



Health and Social Care Act 2012

2012 CHAPTER 7

PART 3

REGULATION OF HEALTH AND ADULT SOCIAL CARE SERVICES

CHAPTER 1

MONITOR

^{F1}61 Monitor

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Textual Amendments

- F1** Pt. 3 Ch. 1 omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 46**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

^{F1}62 General duties

.....

Textual Amendments

- F1** Pt. 3 Ch. 1 omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 46**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

^{F1}63 Secretary of State's guidance on duty under section 62(9)

.....

Status: This version of this part contains provisions that are prospective.

Changes to legislation: Health and Social Care Act 2012, PART 3 is up to date with all changes known to be in force on or before 13 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Textual Amendments

F1 Pt. 3 Ch. 1 omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 46**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

F1 64 General duties: supplementary

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Textual Amendments

F1 Pt. 3 Ch. 1 omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 46**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

F1 65 Power to give Monitor functions relating to adult social care services

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Textual Amendments

F1 Pt. 3 Ch. 1 omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 46**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

F1 66 Matters to have regard to in exercise of functions

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Textual Amendments

F1 Pt. 3 Ch. 1 omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 46**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

F1 67 Conflicts between functions

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Textual Amendments

F1 Pt. 3 Ch. 1 omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 46**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

F1 68 Duty to review regulatory burdens

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Textual Amendments

- F1 Pt. 3 Ch. 1 omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 46; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

F169 Duty to carry out impact assessments

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Textual Amendments

- F1 Pt. 3 Ch. 1 omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 46; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

F170 Information

.....

Textual Amendments

- F1 Pt. 3 Ch. 1 omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 46; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

F171 Failure to perform functions

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Textual Amendments

- F1 Pt. 3 Ch. 1 omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 46; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

CHAPTER 2

COMPETITION

F272 Functions under the Competition Act 1998

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Textual Amendments

- F2 S. 72 omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), ss. 84(1), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

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F³73 Functions under Part 4 of the Enterprise Act 2002

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Textual Amendments

F3 S. 73 omitted (1.7.2022) by virtue of [Health and Care Act 2022 \(c. 31\)](#), **ss. 84(1)**, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

74 Competition functions: supplementary

F⁴(1)

F⁴(2)

F⁴(3)

F⁴(4)

F⁴(5)

F⁴(6)

(7) In section 168 of that Act (regulated markets)—

- (a) in subsection (3) (meaning of “relevant action”), after paragraph (o) insert—
 - “(p) modifying the conditions of a licence issued under section 87 of the Health and Social Care Act 2012.”,
- (b) in subsection (4) (meaning of “relevant statutory functions”), after paragraph (q) insert—
 - “(r) in relation to any licence issued under section 87 of the Health and Social Care Act 2012, the duties of Monitor under sections 62 and 66 of that Act.”, and
- (c) in subsection (5) (meaning of “sectoral regulator”), after paragraph (i) insert—
 - “(ia) Monitor;”.

Textual Amendments

F4 S. 74(1)-(6) omitted (1.7.2022) by virtue of [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 12 para. 5**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

I1 S. 74(7) in force at 1.4.2013 by [S.I. 2013/671](#), **art. 2(3)**

F⁵75 Requirements as to procurement, patient choice and competition

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Textual Amendments

F5 Ss. 75-78 omitted (1.1.2024) by virtue of [Health and Care Act 2022 \(c. 31\)](#), **ss. 80(2)**, 186(6); S.I. 2023/1431, reg. 3(c) (with reg. 5)

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F⁵76 Requirements under section 75: investigations, declarations and directions

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Textual Amendments

- F5** Ss. 75-78 omitted (1.1.2024) by virtue of Health and Care Act 2022 (c. 31), ss. 80(2), 186(6); S.I. 2023/1431, reg. 3(c) (with reg. 5)

F⁵77 Requirements under section 75: undertakings

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Textual Amendments

- F5** Ss. 75-78 omitted (1.1.2024) by virtue of Health and Care Act 2022 (c. 31), ss. 80(2), 186(6); S.I. 2023/1431, reg. 3(c) (with reg. 5)

F⁵78 Guidance

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Textual Amendments

- F5** Ss. 75-78 omitted (1.1.2024) by virtue of Health and Care Act 2022 (c. 31), ss. 80(2), 186(6); S.I. 2023/1431, reg. 3(c) (with reg. 5)

F⁶79 Mergers involving NHS foundation trusts

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Textual Amendments

- F6** S. 79 omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), ss. 83(2), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

F⁸80 Co-operation with the [^{F7}CMA]

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Textual Amendments

- F7** Word in s. 80 heading substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 192(4) (with art. 3)
- F8** S. 80 omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), ss. 82(2), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

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CHAPTER 3

LICENSING

Licensing requirement

81 Requirement for health service providers to be licensed

- (1) Any person who provides a health care service for the purposes of the NHS must hold a licence under this Chapter.
- (2) Regulations may make provision for the purposes of this Chapter for determining, in relation to a service provided by two or more persons acting in different capacities, which of those persons is to be regarded as the person who provides the service.

Commencement Information

- I2** S. 81 partly in force; s. 81 in force for specified purposes at Royal Assent, see [s. 306\(1\)\(d\)](#)
- I3** S. 81 in force at 1.4.2013 for specified purposes by [S.I. 2013/671](#), [art. 2\(3\)](#)
- I4** S. 81 in force at 1.4.2014 in so far as not already in force by [S.I. 2014/39](#), [art. 2\(3\)](#)

82 Deemed breach of requirement to be licensed

- (1) This section applies where a licence holder—
 - (a) in providing a health care service for the purposes of the NHS, carries on a regulated activity (within the meaning of Part 1 of the Health and Social Care Act 2008), but
 - (b) is not registered under Chapter 2 of Part 1 of that Act in respect of the carrying on of that activity.
- (2) The licence holder is to be regarded as providing the service in breach of the requirement under section 81 to hold a licence.

Commencement Information

- I5** S. 82 in force at 1.4.2013 by [S.I. 2013/671](#), [art. 2\(3\)](#)

83 Exemption regulations

- (1) Regulations (referred to in this section and section 84 as “exemption regulations”) may provide for the grant of exemptions from the requirement under section 81 in respect of—
 - (a) a prescribed person or persons of a prescribed description;
 - (b) the provision of a prescribed health care service or a health care service of a prescribed description.
- (2) Exemption regulations may grant an exemption—
 - (a) either generally or to the extent prescribed;
 - (b) either unconditionally or subject to prescribed conditions;

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- (c) indefinitely, for a prescribed period or for a period determined by or under the exemption.
- (3) Conditions subject to which an exemption may be granted include, in particular, conditions requiring any person providing a service pursuant to the exemption—
 - (a) to comply with any direction given by [^{F9}NHS England] about such matters as are specified in the exemption or are of a description so specified,
 - (b) except to the extent that [^{F10}NHS England] otherwise approves, to do, or not to do, such things as are specified in the exemption or are of a description so specified (or to do, or not to do, such things in a specified manner), and
 - (c) to refer for determination by [^{F11}NHS England] such questions arising under the exemption as are specified in the exemption or are of a description so specified.
- (4) Before making exemption regulations the Secretary of State must give notice to—
 - ^{F12}(a)
 - (b) [^{F13}NHS England], and
 - (c) the Care Quality Commission and its Healthwatch England committee.
- (5) The Secretary of State must also publish a notice under subsection (4).
- (6) A notice under subsection (4) must—
 - (a) state that the Secretary of State proposes to make exemption regulations and set out their proposed effect,
 - (b) set out the Secretary of State's reasons for the proposal, and
 - (c) specify the period (“the notice period”) within which representations with respect to the proposal may be made.
- (7) The notice period must be not less than 28 days beginning with the day after that on which the notice is published under subsection (5).
- (8) Where an exemption is granted the Secretary of State—
 - (a) if the exemption is granted to a prescribed person, must give notice of it to that person, and
 - (b) must publish the exemption.

Textual Amendments

- F9** Words in s. 83(3)(a) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 47(2)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F10** Words in s. 83(3)(b) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 47(2)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F11** Words in s. 83(3)(c) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 47(2)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F12** S. 83(4)(a) omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 47(3)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F13** Words in s. 83 substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 1 para. 1(1)(2); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

- I6** S. 83 partly in force; s. 83 in force for specified purposes at Royal Assent, see s. 306(1)(d)
- I7** S. 83 in force at 1.4.2014 in so far as not already in force by S.I. 2014/39, **art. 2(3)**

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84 Exemption regulations: supplementary

- (1) Regulations may revoke exemption regulations by which an exemption was granted to a person, or amend such regulations by which more than one exemption was so granted so as to withdraw any of the exemptions—
 - (a) at the person's request,
 - (b) in accordance with any provision of the exemption regulations by which the exemption was granted, or
 - (c) if the Secretary of State considers it to be inappropriate for the exemption to continue to have effect.
- (2) Regulations may revoke exemption regulations by which an exemption was granted to persons of a prescribed description, or amend such regulations by which more than one exemption was so granted so as to withdraw any of the exemptions—
 - (a) in accordance with any provision of the exemption regulations by which the exemption was granted, or
 - (b) if the Secretary of State considers it to be inappropriate for the exemption to continue to have effect.
- (3) The Secretary of State may by direction withdraw an exemption granted to persons of a description prescribed in exemption regulations for any person of that description—
 - (a) at the person's request,
 - (b) in accordance with any provision of the exemption regulations by which the exemption was granted, or
 - (c) if the Secretary of State considers it to be inappropriate for the exemption to continue to have effect in the case of the person.
- (4) Subsection (5) applies where the Secretary of State proposes to—
 - (a) make regulations under subsection (1)(b) or (c) or (2), or
 - (b) give a direction under subsection (3)(b) or (c).
- (5) The Secretary of State must—
 - (a) consult the following about the proposal—
 - ^{F14}(i)
 - (ii) [^{F15}NHS England];
 - (iii) the Care Quality Commission and its Healthwatch England committee;
 - (b) where the Secretary of State is proposing to make regulations under subsection (1)(b) or (c), give notice of the proposal to the person to whom the exemption was granted;
 - (c) where the Secretary of State is proposing to make regulations under subsection (2), publish the notice;
 - (d) where the Secretary of State is proposing to give a direction under subsection (3)(b) or (c), give notice of the proposal to the person from whom the Secretary of State proposes to withdraw the exemption.
- (6) The notice must—
 - (a) state that the Secretary of State proposes to make the regulations or give the direction (as the case may be),
 - (b) set out the Secretary of State's reasons for the proposal, and

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- (c) specify the period within which representations with respect to the proposal may be made.
- (7) The period so specified must be not less than 28 days beginning with the day after that on which the notice is received or (as the case may be) published.

Textual Amendments

- F14** S. 84(5)(a)(i) omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 48**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F15** Words in s. 84 substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 1 para. 1(1)(2); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

- I8** S. 84 partly in force; s. 84 in force for specified purposes at Royal Assent, see s. 306(1)(d)
- I9** S. 84 in force at 1.4.2014 in so far as not already in force by S.I. 2014/39, **art. 2(3)**

Licensing procedure

85 Application for licence

- (1) A person seeking to hold a licence under this Chapter must make an application to [^{F16}NHS England].
- (2) The application must be made in such form, and contain or be accompanied by such information, as [^{F17}NHS England] requires.

Textual Amendments

- F16** Words in s. 85(1) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 49**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F17** Words in s. 85(2) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 49**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

- I10** S. 85 in force at 1.4.2013 for specified purposes by S.I. 2013/671, **art. 2(3)**
- I11** S. 85 in force at 1.1.2014 by S.I. 2013/2896, **art. 2(1)(3)**

86 Licensing criteria

- (1) [^{F18}NHS England] must set and publish the criteria which must be met by a person in order for that person to be granted a licence under this Chapter.
- (2) [^{F18}NHS England] may revise the criteria and, if it does so, must publish them as revised.
- (3) [^{F18}NHS England] may not set or revise the criteria unless the Secretary of State has by order approved the criteria or (as the case may be) revised criteria.

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Textual Amendments

F18 Words in s. 86(1)-(3) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 50](#); [S.I. 2022/734, reg. 2\(a\)](#), [Sch.](#) (with regs. 6, 13, 29, 30)

Commencement Information

I12 S. 86 in force at 1.4.2013 for specified purposes by [S.I. 2013/671, art. 2\(3\)](#)

I13 S. 86 in force at 1.1.2014 by [S.I. 2013/2896, art. 2\(1\)\(3\)](#)

87 Grant or refusal of licence

- (1) This section applies where an application for a licence has been made under section 85.
- (2) If [^{F19}NHS England] is satisfied that the applicant meets the criteria for holding a licence for the time being published under section 86 it must as soon as reasonably practicable grant the application; otherwise it must refuse it.
- (3) On granting the application, [^{F20}NHS England] must issue a licence to the applicant.
- (4) A licence issued under this section is subject to—
 - (a) such of the standard conditions (see section 94) as are applicable to the licence, [^{F21}and]
 - (b) such other conditions included in the licence by virtue of section 95 (referred to in this Chapter as “the special conditions”), [^{F22}and]
 - (c) [^{F22}any conditions included in the licence by virtue of section 111 (imposition of licence conditions on NHS foundation trusts during transitional period).]

Textual Amendments

F19 Words in s. 87(2) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 51](#); [S.I. 2022/734, reg. 2\(a\)](#), [Sch.](#) (with regs. 13, 29, 30)

F20 Words in s. 87(3) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 51](#); [S.I. 2022/734, reg. 2\(a\)](#), [Sch.](#) (with regs. 13, 29, 30)

F21 Word in s. 87(4)(a) inserted (coming into force immediately after the repeal of s. 111 as soon as there are no NHS foundation trusts in relation to which s. 111 has effect as a result of orders made under s. 112(1)-(4) of the amending Act or as soon as there are no such trusts in existence) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 114\(1\)\(c\)](#), 306(4); [S.I. 2013/671, art. 2\(3\)](#)

F22 S. 87(4)(c) and preceding word omitted (coming into force immediately after the repeal of s. 111 as soon as there are no NHS foundation trusts in relation to which s. 111 has effect as a result of orders made under s. 112(1)-(4) of the amending Act or as soon as there are no such trusts in existence) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 114\(1\)\(d\)](#), 306(4); [S.I. 2013/671, art. 2\(3\)](#)

Commencement Information

I14 S. 87 in force at 1.4.2013 for specified purposes by [S.I. 2013/671, art. 2\(3\)](#)

I15 S. 87 in force at 1.4.2014 in so far as not already in force by [S.I. 2014/39, art. 2\(3\)](#)

[^{F23}87A Application and grant: NHS trusts

- (1) An NHS trust established under section 25 of the National Health Service Act 2006 is to be treated, on its establishment, as—
 - (a) having made an application for a licence under section 85, and

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- (b) having met the criteria for holding a licence for the time being published under section 86.
- (2) An NHS trust established under section 25 of the National Health Service Act 2006 before the day on which section 51(1) of the Health and Care Act 2022 comes into force is to be treated, for the purposes of subsection (1), as having been established on that day.]

Textual Amendments

F23 S. 87A inserted (1.4.2023) by Health and Care Act 2022 (c. 31), ss. 51(2), 186(6); S.I. 2023/371, reg. 2(c)

88 Application and grant: NHS foundation trusts

- [^{F24}(1) This section applies where—
- (a) an NHS trust becomes an NHS foundation trust in pursuance of section 36 of the National Health Service Act 2006 (effect of authorisation of NHS foundation trust), or
 - (b) an NHS foundation trust is established under sections 56 or 56B of that Act (mergers and separations).]
- (2) The NHS foundation trust is to be treated by [^{F25}NHS England] as having—
- (a) duly made an application for a licence under section 85, and
 - (b) met the criteria for holding a licence for the time being published under section 86.
- (3) An NHS foundation trust in existence on the day on which this section comes into force is to be treated for the purposes of this section as having become an NHS foundation trust pursuant to section 36 of the National Health Service Act 2006 on that day.

Textual Amendments

F24 S. 88(1) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 61, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

F25 Words in s. 88(2) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 52; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

I16 S. 88 in force at 1.4.2013 by S.I. 2013/671, art. 2(3)

89 Revocation of licence

- [^{F26}NHS England] may at any time revoke a licence under this Chapter—
- (a) on the application of the licence holder, or
 - (b) if [^{F26}NHS England] is satisfied that the licence holder has failed to comply with a condition of the licence.

