



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

Establishment of mechanisms

134 Duty to establish mechanisms for providing financial assistance

- (1) [F¹NHS England] must establish, and secure the effective operation of, one or more mechanisms for providing financial assistance in cases where a provider of health care services for the purposes of the NHS (referred to in this Chapter as a “provider”) is subject to—
 - (a) a health special administration order (within the meaning of Chapter 5), or
 - (b) an order under section 65D(2) of the National Health Service Act 2006 (trust special administration for NHS foundation trusts).
- (2) Mechanisms that [F¹NHS England] may establish under this section include, in particular—
 - (a) mechanisms for raising money to make grants or loans or to make payments in consequence of indemnities given by [F¹NHS England] by virtue of section 132 or under section 65D(12) of the National Health Service Act 2006;
 - (b) mechanisms for securing that providers arrange, or are provided with, insurance facilities.
- (3) [F¹NHS England] may secure that a mechanism established under this section operates so as to enable it to recover the costs it incurs in establishing and operating the mechanism.

Status: This version of this chapter contains provisions that are prospective.

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- (4) [^{F1}NHS England] may establish different mechanisms for different providers or providers of different descriptions.
- (5) [^{F1}NHS England] does not require permission under any provision of the Financial Services and Markets Act 2000 as respects activities carried out under this Chapter.
- (6) An order under section 306 providing for the commencement of this Chapter may require [^{F1}NHS England] to comply with the duty to establish under subsection (1) before such date as the order specifies.

Textual Amendments

- F1** Words in s. 134(1)–(6) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 78](#); [S.I. 2022/734, reg. 2\(a\)](#), [Sch.](#) (with [regs. 13, 29, 30](#))

Commencement Information

- II** [S. 134](#) partly in force; [s. 134](#) in force for specified purposes at Royal Assent, see [s. 306\(1\)\(d\)](#)

PROSPECTIVE

135 Power to establish fund

- (1) [^{F2}NHS England] may, for the purposes of section 134, establish and maintain a fund.
- (2) In order to raise money for investment in a fund it establishes under this section, [^{F3}NHS England] may impose requirements on providers or [^{F4}integrated care boards].
- (3) [^{F5}NHS England] must appoint at least two managers for a fund it establishes under this section.
- (4) A manager of a fund may be an individual, a firm or a body corporate.
- (5) [^{F6}NHS England] must not appoint an individual as manager of a fund unless it is satisfied that the individual has the appropriate knowledge and experience for managing investments.
- (6) [^{F6}NHS England] must not appoint a firm or body corporate as manager of a fund unless it is satisfied that arrangements are in place to secure that any individual who will exercise functions of the firm or body corporate as manager will, at the time of doing so, have the appropriate knowledge and experience for managing investments.
- (7) [^{F6}NHS England] must not appoint an individual, firm or body corporate as manager of a fund unless the individual, firm or body is an authorised or exempt person within the meaning of the Financial Services and Markets Act 2000.
- (8) [^{F6}NHS England] must secure the prudent management of any fund it establishes under this section.

Textual Amendments

- F2** Words in s. 135(1) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 79\(2\)](#); [S.I. 2022/734, reg. 2\(a\)](#), [Sch.](#) (with [regs. 13, 29, 30](#))

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- F3** Words in s. 135(2) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 79(3)(a)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F4** Words in s. 135(2) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 79(3)(b)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F5** Words in s. 135(3) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 79(4)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F6** Words in s. 135(5)-(8) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 79(4)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

