



Health and Social Care Act 2012

2012 CHAPTER 7

PART 3

REGULATION OF HEALTH AND ADULT SOCIAL CARE SERVICES

CHAPTER 3

LICENSING

Transitional provision

111 Imposition of licence conditions on NHS foundation trusts

- (1) Where Monitor is satisfied that the governance of an NHS foundation trust is such that the trust will fail to comply with the conditions of its licence, Monitor may include in the licence such conditions relating to governance as it considers appropriate for the purpose of reducing that risk.
- (2) The circumstances in which Monitor may be satisfied as mentioned in subsection (1) include circumstances where it is satisfied that the council of governors, the board of directors or the council of governors and board of directors taken together are failing—
 - (a) to secure compliance with conditions in the trust's licence, or
 - (b) to take steps to reduce the risk of a breach of a condition in the trust's licence.
- (3) A condition included under subsection (1) has effect until this section ceases, by virtue of section 112, to have effect in relation to the trust.
- (4) Monitor may modify a condition included under subsection (1).
- (5) Where Monitor is satisfied that the trust has breached or is breaching a condition included under subsection (1), Monitor may by notice require the trust to—
 - (a) remove one or more of the directors or members of the council of governors and appoint interim directors or members of the council;

Status: This is the original version (as it was originally enacted).

- (b) suspend one or more of the directors or members of the council from office as a director or member for a specified period;
 - (c) disqualify one or more of the directors or members of the council from holding office as a director or member for a specified period.
- (6) Where Monitor is satisfied that a person has failed or is failing to comply with a notice under subsection (5), Monitor may do one or more of the things which it may require the trust to do under that subsection.
- (7) Subsection (5) does not prevent Monitor from exercising in relation to a condition included in a licence under subsection (1) the powers conferred by sections 105 and 106 (breach of licence condition etc: enforcement powers which apply during and after period in which this section and sections 112 to 114 have effect).
- (8) Where Monitor includes a condition under subsection (1), it may also make such incidental or consequential modifications as it considers necessary or expedient of any other condition of the licence concerned which is affected.
- (9) Where Monitor includes a condition under subsection (1) by modifying a standard condition of the licence concerned, the modification does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Chapter.
- (10) In this section, a reference to failing to discharge functions includes a reference to failing to discharge those functions properly.
- (11) Omit section 52 of the National Health Service Act 2006 (failing NHS foundation trusts); and in consequence of that, omit—
 - (a) section 39(2)(f) of that Act (copy of notice under section 52 of that Act to be on register), and
 - (b) paragraph 22(1)(f) of Schedule 7 to that Act (copy of that notice to be available for public inspection).

112 Duration of transitional period

- (1) Section 111 ceases to have effect in relation to an NHS foundation trust on such day as the Secretary of State may by order specify.
- (2) Different days may be appointed in relation to different NHS foundation trusts.
- (3) A day specified under subsection (1) must not—
 - (a) in the case of an NHS foundation trust authorised on or before 1 April 2014, be before 1 April 2016;
 - (b) in the case of an NHS foundation trust authorised after 1 April 2014, be before the end of the period of two years beginning with the day on which the trust was authorised.
- (4) In this section, a reference to being authorised is a reference to being given an authorisation under section 35 of the National Health Service Act 2006.
- (5) Section 111 is repealed as soon as there are—
 - (a) no NHS foundation trusts in relation to which it has effect, and
 - (b) no NHS trusts in existence (whether because they had all ceased to exist without section 179 having come into force or there are none continuing in existence by virtue of subsection (3) of that section).

113 Orders under section 112: criteria for deciding applicable trusts

- (1) Where the Secretary of State proposes to make an order under section 112, the Secretary of State must notify Monitor.
- (2) Monitor, having received a notification under subsection (1), must set the criteria that are to be applied for the purpose of determining to which NHS foundation trusts the order should apply.
- (3) Before setting criteria under subsection (2), Monitor must—
 - (a) consult the Care Quality Commission and such other persons as Monitor considers appropriate, and
 - (b) obtain the approval of the Secretary of State.
- (4) If the Secretary of State approves the proposed criteria, Monitor must—
 - (a) publish the criteria,
 - (b) determine, by applying the criteria, to which trusts the order should apply,
 - (c) notify the Secretary of State of its determination, and
 - (d) publish a list of the trusts concerned.
- (5) If the Secretary of State does not approve the proposed criteria, Monitor must propose revised criteria; and subsections (3)(b) and (4) apply in relation to the proposed revised criteria as they apply in relation to the criteria previously proposed.
- (6) The Secretary of State, having received a notification under subsection (4)(c), must review Monitor's determination under subsection (4)(b).

114 Repeal of sections 112 and 113

- (1) Sections 112 and 113 are repealed immediately after section 111 is repealed; and in consequence of that—
 - (a) in section 67(2)(a), omit “or under sections 111 and 113 of this Act (imposition of licence conditions on NHS foundation trusts during transitional period)”,
 - (b) omit section 67(3),
 - (c) in section 87(4), after paragraph (a) insert “and”, and
 - (d) in section 87(4), omit paragraph (c) and the preceding “and”.
- (2) This section is repealed immediately after sections 112 and 113 are repealed.