***Changes to legislation:** Health and Social Care Act 2012, Cross Heading: Procedure is up to date with all changes known to be in force on or before 15 September 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 [F1NHS 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 1

DISCRETIONARY REQUIREMENTS

Procedure

1 (1) Where [F1NHS England] proposes to impose a discretionary requirement on a person, [F1NHS England] must give notice to that person (a "notice of intent").

(2) A notice of intent must—

(a) state that [F2NHS England] proposes to impose the discretionary requirement and set out its effect,

(b) set out the grounds for the proposal to impose the requirement,

(c) explain the effect of section 106 (enforcement undertakings),

(d) set out the circumstances (if any) in which [F3NHS England] may not impose the requirement, and

(e) specify the period ("the notice period") within which representations with respect to the proposal may be made to [F4NHS England].

(3) The notice period must be not less than 28 days beginning with the day after that on which the notice of intent is received.

(4) But where [F5NHS England]—

(a) proposes to impose a compliance requirement or restoration requirement, and

(b) considers that a shorter notice period is necessary to prevent or minimise further breaches of the kind referred to in section 105(1),

the notice period is to be such shorter period as [F5NHS England] may determine, but not less than 5 days beginning with the day after that on which the notice of intent is received.

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Textual Amendments

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

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

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

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

F5 Words in Sch. 11 para. 1(4) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 100(3)(a)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

I1 Sch. 11 para. 1 in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

2 (1) After the end of the notice period **[**[F6]NHS England**]** must decide whether to—

(a) impose the discretionary requirement, with or without modifications, or

(b) impose any other discretionary requirement.

(2) Where **[**[F7]NHS England**]** decides under sub-paragraph (1) to impose a discretionary requirement on a person **[**[F7]NHS England**]** must give notice to that person (a "final notice").

(3) A final notice must—

(a) state that **[**[F8]NHS England**]** has decided to impose the discretionary requirement and set out its effect,

(b) set out the grounds for imposing the requirement,

(c) in the case of a variable monetary penalty, state—

(i) how payment may be made,

(ii) the period ("the payment period") within which payment must be made,

(iii) any discount applicable for early payment of the penalty, and

(iv) the rate of interest payable for late payment of the penalty,

(d) set out the consequences of failing to comply with the requirement, and

(e) explain the right of appeal conferred by paragraph 3.

(4) The payment period must be not less than 28 days beginning with the day after that on which the final notice is received.

(5) **[**[F9]NHS England**]** must not decide under sub-paragraph (1) to impose a variable monetary penalty unless the notice of intent was given before the end of the period of 5 years beginning with the day (or, in the case of a continuing breach, the last day) on which the breach giving rise to the imposition of the discretionary requirement occurred.

Textual Amendments

F6 Words in Sch. 11 para. 2(1) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 100(3)(b)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

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

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

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

Commencement Information

I2 Sch. 11 para. 2(1)(2)(3)(a)(b)(d)(e) in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

I3 Sch. 11 para. 2(3)(c)(4)(5) in force at 1.7.2013 by S.I. 2013/671, **art. 2(4)**

3 (1) A person may appeal to the First-tier Tribunal against a decision of **[**[F10]NHS England**]** to impose a discretionary requirement.

(2) The grounds for an appeal under this paragraph are—

(a) that the decision was based on an error of fact,

(b) that the decision was wrong in law,

(c) in the case of a decision imposing a variable monetary penalty, that the amount of the penalty is unreasonable,

(d) in the case of a decision to impose a compliance requirement or a restoration requirement, that the nature of the requirement is unreasonable, or

(e) that the decision was unreasonable for any other reason.

(3) The discretionary requirement is suspended pending determination of the appeal.

(4) On an appeal under this paragraph, the Tribunal may—

(a) confirm, vary or withdraw the discretionary requirement,

(b) take such steps as **[**[F11]NHS England**]** could take in relation to the breach giving rise to the imposition of the requirement, or

(c) remit the decision whether to confirm the requirement, or any matter relating to that decision, to **[**[F12]NHS England**]**.

Textual Amendments

F10 Words in Sch. 11 para. 3(1) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 100(3)(c)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

F11 Words in Sch. 11 para. 3(4)(b) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 100(3)(c)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

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

Commencement Information

I4 Sch. 11 para. 3(1)(2)(a)(b)(d)(e) in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

I5 Sch. 11 para. 3(2)(c) in force at 1.7.2013 by S.I. 2013/671, **art. 2(4)**

4 **[**[F13]NHS England**]** may by notice to a person on whom a discretionary requirement has been imposed—

(a) withdraw the discretionary requirement,

(b) in the case of a variable monetary penalty, reduce the amount of the penalty or extend the payment period, or

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(c) in the case of a compliance requirement or a restoration requirement, extend the period specified for taking the steps specified in the requirement.

Textual Amendments

F13 Words in Sch. 11 para. 4 substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 100(3)(d)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

I6 Sch. 11 para. 4(a)(c) in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)**

I7 Sch. 11 para. 4(b) in force at 1.7.2013 by S.I. 2013/671, **art. 2(4)**

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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)