the 2006 Act, referred to by government as the Trust Special Administrator’s Regime. It replaces the version published on 5 July 2012.

The TSA’s regime was introduced by the Health Act 2009 and set out under Chapter 5A of the 2006 Act. It offers a time-limited framework to deal with urgent issues affecting the ability of an NHS Trust or Foundation Trust to deliver patient care, whether for clinical or financial reasons, or both. A TSA must make recommendations to the Secretary of State, or in the case of a Foundation Trust, to Monitor, about actions to secure into the future the delivery of quality, safe and financially sustainable essential services of the Trust under administration.

I stress that the regime is a measure of last resort. It is likely to be considered only when all other processes at a local level to deal with the challenges of hospitals have been exhausted. Since 2009, the regime has been used only twice.

Last year, we asked the Rt hon. Member for Sutton and Cheam (Paul Burstow) to chair a committee of MPs, Peers and others to review the development of updated guidance to TSAs. The committee considered the Guidance I am publishing and revised *Statutory Guidance for Trust Special Administrators appointed to NHS Foundation Trusts* to be published by Monitor. Meetings took place between July 2014 and January 2015. I am pleased to have been able to accept the recommendations the committee made to me and believe the Guidance I am publishing is significantly improved as a result. I would like to place on record my thanks to the Rt hon. Member for Sutton and Cheam (Paul Burstow), the Rt hon. Member for Rother Valley (Kevin Barron), the hon. Member for Stourbridge (Margot James), Baroness Finlay of Llandaff, Matt Tee and Dr Johnny Marshall from the NHS Confederation and Jeremy Taylor from National Voices, for the dedication and rigour with which they considered the issues before the Committee. Letters from the committee and notes of its meetings will be published alongside the committee’s Terms of Reference which are available at: [www.gov.uk/government/groups/committee-to-consider-statutory-guidance-for-trust-special-administrators](http://www.gov.uk/government/groups/committee-to-consider-statutory-guidance-for-trust-special-administrators)

I have consulted the Care Quality Commission (CQC) as I am required to do before publishing my Guidance, under section 65N of the 2006 Act. My Department also consulted a range of key stakeholders on the draft Guidance.

The Guidance incorporates the *new powers and requirements* in the Care Act 2014 to strengthen the TSA’s regime. These include:

* enabling a TSA to take a view of the local health economy and, where it is necessary for and consequential upon action recommended at the Trust in administration, permitting the TSA to make recommendations which may affect services at other Trusts;
* matching the TSA’s widened legal remit with a requirement to consult those other Trusts, their staff and their commissioners who would be affected by the recommendations;
* strengthening the representation of patients and local populations through a requirement on the TSA to consult local authorities and Local Healthwatch organisations during the statutory public consultation on the recommendations, in all the areas whose services would be affected by them;
* requiring the TSA to consult the CQC; and,
* giving the TSA more time to develop recommendations and consult on them.

In accordance with my duty under section 65N of the 2006 Act, the Guidance addresses matters required by that section, such as the persons to be consulted and factors to be taken into account in the preparation of the TSA’s draft report, the publication of notices and statements, and the arrangements for a TSA at an NHS Trust to seek support from commissioners for his or her recommendations and on involving NHS England. The latter replicates the substance of the statutory provisions in the regime for Foundation Trusts. A TSA at an NHS Trust should therefore ensure the involvement of local commissioners of all affected Trusts, and take fully into account the need to protect essential NHS services of the NHS Trust under administration and of any other potentially affected Trust.

The Guidance is clear that the TSA should engage with the public, patients, NHS staff and other relevant stakeholders in a meaningful way from the earliest possible point. It covers other areas including the independent nature of the TSA’s role and his or her relationship with national bodies, clinical engagement, engaging other providers, the role of the CQC, taking into account marginalised or hard-to-reach groups, cross-border patients and equality legislation. We have endeavoured to ensure consistency as between this Guidance and Monitor’s revised *Statutory Guidance for Trust Special Administrators appointed to NHS Foundation Trusts*. This latter is expected to be published by Monitor shortly.

NHS England, Monitor and the NHS Trust Development Authority are developing a “success regime” intended to help create the conditions for success in the most challenged health economies[1]. The Guidance I am publishing today also gives examples of measures to tackle failings in NHS Trusts before use of the TSA’s regime would be expected to be considered. However, it remains that the TSA’s regime is available to addresss those rare but very significant failures in the health service in a swift and effective way, ultimately, for the protection of NHS patients and the public, and NHS staff who would otherwise suffer.

A copy of the revised *Statutory Guidance to Trust Special Administrators appointed to NHS Trusts* has been placed in the Library. It is also attached and can be found at: <https://www.gov.uk/government/publications/statutory-guidance-for-trust-special-administrators-appointed-to-nhs-trusts>

[1] Referred to in the NHS planning guidance for 2015/16 *(The Forward View into action: planning for 2015/16*)

Statutory Guidance for Trust Special Administrator (PDF Document, 521.16 KB)

This statement has also been made in the House of Lords: HLWS263