

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

HEALTH AND SOCIAL CARE ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 - Regulation of Health and Adult Social Care Services

Chapter 6 – Financial assistance in special administration cases

Charges on Commissioners

Section 138 – Power to impose charges on commissioners

962. This section gives the Secretary of State the power to make regulations that would allow Monitor to require commissioners to pay charges which relate to Monitor's functions to ensure continuity of NHS services.
963. *Subsections (2) and (3)* specify what must be included in the regulations, which includes provision about how the charge would be calculated, to whom it should be paid and when. The charge may be fixed in the regulations or determined by reference to criteria set in the regulations. Where a charge is set using criteria, the regulations must require Monitor to consult before imposing the charge. Where a charge is not paid when it is due, regulations must provide for interest to be payable on that amount and allow for any unpaid balance, including interest to be recoverable as a civil debt.
964. Where the charge is payable to a provider, Monitor may require the provider to pay Monitor that amount in accordance with the regulations.
965. *Subsection (5)* requires the Secretary of State to consult Monitor and the NHS Commissioning Board before making the regulations.
966. *Subsection (6)* states that regulations under this section may provide for consultation based on the consultation provisions in sections 141 and 142 and for calculation of amounts payable based on the provisions in section 143 in relation to charges imposed by commissioners.