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Textual Amendments

F26 Words in s. 89 substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 53](#); [S.I. 2022/734](#), reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

I17 S. 89 in force at 1.4.2013 by [S.I. 2013/671](#), [art. 2\(3\)](#)

90 Right to make representations

- (1) [^{F27}NHS England] must give notice—
 - (a) to an applicant for a licence under this Chapter of a proposal to refuse the application;
 - (b) to the licence holder of a proposal to revoke a licence under section 89(b).
- (2) A notice under this section must—
 - (a) set out [^{F28}NHS England’s] reasons for its proposal;
 - (b) specify the period within which representations with respect to the proposal may be made to [^{F29}NHS England].
- (3) The period so specified must be not less than 28 days beginning with the day after that on which the notice is received.

Textual Amendments

F27 Words in s. 90(1) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 54\(2\)](#); [S.I. 2022/734](#), reg. 2(a), Sch. (with regs. 13, 29, 30)

F28 Words in s. 90(2)(a) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 54\(3\)\(a\)](#); [S.I. 2022/734](#), reg. 2(a), Sch. (with regs. 13, 29, 30)

F29 Words in s. 90(2)(b) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 54\(3\)\(b\)](#); [S.I. 2022/734](#), reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

I18 S. 90(1)(a) in force at 1.4.2014 by [S.I. 2014/39](#), [art. 2\(3\)](#)

I19 S. 90(1)(b)(2)(3) in force at 1.4.2013 by [S.I. 2013/671](#), [art. 2\(3\)](#)

91 Notice of decisions

- (1) This section applies if [^{F30}NHS England] decides to—
 - (a) refuse an application for a licence under section 87, or
 - (b) revoke a licence under section 89(b).
- (2) [^{F31}NHS England] must give notice of its decision to the applicant or the licence holder (as the case may be).
- (3) A notice under this section must explain the right of appeal conferred by section 92.
- (4) A decision of [^{F32}NHS England] to revoke a licence under section 89(b) takes effect on such day as may be specified by [^{F32}NHS England], being a day no earlier than—
 - (a) if an appeal is brought under section 92, the day on which the decision on appeal is confirmed or the appeal is abandoned,

Status: This version of this part contains provisions that are prospective.

Changes to legislation: Health and Social Care Act 2012, PART 3 is up to date with all changes known to be in force on or before 13 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (b) where the licence holder notifies [^{F32}NHS England] before the end of the period for bringing an appeal under section 92 that the licence holder does not intend to appeal, the day on which [^{F32}NHS England] receives the notification, or
- (c) the day after that period.

Textual Amendments

- F30** Words in s. 91(1) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 55**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F31** Words in s. 91(2) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 55**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F32** Words in s. 91(4) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 55**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

- I20** S. 91(1)(a) in force at 1.4.2014 by S.I. 2014/39, **art. 2(3)**
- I21** S. 91(1)(b)(2)-(4) in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)** (with art. 4)

92 Appeals to the Tribunal

- (1) An appeal lies to the First-tier Tribunal against a decision of [^{F33}NHS England] to—
 - (a) refuse an application for a licence under section 87, or
 - (b) revoke a licence under section 89(b).
- (2) The grounds for an appeal under this section are that the decision was—
 - (a) based on an error of fact,
 - (b) wrong in law, or
 - (c) unreasonable.
- (3) On an appeal under this section, the First-tier Tribunal may—
 - (a) confirm [^{F34}NHS England's] decision,
 - (b) direct that the decision is not to have effect, or
 - (c) remit the decision to [^{F35}NHS England].

Textual Amendments

- F33** Words in s. 92(1) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 56(2)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F34** Words in s. 92(3)(a) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 56(3)(a)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F35** Words in s. 92(3)(c) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 56(3)(b)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

- I22** S. 92(1)(a) in force at 1.4.2014 by S.I. 2014/39, **art. 2(3)**
- I23** S. 92(1)(b)(2)(3) in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

Status: This version of this part contains provisions that are prospective.

Changes to legislation: Health and Social Care Act 2012, PART 3 is up to date with all changes known to be in force on or before 13 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

93 Register of licence holders

- (1) [^{F36}NHS England] must maintain and publish a register of licence holders.
- (2) The register may contain such information as [^{F36}NHS England] considers appropriate for the purpose of keeping members of the public informed about licence holders including, in particular, information about the revocation of any licence under this Chapter.
- (3) [^{F36}NHS England] must secure that copies of the register are available at its offices for inspection at all reasonable times by any person.
- (4) Any person who asks [^{F36}NHS England] for a copy of, or an extract from, the register is entitled to have one.
- (5) Regulations may provide that subsections (3) and (4) do not apply—
 - (a) in such circumstances as may be prescribed, or
 - (b) to such parts of the register as may be prescribed.
- (6) A fee determined by [^{F37}NHS England] is payable for the copy or extract except—
 - (a) in such circumstances as may be prescribed, or
 - (b) in any case where [^{F37}NHS England] considers it appropriate to provide the copy or extract free of charge.

Textual Amendments

F36 Words in s. 93(1)-(4) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 57](#); [S.I. 2022/734, reg. 2\(a\), Sch. \(with regs. 13, 29, 30\)](#)

F37 Words in s. 93(6) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 57](#); [S.I. 2022/734, reg. 2\(a\), Sch. \(with regs. 13, 29, 30\)](#)

Commencement Information

I24 S. 93 partly in force; s. 93 in force for specified purposes at Royal Assent, see [s. 306\(1\)\(d\)](#)

I25 S. 93 in force at 1.4.2013 in so far as not already in force by [S.I. 2013/671, art. 2\(3\)](#)

Licence conditions

94 Standard conditions

- (1) [^{F38}NHS England] must determine and publish the conditions to be included in each licence under this Chapter (referred to in this Chapter as “the standard conditions”).
- (2) Different standard conditions may be determined for different descriptions of licences.
- (3) For the purposes of subsection (2) a description of licences may, in particular, be framed wholly or partly by reference to—
 - (a) the nature of the licence holder,
 - (b) the services provided under the licence, or
 - (c) the areas in which those services are provided.
- (4) But different standard conditions must not be determined for different descriptions of licences to the extent that the description is framed by reference to the nature of the

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licence holder unless [^{F39}NHS England] considers that at least one of requirements 1 and 2 is met.

- (5) Requirement 1 is that—
- (a) the standard conditions in question relate to the governance of licence holders, and
 - (b) it is necessary to determine different standard conditions in order to take account of differences in the status of different licence holders.
- (6) Requirement 2 is that it is necessary to determine different standard conditions for the purpose of ensuring that the burdens to which different licence holders are subject as a result of holding a licence are broadly consistent.

- ^{F40}(7)
- ^{F40}(8)
- ^{F40}(9)
- ^{F40}(10)
- ^{F40}(11)

Textual Amendments

- F38** Words in s. 94(1) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 58\(2\)](#); [S.I. 2022/734](#), [reg. 2\(a\)](#), [Sch.](#) (with [regs. 13, 29, 30](#))
- F39** Words in s. 94(4) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 58\(2\)](#); [S.I. 2022/734](#), [reg. 2\(a\)](#), [Sch.](#) (with [regs. 13, 29, 30](#))
- F40** S. 94(7)-(11) omitted (1.7.2022) by virtue of [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 58\(3\)](#); [S.I. 2022/734](#), [reg. 2\(a\)](#), [Sch.](#) (with [regs. 13, 29, 30](#))

Commencement Information

- I26** S. 94 partly in force; s. 94 in force for specified purposes at Royal Assent, see [s. 306\(1\)\(d\)](#)
- I27** S. 94 in force at 1.4.2013 in so far as not already in force by [S.I. 2013/671](#), [art. 2\(3\)](#)
- I28** S. 94(1)-(6) in force at 1.11.2012 for specified purposes by [S.I. 2012/2657](#), [art. 2\(2\)](#)
- I29** S. 94(7)-(10)(11)(b)(c) in force at 1.11.2012 in so far as not already in force by [S.I. 2012/2657](#), [art. 2\(2\)](#)

95 Special conditions

- (1) [^{F41}NHS England] may—
- (a) ^{F42}... include a special condition in a licence under this Chapter, and
 - (b) ^{F43}... modify a special condition of a licence.
- (2) Before including a special condition or making such modifications [^{F44}NHS England] must give notice to—
- (a) the applicant or the licence holder (as the case may be),
 - (b) the Secretary of State,
 - ^{F45}(c)
 - (d) such [^{F46}integrated care boards] as are likely to be affected by the proposed inclusion or modifications, and
 - (e) the Care Quality Commission and its Healthwatch England committee.

Status: This version of this part contains provisions that are prospective.

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- (3) [^{F47}NHS England] must also publish the notice under subsection (2).
- (4) The notice under subsection (2) must—
 - (a) state that [^{F48}NHS England] proposes to include the special condition or make the modifications and set out its or their proposed effect,
 - (b) set out [^{F49}NHS England’s] reasons for the proposal, and
 - (c) specify the period (“the notice period”) within which representations with respect to the proposal may be made to [^{F50}NHS England].
- (5) The notice period must be not less than 28 days beginning with the day after that on which the notice is published under subsection (3).
- (6) In this section, a reference to modifying a condition includes a reference to amending, omitting or adding a condition.

Textual Amendments

- F41** Words in s. 95(1) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 59\(2\)](#); S.I. 2022/734, [reg. 2\(a\)](#), [Sch.](#) (with [regs. 13, 29, 30](#))
- F42** Words in s. 95(1)(a) omitted (1.7.2022) by virtue of [Health and Care Act 2022 \(c. 31\)](#), [ss. 85\(2\)\(a\)](#), 186(6); S.I. 2022/734, [reg. 2\(a\)](#), [Sch.](#) (with [regs. 13, 29, 30](#))
- F43** Words in s. 95(1)(b) omitted (1.7.2022) by virtue of [Health and Care Act 2022 \(c. 31\)](#), [ss. 85\(2\)\(b\)](#), 186(6); S.I. 2022/734, [reg. 2\(a\)](#), [Sch.](#) (with [regs. 13, 29, 30](#))
- F44** Words in s. 95(2) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 59\(3\)\(a\)](#); S.I. 2022/734, [reg. 2\(a\)](#), [Sch.](#) (with [regs. 13, 29, 30](#))
- F45** S. 95(2)(c) omitted (1.7.2022) by virtue of [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 59\(3\)\(b\)](#); S.I. 2022/734, [reg. 2\(a\)](#), [Sch.](#) (with [regs. 13, 29, 30](#))
- F46** Words in s. 95(2)(d) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 4 para. 176](#); S.I. 2022/734, [reg. 2\(a\)](#), [Sch.](#) (with [regs. 13, 29, 30](#))
- F47** Words in s. 95(3) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 59\(4\)](#); S.I. 2022/734, [reg. 2\(a\)](#), [Sch.](#) (with [regs. 13, 29, 30](#))
- F48** Words in s. 95(4)(a) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 59\(5\)\(a\)](#); S.I. 2022/734, [reg. 2\(a\)](#), [Sch.](#) (with [regs. 13, 29, 30](#))
- F49** Words in s. 95(4)(b) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 59\(5\)\(b\)](#); S.I. 2022/734, [reg. 2\(a\)](#), [Sch.](#) (with [regs. 13, 29, 30](#))
- F50** Words in s. 95(4)(c) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 59\(5\)\(c\)](#); S.I. 2022/734, [reg. 2\(a\)](#), [Sch.](#) (with [regs. 13, 29, 30](#))

Commencement Information

- I30** S. 95 in force at 1.11.2012 for specified purposes by [S.I. 2012/2657](#), [art. 2\(2\)](#) (with [art. 7](#))
- I31** S. 95(1)(a)(2)-(5) in force at 1.4.2013 in so far as not already in force by [S.I. 2013/671](#), [art. 2\(3\)](#) (with [art. 5](#))
- I32** S. 95(1)(b)(6) in force at 1.7.2013 in so far as not already in force by [S.I. 2013/671](#), [art. 2\(4\)](#)

96 Limits on [^{F51}NHS England’s] functions to set or modify licence conditions

- (1) This section applies to the following functions of [^{F52}NHS England] —
 - (a) the duty to determine the standard conditions to be included in each licence under this Chapter or in licences of a particular description (see section 94);
 - (b) the powers to include a special condition in a licence and to modify such a condition (see section 95);

Status: This version of this part contains provisions that are prospective.

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- (c) the power to modify the standard conditions applicable to all licences, or to licences of a particular description (see section 100).
- (2) [^{F53}NHS England] may only exercise a function to which this section applies—
- (a) for the purpose of regulating the price payable for the provision of health care services for the purposes of the NHS;
 - (b) for the purpose of preventing anti-competitive behaviour in the provision of health care services for those purposes which is against the interests of people who use such services;
 - (c) for the purpose of protecting and promoting the right of patients to make choices with respect to treatment or other health care services provided for the purposes of the NHS;
 - (d) for the purpose of ensuring the continued provision of health care services for the purposes of the NHS;
 - [^{F54}(da) for the purpose of ensuring that decisions relating to the provision of health care services for the purposes of the NHS are made with regard to all their likely effects in relation to the matters referred to in subsection (2A);]
 - (e) for the purpose of enabling health care services provided for the purposes of the NHS to be provided in an integrated way where [^{F55}NHS England] considers that this would achieve one or more of the objectives referred to in subsection (3);
 - (f) for the purpose of enabling the provision of health care services provided for the purposes of the NHS to be integrated with the provision of health-related services or social care services where [^{F56}NHS England] considers that this would achieve one or more of the objectives referred to in subsection (3);
 - [^{F57}(g) for the purpose of enabling, promoting or securing co-operation between providers of health care services for the purposes of the NHS, or between such providers and—
 - (i) NHS bodies, within the meaning of section 72 of the National Health Service Act 2006, or
 - (ii) local authorities in England (and for this purpose “local authority” has the meaning given by section 275(1) of the National Health Service Act 2006);]
 - (h) for purposes connected with the governance of persons providing health care services for the purposes of the NHS;
 - (i) for purposes connected with [^{F58}NHS England’s] functions in relation to the register of NHS foundation trusts required to be maintained under section 39 of the National Health Service Act 2006;
 - (j) for purposes connected with the operation of the licensing regime established by this Chapter;
 - [^{F59}(k) for such other purposes as may be prescribed.]
- [^{F60}(2A) The matters referred to in subsection (2)(da) are—
- (a) the health and well-being of the people of England;
 - (b) the quality of services provided to individuals—
 - (i) by relevant bodies, or
 - (ii) in pursuance of arrangements made by relevant bodies,
- for or in connection with the prevention, diagnosis or treatment of illness, as part of the health service in England;

Status: This version of this part contains provisions that are prospective.

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- (c) efficiency and sustainability in relation to the use of resources by relevant bodies for the purposes of the health service in England.
- (2B) For the purposes of subsection (2)(da) (as read with subsection (2A))—
- (a) a reference to the effects of decisions in relation to the health and well-being of the people of England includes a reference to the effects of the decisions in relation to inequalities between the people of England with respect to their health and well-being;
 - (b) a reference to effects of decisions in relation to the quality of services provided to individuals includes a reference to the effects of the decisions in relation to inequalities between individuals with respect to the benefits that they can obtain from those services.
- (2C) In subsection (2A) “relevant bodies” means—
- (a) NHS England,
 - (b) integrated care boards,
 - (c) NHS trusts established under section 25, and
 - (d) NHS foundation trusts.]
- (3) The objectives referred to in subsection (2)(e), [F61 and (f)] are—
- (a) improving the quality of health care services provided for the purposes of the NHS (including the outcomes that are achieved from their provision) or the efficiency of their provision,
 - (b) reducing inequalities between persons with respect to their ability to access those services, and
 - (c) reducing inequalities between persons with respect to the outcomes achieved for them by the provision of those services.
- (4) [F62 NHS England] must not exercise a function to which this section applies in a way which it considers would result in a particular licence holder or holders of licences of a particular description being put at an unfair advantage or disadvantage in competing with others in the provision of health care services for the purposes of the NHS as a result of—
- (a) being in the public or (as the case may be) private sector, or
 - (b) some other aspect of its or their status.
- (5) In subsection (2)(f), “health-related services” and “social care services” each have the meaning given in section 62(11).

