

# 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 3 – Licensing*

#### **Transitional provision**

#### *Section 111 - Imposition of licence conditions on NHS foundation trusts*

850. This and the following three sections provide Monitor with transitional intervention powers over all NHS foundation trusts.
851. *Subsections (1) and (2)* provide transitional powers for Monitor to impose such requirements on a foundation trust (in the form of additional licence conditions), as Monitor considers appropriate, to address a governance failing. Monitor can impose such requirements where it is satisfied that this is necessary to prevent or remedy a breach of a foundation trust's licence. *Subsection (1)* allows Monitor to impose licence conditions relating to governance on a foundation trust where it is satisfied that the governance of the trust will cause it to fail to comply with its licence conditions to provide NHS services. *Subsection (2)* specifies that the circumstances in which these powers may be used include those where the trust's directors, governors, or both, are failing to comply with conditions in the trust's licence, or are failing to reduce the risk of a breach of licence conditions. Monitor's transitional powers are intended to provide an additional safeguard to protect patients' interests by ensuring that foundation trusts are well-governed and exercise their functions consistently with their duty to do so effectively, efficiently and economically, in the early years of the new regulatory regime, when some foundation trust governors may be inexperienced and when some foundation trusts may be newly authorised.
852. *Subsection (3)* provides that any additional licence conditions imposed by Monitor under subsection (1) could continue in force until Monitor's transitional powers were repealed by Parliament by virtue of section 112.
853. *Subsections (5) and (6)* provide Monitor with further powers to take action where a foundation trust fails to comply with Monitor's requirements under subsection (1). Specifically, Monitor could intervene to require the trust to remove, replace on an interim basis, suspend or disqualify one or more directors or governors of the trust. If the trust failed to do so, Monitor could take such action itself.
854. *Subsection (7)* provides that Monitor's exercise of its transitional powers in subsection (5) is without prejudice to its ability to exercise powers to set and enforce requirements on foundation trusts, including requirements relating to governance, or requirements to ensure a foundation trust's continued ability to provide services for the purpose of the NHS. This clarifies that the transitional powers are in addition to Monitor's continuing non-transitional powers to intervene where a licence holder is in

*These notes refer to the Health and Social Care Act 2012  
(c.7) which received Royal Assent on 27 March 2012*

breach of licence conditions, for example, a requirement to maintain continuity of NHS services.

855. *Subsection (11)* repeals section 52 of the NHS Act (failing NHS foundation trusts) because Monitor will have permanent powers to protect the continuity of services through the modified regime for unsustainable foundation trusts. It also makes related consequential amendments.