



Health and Social Care Act 2012

2012 CHAPTER 7

PART 3

REGULATION OF HEALTH AND ADULT SOCIAL CARE SERVICES

CHAPTER 6

FINANCIAL ASSISTANCE IN SPECIAL ADMINISTRATION CASES

Supplementary

144 Investment principles and reviews

- (1) [^{F1}NHS England] must prepare and publish a statement of the principles that govern its decisions, or decisions made on its behalf, about making investments for the purposes of this Chapter.
- (2) [^{F1}NHS England] must—
 - (a) in each financial year, review the statement,
 - (b) if it considers necessary in light of the review, revise the statement, and
 - (c) if it revises the statement, publish the revised statement.
- (3) As soon as reasonably practicable after the end of each financial year, [^{F1}NHS England] must undertake and publish a review of the operation during that year of—
 - (a) the procedure for health special administration under Chapter 5,
 - (b) the procedure for trust special administration for NHS foundation trusts under Chapter 5A of Part 2 of the National Health Service Act 2006, and
 - (c) such mechanisms as have been established under section 134.
- (4) The purposes of the review under subsection (3)(c) are—
 - (a) to assess the operation of the mechanisms concerned,

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- (b) to assess the accuracy of the estimates given by [^{F2}NHS England] in relation to the operation of the mechanisms,
 - (c) to assess what improvements can be made to the process for making estimates in relation to the operation of the mechanisms, and
 - (d) to review the extent of the protection which the mechanisms are required to provide.
- (5) Where a fund established under section 135 has been in operation for the whole or part of the year concerned, the review published under this section must specify—
- (a) the income of the fund during that year, and
 - (b) the expenditure from the fund during that year.
- (6) [^{F3}NHS England] must exclude from a review published under this section information which it is satisfied is—
- (a) commercial information the disclosure of which would, or might, significantly harm the legitimate business interests of an undertaking to which it relates;
 - (b) information relating to the private affairs of an individual the disclosure of which would, or might, significantly harm that person's interests.

Textual Amendments

- F1** Words in s. 144(1)–(3) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 87](#); [S.I. 2022/734, reg. 2\(a\)](#), Sch. (with regs. 13, 29, 30)
- F2** Words in s. 144(4)(b) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 87](#); [S.I. 2022/734, reg. 2\(a\)](#), Sch. (with regs. 13, 29, 30)
- F3** Words in s. 144(6) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 87](#); [S.I. 2022/734, reg. 2\(a\)](#), Sch. (with regs. 13, 29, 30)

Commencement Information

- I1** [S. 144\(3\)\(b\)\(6\)](#) in force at 1.11.2012 by [S.I. 2012/2657, art. 2\(2\)](#)

145 Borrowing

- (1) [^{F4}NHS England] may—
- (a) borrow from a deposit-taker such sums as it may from time to time require for exercising its functions under this Chapter;
 - (b) give security for sums that it borrows.
- (2) But [^{F5}NHS England] may not borrow if the effect would be—
- (a) to take the aggregate amount outstanding in respect of the principal of sums borrowed by it over such limit as the Secretary of State may by order specify, or
 - (b) to increase the amount by which the aggregate amount so outstanding exceeds that limit.
- (3) In this section, “deposit-taker” means—
- (a) a person who has permission under [^{F6}Part 4A] of the Financial Services and Markets Act 2000, ^{F7}...
 - ^{F7}(b)
- (4) The definition of “deposit-taker” in subsection (3) must be read with—

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- (a) section 22 of the Financial Services and Markets Act 2000,
- (b) any relevant order under that section, and
- (c) Schedule 2 to that Act.

Textual Amendments

- F4** Words in s. 145(1) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 5 para. 88**; [S.I. 2022/734](#), reg. 2(a), Sch. (with regs. 13, 29, 30)
- F5** Words in s. 145(2) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 5 para. 88**; [S.I. 2022/734](#), reg. 2(a), Sch. (with regs. 13, 29, 30)
- F6** Words in s. 145(3)(a) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 18 para. 137** (with Sch. 20); [S.I. 2013/423](#), art. 3, Sch.
- F7** [S. 145\(3\)\(b\)](#) and word omitted (31.12.2020) by virtue of [The EEA Passport Rights \(Amendment, etc., and Transitional Provisions\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1149\)](#), reg. 1(3), **Sch. para. 43** (with reg. 4); [2020 c. 1](#), Sch. 5 para. 1(1)

Commencement Information

- I2** S. 145 partly in force; s. 145 in force for specified purposes at Royal Assent, see [s. 306\(1\)\(d\)](#)

146 Shortfall or excess of available funds, etc.

- (1) The Secretary of State may provide financial assistance to [^{F8}NHS England] if the Secretary of State is satisfied that—
 - (a) there are insufficient funds available from a mechanism established under section 134, or
 - (b) the mechanism is otherwise unable to operate effectively.
- (2) If the Secretary of State is satisfied that the level of funds available from a mechanism established under section 134 exceeds the level that is necessary, the Secretary of State may direct [^{F8}NHS England] to transfer the excess to the Secretary of State.
- (3) If the Secretary of State is satisfied that a mechanism established under section 134 has become dormant, or if a mechanism so established is being wound up, the Secretary of State may direct [^{F8}NHS England] to transfer to the Secretary of State such funds as are available from the mechanism.

Textual Amendments

- F8** Words in s. 146(1)-(3) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 5 para. 89**; [S.I. 2022/734](#), reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

- I3** S. 146 partly in force; s. 146 in force for specified purposes at Royal Assent, see [s. 306\(1\)\(d\)](#)

Changes to legislation:

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Changes and effects yet to be applied to :

- specified provision(s) amendment to earlier commencing SI 2012/1831 art. 10 by [S.I. 2012/2657 art. 15](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Pt. 9 Ch. 1B inserted by [2022 c. 31 s. 96](#)
- s. 102(4)(ba) inserted by S.I. 2019/93, Sch. 1 para. 13(3) (as substituted) by [S.I. 2019/1245 reg. 28](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 105(3A)(3B) inserted by [2013 c. 24 Sch. 14 para. 21](#)
- s. 106(3A)(3B) inserted by [2013 c. 24 Sch. 14 para. 22](#)
- s. 250(2)-(2B) substituted for s. 250(2) by [2022 c. 31 s. 95\(2\)\(a\)](#)
- s. 250(6)-(6D) substituted for s. 250(6) by [2022 c. 31 s. 95\(2\)\(d\)](#)
- s. 251251ZA substituted for s. 251 by [2022 c. 31 s. 95\(3\)](#)
- s. 251C(6A) inserted by [2022 c. 31 s. 95\(4\)\(a\)](#)
- s. 259(1)(aa)(b) substituted for s. 259(1)(b) by [2022 c. 31 s. 98\(b\)](#)
- s. 259(1)(aa) words substituted by [S.I. 2023/98 Sch. para. 17\(11\)\(a\)\(iii\)](#) (This amendment comes in force at the same time as 2022 c. 31, s. 98 comes into force)
- s. 259(10A)(10B) inserted by [2022 c. 31 s. 98\(h\)](#)
- s. 304(5)(ja) inserted by [2022 c. 31 s. 95\(5\)](#)