Textual Amendments

- F51** Words in s. 96 heading substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 60\(2\)](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F52** Words in s. 96(1) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 60\(3\)](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F53** Words in s. 96(2) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 60\(4\)\(a\)](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F54** S. 96(2)(da) inserted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), [ss. 76\(a\)](#), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F55** Words in s. 96(2)(e) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 60\(4\)\(b\)](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Status: This version of this part contains provisions that are prospective.

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- F56** Words in s. 96(2)(f) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 60(4)(c)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F57** S. 96(2)(g) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), **ss. 75(4)(a)**, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F58** Words in s. 96(2)(i) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 60(4)(d)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F59** S. 96(2)(k) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 60(4)(e)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F60** S. 96(2A)-(2C) inserted (1.7.2022) by Health and Care Act 2022 (c. 31), **ss. 76(b)**, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F61** Words in s. 96(3) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), **ss. 75(4)(b)**, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F62** Words in s. 96(4) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 60(5)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

- I33** S. 96 partly in force; s. 96 in force for specified purposes at Royal Assent, see s. 306(1)(d)
- I34** S. 96 in force at 1.11.2012 for specified purposes by S.I. 2012/2657, **art. 2(2)**
- I35** S. 96(1)(a)(b)(2)-(5) in force at 1.4.2014 in so far as not already in force by S.I. 2014/39, **art. 2(3)**
- I36** S. 96(1)(c) in force at 1.7.2013 in so far as not already in force by S.I. 2013/671, **art. 2(4)**

97 Conditions: supplementary

- (1) The standard or special conditions of a licence under this Chapter may, in particular, include conditions—
- (a) requiring the licence holder to pay to [^{F63}NHS England] such fees of such amounts as [^{F63}NHS England] may determine in respect of the exercise by [^{F63}NHS England] of its functions under this Chapter,
 - (b) requiring the licence holder to comply with any requirement imposed on it by [^{F64}NHS England] under Chapter 6 (financial assistance in special administration cases),
 - (c) requiring the licence holder to do, or not to do, specified things or things of a specified description (or to do, or not to do, any such things in a specified manner) within such period as may be specified in order to prevent anti-competitive behaviour in the provision of health care services for the purposes of the NHS which is against the interests of people who use such services,
 - (d) requiring the licence holder to give notice to the [^{F65}CMA] before entering into an arrangement under which, or a transaction in consequence of which, the licence holder's activities, and the activities of one or more other businesses, cease to be distinct activities,
 - (e) requiring the licence holder to provide [^{F66}NHS England] with such information as [^{F66}NHS England] considers necessary for the purposes of the exercise of its functions under this Part,
 - (f) requiring the licence holder to publish such information as may be specified or as [^{F67}NHS England] may direct,
 - (g) requiring the licence holder to charge for the provision of health care services for the purposes of the NHS in accordance with [^{F68}the NHS payment scheme (see section 114A)],
 - (h) requiring the licence holder to comply with other rules published by [^{F69}NHS England] about the charging for the provision of health care services for the purposes of the NHS,

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- (i) requiring the licence holder—
 - (i) to do, or not to do, specified things or things of a specified description (or to do, or not to do, any such things in a specified manner) within such period as may be specified in order to ensure the continued provision of one or more of the health care services that the licence holder provides for the purposes of the NHS,
 - (ii) to give [^{F70}NHS England] notice (of such period as may be determined by or under the licence) of the licence holder's intention to cease providing a health care service for the purposes of the NHS, and
 - (iii) if [^{F71}NHS England] so directs, to continue providing that service for a period determined by [^{F71}NHS England],
 - (j) about the use or disposal by the licence holder of assets used in the provision of health care services for the purposes of the NHS in order to ensure the continued provision of one or more of the health care services that the licence holder provides for those purposes, and
 - (k) about the making by the licence holder of investment in relation to the provision of health care services for the purposes of the NHS in order to ensure the continued provision of one or more of the health care services that the licence holder provides for those purposes.
- (2) In subsection (1) “specified” means specified in a condition.
- (3) [^{F72}NHS England] must not include a condition under subsection (1)(c) that requires the licence holder (A) to provide another licence holder with access to facilities of A.
- (4) A condition under subsection (1)(d)—
- (a) may be included only in the licence of an NHS foundation trust or a body which (or part of which) used to be an NHS trust established under section 25 of the National Health Service Act 2006, and
 - (b) ceases to have effect at the end of the period of five years beginning with the day on which it is included in the licence.
- (5) The references in subsection (1)(d) to the activities of a licence holder or other business include a reference to part of the activities concerned.
- (6) The references in subsections (1)(d) and (5) to the activities of a business include a reference to the activities of an NHS foundation trust in so far as its activities would not otherwise be the activities of a business.
- (7) A condition of a licence under this Chapter may provide that it is to have effect, or cease to have effect, at such times and in such circumstances as may be determined by or under the conditions.

Textual Amendments

- F63** Words in s. 97(1)(a) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 61](#); [S.I. 2022/734, reg. 2\(a\), Sch.](#) (with [regs. 13, 29, 30](#))
- F64** Words in s. 97(1)(b) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 61](#); [S.I. 2022/734, reg. 2\(a\), Sch.](#) (with [regs. 13, 29, 30](#))
- F65** Word in s. 97(1)(d) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 193](#) (with art. 3)

Status: This version of this part contains provisions that are prospective.

Changes to legislation: Health and Social Care Act 2012, PART 3 is up to date with all changes known to be in force on or before 13 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- F66** Words in s. 97(1)(e) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 61**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F67** Words in s. 97(1)(f) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 61**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F68** Words in s. 97(1)(g) substituted (1.7.2022 for specified purposes, 1.4.2023 in so far as not already in force) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 10 para. 2**; S.I. 2022/734, reg. 2(b) (with regs. 13, 29, 30); S.I. 2023/371, reg. 2(d)
- F69** Words in s. 97(1)(h) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 61**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F70** Words in s. 97(1)(i)(ii) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 61**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F71** Words in s. 97(1)(i)(iii) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 61**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F72** Words in s. 97(3) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 61**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

- I37** S. 97 partly in force; s. 97 in force for specified purposes at Royal Assent, see s. 306(1)(d)
- I38** S. 97 in force at 1.11.2012 for specified purposes by S.I. 2012/2657, **art. 2(2)**
- I39** S. 97 in force at 1.4.2013 in so far as not already in force by S.I. 2013/671, **art. 2(3)**

98 Conditions relating to the continuation of the provision of services etc.

- (1) The things which a licence holder may be required to do by a condition under section 97(1)(i)(i) include, in particular—
- providing information to the commissioners of services to which the condition applies and to such other persons as [^{F73}NHS England] may direct,
 - allowing [^{F74}NHS England] to enter premises owned or controlled by the licence holder and to inspect the premises and anything on them, and
 - co-operating with such persons as [^{F75}NHS England] may appoint to assist in the management of the licence holder's affairs, business and property.
- (2) A commissioner of services to which a condition under section 97(1)(i), (j) or (k) applies must co-operate with persons appointed under subsection (1)(c) in their provision of the assistance that they have been appointed to provide.
- (3) Where a licence includes a condition under section 97(1)(i), (j) or (k), [^{F76}NHS England] must carry out an ongoing assessment of the risks to the continued provision of services to which the condition applies.
- (4) [^{F77}NHS England] must publish guidance—
- for commissioners of a service to which a condition under section 97(1)(i), (j) or (k) applies about the exercise of their functions in connection with the licence holders who provide the service, and
 - for such licence holders about the conduct of their affairs, business and property at a time at which such a condition applies.
- (5) A commissioner of services to which a condition under section 97(1)(i), (j), or (k) applies must have regard to guidance under subsection (4)(a).

[^{F78}(5A) In subsections (4)(a) and (5) “commissioner” does not include NHS England.]

Status: This version of this part contains provisions that are prospective.

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- (6) [^{F79}NHS England] may revise guidance under subsection (4) and, if it does so, must publish the guidance as revised.
- (7) Before publishing guidance under subsection (4) or (6), [^{F80}NHS England] must obtain the approval of—
- (a) the Secretary of State, ^{F81} ...
 - ^{F81}(b)

Textual Amendments

- F73** Words in s. 98(1)(a) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 62\(2\)](#); [S.I. 2022/734](#), [reg. 2\(a\)](#), [Sch. \(with regs. 13, 29, 30\)](#)
- F74** Words in s. 98(1)(b) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 62\(2\)](#); [S.I. 2022/734](#), [reg. 2\(a\)](#), [Sch. \(with regs. 13, 29, 30\)](#)
- F75** Words in s. 98(1)(c) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 62\(2\)](#); [S.I. 2022/734](#), [reg. 2\(a\)](#), [Sch. \(with regs. 13, 29, 30\)](#)
- F76** Words in s. 98(3) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 62\(3\)](#); [S.I. 2022/734](#), [reg. 2\(a\)](#), [Sch. \(with regs. 13, 29, 30\)](#)
- F77** Words in s. 98(4) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 62\(4\)](#); [S.I. 2022/734](#), [reg. 2\(a\)](#), [Sch. \(with regs. 13, 29, 30\)](#)
- F78** [S. 98\(5A\)](#) inserted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 62\(5\)](#); [S.I. 2022/734](#), [reg. 2\(a\)](#), [Sch. \(with regs. 13, 29, 30\)](#)
- F79** Words in s. 98(6) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 62\(6\)](#); [S.I. 2022/734](#), [reg. 2\(a\)](#), [Sch. \(with regs. 13, 29, 30\)](#)
- F80** Words in s. 98(7) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 62\(7\)\(a\)](#); [S.I. 2022/734](#), [reg. 2\(a\)](#), [Sch. \(with regs. 13, 29, 30\)](#)
- F81** [S. 98\(7\)\(b\)](#) and word omitted (1.7.2022) by virtue of [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 62\(7\)\(b\)](#); [S.I. 2022/734](#), [reg. 2\(a\)](#), [Sch. \(with regs. 13, 29, 30\)](#)

Commencement Information

- I40** S. 98 partly in force; s. 98 in force for specified purposes at Royal Assent, see [s. 306\(1\)\(d\)](#)
- I41** S. 98 in force at 1.4.2013 in so far as not already in force by [S.I. 2013/671](#), [art. 2\(3\)](#)
- I42** S. 98(1)(2) in force at 1.11.2012 for specified purposes by [S.I. 2012/2657](#), [art. 2\(2\)](#)
- I43** S. 98(4)(7) in force at 1.11.2012 in so far as not already in force by [S.I. 2012/2657](#), [art. 2\(2\)](#) (with [art. 8](#))

99 Notification of commissioners where continuation of services at risk

- (1) This section applies where [^{F82}NHS England]—
- (a) takes action in the case of a licence holder in reliance on a condition in the licence under section 97(1)(i), (j) or (k), and
 - (b) does so because it is satisfied that the continued provision for the purposes of the NHS of health care services to which that condition applies is being put at significant risk by the configuration of certain health care services provided for those purposes.
- (2) In subsection (1), a reference to the provision of services is a reference to their provision by the licence holder or any other provider.
- [^{F83}(3) NHS England must as soon as reasonably practicable notify such integrated care boards as NHS England considers appropriate—

Status: This version of this part contains provisions that are prospective.

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- (a) of the action it has taken, and
 - (b) of its reasons for being satisfied as mentioned in subsection (1)(b).]
- (4) [^{F84}NHS England] must publish for each financial year a list of the notifications under this section that it has given during that year; and the list must include for each notification a summary of [^{F85}NHS England’s] reasons for being satisfied as mentioned in subsection (1)(b).
- (5) ^{F86}... [^{F87}Integrated care boards], having received a notification under this section, must have regard to it in arranging for the provision of health care services for the purposes of the NHS.

Textual Amendments

- F82** Words in s. 99(1) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 63(2)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F83** S. 99(3) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 63(3)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F84** Words in s. 99(4) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 63(4)(a)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F85** Words in s. 99(4) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 63(4)(b)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F86** Words in s. 99(5) omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 63(5)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F87** Words in s. 99(5) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 4 para. 177**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

- I44** S. 99 in force at 1.4.2013 by S.I. 2013/671, art. 2(3)

100 Modification of standard conditions

- (1) [^{F88}NHS England] may, subject to the requirements of this section, modify the standard conditions applicable to all licences under this Chapter or to licences of a particular description.

[^{F89}(1A) Before making modifications under subsection (1) that NHS England consider to be a major change, NHS England must—

- (a) carry out an assessment of the likely impact of the modifications, or
- (b) publish a statement setting out its reasons for concluding that such assessment is not needed.]

(2) Before making any [^{F90}modifications under subsection (1)] [^{F91}NHS England] must give notice to—

- (a) each relevant licence holder,
- (b) the Secretary of State,
- ^{F92}(c)
- (d) every [^{F93}integrated care board], and
- (e) the Care Quality Commission and its Healthwatch England committee.

(3) [^{F94}NHS England] must also publish the notice under subsection (2).

Status: This version of this part contains provisions that are prospective.

Changes to legislation: Health and Social Care Act 2012, PART 3 is up to date with all changes known to be in force on or before 13 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (4) The notice under subsection (2) must—
- (a) state that [^{F95}NHS England] proposes to make the modifications,
 - (b) set out the proposed effect of the modifications,
 - [^{F96}(ba) set out any impact assessment carried out by NHS England under subsection (1A)(a),]
 - (c) set out [^{F97}NHS England’s] reasons for the proposal, and
 - (d) specify the period (“the notice period”) within which representations with respect to the proposal may be made to [^{F98}NHS England].
- (5) The notice period must be not less than 28 days beginning with the day after that on which the notice is published under subsection (3).
- ^{F99}(6)
- ^{F99}(7)
- ^{F99}(8)
- ^{F99}(9)
- (10) Where [^{F100}NHS England] modifies the standard conditions applicable to all licences or (as the case may be) to licences of a particular description under this section, [^{F100}NHS England]—
- (a) may also make such incidental or consequential modifications as it considers necessary or expedient of any other conditions of a licence which is affected by the modifications,
 - (b) must make (as nearly as may be) the same modifications of those conditions for the purposes of their inclusion in all licences or (as the case may be) licences of that description granted after that time, and
 - (c) must publish the modifications.
- (11) In this section^{F101} ..., “relevant licence holder”—
- (a) in relation to proposed modifications of the standard conditions applicable to all licences, means any licence holder, and
 - (b) in relation to proposed modifications of the standard conditions applicable to licences of a particular description, means a holder of a licence of that description.
- (12) In this section, a reference to modifying a condition includes a reference to amending, omitting or adding a condition.

Textual Amendments

- F88** Words in s. 100(1) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 64\(2\)](#); S.I. 2022/734, [reg. 2\(a\)](#), [Sch.](#) (with [regs. 13, 29, 30](#))
- F89** S. 100(1A) inserted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), [ss. 35\(2\)](#), 186(6); S.I. 2022/734, [reg. 2\(a\)](#), [Sch.](#) (with [regs. 13, 29, 30](#))
- F90** Words in s. 100(2) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), [ss. 35\(3\)](#), 186(6); S.I. 2022/734, [reg. 2\(a\)](#), [Sch.](#) (with [regs. 13, 29, 30](#))
- F91** Words in s. 100(2) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 64\(3\)\(a\)](#); S.I. 2022/734, [reg. 2\(a\)](#), [Sch.](#) (with [regs. 13, 29, 30](#))
- F92** S. 100(2)(c) omitted (1.7.2022) by virtue of [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 64\(3\)\(b\)](#); S.I. 2022/734, [reg. 2\(a\)](#), [Sch.](#) (with [regs. 13, 29, 30](#))

Status: This version of this part contains provisions that are prospective.

