

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

Levy on providers

Section 139 – Imposition of levy

967. Under Section 135, Monitor has the power to impose levies on providers for the purposes of providing financial assistance during special administration (*subsection (1)*).
968. *Subsection (2)* requires that before the beginning of each financial year and before determining any levies to be imposed for that financial year, Monitor must estimate
- The funds needed to cover the potential costs of providing financial assistance during special administration in the forthcoming financial year;
 - The amount to be collected from commissioners in each financial year; and
 - Any surplus funds that would remain at the end of that financial year.
969. Where Monitor decides to impose a levy, *subsection (3)* requires Monitor to determine the methodology for establishing the rate of the levy and when the levy would be payable. An explanation of any changes to the methodology for establishing the rate must be included in the consultation required to be carried out under section 141 on any proposed levy. Monitor is able to differentiate the levies for different providers (*subsection (5)*).

Section 140 – Power of Secretary of State to set limit on levy and charges

970. This section enables the Secretary of State, by order and subject to the approval of HM Treasury, to limit the amount that Monitor may raise through any provider levies and charges on commissioners. The intention is that this power will be used only in exceptional circumstances, if the Secretary of State considers that the total amount that Monitor proposed to raise to support the special administration regimes was excessive. An order under this section is subject to the affirmative resolution procedure.

Section 141 - Consultation

971. This and subsequent sections set out the consultation requirements in relation to proposed provider levies and the processes by which they are to be calculated. Analogous provision in relation to commissioner charges may be made through regulations made under section 138(6).

972. This section requires Monitor to consult on the proposals for provider levies. The section specifies details about the consultation process, such as the people Monitor must notify and the length of the consultation period.

Section 142 – Responses to consultation

973. This section details how Monitor is required to handle objections to the proposals raised in response to the consultation. Monitor may not implement the proposals unless certain conditions set out in *subsection (2)* are met or, if the conditions are not met, Monitor has made a reference to the Competition Commission.
974. The conditions in *subsection (2)* are that the percentage of providers objecting to the proposals (the objection percentage) and, where regulations provide for this, the percentage of providers objecting to the proposals, weighted by their share of supply (the share of supply percentage) are both less than percentages prescribed by the Secretary of State in regulations. Those regulations may also provide for the method to be used in determining what is meant by “share of supply” in relation to a provider (*subsection (8)*).
975. If the conditions are not met and a reference to the Competition Commission is made, it must be made in terms that require the Commission to investigate and report on certain matters, specified in *subsection (4)*. Those matters are whether Monitor has failed to give sufficient weight to the matters to which it must have regard under section 66 in carrying out its functions and, if so, whether that failure does or might operate against the public interest and if it does, whether that could be remedied or prevented by changes to the proposals
976. **Schedule 10** applies to references made under this section, subject to the modifications set out in *subsection (5)*. The Schedule sets out the requirements and processes surrounding the reference to the Competition Commission and the Competition Commission’s determination of any reference. The Schedule also provides the process for modification of licence conditions following references to the Competition Commission – this is covered in these Notes above (after the notes on section 101).

Section 143 – Amount payable

977. *Subsection (1)* requires Monitor to calculate the amount each provider is to pay under the levy; and to notify the provider of that amount and when it will become payable for each financial year the levy is imposed. The amount payable may be pro-rated where the provider’s liability is only for part of the year (*subsection (2)*). It may also be zero (*subsection (3)*).
978. *Subsections (4) and (5)* enable Monitor to adjust the amount payable by a provider at any time, if Monitor judges that the risk of the provider going into special administration has changed since the start of the financial year or since it last adjusted the amount. Monitor may give notice of the proposed adjustment and where it does, it must specify the adjusted amount.
979. *Subsections (8) and (9)* require Monitor to recalculate the amount payable where a provider requests this, because the provider reasonably believes that the amount has been miscalculated. This provision only applies in relation to amounts payable during the current financial year, not past levies.
980. *Subsection (10)* specifies that Monitor can recover unpaid levies, including accrued interest, as a civil debt.