



Health and Social Care Act 2012

2012 CHAPTER 7

PART 11

MISCELLANEOUS

Duties to co-operate

291 Breaches of duties to co-operate

- (1) If the Secretary of State is of the opinion that bodies subject to a relevant co-operation duty have breached or are breaching the duty, or are at significant risk of breaching the duty, the Secretary of State may give a written notice of the Secretary of State's opinion to each body.
- (2) The relevant co-operation duties are—
 - (a) the duty under section 288 (co-operation by Monitor with the Care Quality Commission),
 - (b) the duties under section 290(1) and (2),
 - (c) the duty under section 70 of the Health and Social Care Act 2008 (co-operation by the Care Quality Commission with Monitor),
 - (d) any duties imposed by an enactment on relevant bodies to co-operate with each other in the exercise of their respective functions.
- (3) The Secretary of State must publish each notice given under subsection (1) in such form as the Secretary of State considers appropriate.
- (4) Subsection (5) applies if, having given a notice under subsection (1), the Secretary of State is satisfied that—
 - (a) the bodies concerned have breached or are continuing to breach the duty or, the risk of a breach having materialised, are breaching the duty, and
 - (b) the breach is having a detrimental effect on the performance of the health service (or, where the effect of the breach on the performance of the health service is both beneficial and detrimental, its overall effect is detrimental).

Status: This is the original version (as it was originally enacted).

- (5) The Secretary of State may by order prohibit each body from exercising specified functions, or from exercising specified functions in a specified manner, unless the other body concerned agrees in writing that the body may do so.
- (6) The power to make an order under subsection (5)—
 - (a) may be exercised so as to specify different functions in relation to each body, but
 - (b) may not be exercised so as to prevent a body from complying with a requirement imposed by or under an enactment or by a court or tribunal.
- (7) In default of agreement as to the exercise of a function specified in an order under subsection (5), a body may exercise the function in accordance with provision determined by arbitration.
- (8) An order under subsection (5) must specify the period for which a prohibition imposed by it has effect; and the period specified for that purpose may not exceed one year beginning with the day on which the order comes into force.
- (9) But if the Secretary of State is satisfied that the breach is continuing to have a detrimental effect (or an effect that overall is detrimental) on the performance of the health service, the Secretary of State may by order extend by one year the period for which the prohibition for the time being has effect.
- (10) In this section, “the health service” means the comprehensive health service continued under section 1(1) of the National Health Service Act 2006.