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- F93** Words in s. 100(2)(d) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 4 para. 178**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F94** Words in s. 100(3) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 64(4)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F95** Words in s. 100(4)(a) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 64(5)(a)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F96** S. 100(4)(ba) inserted (1.7.2022) by Health and Care Act 2022 (c. 31), **ss. 35(4)**, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F97** Words in s. 100(4)(c) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 64(5)(b)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F98** Words in s. 100(4)(d) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 64(5)(c)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F99** S. 100(6)-(9) omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), **ss. 85(3)(a)**, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F100** Words in s. 100(10) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 64(6)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F101** Words in s. 100(11) omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), **ss. 85(3)(b)**, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

- I45** S. 100 partly in force; s. 100 in force for specified purposes at Royal Assent, see s. 306(1)(d)
- I46** S. 100 in force at 1.7.2013 in so far as not already in force by S.I. 2013/671, **art. 2(4)**

^{F103}101 Modification references to the [^{F102}CMA]

.....

Textual Amendments

- F102** Word in s. 101 heading substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 128(6)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F103** S. 101 omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), **ss. 85(4)**, 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

102 Modification of conditions by order under other enactments

- (1) This section applies where the [^{F104}CMA] or Secretary of State (the “relevant authority”) makes a relevant order.
- (2) A relevant order may modify—
 - (a) the conditions of a particular licence, or
 - (b) the standard conditions applicable to all licences under this Chapter or to licences of a particular description.
- (3) The modifications which may be made by a relevant order are those which the relevant authority considers necessary or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.
- (4) In this section “relevant order” means—
 - (a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the Enterprise Act 2002 where one or more of the enterprises which have,

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- or may have, ceased to be distinct enterprises were engaged in the provision of health care services for the purposes of the NHS;
- (b) an order under any of those provisions of that Act where one or more of the enterprises which will or may cease to be distinct enterprises is engaged in the provision of health care services for the purposes of the NHS;
 - (c) an order under section 160 or 161 of that Act where the feature, or combination of features, of the market [^{F105}or markets] in the United Kingdom for goods or services which prevents, restricts or distorts competition relates to—
 - (i) the commissioning by [^{F106}NHS England] or [^{F107}an integrated care board] of health care services for the purposes of the NHS, or
 - (ii) the provision of those services.
- (5) The modification under subsection (2)(a) of part of a standard condition of a licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Chapter.
- (6) Where the relevant authority modifies the standard conditions applicable to all licences or (as the case may be) to licences of a particular description under this section, the relevant authority—
- (a) may, after consultation with [^{F108}NHS England], make such incidental or consequential modifications as the relevant authority considers necessary or expedient of any other conditions of any licence which is affected by the modifications,
 - (b) must also make (as nearly as may be) the same modifications of those conditions for the purposes of their inclusion in all licences or (as the case may be) licences of that description granted after that time, and
 - (c) must publish any modifications it makes under paragraph (b).
- (7) Expressions used in subsection (4) and in Part 3 or (as the case may be) Part 4 of the Enterprise Act 2002 have the same meaning in that subsection as in that Part.
- (8) In this section, a reference to modifying a condition includes a reference to amending, omitting or adding a condition.

Textual Amendments

- F104** Word in s. 102(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 129**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F105** Words in s. 102(4)(c) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 194** (with art. 3)
- F106** Words in s. 102 substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 1 para. 1(1)(2); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F107** Words in s. 102(4)(c)(i) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 4 para. 179**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F108** Words in s. 102(6)(a) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 65**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

- I47** S. 102 partly in force; s. 102 in force for specified purposes at Royal Assent, see s. 306(1)(d)
- I48** S. 102 in force at 1.4.2013 in so far as not already in force by S.I. 2013/671, **art. 2(3)**

Status: This version of this part contains provisions that are prospective.

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103 Standard condition as to transparency of certain criteria

- (1) The standard conditions applicable to any licence under this Chapter must include a condition requiring the licence holder to—
 - (a) set transparent eligibility and selection criteria, and
 - (b) apply those criteria in a transparent way to persons who, having a choice of persons from whom to receive health care services for the purposes of the NHS, choose to receive them from the licence holder.
- (2) “Eligibility and selection criteria”, in relation to a licence holder, means criteria for determining—
 - (a) whether a person is eligible, or is to be selected, to receive health care services provided by the licence holder for the purposes of the NHS, and
 - (b) if the person is selected, the manner in which the services are provided to the person.
- (3) The following powers must not be exercised so as to omit the condition mentioned in subsection (1) from any licence under this Chapter—
 - (a) [^{F109}the power conferred on NHS England by section 100] to modify the standard conditions applicable to all licences, or to licences of a particular description,
 - ^{F110}(b) and
 - (c) the powers conferred by section 102 on the [^{F111}CMA] and Secretary of State to modify those conditions or the conditions of a particular licence.

Textual Amendments

- F109** Words in s. 103(3)(a) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), ss. 85(5)(a), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F110** S. 103(3)(b) omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), ss. 85(5)(b), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F111** Word in s. 103(3)(c) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 6 para. 130(b); S.I. 2014/416, art. 2(1)(d) (with Sch.)

Commencement Information

- I49** S. 103 in force at 1.4.2013 for specified purposes by S.I. 2013/671, art. 2(3)
- I50** S. 103 in force at 1.7.2013 in so far as not already in force by S.I. 2013/671, art. 2(4)
- I51** S. 103(1)(2) in force at 1.11.2012 for specified purposes by S.I. 2012/2657, art. 2(2)

Enforcement

104 Power to require documents and information

- (1) [^{F112}NHS England] may require a person mentioned in subsection (2) to provide it with any information, documents, records or other items which it considers it necessary or expedient to have for the purposes of any of its regulatory functions.
- (2) The persons are—
 - (a) an applicant for a licence under this Chapter,
 - (b) a licence holder,

Status: This version of this part contains provisions that are prospective.

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- (c) a person who has provided, or is providing, a health care service for the purposes of the NHS in accordance with an exemption by virtue of section 83 from the requirement to hold a licence under this Chapter,
 - (d) a person who has provided, or is providing, a health care service for the purposes of the NHS in breach of that requirement,
 - ^{F113}(e) and
 - ^{F114}(f) an integrated care board.]
- (3) The power in subsection (1) includes, in relation to information, documents or records kept by means of a computer, power to require the provision of the information, documents or records in legible form.
- ^{F115}(4) In this section “regulatory functions”, in relation to NHS England, has the meaning given by section 13SB(2) of the National Health Service Act 2006.]

Textual Amendments

- F112** Words in s. 104(1) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 5 para. 66(2)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F113** S. 104(2)(e) omitted (1.7.2022) by virtue of [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 5 para. 66(3)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F114** S. 104(2)(f) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 4 para. 180**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F115** S. 104(4) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 5 para. 66(4)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

- I52** S. 104(1)(2)(a)(f)(3)(4)(a)(d) in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)** (with art. 9)
- I53** S. 104(2)(b)(4)(c) in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**
- I54** S. 104(2)(c)(d) in force at 1.4.2014 in so far as not already in force by S.I. 2014/39, **art. 2(3)**
- I55** S. 104(2)(e) in force at 1.4.2013 in so far as not already in force by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

105 Discretionary requirements

- (1) ^{F116}[NHS England] may impose one or more discretionary requirements on a person if ^{F116}[NHS England] is satisfied that the person—
- (a) has provided, or is providing, a health care service for the purposes of the NHS in breach of the requirement to hold a licence under this Chapter (see section 81),
 - (b) is a licence holder who has provided, or is providing, a health care service for the purposes of the NHS in breach of a condition of the licence, or
 - (c) is in breach of a requirement imposed by ^{F116}[NHS England] under section 104.
- (2) In this Chapter, “discretionary requirement” means—
- (a) a requirement to pay a monetary penalty to ^{F117}[NHS England] of such amount as ^{F117}[NHS England] may determine (referred to in this Chapter as a “variable monetary penalty”),

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- (b) a requirement to take such steps within such period as [^{F118}NHS England] may specify, to secure that the breach in question does not continue or recur (referred to in this Chapter as a “compliance requirement”), or
 - (c) a requirement to take such steps within such period as [^{F119}NHS England] may specify, to secure that the position is, so far as possible, restored to what it would have been if the breach in question was not occurring or had not occurred (referred to in this Chapter as a “restoration requirement”).
- (3) [^{F120}NHS England] must not impose discretionary requirements on a person on more than one occasion in relation to the same breach.
- (4) A variable monetary penalty must not exceed 10% of the turnover in England of the person on whom it is imposed, such amount to be calculated in the prescribed manner.
- (5) If the whole or any part of a variable monetary penalty is not paid by the time it is required to be paid, the unpaid balance from time to time carries interest at the rate for the time being specified in section 17 of the Judgments Act 1838; but the total interest must not exceed the amount of the penalty.

Textual Amendments

- F116** Words in s. 105(1) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 67**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F117** Words in s. 105(2)(a) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 67**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F118** Words in s. 105(2)(b) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 67**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F119** Words in s. 105(2)(c) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 67**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F120** Words in s. 105(3) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 67**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

- I56** S. 105 partly in force; s. 105 in force for specified purposes at Royal Assent, see s. 306(1)(d)
- I57** S. 105(1)(a) in force at 1.4.2014 in so far as not already in force by S.I. 2014/39, **art. 2(3)**
- I58** S. 105(1)(b)(c)(2)(b)(c)(3) in force at 1.4.2013 in so far as not already in force by S.I. 2013/671, **art. 2(3)**
- I59** S. 105(2)(a)(4)(5) in force at 1.7.2013 in so far as not already in force by S.I. 2013/671, **art. 2(4)**

106 Enforcement undertakings

- (1) [^{F121}NHS England] may accept an enforcement undertaking from a person if [^{F121}NHS England] has reasonable grounds to suspect that the person—
- (a) has provided, or is providing, a health care service for the purposes of the NHS in breach of the requirement to hold a licence under this Chapter,
 - (b) is a licence holder who has provided, or is providing, a health care service for the purposes of the NHS in breach of a condition of the licence, or
 - (c) is in breach of a requirement imposed by [^{F121}NHS England] under section 104.

Status: This version of this part contains provisions that are prospective.

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- (2) In this Chapter, “enforcement undertaking” means an undertaking from a person to take such action of a kind mentioned in subsection (3) as may be specified in the undertaking within such period as may be so specified.
- (3) The specified action must be—
- (a) action to secure that the breach in question does not continue or recur,
 - (b) action to secure that the position is, so far as possible, restored to what it would have been if the breach in question was not occurring or had not occurred,
 - (c) action (including the payment of a sum of money) to benefit—
 - (i) any other licence holder affected by the breach, or
 - (ii) any commissioner of health care services for the purposes of the NHS which is affected by the breach, or
 - (d) action of such a description as may be prescribed.
- (4) Where [^{F122}NHS England] accepts an enforcement undertaking then, unless the person from whom the undertaking is accepted has failed to comply with the undertaking or any part of it—
- (a) [^{F122}NHS England] may not impose on that person any discretionary requirement which it would otherwise have power to impose by virtue of section 105 in respect of the breach to which the undertaking relates, and
 - (b) if the breach to which the undertaking relates falls within subsection (1)(b), [^{F122}NHS England] may not revoke that person's licence under section 89(b).
- (5) Where a person from whom [^{F123}NHS England] has accepted an enforcement undertaking has failed to comply fully with the undertaking but has complied with part of it, [^{F123}NHS England] must take the partial compliance into account in deciding whether—
- (a) to impose a discretionary requirement on the person in respect of the breach to which the undertaking relates, or
 - (b) if the breach to which the undertaking relates falls within subsection (1)(b), to revoke the person's licence under section 89(b).

Textual Amendments

- F121** Words in s. 106(1) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 68](#); [S.I. 2022/734](#), reg. 2(a), [Sch.](#) (with regs. 13, 29, 30)
- F122** Words in s. 106(4) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 68](#); [S.I. 2022/734](#), reg. 2(a), [Sch.](#) (with regs. 13, 29, 30)
- F123** Words in s. 106(5) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 68](#); [S.I. 2022/734](#), reg. 2(a), [Sch.](#) (with regs. 13, 29, 30)

Commencement Information

- I60** S. 106 partly in force; s. 106 in force for specified purposes at Royal Assent, see s. 306(1)(d)
- I61** S. 106(1)(a) in force at 1.4.2014 in so far as not already in force by [S.I. 2014/39](#), [art. 2\(3\)](#)
- I62** S. 106(1)(b)(c)(2)-(5) in force at 1.4.2013 in so far as not already in force by [S.I. 2013/671](#), [art. 2\(3\)](#)

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107 Further provision about enforcement powers

Schedule 11 (Part 1 of which makes further provision about discretionary requirements and Part 2 of which makes further provision about enforcement undertakings) has effect.

Commencement Information

I63 S. 107 in force at 1.7.2013 for specified purposes by [S.I. 2013/671, art. 2\(3\)](#)

I64 S. 107 in force at 1.7.2013 in so far as not already in force by [S.I. 2013/671, art. 2\(4\)](#)

108 Guidance as to use of enforcement powers

- (1) [^{F124}NHS England] must publish guidance about how it intends to exercise its functions under sections 105 and 106 and Schedule 11.
- (2) [^{F124}NHS England] may revise the guidance and, if it does so, must publish the guidance as revised.
- (3) [^{F124}NHS England] must consult such persons as it considers appropriate before publishing or revising the guidance.
- (4) Guidance relating to [^{F125}NHS England's] functions under section 105 must include information about—
 - (a) the circumstances in which [^{F126}NHS England] is likely to impose a discretionary requirement,
 - (b) the circumstances in which [^{F127}NHS England] may not impose a discretionary requirement,
 - (c) the matters likely to be taken into account by [^{F128}NHS England] in determining the amount of any variable monetary penalty to be imposed (including, where relevant, any discounts for voluntary reporting of breaches in respect of which a penalty may be imposed), and
 - (d) rights to make representations and rights of appeal.
- (5) [^{F129}NHS England] must have regard to the guidance or (as the case may be) revised guidance in exercising its functions under sections 105 and 106 and Schedule 11.

Textual Amendments

F124 Words in s. 108(1)-(3) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 69\(2\)](#); [S.I. 2022/734, reg. 2\(a\), Sch. \(with regs. 13, 29, 30\)](#)

F125 Words in s. 108(4) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 69\(3\)\(a\)](#); [S.I. 2022/734, reg. 2\(a\), Sch. \(with regs. 13, 29, 30\)](#)

F126 Words in s. 108(4)(a) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 69\(3\)\(b\)](#); [S.I. 2022/734, reg. 2\(a\), Sch. \(with regs. 13, 29, 30\)](#)

F127 Words in s. 108(4)(b) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 69\(3\)\(b\)](#); [S.I. 2022/734, reg. 2\(a\), Sch. \(with regs. 13, 29, 30\)](#)

F128 Words in s. 108(4)(c) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 69\(3\)\(b\)](#); [S.I. 2022/734, reg. 2\(a\), Sch. \(with regs. 13, 29, 30\)](#)

F129 Words in s. 108(5) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 69\(4\)](#); [S.I. 2022/734, reg. 2\(a\), Sch. \(with regs. 13, 29, 30\)](#)

Status: This version of this part contains provisions that are prospective.

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Commencement Information

- I65** S. 108(1)-(4) in force at 1.11.2012 for specified purposes by [S.I. 2012/2657](#), [art. 2\(2\)](#)
I66 S. 108(1)-(4) in force at 1.4.2013 in so far as not already in force by [S.I. 2013/671](#), [art. 2\(3\)](#)
I67 S. 108(5) in force at 1.4.2013 by [S.I. 2013/671](#), [art. 2\(3\)](#)

109 Publication of enforcement action

- (1) [^{F130}NHS England] must include information about the following in its annual report—
- (a) the cases in which a discretionary requirement has been imposed during the financial year to which the report relates, and
 - (b) the cases in which an enforcement undertaking has been accepted during that financial year.
- (2) But [^{F131}NHS England] must not include information which it is satisfied is—
- (a) commercial information the disclosure of which would, or might, significantly harm the legitimate business interests of the person to whom it relates;
 - (b) information relating to the private affairs of an individual the disclosure of which would, or might, significantly harm that person's interests.
- (3) The reference in subsection (1)(a) to cases in which a discretionary requirement has been imposed does not include a reference to a case where a discretionary requirement has been imposed but overturned on appeal.

