

HEALTH AND SOCIAL CARE ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 - Regulation of Health and Adult Social Care Services

Chapter 3 – Licensing

Enforcement

Schedule 11 - Further provision about enforcement powers

Part 2 – Enforcement undertakings

Procedure

840. Paragraphs 9 and 10 stipulate that Monitor must consult upon and then publish a procedure for entering into enforcement undertakings. It may revise that procedure but it would have to publish any revision. Monitor must also publish details of each enforcement undertaking it accepted, but with any commercial information or information that Monitor considered would or might harm any person's legitimate business or personal interests redacted (paragraph 10).

Variation of terms

841. A person giving an enforcement undertaking and Monitor may agree to vary the terms of an enforcement undertaking. This is intended to provide the flexibility to alter the agreement if necessary if, for example, a provider had good reasons for taking longer to carry out a remedial measure than was originally planned and agreed.

Compliance certificates

842. If it is satisfied that a person had complied with an enforcement undertaking, Monitor must issue a compliance certificate (paragraph 12). Someone who had given an enforcement undertaking may apply for a certificate at any time.
843. Paragraph 13 provides that an appeal to the First-tier Tribunal may be made against a decision of Monitor to refuse an application for a compliance certificate, on the grounds that the decision was based on an error in fact, was wrong in law, or was unfair or unreasonable. The Tribunal may confirm Monitor's decision or decide that it did not have effect.

Inaccurate, incomplete or misleading information

844. If Monitor is satisfied that information supplied by a person in relation to an enforcement undertaking is inaccurate, misleading or incomplete, Monitor may treat the person as having failed to comply with the undertaking. If it did this, Monitor would have to revoke any compliance certificate given to that person in connection with the particular undertaking.