



Health and Social Care Act 2012

2012 CHAPTER 7

PART 3

REGULATION OF HEALTH AND ADULT SOCIAL CARE SERVICES

CHAPTER 3

LICENSING

Enforcement

105 Discretionary requirements

- (1) [F¹NHS England] may impose one or more discretionary requirements on a person if [F¹NHS England] is satisfied that the person—
- (a) has provided, or is providing, a health care service for the purposes of the NHS in breach of the requirement to hold a licence under this Chapter (see section 81),
 - (b) is a licence holder who has provided, or is providing, a health care service for the purposes of the NHS in breach of a condition of the licence, or
 - (c) is in breach of a requirement imposed by [F¹NHS England] under section 104.
- (2) In this Chapter, “discretionary requirement” means—
- (a) a requirement to pay a monetary penalty to [F²NHS England] of such amount as [F²NHS England] may determine (referred to in this Chapter as a “variable monetary penalty”),
 - (b) a requirement to take such steps within such period as [F³NHS England] may specify, to secure that the breach in question does not continue or recur (referred to in this Chapter as a “compliance requirement”), or
 - (c) a requirement to take such steps within such period as [F⁴NHS England] may specify, to secure that the position is, so far as possible, restored to what

Changes to legislation: Health and Social Care Act 2012, Section 105 is up to date with all changes known to be in force on or before 28 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

it would have been if the breach in question was not occurring or had not occurred (referred to in this Chapter as a “restoration requirement”).

- (3) [^{F5}NHS England] must not impose discretionary requirements on a person on more than one occasion in relation to the same breach.
- (4) A variable monetary penalty must not exceed 10% of the turnover in England of the person on whom it is imposed, such amount to be calculated in the prescribed manner.
- (5) If the whole or any part of a variable monetary penalty is not paid by the time it is required to be paid, the unpaid balance from time to time carries interest at the rate for the time being specified in section 17 of the Judgments Act 1838; but the total interest must not exceed the amount of the penalty.

Textual Amendments

- F1** Words in s. 105(1) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 67](#); [S.I. 2022/734](#), reg. 2(a), [Sch.](#) (with regs. 13, 29, 30)
- F2** Words in s. 105(2)(a) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 67](#); [S.I. 2022/734](#), reg. 2(a), [Sch.](#) (with regs. 13, 29, 30)
- F3** Words in s. 105(2)(b) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 67](#); [S.I. 2022/734](#), reg. 2(a), [Sch.](#) (with regs. 13, 29, 30)
- F4** Words in s. 105(2)(c) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 67](#); [S.I. 2022/734](#), reg. 2(a), [Sch.](#) (with regs. 13, 29, 30)
- F5** Words in s. 105(3) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 67](#); [S.I. 2022/734](#), reg. 2(a), [Sch.](#) (with regs. 13, 29, 30)

Commencement Information

- I1** S. 105 partly in force; s. 105 in force for specified purposes at Royal Assent, see s. 306(1)(d)
- I2** S. 105(1)(a) in force at 1.4.2014 in so far as not already in force by [S.I. 2014/39](#), [art. 2\(3\)](#)
- I3** S. 105(1)(b)(c)(2)(b)(c)(3) in force at 1.4.2013 in so far as not already in force by [S.I. 2013/671](#), [art. 2\(3\)](#)
- I4** S. 105(2)(a)(4)(5) in force at 1.7.2013 in so far as not already in force by [S.I. 2013/671](#), [art. 2\(4\)](#)

Changes to legislation:

Health and Social Care Act 2012, Section 105 is up to date with all changes known to be in force on or before 28 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\(5\)](#)