

# HEALTH AND SOCIAL CARE ACT 2012

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 3 - Regulation of Health and Adult Social Care Services**

##### *Chapter 3 – Licensing*

##### **Enforcement**

##### *Section 106 - Enforcement undertakings*

825. ‘Enforcement undertakings’ are settlements offered by a person to rectify one or more breaches for which Monitor would otherwise be able to impose a discretionary requirement. Monitor could choose whether to accept the offered settlement, based on whether it was likely to constitute an appropriate remedy. This alternative to discretionary requirements provides an incentive for providers and others to take responsibility for proposing solutions to problems, and thus to be proactive about remedying breaches.
826. *Subsection (3)* specifies what types of enforcement undertakings Monitor may accept:
- action to cease the breach or to prevent the breach continuing or happening again;
  - action to restore the position to what it would have been before a breach occurred, so far as is possible;
  - action to benefit any licence holder or commissioner affected by a breach, which could be payment of money; or
  - other action as may be specified in regulations.
827. Once Monitor accepts an enforcement undertaking, it may only impose a discretionary requirement or revoke a licence if the licensee fails to comply with the undertaking, or any part of it (*subsection (4)*). *Subsection (5)* provides that where a provider has partially complied with an undertaking, Monitor must take the partial compliance into account when deciding whether to take further enforcement action.