Textual Amendments

- F130** Words in s. 109(1) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 70](#); [S.I. 2022/734](#), [reg. 2\(a\)](#), [Sch.](#) (with [regs. 13, 29, 30](#))
F131 Words in s. 109(2) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 70](#); [S.I. 2022/734](#), [reg. 2\(a\)](#), [Sch.](#) (with [regs. 13, 29, 30](#))

Commencement Information

- I68** S. 109 in force at 1.4.2013 by [S.I. 2013/671](#), [art. 2\(3\)](#)

110 Notification of enforcement action

- (1) As soon as reasonably practicable after imposing a discretionary requirement or accepting an enforcement undertaking [^{F132}NHS England] must notify the following of that fact—
- ^{F133}(a)
 - (b) such [^{F134}integrated care boards] as are likely to be affected by the imposition of the requirement or the acceptance of the undertaking, and
 - (c) any person exercising regulatory functions in relation to the person on whom the discretionary requirement was imposed or from whom the enforcement undertaking was accepted.
- (2) In subsection (1) “regulatory functions” has the same meaning as in the Legislative and Regulatory Reform Act 2006 (see section 32 of that Act).

Status: This version of this part contains provisions that are prospective.

Changes to legislation: Health and Social Care Act 2012, PART 3 is up to date with all changes known to be in force on or before 13 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Textual Amendments

- F132** Words in s. 110(1) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 71\(a\)](#); [S.I. 2022/734, reg. 2\(a\)](#), [Sch.](#) (with regs. 13, 29, 30)
- F133** S. 110(1)(a) omitted (1.7.2022) by virtue of [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 71\(b\)](#); [S.I. 2022/734, reg. 2\(a\)](#), [Sch.](#) (with regs. 13, 29, 30)
- F134** Words in s. 110(1)(b) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 4 para. 181](#); [S.I. 2022/734, reg. 2\(a\)](#), [Sch.](#) (with regs. 13, 29, 30)

Commencement Information

- I69** S. 110 in force at 1.4.2013 by [S.I. 2013/671, art. 2\(3\)](#)

Transitional provision

^{F135}111 Imposition of licence conditions on NHS foundation trusts

- (1) Where ^{F136}[NHS England] is satisfied that the governance of an NHS foundation trust is such that the trust will fail to comply with the conditions of its licence, ^{F136}[NHS England] may include in the licence such conditions relating to governance as it considers appropriate for the purpose of reducing that risk.
- (2) The circumstances in which ^{F136}[NHS England] may be satisfied as mentioned in subsection (1) include circumstances where it is satisfied that the council of governors, the board of directors or the council of governors and board of directors taken together are failing—
 - (a) to secure compliance with conditions in the trust’s licence, or
 - (b) to take steps to reduce the risk of a breach of a condition in the trust’s licence.
- ^{F137}(2A) Where a warning notice under section 29A of the Health and Social Care Act 2008 is given to an NHS foundation trust, ^{F136}[NHS England] may include in the trust’s licence such conditions as it considers appropriate in connection with the matters to which the notice relates.]
- (3) A condition included under subsection (1) ^{F138}[or (2A)] has effect until this section ceases, by virtue of section 112, to have effect in relation to the trust.
- (4) ^{F139}[NHS England] may modify a condition included under subsection (1) ^{F138}[or (2A)].
- (5) Where ^{F139}[NHS England] is satisfied that the trust has breached or is breaching a condition included under subsection (1) ^{F138}[or (2A)], ^{F139}[NHS England] may by notice require the trust to—
 - (a) remove one or more of the directors or members of the council of governors and appoint interim directors or members of the council;
 - (b) suspend one or more of the directors or members of the council from office as a director or member for a specified period;
 - (c) disqualify one or more of the directors or members of the council from holding office as a director or member for a specified period.
- (6) Where ^{F139}[NHS England] is satisfied that a person ^{F139}has failed or is failing to comply with a notice under subsection (5), ^{F139}[NHS England] may do one or more of the things which it may require the trust to do under that subsection.

Status: This version of this part contains provisions that are prospective.

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- (7) Subsection (5) does not prevent [^{F139}NHS England] from exercising in relation to a condition included in a licence under subsection (1) [^{F140}or (2A)] the powers conferred by sections 105 and 106 (breach of licence condition etc: enforcement powers which apply during and after period in which this section and sections 112 to 114 have effect).
- (8) Where [^{F139}NHS England] includes a condition under subsection (1) [^{F140}or (2A)], it may also make such incidental or consequential modifications as it considers necessary or expedient of any other condition of the licence concerned which is affected.
- (9) Where [^{F139}NHS England] includes a condition under subsection (1) [^{F140}or (2A)] by modifying a standard condition of the licence concerned, the modification does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Chapter.
- (10) In this section, a reference to failing to discharge functions includes a reference to failing to discharge those functions properly.
- (11) Omit section 52 of the National Health Service Act 2006 (failing NHS foundation trusts); and in consequence of that, omit—
- (a) section 39(2)(f) of that Act (copy of notice under section 52 of that Act to be on register), and
 - (b) paragraph 22(1)(f) of Schedule 7 to that Act (copy of that notice to be available for public inspection).]

Textual Amendments

- F135** S. 111 repealed (coming into force as soon as there are no NHS foundation trusts in relation to which it has effect as a result of orders made under s. 112(1)-(4) of the amending Act or as soon as there are no such trusts in existence) by [Health and Social Care Act 2012 \(c. 7\)](#), ss. 112(5), 306(4); [S.I. 2013/671](#), art. 2(3)
- F136** Words in s. 111(1)-(2A) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 72](#); [S.I. 2022/734](#), reg. 2(a), Sch. (with regs. 13, 29, 30)
- F137** S. 111(2A) inserted (1.4.2015) by [Care Act 2014 \(c. 23\)](#), ss. [83\(2\)](#), 127(1); [S.I. 2015/993](#), [art. 2\(v\)](#) (with transitional provisions in [S.I. 2015/995](#))
- F138** Words in s. 111(3)-(5) inserted (1.4.2015) by [Care Act 2014 \(c. 23\)](#), ss. [83\(3\)](#), 127(1); [S.I. 2015/993](#), [art. 2\(v\)](#) (with transitional provisions in [S.I. 2015/995](#))
- F139** Words in s. 111(4)-(9) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 72](#); [S.I. 2022/734](#), reg. 2(a), Sch. (with regs. 13, 29, 30)
- F140** Words in s. 111(7)-(9) inserted (1.4.2015) by [Care Act 2014 \(c. 23\)](#), ss. [83\(3\)](#), 127(1); [S.I. 2015/993](#), [art. 2\(v\)](#) (with transitional provisions in [S.I. 2015/995](#))

Commencement Information

- I70** S. 111 in force at 1.4.2013 by [S.I. 2013/671](#), [art. 2\(3\)](#)

[^{F141}112 Duration of transitional period

- (1) Section 111 ceases to have effect in relation to an NHS foundation trust on such day as the Secretary of State may by order specify.
- (2) Different days may be appointed in relation to different NHS foundation trusts.
- (3) A day specified under subsection (1) must not—

Status: This version of this part contains provisions that are prospective.

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- (a) in the case of an NHS foundation trust authorised on or before 1 April 2014, be before 1 April 2016;
 - (b) in the case of an NHS foundation trust authorised after 1 April 2014, be before the end of the period of two years beginning with the day on which the trust was authorised.
- (4) In this section, a reference to being authorised is a reference to being given an authorisation under section 35 of the National Health Service Act 2006.
- (5) Section 111 is repealed as soon as there are—
- (a) no NHS foundation trusts in relation to which it has effect, and
 - (b) no NHS trusts in existence ^{F142}....]

Textual Amendments

F141 S. 112 repealed (coming into force immediately after the repeal of s. 111 as soon as there are no NHS foundation trusts in relation to which s. 111 has effect as a result of orders made under s. 112(1)-(4) of the amending Act or as soon as there are no such trusts in existence) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 114(1), 306(4)**; [S.I. 2013/671](#), **art. 2(3)**

F142 Words in s. 112(5)(b) omitted (1.7.2022) by virtue of [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 7 para. 9**; [S.I. 2022/734](#), **reg. 2(a)**, **Sch.** (with **regs. 13, 29, 30**)

Commencement Information

I71 S. 112 partly in force; s. 112 in force for specified purposes at Royal Assent, see [s. 306\(1\)\(d\)](#)

I72 S. 112 in force at 1.4.2013 in so far as not already in force by [S.I. 2013/671](#), **art. 2(3)**

^{F143}113 Orders under section 112: criteria for deciding applicable trusts

- (1) Where the Secretary of State proposes to make an order under section 112, the Secretary of State must notify [^{F144}NHS England].
- (2) [^{F144}NHS England], having received a notification under subsection (1), must set the criteria that are to be applied for the purpose of determining to which NHS foundation trusts the order should apply.
- (3) Before setting criteria under subsection (2), [^{F144}NHS England] must—
 - (a) consult the Care Quality Commission and such other persons as [^{F144}NHS England] considers appropriate, and
 - (b) obtain the approval of the Secretary of State.
- (4) If the Secretary of State approves the proposed criteria, [^{F144}NHS England] must—
 - (a) publish the criteria,
 - (b) determine, by applying the criteria, to which trusts the order should apply,
 - (c) notify the Secretary of State of its determination, and
 - (d) publish a list of the trusts concerned.
- (5) If the Secretary of State does not approve the proposed criteria, [^{F144}NHS England] must propose revised criteria; and subsections (3)(b) and (4) apply in relation to the proposed revised criteria as they apply in relation to the criteria previously proposed.
- (6) The Secretary of State, having received a notification under subsection (4)(c), must review [^{F145}NHS England's] determination under subsection (4)(b).]

Status: This version of this part contains provisions that are prospective.

Changes to legislation: Health and Social Care Act 2012, PART 3 is up to date with all changes known to be in force on or before 13 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Textual Amendments

- F143** S. 113 repealed (coming into force immediately after the repeal of s. 111 as soon as there are no NHS foundation trusts in relation to which s. 111 has effect as a result of orders made under s. 112(1)-(4) of the amending Act or as soon as there are no such trusts in existence) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 114(1)**, 306(4); S.I. 2013/671, art. 2(3)
- F144** Words in s. 113(1)-(5) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 5 para. 73(2)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F145** Words in s. 113(6) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 5 para. 73(3)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

- I73** S. 113 in force at 1.4.2013 by [S.I. 2013/671](#), **art. 2(3)**

^{F146}114 Repeal of sections 112 and 113

- (1) Sections 112 and 113 are repealed immediately after section 111 is repealed; and in consequence of that—
- (a) in section 67(2)(a), omit “or under sections 111 and 113 of this Act (imposition of licence conditions on NHS foundation trusts during transitional period)”,
 - (b) omit section 67(3),
 - (c) in section 87(4), after paragraph (a) insert “and”, and
 - (d) in section 87(4), omit paragraph (c) and the preceding “and”.
- (2) This section is repealed immediately after sections 112 and 113 are repealed.]

Textual Amendments

- F146** S. 114 repealed (coming into force immediately after sections 112 and 113 are repealed) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 114(2)**, 306(4); S.I. 2013/671, **art. 2(3)**

Commencement Information

- I74** S. 114 in force at 1.4.2013 by [S.I. 2013/671](#), **art. 2(3)**

^{F147}CHAPTER 4

THE NHS PAYMENT SCHEME

Textual Amendments

- F147** [Pt. 3 Ch. 4](#) substituted (1.7.2022 but only for the insertion of ss. 114C, 114D for specified purposes, 1.4.2023 in so far as not already in force) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 10 para. 3**; S.I. 2022/734, reg. 2(b) (with regs. 13, 29, 30); S.I. 2023/371, reg. 2(d)

114A The NHS payment scheme

- (1) NHS England must publish a document, to be known as “the NHS payment scheme”, containing rules for determining the price that is to be payable by a commissioner—

Status: This version of this part contains provisions that are prospective.

Changes to legislation: Health and Social Care Act 2012, PART 3 is up to date with all changes known to be in force on or before 13 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (a) for the provision of health care services for the purposes of the NHS;
 - (b) for the provision of services in pursuance of arrangements made by NHS England or an integrated care board in the exercise of any public health functions of the Secretary of State, within the meaning of the National Health Service Act 2006, by virtue of any provision of that Act.
- (2) The commissioner and the provider of services mentioned in subsection (1) must comply with rules under that subsection.
- (3) Rules under subsection (1) may, in particular—
 - (a) specify prices;
 - (b) specify amounts, formulae or other matters on the basis of which prices are to be determined;
 - (c) provide for prices to be determined for, or by reference to, components of services or groups of services;
 - (d) make different provision for different services or provision for some services but not others;
 - (e) make different provision for the same service by reference to different circumstances or areas, different descriptions of provider, or other factors relevant to the provision of the service or the arrangements for its provision;
 - (f) confer a discretion on the commissioner of a service or on NHS England.
- (4) Rules under subsection (1) may allow or require a price to be agreed between the commissioner and the provider of a service.
- (5) Rules made by virtue of subsection (4) may—
 - (a) make provision about how the price is to be agreed;
 - (b) allow the agreement to make any provision that could be made by rules by virtue of subsection (3);
 - (c) provide for the publication by the commissioner, the provider or NHS England of information relevant to the agreement.
- (6) For the purpose of securing that the prices payable for the provision of services mentioned in subsection (1)(a) or (b) result in a fair level of pay for providers of those services, NHS England must, in exercising functions under subsection (1), have regard to—
 - (a) differences in the costs incurred in providing those services to persons of different descriptions, and
 - (b) differences between providers with respect to the range of those services that they provide.
- (7) The NHS payment scheme may contain rules relating to the making of payments to the provider of a service for the provision of that service.
- (8) The NHS payment scheme may contain guidance as to the application of rules under subsection (1).
- (9) A commissioner of a service mentioned in subsection (1) must have regard to any such guidance.
- (10) The NHS payment scheme has effect for the period specified in the NHS payment scheme or, where a new edition of the NHS payment scheme takes effect before the end of that period, until that new edition takes effect.

Status: This version of this part contains provisions that are prospective.

Changes to legislation: Health and Social Care Act 2012, PART 3 is up to date with all changes known to be in force on or before 13 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

114B The NHS payment scheme: enforcement

Where the commissioner of a service fails to comply with rules contained in the NHS payment scheme, NHS England may direct the commissioner to take steps specified in the direction, within a period specified in the direction—

- (a) to secure that the failure does not continue or recur, or
- (b) to secure that the position is (so far as practicable) restored to what it would have been if the failure was not occurring or had not occurred.

114C The NHS payment scheme: impact assessment and consultation

- (1) Before publishing the NHS payment scheme, NHS England must—
 - (a) carry out an assessment of the likely impact of the proposed scheme, or
 - (b) publish a statement setting out its reasons for concluding that such assessment is not needed.
- (2) Before publishing the NHS payment scheme, NHS England must consult the following—
 - (a) each integrated care board;
 - (b) each relevant provider;
 - (c) such other persons as NHS England considers appropriate.
- (3) NHS England must give those persons a notice—
 - (a) describing the proposed NHS payment scheme,
 - (b) setting out any impact assessment carried out under subsection (1)(a), and
 - (c) specifying when the period within which representations may be made about the proposed NHS payment scheme (“the consultation period”) will come to an end.
- (4) The consultation period is the period of 28 days beginning with the day after that on which the notice is published.
- (5) NHS England must publish the notice given under subsection (2).
- (6) If, having consulted under this section—
 - (a) NHS England decides to make amendments of the proposed NHS payment scheme that are, in its opinion, significant, and
 - (b) it would, in NHS England’s opinion, be unfair to make the amendments without further consultation,
 NHS England must consult again under this section.
- (7) Subsection (6) does not apply where section 114D applies.
- (8) In this section “relevant provider” means—
 - (a) a licence holder, or
 - (b) another person, of a prescribed description, that provides—
 - (i) health care services for the purposes of the NHS, or
 - (ii) services in pursuance of arrangements made by NHS England or an integrated care board by virtue of section 7A or 7B of the National Health Service Act 2006 (Secretary of State’s public health functions).

Status: This version of this part contains provisions that are prospective.

