



Health and Social Care Act 2012

2012 CHAPTER 7

PART 3

REGULATION OF HEALTH AND ADULT SOCIAL CARE SERVICES

CHAPTER 3

LICENSING

Transitional provision

[^{F1}111 Imposition of licence conditions on NHS foundation trusts

- (1) Where [^{F2}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, [^{F2}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 [^{F2}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.

[^{F3}(2A) Where a warning notice under section 29A of the Health and Social Care Act 2008 is given to an NHS foundation trust, [^{F2}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) [^{F4}or (2A)] has effect until this section ceases, by virtue of section 112, to have effect in relation to the trust.
- (4) [^{F5}NHS England] may modify a condition included under subsection (1) [^{F4}or (2A)].

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- (5) Where [F5NHS England] is satisfied that the trust has breached or is breaching a condition included under subsection (1) [F4or (2A)], [F5NHS 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 [F5NHS England] is satisfied that a person has failed or is failing to comply with a notice under subsection (5), [F5NHS England] may do one or more of the things which it may require the trust to do under that subsection.
- (7) Subsection (5) does not prevent [F5NHS England] from exercising in relation to a condition included in a licence under subsection (1) [F6or (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 [F5NHS England] includes a condition under subsection (1) [F6or (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 [F5NHS England] includes a condition under subsection (1) [F6or (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

- F1** 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)
- F2** 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)
- F3** 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](#))
- F4** 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](#))
- F5** 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)

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F6 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

I1 S. 111 in force at 1.4.2013 by [S.I. 2013/671](#), **art. 2(3)**

[^{F7}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—
 - (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 ^{F8}....]

Textual Amendments

- F7** 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)**
- F8** 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

- I2** S. 112 partly in force; s. 112 in force for specified purposes at Royal Assent, see s. 306(1)(d)
- I3** S. 112 in force at 1.4.2013 in so far as not already in force by [S.I. 2013/671](#), **art. 2(3)**

[^{F9}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 [^{F10}NHS England].
- (2) [^{F10}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), [^{F10}NHS England] must—
 - (a) consult the Care Quality Commission and such other persons as [^{F10}NHS England] considers appropriate, and

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- (b) obtain the approval of the Secretary of State.
- (4) If the Secretary of State approves the proposed criteria, [^{F10}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, [^{F10}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 [^{F11}NHS England’s] determination under subsection (4)(b).]

Textual Amendments

- F9** 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)
- F10** 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)
- F11** 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

- I4** S. 113 in force at 1.4.2013 by [S.I. 2013/671](#), **art. 2(3)**

[^{F12}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

- F12** 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

- I5** S. 114 in force at 1.4.2013 by [S.I. 2013/671](#), **art. 2(3)**

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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. 251 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\(5\)](#)