PROSPECTIVE

Applications for financial assistance

136 Applications

- (1) [^{F7}NHS England] may, on an application by a special administrator, provide financial assistance to the special administrator by using a mechanism established under section 134.
- (2) An application under this section must be in such form, and must be supported by such evidence or other information, as [^{F7}NHS England] may require (and a requirement under this subsection may be imposed after the receipt, but before the determination, of the application).
- (3) If [^{F7}NHS England] grants an application under this section, it must notify the applicant of—
 - (a) the purpose for which the financial assistance is being provided, and
 - (b) the other conditions to which its provision is subject.
- (4) The special administrator must secure that the financial assistance is used only—
 - (a) for the purpose notified under subsection (3)(a), and
 - (b) in accordance with the conditions notified under subsection (3)(b).
- (5) Financial assistance under this section may be provided only in the period during which the provider in question is in special administration.
- (6) If [^{F8}NHS England] refuses an application under this section, it must notify the applicant of the reasons for the refusal.
- (7) [^{F8}NHS England] must, on a request by an applicant whose application under this section has been refused, reconsider the application; but no individual involved in the decision to refuse the application may be involved in the decision on the reconsideration of the application.
- (8) For the purposes of reconsidering an application, [^{F8}NHS England] may request information from the applicant.
- (9) [^{F8}NHS England] must notify the applicant of its decision on reconsidering the application; and—
 - (a) if [^{F8}NHS England] grants the application, it must notify the applicant of the matters specified in subsection (3), and

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- (b) if [^{F8}NHS England] refuses the application, it must notify the applicant of the reasons for the refusal.

(10) In this Chapter—

- (a) “special administrator” means—
- (i) a person appointed as a health special administrator under Chapter 5, or
 - (ii) a person appointed as a trust special administrator under section 65D(2) of the National Health Service Act 2006, and
- (b) references to being in special administration are to be construed accordingly.

Textual Amendments

- F7** Words in s. 136(1)–(3) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 80](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F8** Words in s. 136(6)–(9) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 80](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

137 Grants and loans

- (1) [^{F9}NHS England] may not provide financial assistance under section 136 in the form of a grant or loan unless it is satisfied that—
- (a) it is necessary for the provider—
 - (i) to be able to continue to provide one or more of the health care services that it provides for the purposes of the NHS, or
 - (ii) to be able to secure a viable business in the long term, and
 - (b) no other source of funding which would enable it do so and on which it would be reasonable for it to rely is likely to become available to it.
- (2) The terms of a grant or loan must include a term that the whole or a specified part of the grant or loan becomes repayable in the event of a breach by the provider or special administrator of the terms of the grant or loan.
- (3) Subject to that, where [^{F10}NHS England] makes a grant or loan under section 136, it may do so in such manner and on such terms as it may determine.
- (4) [^{F10}NHS England] may take such steps as it considers appropriate (including steps to adjust the amount of future payments towards the mechanism established under section 134 to raise funds for grants or loans under section 136) to recover overpayments in the provision of a grant or loan under that section.
- (5) The power to recover an overpayment under subsection (4) includes a power to recover interest, at such rate as [^{F10}NHS England] may determine, on the amount of the overpayment for the period beginning with the making of the overpayment and ending with its recovery.

Textual Amendments

- F9** Words in s. 137(1) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 81](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

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F10 Words in s. 137(3)-(5) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 81; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Charges on commissioners

138 Power to impose charges on commissioners

- [^{F11}(1) The Secretary of State may by regulations confer power on NHS England to require integrated care boards to pay charges relating to such of NHS England’s regulatory functions as relate to securing the continued provision of health care services for the purposes of the NHS.
- (1A) In subsection (1) “regulatory functions”, in relation to NHS England, has the meaning given by section 13SB(2) of the National Health Service Act 2006.]
- (2) The regulations must provide that the amount of a charge imposed by virtue of this section is to be such amount—
- as may be prescribed, or
 - as is determined by reference to such criteria, and by using such method, as may be prescribed.
- (3) The regulations must—
- prescribe to whom the charge is to be paid;
 - prescribe when the charge becomes payable;
 - where the amount of the charge is to be determined in accordance with subsection (2)(b), require [^{F12}NHS England] to carry out consultation in accordance with the regulations before imposing the charge;
 - provide for any amount that is not paid by the time prescribed for the purposes of paragraph (b) to carry interest at the rate for the time being specified in section 18 of the Judgments Act 1838;
 - provide for any unpaid balance and accrued interest to be recoverable summarily as a civil debt (but for this not to affect any other method of recovery).
- (4) Where the person that the regulations prescribe for the purposes of subsection (3)(a) is a provider, the regulations may confer power on [^{F13}NHS England] to require the provider to pay [^{F13}NHS England] the amount of the charge in question in accordance with the regulations.
- [^{F14}(5) Before making regulations under this section, the Secretary of State must consult NHS England.]
- (6) Regulations under this section may apply with modifications provision made by sections 141 to 143 in relation to charges imposed by virtue of this section.

