EXPLANATORY MEMORANDUM TO

THE MID STAFFORDSHIRE NHS FOUNDATION TRUST (TRUST SPECIAL ADMINSTRATORS EXTENSION OF TIME) (NO. 2) ORDER 2013

2013 No. 2671

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) (No. 2) Order 2013 ("the Order") extends one 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 second 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 15 working days within which the TSAs must produce a final 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 final report from 15 working days to 55 working days.

7.2 The TSAs are well advanced in finding a solution which delivers the essential services identified by local commissioners. The additional working days will allow the time for the relevant parties, principally NHS England and the NHS Trust Development Authority, to reach agreement on the level of future funding required and who will provide it. This agreement will provide reassurance to local commissioners about the financial implications of the TSAs' recommendations.

7.3 This process of agreeing the future funding for the services local commissioners have identified would always have needed to happen, and is now being brought forward so that the TSAs' final report to Monitor, which will also be laid before Parliament, includes a solution which is financially, as well as clinically, viable. This will provide greater clarity as it addresses the interests of taxpayers as well as patients.

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.

10.2 In order to ensure patients are still able to access services, the TSA would always have been running the trust during this time. Any impact on the public sector will therefore be limited to any necessary additional costs the TSAs will incur to support the process of NHS England and the NHS Trust Development Authority reaching agreement on the funding required.

10.3 These additional costs are currently subject to negotiation but Monitor will ensure they are kept to a minimum.

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 period within which the TSAs appointed to the Trust must provide a final report to be extended. This Order will cease to have effect once the extended time period has 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.