Changes to legislation: Health and Social Care Act 2012, PART 3 is up to date with all changes known to be in force on or before 13 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

114D Objections to proposed NHS payment scheme

- (1) This section applies where—
 - (a) within the consultation period under section 114C, NHS England receives objections to the proposed NHS payment scheme from one or more integrated care boards or relevant providers, and
 - (b) either or both of the following apply—
 - (i) the objection percentage for integrated care boards exceeds the prescribed percentage;
 - (ii) the objection percentage for relevant providers exceeds the prescribed percentage.
- (2) In subsection (1)(b) the “objection percentage” is the proportion (expressed as a percentage) of integrated care boards or (as the case may be) relevant providers that objected.
- (3) NHS England must consult such persons as appear to NHS England to be representative of the integrated care boards or relevant providers from whom objections were received.
- (4) If, having complied with subsection (3)—
 - (a) NHS England decides to make amendments of the proposed NHS payment scheme that are, in its opinion, significant, and
 - (b) it would, in NHS England’s opinion, be unfair to make the amendments without further consultation,NHS England must consult again under section 114C.
- (5) If, having complied with subsection (3), NHS England decides not to amend the proposed NHS payment scheme, it may publish the scheme but, before doing so, must—
 - (a) publish a notice stating that decision and setting out the reasons for it, and
 - (b) send a copy of the notice to—
 - (i) the persons consulted under subsection (3), and
 - (ii) the integrated care boards or relevant providers from whom objections were received.

114E Amendments of the NHS payment scheme

- (1) NHS England may amend the NHS payment scheme during the period for which it has effect, provided that, in the opinion of NHS England, the amendments are not so significant as to require publication of a new edition of the NHS payment scheme.
- (2) In deciding whether the amendments are so significant as to require the publication of a new edition of the NHS payment scheme, NHS England must have regard to—
 - (a) the proportion of integrated care boards that would be affected by the proposed amendments;
 - (b) the proportion of relevant providers that would be affected by the proposed amendments;
 - (c) the impact that the proposed amendments would have on integrated care boards and relevant providers that would be affected by them;
 - (d) whether any integrated care boards or relevant providers would be disproportionately affected by the proposed amendments;

Status: This version of this part contains provisions that are prospective.

Changes to legislation: Health and Social Care Act 2012, PART 3 is up to date with all changes known to be in force on or before 13 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (e) the amount of any increase or decrease in prices that would result from the proposed amendments.
- (3) If NHS England amends the NHS payment scheme, it must publish the NHS payment scheme as amended.
- (4) Before amending the NHS payment scheme, NHS England must, in accordance with subsections (5) to (7), consult the following about the proposed amendments—
 - (a) any integrated care boards that would be affected by the proposed amendments;
 - (b) any relevant providers that would be affected by the proposed amendments;
 - (c) such other persons as NHS England considers appropriate.
- (5) NHS England must publish a notice specifying—
 - (a) the proposed amendments, and
 - (b) when the period within which representations may be made about the proposed amendments (“the consultation period”) will come to an end.
- (6) The consultation period is the period of 28 days beginning with the day after that on which the notice is published.
- (7) NHS England must send a copy of the notice to each of the persons to be consulted under subsection (4).

114F Interpretation

In this Chapter—

“commissioner”, in relation to a service, means the person who arranges for the provision of the service;

“the NHS payment scheme” means the document published under section 114A(1);

“relevant provider” has the meaning given by section 114C(8).]

^{F147}**115 Price payable by commissioners for NHS services**

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^{F147}**116 The national tariff**

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^{F147}**117 The national tariff: further provision**

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^{F147}**118 Consultation on proposals for the national tariff**

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^{F147}**119 Consultation: further provision**

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Status: This version of this part contains provisions that are prospective.

Changes to legislation: Health and Social Care Act 2012, PART 3 is up to date with all changes known to be in force on or before 13 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

^{F147}**120 Responses to consultation**

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^{F147}**121 Determination on reference under section 120**

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^{F147}**122 Changes following determination on reference under section 120**

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^{F147}**123 Power to veto changes proposed under section 122**

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^{F147}**124 Local modifications of prices: agreements**

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^{F147}**125 Local modifications of prices: applications**

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^{F147}**126 Applications under section 125: notification of commissioners**

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^{F147}**127 Correction of mistakes**

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CHAPTER 5

HEALTH SPECIAL ADMINISTRATION

PROSPECTIVE

128 Health special administration orders

- (1) In this Chapter “health special administration order” means an order which—
 - (a) is made by the court in relation to a relevant provider, and
 - (b) directs that the affairs, business and property of the provider are to be managed by one or more persons appointed by the court.
- (2) An application to the court for a health special administration order may be made only by [^{F148}NHS England].
- (3) A person appointed as mentioned in subsection (1)(b) is referred to in this Chapter as a “health special administrator”.

Status: This version of this part contains provisions that are prospective.

Changes to legislation: *Health and Social Care Act 2012, PART 3 is up to date with all changes known to be in force on or before 13 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (4) A health special administrator of a company—
- (a) is an officer of the court, and
 - (b) in exercising functions in relation to the company, is the company's agent.
- (5) A person is not to be the health special administrator of a company unless the person is qualified to act as an insolvency practitioner in relation to the company.
- (6) A health special administrator of a relevant provider must manage its affairs, business and property, and exercise the health special administrator's functions, so as to—
- (a) achieve the objective set out in section 129 as quickly and as efficiently as is reasonably practicable,
 - (b) in seeking to achieve that objective, ensure that any regulated activity carried on in providing the services provided by the provider is carried on in accordance with any requirements or conditions imposed in respect of that activity by virtue of Chapter 2 of Part 1 of the Health and Social Care Act 2008,
 - (c) so far as is consistent with the objective set out in section 129, protect the interests of the creditors of the provider as a whole, and
 - (d) so far as is consistent with that objective and subject to those interests, protect the interests of the members of the provider as a whole.
- (7) In relation to a health special administration order applying to a non-GB company, references in this Chapter to the affairs, business and property of the company are references only to its affairs and business so far as carried on in Great Britain and to its property in Great Britain.
- (8) In this section—
- (a) a reference to a person qualified to act as an insolvency practitioner in relation to a company is to be construed in accordance with Part 13 of the Insolvency Act 1986 (insolvency practitioners and their qualifications);
 - (b) “regulated activity” has the same meaning as in Part 1 of the Health and Social Care Act 2008 (see section 8 of that Act).
- (9) In this Chapter—
- “business” and “property” each have the same meaning as in the Insolvency Act 1986 (see section 436 of that Act);
- “company” includes a company not registered under the Companies Act 2006;
- “court”, in relation to a company, means the court—
- (a) having jurisdiction to wind up the company, or
 - (b) that would have such jurisdiction apart from section 221(2) or 441(2) of the Insolvency Act 1986 (exclusion of winding up jurisdiction in case of companies incorporated in, or having principal place of business in, Northern Ireland);
- “member” is to be read in accordance with section 250 of the Insolvency Act 1986;
- “non-GB company” means a company incorporated outside Great Britain;
- “relevant provider” means a company which is providing services to which a condition included in the company's licence under section 97(1)(i), (j) or (k) applies;

Status: This version of this part contains provisions that are prospective.

Changes to legislation: Health and Social Care Act 2012, PART 3 is up to date with all changes known to be in force on or before 13 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

“wholly-owned subsidiary” has the meaning given by section 1159 of the Companies Act 2006.

Textual Amendments

F148 Words in s. 128(2) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 74](#); [S.I. 2022/734](#), reg. 2(a), [Sch.](#) (with [regs. 13, 29, 30](#))

PROSPECTIVE

129 Objective of a health special administration

- (1) The objective of a health special administration is to secure—
 - (a) the continued provision of such of the health care services provided for the purposes of the NHS by the company subject to the health special administration order, at such level, as the commissioners of those services determine by applying criteria specified in health special administration regulations (see section 130), and
 - (b) that it becomes unnecessary, by one or both of the means set out in subsection (2), for the health special administration order to remain in force for that purpose.
- (2) Those means are—
 - (a) the rescue as a going concern of the company subject to the health special administration order, and
 - (b) one or more transfers falling within subsection (3).
- (3) A transfer falls within this subsection if it is a transfer as a going concern—
 - (a) to another person, or
 - (b) as respects different parts of the undertaking of the company subject to the health special administration order, to two or more other persons,of so much of that undertaking as it is appropriate to transfer for the purpose of achieving the objective of the health special administration.
- (4) The means by which a transfer falling within subsection (3) may be effected include in particular—
 - (a) a transfer of the undertaking of the company subject to the health special administration order, or of part of its undertaking, to a wholly-owned subsidiary of that company, and
 - (b) a transfer to a company of securities of a wholly-owned subsidiary to which there has been a transfer falling within paragraph (a).
- (5) The objective of a health special administration may be achieved by transfers to the extent only that—
 - (a) the rescue as a going concern of the company subject to the health special administration order is not reasonably practicable or is not reasonably practicable without such transfers,
 - (b) the rescue of the company as a going concern will not achieve that objective or will not do so without such transfers,

Status: This version of this part contains provisions that are prospective.

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- (c) such transfers would produce a result for the company's creditors as a whole that is better than the result that would be produced without them, or
- (d) such transfers would, without prejudicing the interests of its creditors as a whole, produce a result for the company's members as a whole that is better than the result that would be produced without them.

130 Health special administration regulations

- (1) Regulations (referred to in this Chapter as “health special administration regulations”) must make further provision about health special administration orders.
- (2) Health special administration regulations may apply with or without modifications—
 - (a) any provision of Part 2 of the Insolvency Act 1986 (administration) or any related provision of that Act, and
 - (b) any other enactment which relates to insolvency or administration or makes provision by reference to anything that is or may be done under that Act.
- (3) Health special administration regulations may, in particular, provide that the court may make a health special administration order in relation to a relevant provider if it is satisfied, on a petition by the Secretary of State under section 124A of the Insolvency Act 1986 (petition for winding up on grounds of public interest), that it would be just and equitable (disregarding the objective of the health special administration) to wind up the provider in the public interest.
- (4) Health special administration regulations may make provision about—
 - (a) the application of procedures under the Insolvency Act 1986 in relation to relevant providers, and
 - (b) the enforcement of security over property of relevant providers.
- (5) Health special administration regulations may, in particular, make provision about the publication and maintenance by [F149NHS England] of a list of relevant providers.
- (6) Health special administration regulations may in particular—
 - (a) require [F150NHS England] to publish guidance for commissioners about the application of the criteria referred to in section 129(1)(a);
 - (b) confer power on [F151NHS England] to revise guidance published by virtue of paragraph (a) and require it to publish guidance so revised;
 - (c) require [F152NHS England], before publishing guidance by virtue of paragraph (a) or (b), to obtain the approval of the Secretary of State F153...;
 - (d) require commissioners, when applying the criteria referred to in section 129(1)(a), to have regard to such matters as [F154NHS England] may specify in guidance published by virtue of paragraph (a) or (b);
 - (e) require [F155NHS England] to make arrangements for facilitating agreement between commissioners in their exercise of their function under section 129(1)(a);
 - (f) confer power on [F155NHS England], where commissioners fail to reach agreement in pursuance of arrangements made by virtue of paragraph (e), to exercise their function under section 129(1)(a);
 - (g) provide that, in consequence of the exercise of the power conferred by virtue of paragraph (f), the function under section 129(1)(a), so far as applying to the commissioners concerned, is to be regarded as discharged;

Status: This version of this part contains provisions that are prospective.

Changes to legislation: Health and Social Care Act 2012, PART 3 is up to date with all changes known to be in force on or before 13 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (h) require a health special administrator to carry out in accordance with the regulations consultation on the action which the administrator recommends should be taken in relation to the provider concerned.
- (7) Health special administration regulations may modify this Chapter or any enactment mentioned in subsection (8) in relation to any provision made by virtue of this Chapter.
- (8) The enactments are—
 - (a) the Insolvency Act 1986, and
 - (b) any other enactment which relates to insolvency or administration or makes provision by reference to anything that is or may be done under that Act.
- (9) The power to make rules under section 411 of the Insolvency Act 1986 (company insolvency rules) applies for the purpose of giving effect to provision made by virtue of this Chapter as it applies for the purpose of giving effect to Parts 1 to 7 of that Act.
- (10) For that purpose—
 - (a) the power to make rules in relation to England and Wales is exercisable by the Lord Chancellor with the concurrence of the Secretary of State and, in the case of rules that affect court procedure, with the concurrence of the Lord Chief Justice;
 - (b) the power to make rules in relation to Scotland is exercisable by the Secretary of State;
 - (c) references in section 411 of that Act to those Parts are to be read as including a reference to this Chapter.
- (11) Before making health special administration regulations the Secretary of State must consult [^{F156}such persons as the Secretary of State considers appropriate].

Textual Amendments

- F149** Words in s. 130(5) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 75(2)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F150** Words in s. 130(6)(a) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 75(3)(a)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F151** Words in s. 130(6)(b) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 75(3)(a)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F152** Words in s. 130(6)(c) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 75(3)(b)(i)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F153** Words in s. 130(6)(c) omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 75(3)(b)(ii)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F154** Words in s. 130(6)(d) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 75(3)(c)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F155** Words in s. 130 substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 1 para. 1(1)(2); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F156** Words in s. 130(11) substituted for s. 130(11)(a)(b) (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 75(4)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

- I75** S. 130 partly in force; s. 130 in force for specified purposes at Royal Assent, see s. 306(1)(d)

Status: This version of this part contains provisions that are prospective.

Changes to legislation: Health and Social Care Act 2012, PART 3 is up to date with all changes known to be in force on or before 13 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

131 Transfer schemes

- (1) Health special administration regulations may make provision about transfer schemes to achieve the objective of a health special administration (see section 129).
- (2) Health special administration regulations may, in particular, include provision—
 - (a) for the making of a transfer scheme to be subject to the consent of [^{F157}NHS England] and the person to whom the transfer is being made,
 - (b) for [^{F158}NHS England] to have power to modify a transfer scheme with the consent of parties to the transfers effected by the scheme, and
 - (c) for modifications made to a transfer scheme by virtue of paragraph (b) to have effect from such time as [^{F159}NHS England] may specify (which may be a time before the modifications were made).
- (3) Health special administration regulations may, in particular, provide that a transfer scheme may include provision—
 - (a) for the transfer of rights and liabilities under or in connection with a contract of employment from a company subject to a health special administration order to another person,
 - (b) for the transfer of property, or rights and liabilities other than those mentioned in paragraph (a), from a company subject to a health special administration order to another person,
 - (c) for the transfer of property, rights and liabilities which would not otherwise be capable of being transferred or assigned,
 - (d) for the transfer of property acquired, and rights and liabilities arising, after the making of the scheme,
 - (e) for the creation of interests or rights, or the imposition of liabilities, and
 - (f) for the transfer, or concurrent exercise, of functions under enactments.

Textual Amendments

F157 Words in s. 131(2)(a) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 76](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

F158 Words in s. 131(2)(b) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 76](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

F159 Words in s. 131(2)(c) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 76](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

I76 S. 131 partly in force; s. 131 in force for specified purposes at Royal Assent, see s. 306(1)(d)

132 Indemnities

Health special administration regulations may make provision about the giving by [^{F160}NHS England] of indemnities in respect of—

- (a) liabilities incurred in connection with the discharge by health special administrators of their functions, and
- (b) loss or damage sustained in that connection.

Status: This version of this part contains provisions that are prospective.

Changes to legislation: Health and Social Care Act 2012, PART 3 is up to date with all changes known to be in force on or before 13 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Textual Amendments

F160 Words in s. 132 substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 77](#); [S.I. 2022/734](#), reg. 2(a), [Sch.](#) (with regs. 13, 29, 30)

Commencement Information

I77 [S. 132](#) partly in force; [s. 132](#) in force for specified purposes at Royal Assent, see [s. 306\(1\)\(d\)](#)

133 Modification of this Chapter under Enterprise Act 2002

- (1) The power to modify or apply enactments conferred on the Secretary of State by each of the sections of the Enterprise Act 2002 mentioned in subsection (2) includes power to make such consequential modifications of provision made by virtue of this Chapter as the Secretary of State considers appropriate in connection with any other provision made under that section.
- (2) Those sections are—
 - (a) sections 248 and 277 (amendments consequential on that Act), and
 - (b) section 254 (power to apply insolvency law to foreign companies).

