



# Health and Social Care Act 2012

## 2012 CHAPTER 7

### PART 3

#### REGULATION OF HEALTH AND ADULT SOCIAL CARE SERVICES

### CHAPTER 6

#### FINANCIAL ASSISTANCE IN SPECIAL ADMINISTRATION CASES

#### *Supplementary*

#### **144 Investment principles and reviews**

- (1) Monitor 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) Monitor 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, Monitor 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,

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*Status: This is the original version (as it was originally enacted).*

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- (b) to assess the accuracy of the estimates given by Monitor 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) Monitor must exclude from a review published under this section information which it is satisfied is—
- (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.

#### **145 Borrowing**

- (1) Monitor 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 Monitor 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 Part 4 of the Financial Services and Markets Act 2000, or
  - (b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits.
- (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.

#### **146 Shortfall or excess of available funds, etc.**

- (1) The Secretary of State may provide financial assistance to Monitor 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 Monitor 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 Monitor to transfer to the Secretary of State such funds as are available from the mechanism.