

# HEALTH AND SOCIAL CARE ACT 2012

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 3 - Regulation of Health and Adult Social Care Services**

##### *Chapter 1 – Monitor*

##### *Schedule 8 - Monitor*

643. This Schedule provides for Monitor’s governance arrangements. It includes details of the membership of Monitor and the process for appointments, including the appointment of the chief executive.
644. [Paragraphs 1 and 2](#) detail the membership and appointment of the chair, chief executive and other members of Monitor. The chair and at least four other members must be appointed by the Secretary of State. The chief executive and other executive members are appointed by the non-executive members, with the consent of the Secretary of State. The number of non-executive members must be equal to or exceed the number of executive members and no more than five executive members could be appointed without the consent of the Secretary of State. This is intended to ensure that Monitor’s board remains at an appropriate size and to ensure that appointment of any additional members is justified.
645. [Paragraphs 3 to 5](#) make provision for arrangements for the office of non-executive members. Under these paragraphs, tenure of office is in accordance with the terms and conditions of appointment but cannot be for more than four years. The Secretary of State may suspend or remove a non-executive member from office, on the grounds of incapacity, misbehaviour, or failure to carry out duties. Where a non-executive member is suspended from office, the Secretary of State must follow the procedures set out in [paragraph 4](#). The Secretary of State must provide the individual with notice of the suspension, and there is a process for review of the suspension. There is also provision for the Secretary of State to appoint an interim chair when a chair is suspended (see [paragraph 5](#)).
646. The suspension must be for an initial period of not more than six months. It may be reviewed by the Secretary of State at any time and must be reviewed if the person suspended requests it.
647. [Paragraph 6](#) requires that Monitor must pay to non-executive members such remuneration and allowances as the Secretary of State may determine. It also provides for Monitor to make arrangements for pensions, allowances and gratuities to be paid to non-executive members or former non-executive members. These arrangements would be for Monitor to determine with the approval of the Secretary of State.
648. [Paragraph 7](#) provides Monitor with powers to employ staff on such pay, terms and conditions as it may determine, following Secretary of State approval of its policy on the remuneration, pensions etc of employees.

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649. [Paragraph 8](#) makes provision about pension arrangements for the person appointed as chair of Monitor. Where that person is a member of a public sector pension scheme under section 1 of the Superannuation Act 1972, the Minister for the Civil Service can decide whether time as chair of Monitor can count as years of service for that pension scheme. This paragraph also makes provision for employment with Monitor to be included among the kinds of employment to which such a pension schemes may apply.
650. [Paragraph 9](#) gives Monitor the power to appoint committees and sub-committees, and to pay remuneration and allowances to committee members if they are not members or employees of Monitor.
651. [Paragraph 10](#) allows Monitor to regulate its own procedure and states that any vacancy amongst the members does not affect the validity of its actions.
652. [Paragraph 11](#) requires Monitor to act effectively, efficiently and economically in exercising its functions and provides power to arrange for any of its functions to be exercised on its behalf by certain persons.
653. [Paragraph 12](#) enables Monitor to engage and pay individuals to contribute to particular cases or types of cases. This will enable Monitor to have access to people with specialist skills during its consideration of such cases.
654. [Paragraph 13](#) gives Monitor the power to temporarily borrow money by overdraft with the consent of the Secretary of State. Other than this arrangement and powers to borrow money in relation to financial mechanisms to support continuity of services, Monitor is not allowed to borrow money.
655. [Paragraph 14](#) allows Monitor to obtain and compile information in order to be able to take informed decisions in exercising its functions. This could include the commissioning or supporting of research.
656. [Paragraph 15](#) gives Monitor the power to do anything it needs to in order to exercise its functions.
657. [Paragraph 16](#) allows the Secretary of State to fund Monitor's activities to the extent that he considers appropriate.
658. [Paragraph 17](#) makes provision about NHS foundation trust accounts. Monitor is required to prepare a set of accounts in each financial year which consolidates the annual accounts of all foundation trusts. The Secretary of State may, with HM Treasury approval, direct Monitor to prepare a set of interim accounts which consolidates any interim accounts prepared by NHS foundation trusts. The Secretary of State may, also with HM Treasury approval, give directions which specify the content and form of the accounts and methods and principles by which the accounts should be prepared. This ensures that the Secretary of State would receive whatever information in respect of foundation trusts he required to permit him to fulfil his statutory duties in respect of the Department's own consolidated Resource Accounts.
659. Any consolidated accounts (both annual and interim) prepared by Monitor under this paragraph must be audited by the Comptroller and Auditor General where the Secretary of State directs. Monitor is also required to act with a view to securing that NHS foundation trusts comply promptly with requests from it or from the Secretary of State relating to accounts, and to facilitate the preparation of accounts by the Secretary of State.
660. Once the responsibility for preparing consolidated accounts for foundation trusts transfers from Monitor to the Secretary of State, this paragraph will no longer apply.
661. [Paragraphs 18 to 20](#) make provision about Monitor's accounts. Monitor is required, as a non-Departmental public body, to prepare its own annual accounts in the form and with the content, and using methods and principles, determined by the Secretary of State

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with HM Treasury's approval. Monitor must prepare annual accounts which must be sent to the Comptroller and Auditor General who is responsible for laying copies of the audited accounts (and his report on them) before Parliament.

662. The Secretary of State may require Monitor to produce interim accounts in addition to its annual accounts. The Secretary of State may direct that these accounts are sent to the Auditor General and Comptroller for audit. If they are, copies must be laid before Parliament along with the report on the accounts.
663. [Paragraph 21](#) provides that Monitor must publish an annual report on how it has exercised its functions. In particular, the report must set out how Monitor has promoted economy, efficiency and effectiveness and include statements of what it did to comply with its duties in sections 63(2) and 64(1)(h) (duties to have regard to Secretary of State guidance) . Monitor must lay a copy before Parliament and send a copy to the Secretary of State. Monitor is also required to provide further information about its own functions and any information that it holds about NHS foundation trusts to the Secretary of State as required.
664. [Paragraph 22](#) requires Monitor to respond to recommendations made by the Parliamentary Committees about the exercise of its functions.
665. [Paragraphs 23 and 24](#) concern the use of Monitor's seal and its non-Crown status. These provisions replicate those currently in the NHS Act.