Textual Amendments

F11 S. 138(1)(1A) substituted for s. 138(1) (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 82(2); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

F12 Words in s. 138(3)(c) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 82(3); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

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- F13** Words in s. 138(4) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 82\(4\)](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F14** S. 138(5) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 82\(5\)](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

- I2** S. 138 partly in force; s. 138 in force for specified purposes at Royal Assent, see s. 306(1)(d)

Levy on providers

PROSPECTIVE

139 Imposition of levy

- (1) The power under section 135(2) includes, in particular, power to impose a levy on providers for each financial year.
- (2) Before deciding whether to impose a levy under this section for the coming financial year, [^{F15}NHS England] must estimate—
 - (a) the amount that will be required for the purpose of providing financial assistance in accordance with this Chapter,
 - (b) the amount that will be collected from [^{F16}integrated care boards] by way of charges imposed by virtue of section 138 during that year, and
 - (c) the amount that will be standing to the credit of the fund at the end of the current financial year.
- (3) Before the start of a financial year in which [^{F17}NHS England] proposes to impose a levy under this section, it must determine—
 - (a) the factors by reference to which the rate of the levy is to be assessed,
 - (b) the time or times by reference to which those factors are to be assessed, and
 - (c) the time or times during the year when the levy, or an instalment of it, becomes payable.
- (4) Where the determinations under subsection (3) reflect changes made to the factors by reference to which the rate of the levy is to be assessed, the notice under section 143(1)(b) must include an explanation of those changes.
- (5) A levy under this section may be imposed at different rates for different providers.

Textual Amendments

- F15** Words in s. 139(2) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 83\(2\)\(a\)](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F16** Words in s. 139(2)(b) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 83\(2\)\(b\)](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F17** Words in s. 139(3) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 83\(3\)](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

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140 Power of Secretary of State to set limit on levy and charges

- (1) Before the beginning of each financial year, the Secretary of State may, with the approval of the Treasury, specify by order—
 - (a) the maximum amount that [^{F18}NHS England] may raise from levies it imposes under section 139 for that year, and
 - (b) the maximum amount that it may raise from charges it imposes by virtue of section 138 for that year.
- (2) Where the Secretary of State makes an order under this section, [^{F19}NHS England] must secure that the levies and charges for that year are at a level that [^{F19}NHS England] estimates will, in each case, raise an amount not exceeding the amount specified for that case in the order.

Textual Amendments

F18 Words in s. 140(1)(a) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 84; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

F19 Words in s. 140(2) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 84; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

I3 S. 140 partly in force; s. 140 in force for specified purposes at Royal Assent, see s. 306(1)(d)

PROSPECTIVE

141 Consultation

- (1) This section applies where [^{F20}NHS England] is proposing to impose a levy under section 139 for the coming financial year and—
 - (a) has not imposed a levy under that section for the current financial year or any previous year,
 - (b) has been imposing the levy for the current financial year but proposes to make relevant changes to it for the coming financial year, or
 - (c) has been imposing the levy for the current financial year and the financial year preceding it, but has not been required to serve a notice under this section in respect of the levy for either of those years.
- (2) A change to a levy is relevant for the purposes of subsection (1)(b) if it is a change to the factors by reference to which the rate of the levy is to be assessed.
- (3) Before making the determinations under section 139(3) in respect of the levy, [^{F21}NHS England] must send a notice to—
 - (a) the Secretary of State,
 - ^{F22}(b)
 - ^{F23}(c) each integrated care board,
 - (d) each potentially liable provider, and
 - (e) such other persons as it considers appropriate.
- (4) [^{F24}NHS England] must publish a notice that it sends under subsection (3).

