

# HEALTH AND SOCIAL CARE ACT 2012

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 3 - Regulation of Health and Adult Social Care Services**

##### *Chapter 5 – Health special administration*

##### *Section 130 - Health special administration regulations*

929. *Subsection (1)* requires the Secretary of State to make regulations setting out the detail of the health special administration regime. The regulations will be subject to consultation and the affirmative resolution procedure in Parliament.
930. These provisions are designed so that health special administration can reflect existing insolvency law and practice. *Subsection (2)* provides that the regulations may apply, with modifications, the procedure of administration set out in Part 2 of the Insolvency Act 1986 (which includes provision for the powers of administrators and the process of administration) and other relevant legislation.
931. The regulations may also include provision for enabling the court to make a health special administration order if the Secretary of State presents a public interest winding-up petition in relation to a relevant provider (*subsection (3)*).
932. The regulations may make provision about the application of other corporate insolvency procedures and the enforcement of security over property, in the context of health special administration.
933. The regulations may set out requirements for Monitor to publish and maintain details of companies that are potentially within the scope of the health special administration regime (*subsection (5)*).
934. *Subsection (6)* provides that the regulations may also set out further details about health special administration. In particular, such regulations may make provision for Monitor to issue guidance to commissioners about the exercise of their functions in determining the services which are to be subject to health special administration.
935. The regulations may require Monitor to publish such guidance, enable Monitor to revise it and require that any such guidance or revised guidance is approved by the Secretary of State and NHS Commissioning Board before it is published. The regulations may also require commissioners to have regard to any such guidance issued by Monitor. Where commissioners exercising those functions fail to reach agreement, the regulations may make provision for the NHS Commissioning Board to facilitate agreement or to exercise the commissioners' functions in order to determine the issue where agreement cannot be reached. The intention is that any such provision will apply where a relevant provider delivers services to more than one commissioner.
936. The regulations may also require a health special administrator to carry out consultation, in accordance with the regulations, on the actions they recommend in relation to a particular provider.

*These notes refer to the Health and Social Care Act 2012  
(c.7) which received Royal Assent on 27 March 2012*

937. *Subsections (7) and (8)* provide that the regulations could also modify this Chapter, the Insolvency Act 1986 and any other enactment which either makes provision about what is to be done under that Act or is relevant to insolvency or administration. This ensures that the health special administration regime may be tailored to meet the needs of the health care sector.
938. *Subsection (9)* provides that further secondary legislation ('rules') may be made under section 411 of the Insolvency Act 1986 to give effect to the health special administration regime. This is consistent with other insolvency regimes, where rules provide the details needed to make the procedures workable in practice. The rules would be made in the normal way and the power to make rules in relation to Scotland is exercisable by the Secretary of State (*subsection (10)(b)*). Rules made under this provision would apply to any Scottish companies providing NHS services in England.