

HEALTH AND SOCIAL CARE ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 - Regulation of Health and Adult Social Care Services

Chapter 6 – Financial assistance in special administration cases

Establishment of mechanisms

Section 134 - Duty to establish mechanisms for providing financial assistance

946. This section places Monitor under a duty to establish effective financial mechanisms to support the operation of the special administration regimes provided for foundation trusts in Chapter 5A of Part 2 of the NHS Act and for companies in Chapter 5 of this Act.
947. Monitor has the power to determine the appropriate form of financial mechanisms (for example by levying contributions to a risk pool, establishing contingent liabilities or other approach that would best fit the risks) and whether and how the mechanisms may need to be varied for different providers. As specified by *subsection (2)*, these mechanisms could include, but need not be limited to:
- providers and commissioners being required to contribute to a collective insurance scheme or ‘risk pool’; or
 - providers being required to purchase their own insurance to cover such liabilities on failure as are specified by Monitor.
948. *Subsection (3)* provides that the mechanisms may make provision for Monitor to recover the costs of setting up and running those mechanisms.
949. The financial mechanisms are exempt from any provisions of the Financial Services and Markets Act 2000 and therefore not subject to Financial Services Authority regulation. The Government considers that Financial Services Authority regulation is not necessary given the statutory duties placed on Monitor and the better regulation safeguards set out elsewhere in this Act.
950. *Subsection (6)* provides that Monitor’s duty to establish a mechanism or mechanisms may be commenced before the rest of this Chapter. This is to allow the substantial development work to be undertaken so that the financing arrangements can be delivered in a timely manner.