

**Changes to legislation:** Health and Social Care Act 2012, PART 2 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

## SCHEDULES

### SCHEDULE 11

#### FURTHER PROVISION ABOUT [F<sup>1</sup>NHS ENGLAND'S] ENFORCEMENT POWERS

##### Textual Amendments

- F1** Words in Sch. 11 heading substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 100(2); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

### PART 2

#### ENFORCEMENT UNDERTAKINGS

##### *Procedure*

- 9 (1) [F<sup>1</sup>NHS England] must publish a procedure for entering into enforcement undertakings.
- (2) [F<sup>2</sup>NHS England] may revise the procedure and if it does so, [F<sup>2</sup>NHS England] must publish the procedure as revised.
- (3) [F<sup>3</sup>NHS England] must consult such persons as it considers appropriate before publishing or revising the procedure.

##### Textual Amendments

- F1** Words in Sch. 11 para. 9(1) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 100(3)(i); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F2** Words in Sch. 11 para. 9(2) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 100(3)(i); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F3** Words in Sch. 11 para. 9(3) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 100(3)(i); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

##### Commencement Information

- I1** Sch. 11 para. 9 in force at 1.4.2013 by S.I. 2013/671, art. 2(3)

- 10 (1) Where [F<sup>4</sup>NHS England] accepts an enforcement undertaking, [F<sup>4</sup>NHS England] must publish the undertaking.
- (2) But [F<sup>5</sup>NHS England] must not under sub-paragraph (1) publish any part of an enforcement undertaking which contains information which it is satisfied is—
- (a) commercial information the disclosure of which would, or might, significantly harm the legitimate business interests of the person to whom it relates;

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- (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**

- F4** Words in Sch. 11 para. 10(1) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 100(3)(j); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F5** Words in Sch. 11 para. 10(2) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 100(3)(j); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

**Commencement Information**

- I2** Sch. 11 para. 10 in force at 1.4.2013 by S.I. 2013/671, art. 2(3)

*Variation of terms*

- 11 The terms of an enforcement undertaking (including, in particular, the action specified under it and the period so specified within which the action must be taken) may be varied if both the person giving the undertaking and [<sup>F6</sup>NHS England] agree.

**Textual Amendments**

- F6** Words in Sch. 11 para. 11 substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 100(3)(k); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

**Commencement Information**

- I3** Sch. 11 para. 11 in force at 1.4.2013 by S.I. 2013/671, art. 2(3)

*Compliance certificates*

- 12 (1) Where [<sup>F7</sup>NHS England] is satisfied that an enforcement undertaking has been complied with, [<sup>F7</sup>NHS England] must issue a certificate to that effect (referred to in this Schedule as a “compliance certificate”).
- (2) A person who has given an enforcement undertaking may at any time make an application to [<sup>F8</sup>NHS England] for a compliance certificate.
- (3) The application must be made in such form, and accompanied by such information, as [<sup>F9</sup>NHS England] requires.
- (4) [<sup>F10</sup>NHS England] must decide whether or not to issue a compliance certificate, and give notice to the applicant of its decision, before the end of the period of 14 days beginning with the day after that on which the application is received.

**Textual Amendments**

- F7** Words in Sch. 11 para. 12(1) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 100(3)(l); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F8** Words in Sch. 11 para. 12(2) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 100(3)(l); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F9** Words in Sch. 11 para. 12(3) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 100(3)(l); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

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**F10** Words in Sch. 11 para. 12(4) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 100(3)(l); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

#### Commencement Information

**I4** Sch. 11 para. 12 in force at 1.4.2013 by S.I. 2013/671, art. 2(3)

- 13 (1) An appeal lies to the First-tier Tribunal against a decision of [F11NHS England] to refuse an application for a certificate of compliance.
- (2) The grounds for an appeal under this paragraph are that the decision was—
- (a) based on an error of fact,
  - (b) wrong in law, or
  - (c) unfair or unreasonable.
- (3) On an appeal under this paragraph, the Tribunal may confirm [F12NHS England's] decision or direct that it is not to have effect.

#### Textual Amendments

**F11** Words in Sch. 11 para. 13(1) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 100(3)(m); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

**F12** Words in Sch. 11 para. 13(3) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 100(4); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

#### Commencement Information

**I5** Sch. 11 para. 13 in force at 1.4.2013 by S.I. 2013/671, art. 2(3)

#### *Inaccurate, incomplete or misleading information*

- 14 Where [F13NHS England] is satisfied that a person who has given an enforcement undertaking has supplied [F13NHS England] with inaccurate, misleading or incomplete information in relation to the undertaking—
- (a) [F13NHS England] may treat the person as having failed to comply with the undertaking, and
  - (b) if [F13NHS England] decides so to treat the person, [F13NHS England] must by notice revoke any compliance certificate given to that person.

#### Textual Amendments

**F13** Words in Sch. 11 para. 14 substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 100(3)(n); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

#### Commencement Information

**I6** Sch. 11 para. 14 in force at 1.4.2013 by S.I. 2013/671, art. 2(3)

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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. 251 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\(5\)](#)