Commencement Information

I78 [S. 133](#) partly in force; [s. 133](#) in force for specified purposes at Royal Assent, see [s. 306\(1\)\(d\)](#)

CHAPTER 6

FINANCIAL ASSISTANCE IN SPECIAL ADMINISTRATION CASES

Establishment of mechanisms

134 Duty to establish mechanisms for providing financial assistance

- (1) [^{F161}NHS England] must establish, and secure the effective operation of, one or more mechanisms for providing financial assistance in cases where a provider of health care services for the purposes of the NHS (referred to in this Chapter as a “provider”) is subject to—
 - (a) a health special administration order (within the meaning of Chapter 5), or
 - (b) an order under section 65D(2) of the National Health Service Act 2006 (trust special administration for NHS foundation trusts).
- (2) Mechanisms that [^{F161}NHS England] may establish under this section include, in particular—
 - (a) mechanisms for raising money to make grants or loans or to make payments in consequence of indemnities given by [^{F161}NHS England] by virtue of section 132 or under section 65D(12) of the National Health Service Act 2006;
 - (b) mechanisms for securing that providers arrange, or are provided with, insurance facilities.

Status: This version of this part contains provisions that are prospective.

Changes to legislation: *Health and Social Care Act 2012, PART 3 is up to date with all changes known to be in force on or before 13 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (3) [^{F161}NHS England] may secure that a mechanism established under this section operates so as to enable it to recover the costs it incurs in establishing and operating the mechanism.
- (4) [^{F161}NHS England] may establish different mechanisms for different providers or providers of different descriptions.
- (5) [^{F161}NHS England] does not require permission under any provision of the Financial Services and Markets Act 2000 as respects activities carried out under this Chapter.
- (6) An order under section 306 providing for the commencement of this Chapter may require [^{F161}NHS England] to comply with the duty to establish under subsection (1) before such date as the order specifies.

Textual Amendments

F161 Words in s. 134(1)-(6) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 78](#); [S.I. 2022/734, reg. 2\(a\)](#), [Sch.](#) (with [regs. 13, 29, 30](#))

Commencement Information

I79 [S. 134](#) partly in force; [s. 134](#) in force for specified purposes at Royal Assent, see [s. 306\(1\)\(d\)](#)

PROSPECTIVE

135 Power to establish fund

- (1) [^{F162}NHS England] may, for the purposes of section 134, establish and maintain a fund.
- (2) In order to raise money for investment in a fund it establishes under this section, [^{F163}NHS England] may impose requirements on providers or [^{F164}integrated care boards].
- (3) [^{F165}NHS England] must appoint at least two managers for a fund it establishes under this section.
- (4) A manager of a fund may be an individual, a firm or a body corporate.
- (5) [^{F166}NHS England] must not appoint an individual as manager of a fund unless it is satisfied that the individual has the appropriate knowledge and experience for managing investments.
- (6) [^{F166}NHS England] must not appoint a firm or body corporate as manager of a fund unless it is satisfied that arrangements are in place to secure that any individual who will exercise functions of the firm or body corporate as manager will, at the time of doing so, have the appropriate knowledge and experience for managing investments.
- (7) [^{F166}NHS England] must not appoint an individual, firm or body corporate as manager of a fund unless the individual, firm or body is an authorised or exempt person within the meaning of the Financial Services and Markets Act 2000.
- (8) [^{F166}NHS England] must secure the prudent management of any fund it establishes under this section.

Status: This version of this part contains provisions that are prospective.

Changes to legislation: Health and Social Care Act 2012, PART 3 is up to date with all changes known to be in force on or before 13 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Textual Amendments

- F162** Words in s. 135(1) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 79\(2\)](#); [S.I. 2022/734, reg. 2\(a\)](#), Sch. (with regs. 13, 29, 30)
- F163** Words in s. 135(2) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 79\(3\)\(a\)](#); [S.I. 2022/734, reg. 2\(a\)](#), Sch. (with regs. 13, 29, 30)
- F164** Words in s. 135(2) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 79\(3\)\(b\)](#); [S.I. 2022/734, reg. 2\(a\)](#), Sch. (with regs. 13, 29, 30)
- F165** Words in s. 135(3) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 79\(4\)](#); [S.I. 2022/734, reg. 2\(a\)](#), Sch. (with regs. 13, 29, 30)
- F166** Words in s. 135(5)-(8) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 79\(4\)](#); [S.I. 2022/734, reg. 2\(a\)](#), Sch. (with regs. 13, 29, 30)

PROSPECTIVE

Applications for financial assistance

136 Applications

- (1) [^{F167}NHS England] may, on an application by a special administrator, provide financial assistance to the special administrator by using a mechanism established under section 134.
- (2) An application under this section must be in such form, and must be supported by such evidence or other information, as [^{F167}NHS England] may require (and a requirement under this subsection may be imposed after the receipt, but before the determination, of the application).
- (3) If [^{F167}NHS England] grants an application under this section, it must notify the applicant of—
 - (a) the purpose for which the financial assistance is being provided, and
 - (b) the other conditions to which its provision is subject.
- (4) The special administrator must secure that the financial assistance is used only—
 - (a) for the purpose notified under subsection (3)(a), and
 - (b) in accordance with the conditions notified under subsection (3)(b).
- (5) Financial assistance under this section may be provided only in the period during which the provider in question is in special administration.
- (6) If [^{F168}NHS England] refuses an application under this section, it must notify the applicant of the reasons for the refusal.
- (7) [^{F168}NHS England] must, on a request by an applicant whose application under this section has been refused, reconsider the application; but no individual involved in the decision to refuse the application may be involved in the decision on the reconsideration of the application.
- (8) For the purposes of reconsidering an application, [^{F168}NHS England] may request information from the applicant.

Status: This version of this part contains provisions that are prospective.

Changes to legislation: *Health and Social Care Act 2012, PART 3 is up to date with all changes known to be in force on or before 13 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (9) [^{F168}NHS England] must notify the applicant of its decision on reconsidering the application; and—
- (a) if [^{F168}NHS England] grants the application, it must notify the applicant of the matters specified in subsection (3), and
 - (b) if [^{F168}NHS England] refuses the application, it must notify the applicant of the reasons for the refusal.
- (10) In this Chapter—
- (a) “special administrator” means—
 - (i) a person appointed as a health special administrator under Chapter 5, or
 - (ii) a person appointed as a trust special administrator under section 65D(2) of the National Health Service Act 2006, and
 - (b) references to being in special administration are to be construed accordingly.

Textual Amendments

- F167** Words in s. 136(1)-(3) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 80](#); [S.I. 2022/734](#), reg. 2(a), [Sch.](#) (with regs. 13, 29, 30)
- F168** Words in s. 136(6)-(9) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 80](#); [S.I. 2022/734](#), reg. 2(a), [Sch.](#) (with regs. 13, 29, 30)

137 Grants and loans

- (1) [^{F169}NHS England] may not provide financial assistance under section 136 in the form of a grant or loan unless it is satisfied that—
- (a) it is necessary for the provider—
 - (i) to be able to continue to provide one or more of the health care services that it provides for the purposes of the NHS, or
 - (ii) to be able to secure a viable business in the long term, and
 - (b) no other source of funding which would enable it do so and on which it would be reasonable for it to rely is likely to become available to it.
- (2) The terms of a grant or loan must include a term that the whole or a specified part of the grant or loan becomes repayable in the event of a breach by the provider or special administrator of the terms of the grant or loan.
- (3) Subject to that, where [^{F170}NHS England] makes a grant or loan under section 136, it may do so in such manner and on such terms as it may determine.
- (4) [^{F170}NHS England] may take such steps as it considers appropriate (including steps to adjust the amount of future payments towards the mechanism established under section 134 to raise funds for grants or loans under section 136) to recover overpayments in the provision of a grant or loan under that section.
- (5) The power to recover an overpayment under subsection (4) includes a power to recover interest, at such rate as [^{F170}NHS England] may determine, on the amount of the overpayment for the period beginning with the making of the overpayment and ending with its recovery.

Status: This version of this part contains provisions that are prospective.

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Textual Amendments

- F169** Words in s. 137(1) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 81](#); [S.I. 2022/734, reg. 2\(a\)](#), Sch. (with regs. 13, 29, 30)
- F170** Words in s. 137(3)-(5) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 81](#); [S.I. 2022/734, reg. 2\(a\)](#), Sch. (with regs. 13, 29, 30)

Charges on commissioners

138 Power to impose charges on commissioners

- [^{F171}(1) The Secretary of State may by regulations confer power on NHS England to require integrated care boards to pay charges relating to such of NHS England’s regulatory functions as relate to securing the continued provision of health care services for the purposes of the NHS.
- (1A) In subsection (1) “regulatory functions”, in relation to NHS England, has the meaning given by section [13SB\(2\)](#) of the National Health Service Act 2006.]
- (2) The regulations must provide that the amount of a charge imposed by virtue of this section is to be such amount—
- (a) as may be prescribed, or
 - (b) as is determined by reference to such criteria, and by using such method, as may be prescribed.
- (3) The regulations must—
- (a) prescribe to whom the charge is to be paid;
 - (b) prescribe when the charge becomes payable;
 - (c) where the amount of the charge is to be determined in accordance with subsection (2)(b), require [^{F172}NHS England] to carry out consultation in accordance with the regulations before imposing the charge;
 - (d) provide for any amount that is not paid by the time prescribed for the purposes of paragraph (b) to carry interest at the rate for the time being specified in section 18 of the Judgments Act 1838;
 - (e) provide for any unpaid balance and accrued interest to be recoverable summarily as a civil debt (but for this not to affect any other method of recovery).
- (4) Where the person that the regulations prescribe for the purposes of subsection (3)(a) is a provider, the regulations may confer power on [^{F173}NHS England] to require the provider to pay [^{F173}NHS England] the amount of the charge in question in accordance with the regulations.
- [^{F174}(5) Before making regulations under this section, the Secretary of State must consult NHS England.]
- (6) Regulations under this section may apply with modifications provision made by sections 141 to 143 in relation to charges imposed by virtue of this section.

Status: This version of this part contains provisions that are prospective.

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Textual Amendments

- F171** S. 138(1)(1A) substituted for s. 138(1) (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 82\(2\)](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F172** Words in s. 138(3)(c) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 82\(3\)](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F173** Words in s. 138(4) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 82\(4\)](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F174** S. 138(5) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 82\(5\)](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

- I80** S. 138 partly in force; s. 138 in force for specified purposes at Royal Assent, see s. 306(1)(d)

Levy on providers

PROSPECTIVE

139 Imposition of levy

- (1) The power under section 135(2) includes, in particular, power to impose a levy on providers for each financial year.
- (2) Before deciding whether to impose a levy under this section for the coming financial year, [^{F175}NHS England] must estimate—
 - (a) the amount that will be required for the purpose of providing financial assistance in accordance with this Chapter,
 - (b) the amount that will be collected from [^{F176}integrated care boards] by way of charges imposed by virtue of section 138 during that year, and
 - (c) the amount that will be standing to the credit of the fund at the end of the current financial year.
- (3) Before the start of a financial year in which [^{F177}NHS England] proposes to impose a levy under this section, it must determine—
 - (a) the factors by reference to which the rate of the levy is to be assessed,
 - (b) the time or times by reference to which those factors are to be assessed, and
 - (c) the time or times during the year when the levy, or an instalment of it, becomes payable.
- (4) Where the determinations under subsection (3) reflect changes made to the factors by reference to which the rate of the levy is to be assessed, the notice under section 143(1) (b) must include an explanation of those changes.
- (5) A levy under this section may be imposed at different rates for different providers.

Textual Amendments

- F175** Words in s. 139(2) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 83\(2\)\(a\)](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Status: This version of this part contains provisions that are prospective.

Changes to legislation: Health and Social Care Act 2012, PART 3 is up to date with all changes known to be in force on or before 13 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- F176** Words in s. 139(2)(b) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 83\(2\)\(b\)](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F177** Words in s. 139(3) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 83\(3\)](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

140 Power of Secretary of State to set limit on levy and charges

- (1) Before the beginning of each financial year, the Secretary of State may, with the approval of the Treasury, specify by order—
- (a) the maximum amount that [^{F178}NHS England] may raise from levies it imposes under section 139 for that year, and
 - (b) the maximum amount that it may raise from charges it imposes by virtue of section 138 for that year.
- (2) Where the Secretary of State makes an order under this section, [^{F179}NHS England] must secure that the levies and charges for that year are at a level that [^{F179}NHS England] estimates will, in each case, raise an amount not exceeding the amount specified for that case in the order.

Textual Amendments

- F178** Words in s. 140(1)(a) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 84](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F179** Words in s. 140(2) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 84](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

- I81** S. 140 partly in force; s. 140 in force for specified purposes at Royal Assent, see s. 306(1)(d)

PROSPECTIVE

141 Consultation

- (1) This section applies where [^{F180}NHS England] is proposing to impose a levy under section 139 for the coming financial year and—
- (a) has not imposed a levy under that section for the current financial year or any previous year,
 - (b) has been imposing the levy for the current financial year but proposes to make relevant changes to it for the coming financial year, or
 - (c) has been imposing the levy for the current financial year and the financial year preceding it, but has not been required to serve a notice under this section in respect of the levy for either of those years.
- (2) A change to a levy is relevant for the purposes of subsection (1)(b) if it is a change to the factors by reference to which the rate of the levy is to be assessed.
- (3) Before making the determinations under section 139(3) in respect of the levy, [^{F181}NHS England] must send a notice to—
- (a) the Secretary of State,
 - ^{F182}(b)

Status: This version of this part contains provisions that are prospective.

Changes to legislation: *Health and Social Care Act 2012, PART 3 is up to date with all changes known to be in force on or before 13 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- [^{F183}(c) each integrated care board,]
- (d) each potentially liable provider, and
- (e) such other persons as it considers appropriate.
- (4) [^{F184}NHS England] must publish a notice that it sends under subsection (3).
- (5) In a case within subsection (1)(a) or (c), the notice must state—
 - (a) the factors by reference to which [^{F185}NHS England] proposes to assess the rate of the levy,
 - (b) the time or times by reference to which it proposes to assess those factors, and
 - (c) the time or times during the coming financial year when it proposes that the levy, or an instalment of it, will become payable.
- (6) In a case within subsection (1)(b), the notice must specify the relevant changes [^{F186}NHS England] proposes to make.
- (7) A notice under this section must specify when the consultation period in relation to the proposals ends; and for that purpose, the consultation period is the period of 28 days beginning with the day on which the notice is published under subsection (4).
- (8) In this section ^{F187}... a “potentially liable provider” means a provider on whom [^{F188}NHS England] is proposing to impose the levy for the coming financial year (regardless of the amount (if any) that the provider would be liable to pay as a result of the proposal).

Textual Amendments

- F180** Words in s. 141(1) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 85\(2\)](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F181** Words in s. 141(3) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 85\(3\)\(a\)](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F182** S. 141(3)(b) omitted (1.7.2022) by virtue of [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 85\(3\)\(b\)](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F183** S. 141(3)(c) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 4 para. 182](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F184** Words in s. 141(4) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 85\(4\)](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F185** Words in s. 141(5)(a) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 85\(4\)](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F186** Words in s. 141(6) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 85\(4\)](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F187** Words in s. 141(8) omitted (1.7.2022) by virtue of [Health and Care Act 2022 \(c. 31\), ss. 85\(6\), 186\(6\)](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F188** Words in s. 141(8) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 85\(4\)](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

^{F189}**142 Responses to consultation**

.....

Status: This version of this part contains provisions that are prospective.

