

Changes to legislation: Health and Social Care Act 2012, SCHEDULE 11 is up to date with all changes known to be in force on or before 29 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

SCHEDULES

SCHEDULE 11

Section 107

FURTHER PROVISION ABOUT [F1NHS ENGLAND’S] ENFORCEMENT POWERS

Textual Amendments

- F1** Words in Sch. 11 heading substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 100(2); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

PART 1

DISCRETIONARY REQUIREMENTS

Procedure

- 1 (1) Where [F2NHS England] proposes to impose a discretionary requirement on a person, [F2NHS England] must give notice to that person (a “notice of intent”).
- (2) A notice of intent must—
- (a) state that [F3NHS England] proposes to impose the discretionary requirement and set out its effect,
 - (b) set out the grounds for the proposal to impose the requirement,
 - (c) explain the effect of section 106 (enforcement undertakings),
 - (d) set out the circumstances (if any) in which [F4NHS England] may not impose the requirement, and
 - (e) specify the period (“the notice period”) within which representations with respect to the proposal may be made to [F5NHS England].
- (3) The notice period must be not less than 28 days beginning with the day after that on which the notice of intent is received.
- (4) But where [F6NHS England]—
- (a) proposes to impose a compliance requirement or restoration requirement, and
 - (b) considers that a shorter notice period is necessary to prevent or minimise further breaches of the kind referred to in section 105(1),
- the notice period is to be such shorter period as [F6NHS England] may determine, but not less than 5 days beginning with the day after that on which the notice of intent is received.

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Textual Amendments

- F2** Words in Sch. 11 para. 1(1) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 100\(3\)\(a\)](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F3** Words in Sch. 11 para. 1(2)(a) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 100\(3\)\(a\)](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F4** Words in Sch. 11 para. 1(2)(d) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 100\(3\)\(a\)](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F5** Words in Sch. 11 para. 1(2)(e) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 100\(3\)\(a\)](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F6** Words in Sch. 11 para. 1(4) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 100\(3\)\(a\)](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

- I1** Sch. 11 para. 1 in force at 1.4.2013 by [S.I. 2013/671, art. 2\(3\)](#)

- 2 (1) After the end of the notice period [^{F7}NHS England] must decide whether to—
- (a) impose the discretionary requirement, with or without modifications, or
 - (b) impose any other discretionary requirement.
- (2) Where [^{F8}NHS England] decides under sub-paragraph (1) to impose a discretionary requirement on a person [^{F8}NHS England] must give notice to that person (a “final notice”).
- (3) A final notice must—
- (a) state that [^{F9}NHS England] has decided to impose the discretionary requirement and set out its effect,
 - (b) set out the grounds for imposing the requirement,
 - (c) in the case of a variable monetary penalty, state—
 - (i) how payment may be made,
 - (ii) the period (“the payment period”) within which payment must be made,
 - (iii) any discount applicable for early payment of the penalty, and
 - (iv) the rate of interest payable for late payment of the penalty,
 - (d) set out the consequences of failing to comply with the requirement, and
 - (e) explain the right of appeal conferred by paragraph 3.
- (4) The payment period must be not less than 28 days beginning with the day after that on which the final notice is received.
- (5) [^{F10}NHS England] must not decide under sub-paragraph (1) to impose a variable monetary penalty unless the notice of intent was given before the end of the period of 5 years beginning with the day (or, in the case of a continuing breach, the last day) on which the breach giving rise to the imposition of the discretionary requirement occurred.

Textual Amendments

- F7** Words in Sch. 11 para. 2(1) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 100\(3\)\(b\)](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

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- F8** Words in Sch. 11 para. 2(2) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 100(3)(b)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F9** Words in Sch. 11 para. 2(3)(a) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 100(3)(b)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F10** Words in Sch. 11 para. 2(5) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 100(3)(b)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

- I2** Sch. 11 para. 2(1)(2)(3)(a)(b)(d)(e) in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**
- I3** Sch. 11 para. 2(3)(c)(4)(5) in force at 1.7.2013 by S.I. 2013/671, **art. 2(4)**

- 3 (1) A person may appeal to the First-tier Tribunal against a decision of [^{F11}NHS England] to impose a discretionary requirement.
- (2) The grounds for an appeal under this paragraph are—
- (a) that the decision was based on an error of fact,
 - (b) that the decision was wrong in law,
 - (c) in the case of a decision imposing a variable monetary penalty, that the amount of the penalty is unreasonable,
 - (d) in the case of a decision to impose a compliance requirement or a restoration requirement, that the nature of the requirement is unreasonable, or
 - (e) that the decision was unreasonable for any other reason.
- (3) The discretionary requirement is suspended pending determination of the appeal.
- (4) On an appeal under this paragraph, the Tribunal may—
- (a) confirm, vary or withdraw the discretionary requirement,
 - (b) take such steps as [^{F12}NHS England] could take in relation to the breach giving rise to the imposition of the requirement, or
 - (c) remit the decision whether to confirm the requirement, or any matter relating to that decision, to [^{F13}NHS England].