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- (5) In a case within subsection (1)(a) or (c), the notice must state—
 - (a) the factors by reference to which [^{F25}NHS England] proposes to assess the rate of the levy,
 - (b) the time or times by reference to which it proposes to assess those factors, and
 - (c) the time or times during the coming financial year when it proposes that the levy, or an instalment of it, will become payable.
- (6) In a case within subsection (1)(b), the notice must specify the relevant changes [^{F26}NHS England] proposes to make.
- (7) A notice under this section must specify when the consultation period in relation to the proposals ends; and for that purpose, the consultation period is the period of 28 days beginning with the day on which the notice is published under subsection (4).
- (8) In this section ^{F27}... a “potentially liable provider” means a provider on whom [^{F28}NHS England] is proposing to impose the levy for the coming financial year (regardless of the amount (if any) that the provider would be liable to pay as a result of the proposal).

Textual Amendments

- F20** Words in s. 141(1) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 85(2); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F21** Words in s. 141(3) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 85(3)(a); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F22** S. 141(3)(b) omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 85(3)(b); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F23** S. 141(3)(c) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 4 para. 182; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F24** Words in s. 141(4) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 85(4); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F25** Words in s. 141(5)(a) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 85(4); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F26** Words in s. 141(6) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 85(4); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F27** Words in s. 141(8) omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), ss. 85(6), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F28** Words in s. 141(8) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 85(4); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

^{F29}**142 Responses to consultation**

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Textual Amendments

- F29** S. 142 omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), ss. 85(7), 186(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

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PROSPECTIVE

143 Amount payable

- (1) [^{F30}NHS England] must—
 - (a) calculate the amount which each provider who is to be subject to a levy under section 139 for a financial year is to be liable to pay in respect of that year, and
 - (b) notify the provider of that amount and the date or dates on which it, or instalments of it, will become payable.
- (2) If the provider is to be subject to the levy for only part of the financial year, it is to be liable to pay only the amount which bears to the amount payable for the whole financial year the same proportion as the part of the financial year for which the provider is to be subject to the levy bears to the whole financial year.
- (3) The amount which a provider is liable to pay may be zero.
- (4) Subsection (5) applies if, during a financial year in which [^{F31}NHS England] is imposing a levy under section 139, it becomes satisfied that the risk of a provider who is subject to the levy going into special administration has changed by reference to what it was—
 - (a) at the start of the year, or
 - (b) if [^{F31}NHS England] has already exercised the power under subsection (5) in relation to the levy in the case of that provider, at the time it did so.
- (5) [^{F31}NHS England] may notify the provider that [^{F31}NHS England] proposes to adjust the amount that the provider is liable to pay so as to reflect the change; and the notice must specify the amount of the proposed adjustment.
- (6) Following the expiry of the period of 28 days beginning with the day after that on which [^{F31}NHS England] sends the notice, it may make the adjustment.
- (7) In a case within subsection (2), subsection (4) has effect as if references to the financial year were references to the part of the financial year for which the provider is to be subject to the levy.
- (8) Where a provider who reasonably believes that [^{F32}NHS England] has miscalculated the amount notified to the provider under subsection (1) or (5) requests [^{F32}NHS England] to recalculate the amount, [^{F32}NHS England] must—
 - (a) comply with the request, and
 - (b) send the provider written notice of its recalculation.
- (9) Subsection (8) does not apply to a request to recalculate an amount in respect of a financial year preceding the one in which the request is made.
- (10) If the whole or part of the amount which a person is liable to pay is not paid by the date by which it is required to be paid, the unpaid balance carries interest at the rate for the time being specified in section 17 of the Judgments Act 1838; and the unpaid balance and accrued interest are recoverable summarily as a civil debt (but this does not affect any other method of recovery).

