THE MID STAFFORDSHIRE NHS FOUNDATION TRUST (TRUST SPECIAL ADMINSTRATORS EXTENSION OF TIME) ORDER 2013

2013 No. 1483

1. This explanatory memorandum has been prepared by Monitor and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Mid Staffordshire NHS Foundation Trust (Trust Special Administrators Extension of Time) Order 2013 ("the Order") extends two of the time periods within which the trust special administrators appointed to Mid Staffordshire NHS Foundation Trust ("the Trust") must carry out certain duties.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Section 16 of the Health Act 2009 inserted a new chapter 5A into the 2006 Act to provide for the Secretary of State to appoint trust special administrators ("TSAs") to failing NHS trusts and NHS foundation trusts. Part 4 of the Health and Social Care Act 2012 amended chapter 5A of the 2006 Act to allow Monitor to appoint TSAs in relation to failing NHS foundation trusts rather than the Secretary of State. The legislation also sets out the functions of the TSAs during the period of the appointment, in particular, provision is made for the TSAs to prepare a draft report making recommendations to Monitor on the action that Monitor should take in relation to the trust, for consultation by the TSAs with staff of the trust, commissioners of services and any other person as directed by Monitor. The TSAs must prepare a final report to Monitor and Monitor must determine whether it is satisfied that the recommendations in the report meet the objective of trust special administration. The Secretary of State has a right to veto the final report on certain limited grounds. These functions of the TSAs, Monitor and the Secretary of State are to be carried out within the time periods prescribed in the 2006 Act, unless those time periods are extended on the limited grounds provided for in the Act.

4.2 Section 65J(2) and (5) of the 2006 Act gives Monitor the power to, by order, extend certain of the time periods prescribed in the 2006 Act within which the TSAs must carry out specified duties if Monitor considers it is not reasonable in the circumstances for the TSAs to be required to carry out a specified duty in that period.

4.3 This Order is the first order that has been made under section 65J(2) and (5) of the 2006 Act.

5. Territorial Extent and Application

5.1 This Order applies to England.

6. European Convention on Human Rights

As this instrument is not subject to either the affirmative or the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The legislation sets out a period of 45 working days within which the TSAs must produce a draft report and a period of 30 working days for consultation on the draft report. In this case, Monitor has exercised its powers under section 65J(2) and (5) of the 2006 Act to make the Order to extend the time period within which the TSA must produce a draft report from 45 working days to 75 working days and to extend the period for the consultation from 30 working days to 40 working days.

7.2 Monitor considers that it is not reasonable in the circumstances for the TSAs at Mid Staffordshire NHS foundation trust to produce a draft report within 45 working days for the following reason:

- the TSAs need to conduct further analysis, and work with providers of health services in the local area, to assess the overall financial impact of the options that are being considered. Such work will include:
  - Understanding the impact of the proposed options on the local health economy and considering how the position of the local health economy may impact on the options being considered; and
  - Identifying and agreeing the likely funding requirements, through working with the TDA and commissioners, before making a firm recommendation.

7.3 Monitor considers that it is not reasonable in the circumstances for the TSAs to consult on the draft report within a 30 day period because as a consequence of extending the period for the production of the draft report by 30 days, the consultation period would take place largely in August. Monitor therefore considers it reasonable, given the importance of this consultation to the public, patients and stakeholders, to extend the consultation period by an additional 10 working days.

8. Consultation Outcome

8.1 There is no statutory requirement for consultation prior to making the Order.

9. Guidance

9.1 There is guidance for TSAs on the Monitor website at http://www.monitor-nhsft.gov.uk/home/news-events-publications/our-publications/browse-category/guidance-health-care-providers-and-co-5

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument. There is no impact on the private or voluntary sectors. The impact on the public sector is likely to be additional costs of £750,000 incurred as a result of extending the time of preparation of the draft report and consultation periods.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Order provides for the time periods within which the TSAs appointed to the Trust must provide a draft report and consult on the draft report to be extended. This Order will cease to have effect once the extended time periods have elapsed.

13. Contact

Katherine Cawley at Monitor Tel: 020 7340 2416 or email: Katherine.Cawley@Monitor.gov.uk can answer any queries regarding the instrument.