Textual Amendments

- F11** Words in Sch. 11 para. 3(1) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 100(3)(c)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F12** Words in Sch. 11 para. 3(4)(b) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 100(3)(c)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F13** Words in Sch. 11 para. 3(4)(c) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 100(3)(c)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

- I4** Sch. 11 para. 3(1)(2)(a)(b)(d)(e) in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**
- I5** Sch. 11 para. 3(2)(c) in force at 1.7.2013 by S.I. 2013/671, **art. 2(4)**

- 4 [^{F14}NHS England] may by notice to a person on whom a discretionary requirement has been imposed—
- (a) withdraw the discretionary requirement,
 - (b) in the case of a variable monetary penalty, reduce the amount of the penalty or extend the payment period, or

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- (c) in the case of a compliance requirement or a restoration requirement, extend the period specified for taking the steps specified in the requirement.

Textual Amendments

F14 Words in Sch. 11 para. 4 substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 100(3)(d); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

I6 Sch. 11 para. 4(a)(c) in force at 1.4.2013 by S.I. 2013/671, art. 2(3)
I7 Sch. 11 para. 4(b) in force at 1.7.2013 by S.I. 2013/671, art. 2(4)

Non-compliance penalties

- 5 (1) If a person fails to comply with a compliance requirement or a restoration requirement [^{F15}NHS England] may impose a monetary penalty on that person of such amount as [^{F15}NHS England] may determine (a “non-compliance penalty”).
- (2) Where [^{F16}NHS England] proposes to impose a non-compliance penalty on a person [^{F16}NHS England] must give notice to that person (a “non-compliance notice”).
- (3) A non-compliance notice must—
- (a) specify the amount of the non-compliance penalty,
 - (b) set out the grounds for imposing the penalty,
 - (c) state how payment of the penalty may be made,
 - (d) state the period (“the payment period”) within which payment must be made,
 - (e) state any discount applicable for early payment of the penalty,
 - (f) set out the consequences of a failure to pay within the payment period (including any increase in the amount payable), and
 - (g) explain the right of appeal conferred by paragraph 6.
- (4) The payment period must be not less than 28 days beginning with the day after that on which the non-compliance notice is received.
- (5) If the whole or any part of a non-compliance penalty is not paid by the time it is required to be paid [^{F17}NHS England] may increase the amount payable by no more than 50% of the amount of the penalty.
- (6) [^{F18}NHS England] may by notice to a person on whom a non-compliance penalty has been imposed reduce the amount of the penalty or extend the payment period.

Textual Amendments

F15 Words in Sch. 11 para. 5(1) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 100(3)(e); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

F16 Words in Sch. 11 para. 5(2) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 100(3)(e); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

F17 Words in Sch. 11 para. 5(5) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 100(3)(e); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

F18 Words in Sch. 11 para. 5(6) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 100(3)(e); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

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Commencement Information

I8 Sch. 11 para. 5 in force at 1.4.2013 by [S.I. 2013/671](#), [art. 2\(3\)](#)

- 6
- (1) A person may appeal to the First-tier Tribunal against a decision of [^{F19}NHS England] to impose a non-compliance penalty.
 - (2) The grounds for such an appeal are—
 - (a) that the decision was based on an error of fact,
 - (b) that the decision was wrong in law, or
 - (c) that the decision was, or the amount of the penalty is, unfair or unreasonable.
 - (3) The non-compliance penalty is suspended pending determination of the appeal.
 - (4) On an appeal, the Tribunal may—
 - (a) confirm, vary or withdraw the non-compliance penalty, or
 - (b) remit the decision whether to confirm the penalty, or any matter relating to that decision, to [^{F20}NHS England].

Textual Amendments

F19 Words in [Sch. 11 para. 6\(1\)](#) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 100\(3\)\(f\)](#); [S.I. 2022/734](#), reg. 2(a), [Sch.](#) (with regs. 13, 29, 30)

F20 Words in [Sch. 11 para. 6\(4\)\(b\)](#) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 100\(3\)\(f\)](#); [S.I. 2022/734](#), reg. 2(a), [Sch.](#) (with regs. 13, 29, 30)

Commencement Information

I9 Sch. 11 para. 6 in force at 1.4.2013 by [S.I. 2013/671](#), [art. 2\(3\)](#)

Recovery of financial penalties

- 7
- (1) Amounts payable to [^{F21}NHS England] of the kind mentioned in sub-paragraph (2) are recoverable summarily as a civil debt (but this does not affect any other method of recovery).
 - (2) The amounts are—
 - (a) a variable monetary penalty and any interest payable on it, or
 - (b) a non-compliance penalty.