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Textual Amendments

- F30** Words in s. 143(1) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 86](#); [S.I. 2022/734](#), reg. 2(a), [Sch.](#) (with regs. 13, 29, 30)
- F31** Words in s. 143(4)-(6) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 86](#); [S.I. 2022/734](#), reg. 2(a), [Sch.](#) (with regs. 13, 29, 30)
- F32** Words in s. 143(8) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 86](#); [S.I. 2022/734](#), reg. 2(a), [Sch.](#) (with regs. 13, 29, 30)

Supplementary

144 Investment principles and reviews

- (1) [^{F33}NHS England] 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) [^{F33}NHS England] 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, [^{F33}NHS England] 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,
 - (b) to assess the accuracy of the estimates given by [^{F34}NHS England] 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) [^{F35}NHS England] 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.

Status: This version of this chapter contains provisions that are prospective.

Changes to legislation: Health and Social Care Act 2012, CHAPTER 6 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Textual Amendments

- F33** Words in s. 144(1)–(3) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 87](#); [S.I. 2022/734, reg. 2\(a\)](#), [Sch.](#) (with regs. 13, 29, 30)
- F34** Words in s. 144(4)(b) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 87](#); [S.I. 2022/734, reg. 2\(a\)](#), [Sch.](#) (with regs. 13, 29, 30)
- F35** Words in s. 144(6) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 87](#); [S.I. 2022/734, reg. 2\(a\)](#), [Sch.](#) (with regs. 13, 29, 30)

Commencement Information

- I4** [S. 144\(3\)\(b\)\(6\)](#) in force at 1.11.2012 by [S.I. 2012/2657, art. 2\(2\)](#)

145 Borrowing

- (1) [^{F36}NHS England] may—
- borrow from a deposit-taker such sums as it may from time to time require for exercising its functions under this Chapter;
 - give security for sums that it borrows.
- (2) But [^{F37}NHS England] may not borrow if the effect would be—
- 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
 - to increase the amount by which the aggregate amount so outstanding exceeds that limit.
- (3) In this section, “deposit-taker” means—
- a person who has permission under [^{F38}Part 4A] of the Financial Services and Markets Act 2000, ^{F39}...
 - ^{F39}(b)
- (4) The definition of “deposit-taker” in subsection (3) must be read with—
- section 22 of the Financial Services and Markets Act 2000,
 - any relevant order under that section, and
 - Schedule 2 to that Act.

Textual Amendments

- F36** Words in s. 145(1) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 88](#); [S.I. 2022/734, reg. 2\(a\)](#), [Sch.](#) (with regs. 13, 29, 30)
- F37** Words in s. 145(2) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 88](#); [S.I. 2022/734, reg. 2\(a\)](#), [Sch.](#) (with regs. 13, 29, 30)
- F38** Words in s. 145(3)(a) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 18 para. 137](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F39** [S. 145\(3\)\(b\)](#) and word omitted (31.12.2020) by virtue of [The EEA Passport Rights \(Amendment, etc., and Transitional Provisions\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1149\)](#), reg. 1(3), [Sch. para. 43](#) (with reg. 4); [2020 c. 1, Sch. 5 para. 1\(1\)](#)

Commencement Information

- I5** [S. 145](#) partly in force; [s. 145](#) in force for specified purposes at Royal Assent, see [s. 306\(1\)\(d\)](#)

Status: This version of this chapter contains provisions that are prospective.

Changes to legislation: Health and Social Care Act 2012, CHAPTER 6 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

146 Shortfall or excess of available funds, etc.

- (1) The Secretary of State may provide financial assistance to ^{F40}[NHS England] 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 ^{F40}[NHS England] 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 ^{F40}[NHS England] to transfer to the Secretary of State such funds as are available from the mechanism.

Textual Amendments

F40 Words in s. 146(1)–(3) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 89](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

I6 S. 146 partly in force; s. 146 in force for specified purposes at Royal Assent, see s. 306(1)(d)

Status:

This version of this chapter contains provisions that are prospective.

Changes to legislation:

Health and Social Care Act 2012, CHAPTER 6 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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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. 251251ZA 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\(5\)](#)