Changes to legislation: Health and Social Care Act 2012, PART 3 is up to date with all changes known to be in force on or before 13 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Textual Amendments

F189 S. 142 omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), ss. 85(7), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

PROSPECTIVE

143 Amount payable

- (1) [F190NHS England] must—
 - (a) calculate the amount which each provider who is to be subject to a levy under section 139 for a financial year is to be liable to pay in respect of that year, and
 - (b) notify the provider of that amount and the date or dates on which it, or instalments of it, will become payable.
- (2) If the provider is to be subject to the levy for only part of the financial year, it is to be liable to pay only the amount which bears to the amount payable for the whole financial year the same proportion as the part of the financial year for which the provider is to be subject to the levy bears to the whole financial year.
- (3) The amount which a provider is liable to pay may be zero.
- (4) Subsection (5) applies if, during a financial year in which [F191NHS England] is imposing a levy under section 139, it becomes satisfied that the risk of a provider who is subject to the levy going into special administration has changed by reference to what it was—
 - (a) at the start of the year, or
 - (b) if [F191NHS England] has already exercised the power under subsection (5) in relation to the levy in the case of that provider, at the time it did so.
- (5) [F191NHS England] may notify the provider that [F191NHS England] proposes to adjust the amount that the provider is liable to pay so as to reflect the change; and the notice must specify the amount of the proposed adjustment.
- (6) Following the expiry of the period of 28 days beginning with the day after that on which [F191NHS England] sends the notice, it may make the adjustment.
- (7) In a case within subsection (2), subsection (4) has effect as if references to the financial year were references to the part of the financial year for which the provider is to be subject to the levy.
- (8) Where a provider who reasonably believes that [F192NHS England] has miscalculated the amount notified to the provider under subsection (1) or (5) requests [F192NHS England] to recalculate the amount, [F192NHS England] must—
 - (a) comply with the request, and
 - (b) send the provider written notice of its recalculation.
- (9) Subsection (8) does not apply to a request to recalculate an amount in respect of a financial year preceding the one in which the request is made.
- (10) If the whole or part of the amount which a person is liable to pay is not paid by the date by which it is required to be paid, the unpaid balance carries interest at the rate

Status: This version of this part contains provisions that are prospective.

Changes to legislation: Health and Social Care Act 2012, PART 3 is up to date with all changes known to be in force on or before 13 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

for the time being specified in section 17 of the Judgments Act 1838; and the unpaid balance and accrued interest are recoverable summarily as a civil debt (but this does not affect any other method of recovery).

Textual Amendments

- F190** Words in s. 143(1) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 86](#); S.I. 2022/734, reg. 2(a), [Sch.](#) (with regs. 13, 29, 30)
- F191** Words in s. 143(4)-(6) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 86](#); S.I. 2022/734, reg. 2(a), [Sch.](#) (with regs. 13, 29, 30)
- F192** Words in s. 143(8) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 86](#); S.I. 2022/734, reg. 2(a), [Sch.](#) (with regs. 13, 29, 30)

Supplementary

144 Investment principles and reviews

- (1) [^{F193}NHS England] must prepare and publish a statement of the principles that govern its decisions, or decisions made on its behalf, about making investments for the purposes of this Chapter.
- (2) [^{F193}NHS England] must—
 - (a) in each financial year, review the statement,
 - (b) if it considers necessary in light of the review, revise the statement, and
 - (c) if it revises the statement, publish the revised statement.
- (3) As soon as reasonably practicable after the end of each financial year, [^{F193}NHS England] must undertake and publish a review of the operation during that year of—
 - (a) the procedure for health special administration under Chapter 5,
 - (b) the procedure for trust special administration for NHS foundation trusts under Chapter 5A of Part 2 of the National Health Service Act 2006, and
 - (c) such mechanisms as have been established under section 134.
- (4) The purposes of the review under subsection (3)(c) are—
 - (a) to assess the operation of the mechanisms concerned,
 - (b) to assess the accuracy of the estimates given by [^{F194}NHS England] in relation to the operation of the mechanisms,
 - (c) to assess what improvements can be made to the process for making estimates in relation to the operation of the mechanisms, and
 - (d) to review the extent of the protection which the mechanisms are required to provide.
- (5) Where a fund established under section 135 has been in operation for the whole or part of the year concerned, the review published under this section must specify—
 - (a) the income of the fund during that year, and
 - (b) the expenditure from the fund during that year.
- (6) [^{F195}NHS England] must exclude from a review published under this section information which it is satisfied is—

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- (a) commercial information the disclosure of which would, or might, significantly harm the legitimate business interests of an undertaking to which it relates;
- (b) information relating to the private affairs of an individual the disclosure of which would, or might, significantly harm that person's interests.

Textual Amendments

- F193** Words in s. 144(1)-(3) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 87**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F194** Words in s. 144(4)(b) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 87**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F195** Words in s. 144(6) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 87**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

- I82** S. 144(3)(b)(6) in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)**

145 Borrowing

- (1) [^{F196}NHS England] may—
 - (a) borrow from a deposit-taker such sums as it may from time to time require for exercising its functions under this Chapter;
 - (b) give security for sums that it borrows.
- (2) But [^{F197}NHS England] may not borrow if the effect would be—
 - (a) to take the aggregate amount outstanding in respect of the principal of sums borrowed by it over such limit as the Secretary of State may by order specify, or
 - (b) to increase the amount by which the aggregate amount so outstanding exceeds that limit.
- (3) In this section, “deposit-taker” means—
 - (a) a person who has permission under [^{F198}Part 4A] of the Financial Services and Markets Act 2000, ^{F199} ...
 - ^{F199}(b)
- (4) The definition of “deposit-taker” in subsection (3) must be read with—
 - (a) section 22 of the Financial Services and Markets Act 2000,
 - (b) any relevant order under that section, and
 - (c) Schedule 2 to that Act.

Textual Amendments

- F196** Words in s. 145(1) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 88**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F197** Words in s. 145(2) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 88**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F198** Words in s. 145(3)(a) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 137** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Status: This version of this part contains provisions that are prospective.

Changes to legislation: *Health and Social Care Act 2012, PART 3 is up to date with all changes known to be in force on or before 13 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

F199 S. 145(3)(b) and word omitted (31.12.2020) by virtue of [The EEA Passport Rights \(Amendment, etc., and Transitional Provisions\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1149\)](#), reg. 1(3), [Sch. para. 43](#) (with reg. 4); 2020 c. 1, Sch. 5 para. 1(1)

Commencement Information

I83 S. 145 partly in force; s. 145 in force for specified purposes at Royal Assent, see [s. 306\(1\)\(d\)](#)

146 Shortfall or excess of available funds, etc.

- (1) The Secretary of State may provide financial assistance to [^{F200}NHS England] if the Secretary of State is satisfied that—
 - (a) there are insufficient funds available from a mechanism established under section 134, or
 - (b) the mechanism is otherwise unable to operate effectively.
- (2) If the Secretary of State is satisfied that the level of funds available from a mechanism established under section 134 exceeds the level that is necessary, the Secretary of State may direct [^{F200}NHS England] to transfer the excess to the Secretary of State.
- (3) If the Secretary of State is satisfied that a mechanism established under section 134 has become dormant, or if a mechanism so established is being wound up, the Secretary of State may direct [^{F200}NHS England] to transfer to the Secretary of State such funds as are available from the mechanism.

Textual Amendments

F200 Words in s. 146(1)-(3) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 89](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

I84 S. 146 partly in force; s. 146 in force for specified purposes at Royal Assent, see [s. 306\(1\)\(d\)](#)

CHAPTER 7

MISCELLANEOUS AND GENERAL

147 Secretary of State's duty as respects variation in provision of health services

After section 12D of the National Health Service Act 2006 insert—

“Miscellaneous

12E Secretary of State's duty as respects variation in provision of health services

- (1) The Secretary of State must not exercise the functions mentioned in subsection (2) for the purpose of causing a variation in the proportion of services provided as part of the health service that is provided by persons of a particular description if that description is by reference to—

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- (a) whether the persons in question are in the public or (as the case may be) private sector, or
 - (b) some other aspect of their status.
- (2) The functions mentioned in this subsection are the functions of the Secretary of State under—
- (a) sections 6E and 13A, and
 - (b) section 75 of the Health and Social Care Act 2012 (requirements as to procurement, patient choice and competition)."

Commencement Information

I85 S. 147 in force at 1.10.2012 for specified purposes by [S.I. 2012/1831](#), [art. 2\(2\)](#)

I86 S. 147 in force at 1.4.2013 in so far as not already in force by [S.I. 2013/160](#), [art. 2\(2\)](#) (with arts. 7-9)

148 Service of documents

- (1) A notice required under this Part to be given or sent to or served on a person (“R”) may be given or sent to or served on R—
- (a) by being delivered personally to R,
 - (b) by being sent to R—
 - (i) by a registered post service, as defined by section 125(1) of the Postal Services Act 2000, or
 - (ii) by a postal service which provides for the delivery of the document to be recorded, or
 - (c) subject to section 149, by being sent to R by an electronic communication.
- (2) Where a notice is sent as mentioned in subsection (1)(b), it is, unless the contrary is proved, to be taken to have been received on the third day after the day on which it is sent.
- (3) Where a notice is sent as mentioned in subsection (1)(c) in accordance with section 149, it is, unless the contrary is proved, to be taken to have been received on the next working day after the day on which it is transmitted.
- (4) In subsection (3) “working day” means a day other than—
- (a) a Saturday or a Sunday;
 - (b) Christmas Day or Good Friday; or
 - (c) a day which is a bank holiday in England under the Banking and Financial Dealings Act 1971.
- (5) A notice required under this Part to be given or sent to or served on a body corporate or a firm is duly given, sent or served if it is given or sent to or served on the secretary or clerk of that body or a partner of that firm.
- (6) For the purposes of section 7 of the Interpretation Act 1978 in its application to this section, the proper address of a person is—
- (a) in the case of a person who holds a licence under Chapter 3 who has notified [^{F201}NHS England] of an address for service, that address, and
 - (b) in any other case, the address determined in accordance with subsection (7).
- (7) That address is—

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- (a) in the case of a secretary or clerk of a body corporate, the address of the registered or principal office of the body,
 - (b) in the case of a partner of a firm, the address of the principal office of the firm, and
 - (c) in any other case, the last known address of the person.
- (8) In this section and in section 149—
- “electronic communication” has the same meaning as in the Electronic Communications Act 2000;
 - “notice” includes any other document.

^{F202}(9)

Textual Amendments

- F201** Words in s. 148(6)(a) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 5 para. 90(2)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F202** S. 148(9) omitted (1.7.2022) by virtue of [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 5 para. 90(3)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

- I87** S. 148(1)-(5)(6)(b)(7)-(9) in force at 1.11.2012 by S.I. 2012/2657, **art. 2(2)**
- I88** S. 148(6)(a) in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

149 Electronic communications

- (1) If a notice required or authorised by this Part to be given or sent by or to a person or to be served on a person is sent by an electronic communication, it is to be treated as given, sent or served only if the requirements of subsection (2) or (3) are met.
- (2) If the person required or authorised to give, send or serve the notice is [^{F203}NHS England] or the [^{F204}CMA]—
 - (a) the person to whom the notice is given or sent or on whom it is served must have indicated to [^{F203}NHS England] or (as the case may be) [^{F205}the CMA] the person's willingness to receive notices by an electronic communication and provided an address suitable for that purpose, and
 - (b) the notice must be sent to or given or served at the address so provided.
- (3) If the person required or authorised to give, send or serve the notice is not [^{F203}NHS England] or the [^{F206}CMA], the notice must be given, sent or served in such manner as [^{F203}NHS England] may require.
- (4) An indication given for the purposes of subsection (2) may be given generally for the purposes of notices required or authorised to be given, sent or served by [^{F203}NHS England] or (as the case may be) the [^{F206}CMA] under this Part or may be limited to notices of a particular description.
- (5) [^{F203}NHS England] must publish such requirements as it imposes under subsection (3).

Status: This version of this part contains provisions that are prospective.

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Textual Amendments

- F203** Words in s. 149(2)-(5) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 91](#); [S.I. 2022/734, reg. 2\(a\)](#), [Sch.](#) (with regs. 13, 29, 30)
- F204** Word in s. 149(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 136\(2\)\(a\)](#); [S.I. 2014/416, art. 2\(1\)\(d\)](#) (with [Sch.](#))
- F205** Words in s. 149(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 136\(2\)\(b\)](#); [S.I. 2014/416, art. 2\(1\)\(d\)](#) (with [Sch.](#))
- F206** Words in s. 149(3)(4) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 136\(3\)](#); [S.I. 2014/416, art. 2\(1\)\(d\)](#) (with [Sch.](#))

Commencement Information

- I89** S. 149 in force at 1.11.2012 by [S.I. 2012/2657, art. 2\(2\)](#)

150 Interpretation, transitional provision and consequential amendments

(1) In this Part—

[^{F207}“anti-competitive behaviour” means behaviour which would (or would be likely to) prevent, restrict or distort competition and a reference to preventing anti-competitive behaviour includes a reference to eliminating or reducing the effects (or potential effects) of the behaviour;]

[^{F208}“the CMA” means the Competition and Markets Authority;]

“commissioner”, in relation to a health care service, means the person who arranges for the provision of the service (and “commission” is to be construed accordingly);

“enactment” includes an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978);

“facilities” has the same meaning as in the National Health Service Act 2006 (see section 275 of that Act);

“financial year” means a period of 12 months ending with 31 March;

[^{F209}“health care” means all forms of health care provided for individuals, whether relating to physical or mental health, with a reference in this Part to “health care services” being read accordingly; and for the purposes of this Part it does not matter if a health care service is also an adult social care service;]

[^{F210}“the NHS” means the comprehensive health service continued under section 1(1) of the National Health Service Act 2006, except the part of it that is provided in pursuance of the public health functions (within the meaning of that Act) of the Secretary of State or local authorities;]

“prescribed” means prescribed in regulations;

“service” includes facility.

[^{F211}(1A) A reference in this Part to the provision of health care services for the purposes of the NHS is a reference to their provision for those purposes in accordance with the National Health Service Act 2006.]

^{F212}(2)

^{F213}(3)

(4) Until section 181 comes into force, the following provisions in this Part are to be read as if the words “and its Healthwatch England committee” were omitted—

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- (a) section 83(4)(c);
- (b) section 84(5)(a)(iii);
- (c) section 95(2)(e);
- (d) section 100(2)(e).

(5) Schedule 13 (which contains minor and consequential amendments) has effect.

Textual Amendments

- F207** Words in s. 150(1) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 92(2)(a)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F208** Words in s. 150(1) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 137**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F209** Words in s. 150(1) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 92(2)(b)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F210** Words in s. 150(1) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 92(2)(c)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F211** S. 150(1A) inserted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 92(3)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F212** S. 150(2) omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 1 para. 16**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F213** S. 150(3) omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 4 para. 183**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

- I90** S. 150 partly in force; s. 150 in force for specified purposes at Royal Assent, see s. 306(1)(d)
- I91** S. 150(1)(3) in force at 1.11.2012 in so far as not already in force by S.I. 2012/2657, **art. 2(2)**
- I92** S. 150(5) in force at 1.7.2012 for specified purposes by S.I. 2012/1319, **art. 2(3)**
- I93** S. 150(5) in force at 1.11.2012 for specified purposes by S.I. 2012/2657, **art. 2(2)**
- I94** S. 150(5) in force at 1.4.2013 for specified purposes by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

Status:

This version of this part contains provisions that are prospective.

Changes to legislation:

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Changes and effects yet to be applied to :

- specified provision(s) amendment to earlier commencing SI 2012/1831 art. 10 by [S.I. 2012/2657 art. 15](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Pt. 9 Ch. 1B inserted by [2022 c. 31 s. 96](#)
- s. 102(4)(ba) inserted by S.I. 2019/93, Sch. 1 para. 13(3) (as substituted) by [S.I. 2019/1245 reg. 28](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 105(3A)(3B) inserted by [2013 c. 24 Sch. 14 para. 21](#)
- s. 106(3A)(3B) inserted by [2013 c. 24 Sch. 14 para. 22](#)
- s. 250(2)-(2B) substituted for s. 250(2) by [2022 c. 31 s. 95\(2\)\(a\)](#)
- s. 250(6)-(6D) substituted for s. 250(6) by [2022 c. 31 s. 95\(2\)\(d\)](#)
- s. 251251ZA substituted for s. 251 by [2022 c. 31 s. 95\(3\)](#)
- s. 251C(6A) inserted by [2022 c. 31 s. 95\(4\)\(a\)](#)
- s. 259(1)(aa)(b) substituted for s. 259(1)(b) by [2022 c. 31 s. 98\(b\)](#)
- s. 259(1)(aa) words substituted by [S.I. 2023/98 Sch. para. 17\(11\)\(a\)\(iii\)](#) (This amendment comes in force at the same time as 2022 c. 31, s. 98 comes into force)
- s. 259(10A)(10B) inserted by [2022 c. 31 s. 98\(h\)](#)
- s. 304(5)(ja) inserted by [2022 c. 31 s. 95\(5\)](#)