Textual Amendments

F21 Words in [Sch. 11 para. 7\(1\)](#) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 100\(3\)\(g\)](#); [S.I. 2022/734](#), reg. 2(a), [Sch.](#) (with regs. 13, 29, 30)

Commencement Information

I10 Sch. 11 para. 7(1)(2)(b) in force at 1.4.2013 by [S.I. 2013/671](#), [art. 2\(3\)](#)

I11 [Sch. 11 para. 7\(2\)\(a\)](#) in force at 1.7.2013 by [S.I. 2013/671](#), [art. 2\(4\)](#)

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Payments of penalties etc. into Consolidated Fund

- 8 [F22NHS England] must pay any sums it receives in respect of any of the following into the Consolidated Fund—
- (a) a variable monetary penalty and any interest payable on it, or
 - (b) a non-compliance penalty.

Textual Amendments

F22 Words in Sch. 11 para. 8 substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 100(3)(h); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

I12 Sch. 11 para. 8(a) in force at 1.7.2013 by S.I. 2013/671, art. 2(4)

I13 Sch. 11 para. 8(b) in force at 1.4.2013 by S.I. 2013/671, art. 2(3)

PART 2

ENFORCEMENT UNDERTAKINGS

Procedure

- 9 (1) [F23NHS England] must publish a procedure for entering into enforcement undertakings.
- (2) [F24NHS England] may revise the procedure and if it does so, [F24NHS England] must publish the procedure as revised.
- (3) [F25NHS England] must consult such persons as it considers appropriate before publishing or revising the procedure.

Textual Amendments

F23 Words in Sch. 11 para. 9(1) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 100(3)(i); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

F24 Words in Sch. 11 para. 9(2) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 100(3)(i); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

F25 Words in Sch. 11 para. 9(3) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 100(3)(i); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

I14 Sch. 11 para. 9 in force at 1.4.2013 by S.I. 2013/671, art. 2(3)

- 10 (1) Where [F26NHS England] accepts an enforcement undertaking, [F26NHS England] must publish the undertaking.
- (2) But [F27NHS England] must not under sub-paragraph (1) publish any part of an enforcement undertaking which contains information which it is satisfied is—
- (a) commercial information the disclosure of which would, or might, significantly harm the legitimate business interests of the person to whom it relates;

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- (b) information relating to the private affairs of an individual the disclosure of which would, or might, significantly harm that person's interests.

Textual Amendments

- F26** Words in Sch. 11 para. 10(1) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 100(3)(j); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F27** Words in Sch. 11 para. 10(2) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 100(3)(j); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

- I15** Sch. 11 para. 10 in force at 1.4.2013 by S.I. 2013/671, art. 2(3)

Variation of terms

- 11 The terms of an enforcement undertaking (including, in particular, the action specified under it and the period so specified within which the action must be taken) may be varied if both the person giving the undertaking and [F28NHS England] agree.

Textual Amendments

- F28** Words in Sch. 11 para. 11 substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 100(3)(k); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

- I16** Sch. 11 para. 11 in force at 1.4.2013 by S.I. 2013/671, art. 2(3)

Compliance certificates

- 12 (1) Where [F29NHS England] is satisfied that an enforcement undertaking has been complied with, [F29NHS England] must issue a certificate to that effect (referred to in this Schedule as a “compliance certificate”).
- (2) A person who has given an enforcement undertaking may at any time make an application to [F30NHS England] for a compliance certificate.
- (3) The application must be made in such form, and accompanied by such information, as [F31NHS England] requires.
- (4) [F32NHS England] must decide whether or not to issue a compliance certificate, and give notice to the applicant of its decision, before the end of the period of 14 days beginning with the day after that on which the application is received.

Textual Amendments

- F29** Words in Sch. 11 para. 12(1) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 100(3)(l); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F30** Words in Sch. 11 para. 12(2) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 100(3)(l); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

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- F31** Words in Sch. 11 para. 12(3) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 100(3)(l)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F32** Words in Sch. 11 para. 12(4) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 100(3)(l)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

- I17** Sch. 11 para. 12 in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

- 13 (1) An appeal lies to the First-tier Tribunal against a decision of [^{F33}NHS England] to refuse an application for a certificate of compliance.
- (2) The grounds for an appeal under this paragraph are that the decision was—
- (a) based on an error of fact,
 - (b) wrong in law, or
 - (c) unfair or unreasonable.
- (3) On an appeal under this paragraph, the Tribunal may confirm [^{F34}NHS England’s] decision or direct that it is not to have effect.

Textual Amendments

- F33** Words in Sch. 11 para. 13(1) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 100(3)(m)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F34** Words in Sch. 11 para. 13(3) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 100(4)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

- I18** Sch. 11 para. 13 in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

Inaccurate, incomplete or misleading information

- 14 Where [^{F35}NHS England] is satisfied that a person who has given an enforcement undertaking has supplied [^{F35}NHS England] with inaccurate, misleading or incomplete information in relation to the undertaking—
- (a) [^{F35}NHS England] may treat the person as having failed to comply with the undertaking, and
 - (b) if [^{F35}NHS England] decides so to treat the person, [^{F35}NHS England] must by notice revoke any compliance certificate given to that person.

Textual Amendments

- F35** Words in Sch. 11 para. 14 substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 100(3)(n)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

- I19** Sch. 11 para. 14 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. 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\(5\)](#)