

HEALTH AND SOCIAL CARE ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 - Regulation of Health and Adult Social Care Services

Chapter 6 – Financial assistance in special administration cases

Supplementary

Section 144 – Investment principles and reviews

981. *Subsections (1) and (2)* relate to any investments Monitor wants to make for the purposes of providing financial assistance in special administration. A reason for Monitor making investments might be to manage the flows of money into and out of any fund it established to provide such assistance. It is likely that the flows out of a fund would be “lumpy”: in that instances where a provider was placed in special administration would be rare, but each would probably result in the drawing-down of significant proportions of the monies held in the fund. The Government anticipates that Monitor may want to take steps to smooth the impact of this “lumpiness” upon providers and commissioners.
982. Subsection (1) requires Monitor to prepare and publish a statement on the principles governing its decisions about investments for the purposes of providing financial assistance in special administration.
983. *Subsection (2)* provides that Monitor must review the statement annually, revising it if necessary. If Monitor revises the statement, it must re-publish it.
984. *Subsection (3)* requires Monitor to undertake and publish an annual review of the procedure for the operation of the trust special administration regime for foundation trusts and health special administration regime for companies and the financial mechanisms supporting them.
985. *Subsection (4)* specifies the purposes of such a review. Where the fund has been in operation in the year concerned, the review must specify the income and expenditure of the fund during the year. The published review must exclude commercially sensitive information and information about an individual’s private affairs, where disclosure would or might harm their interests (*subsection (6)*).

Section 145 - Borrowing

986. This section enables Monitor to take out loans in order to exercise its functions to provide financial assistance. This is intended to give Monitor greater flexibility in the ways it manages the flows of money into and out of any funds it holds. The nature of failure is not entirely predictable, therefore the instances of failure could be zero for a considerable time period and then there could, in theory, be several occurring all at a similar time. In an instance like this, the funds may be tied up in investments to make

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

the most of public money. Borrowing may be a suitable alternative to releasing money at short notice from investments (which may involve penalties).

987. *Subsection (2)* provides that Monitor would not be able to borrow beyond a borrowing limit specified by the Secretary of State by order.

Section 146 - Shortfall or excess of available funds, etc.

988. *Subsection (1)* enables the Secretary of State to provide financial assistance to Monitor, if the Secretary of State is satisfied that the financial mechanism established by Monitor to provide funds to special administrators is not generating sufficient funds or the mechanism is not operating effectively. This means that the Secretary of State could top up the financial mechanisms to ensure the continuity of NHS services, where necessary.

989. *Subsections (2) and (3)* provide that the Secretary of State can direct Monitor to transfer funds to the Secretary of State if satisfied that the funds generated by a financial mechanism exceed the level necessary or if the financial mechanism is dormant or has been wound up. This provision is to ensure excess funds do not go unused. The Secretary of State could use the funds for re-investment in the health service.