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STATUTORY INSTRUMENTS

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**2013 No. 671 (C. 28)**

**NATIONAL HEALTH SERVICE**

**The Health and Social Care Act 2012 (Commencement No. 5,  
Transitional, Savings and Transitory Provisions) Order 2013**

*Made - - - - 19th March 2013*

The Secretary of State for Health makes the following Order in exercise of the powers conferred by sections 304(10) and 306 of the Health and Social Care Act 2012<sup>(1)</sup>.

**Citation and interpretation**

**1.**—(1) This Order may be cited as the Health and Social Care Act 2012 (Commencement No. 5, Transitional, Savings and Transitory Provisions) Order 2013.

(2) In this Order—

“the 2012 Act” means the Health and Social Care Act 2012; and

“the 2006 Act” means the National Health Service Act 2006<sup>(2)</sup>.

**Commencement of provisions**

**2.**—(1) Insofar as they are not already in force<sup>(3)</sup>, the following provisions of the 2012 Act are to come into force in accordance with this Order.

(2) Section 172(4) and (5)(b) (supplementary) come into force immediately before the coming into force of section 173 (repeal of de-authorisation provisions) in accordance with paragraph (3).

(3) 1st April 2013 is the day appointed for the coming into force of—

section 66 (matters to have regard to in exercise of functions);

section 67 (conflicts between functions);

section 68 (duty to review regulatory burdens);

section 69 (duty to carry out impact assessments);

section 74 (competition functions: supplementary);

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(1) 2012 c. 7.

(2) 2006 c. 41.

(3) See section 306(1) of the Health and Social Care Act 2012 (c. 7) (“the 2012 Act”) for the provisions which came into force on the day the 2012 Act was passed, and S.I. 2012/1319 (C. 47), 2012/1831 (C. 71), 2012/2657 (C. 107) and 2013/160 (C. 9) for provisions of the 2012 Act which came into force by Order on earlier dates.

section 81 (requirement for health service providers to be licensed), only insofar as it relates to NHS foundation trusts;

section 82 (deemed breach of requirement to be licensed);

sections 85 to 87 (application and criteria for, and grant of, licence), insofar as they relate to licences for NHS foundation trusts;

section 88 (application and grant: NHS foundation trusts);

section 89 (revocation of licence);

section 90 (right to make representations), except subsection (1)(a);

section 91 (notice of decisions), except subsection (1)(a);

section 92 (appeals to the Tribunal), except subsection (1)(a);

section 93 (register of licence holders);

section 94 (standard conditions);

section 95 (special conditions), except subsections (1)(b) and (6);

section 97 (conditions: supplementary);

section 98 (conditions relating to the continuation of the provision of services etc.);

section 99 (notification of commissioners where continuation of services at risk);

section 102 (modification of conditions by order under other enactments);

section 103 (standard condition as to transparency of certain criteria), except insofar as it relates to Monitor's functions under section 100 and 101(7) of the 2012 Act;

section 104(2)(b) and (4)(c) (power to require documents and information);

section 105(1)(b) and (c), (2)(b) and (c) and (3) (discretionary requirements);

section 106 (enforcement undertakings), except subsection (1)(a);

section 108 (guidance as to use of enforcement powers);

section 109 (publication of enforcement action);

section 110 (notification of enforcement action);

sections 111 to 114 (transitional provision);

section 148 (service of documents);

section 156(5) and (6) (annual report and forward plan);

section 159 (authorisation), except subsection (4);

section 163(2) and (7) to (9) (financial powers etc.);

section 164 (goods and services);

section 168 (mergers);

section 169 (acquisitions);

section 170 (separations);

section 171 (dissolution);

section 172 (supplementary);

section 173 (repeal of de-authorisation provisions);

section 289(4)(b) and (5), and section 289(1) insofar as it relates to those provisions (Care Quality Commission: duty to co-operate with Monitor); and

in Schedule 11 (further provision about Monitor's enforcement powers)—

(a) paragraph 1,

- (b) paragraph 2(1), (2) and (3)(a), (b), (d) and (e),
- (c) paragraph 3, except sub-paragraph (2)(c),
- (d) paragraph 4(a) and (c),
- (e) paragraphs 5 and 6,
- (f) paragraph 7(1) and (2)(b),
- (g) paragraph 8(b), and
- (h) paragraphs 9 to 14,

and section 107 insofar as it relates to those paragraphs.

(4) 1st July 2013 is the day appointed for the coming into force of—

- section 95;
- section 96(1)(c) (limits on Monitor’s functions to set or modify licence conditions);
- section 100 (modification of standard conditions);
- section 101 (modification references to the Competition Commission);
- section 103;
- section 105(2)(a), (4) and (5); and
- section 107 and Schedule 11.

(5) Insofar as they relate to consultation under section 118 and 119 of the 2012 Act (consultation on proposals for the national tariff, and consultation: further provision) in relation to a tariff published by Monitor under section 116 of the 2012 Act (the national tariff), 1st September 2013 is the day appointed for the coming into force of—

- section 120 (responses to consultation) and Schedule 12 (procedure on references under section 120);
- section 121 (determination on reference under section 120);
- section 122 (changes following determination on reference under section 120); and
- section 123 (power to veto changes proposed under section 122).

### **Transitory modification in respect of the commencement of section 62 of the 2012 Act (Monitor’s general duties)**

3. From 1st April 2013 until the saving provision in paragraph 10(2) of Schedule 13 to the 2012 Act (continued effect of section 32 of the 2006 Act pending the commencement of section 179 of the 2012 Act) ceases to have effect, section 32 of the 2006 Act is to be read as if—

- (a) “, 3” were omitted<sup>(4)</sup>; and
- (b) at the end there were inserted “and with the performance by clinical commissioning groups of their duty under section 3(1)”<sup>(5)</sup>.

### **Transitory modification in respect of the commencement of section 91 of the 2012 Act (notice of decisions)**

4. Until section 85 of the 2012 Act comes fully into force, section 91(2) of the 2012 Act is to be read as if “the applicant or” were omitted.

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(4) Section 62 of the 2012 Act is commenced in full on 1st April 2013 by article 2(2) of [S.I. 2013/160](#).

(5) Section 3 of the National Health Service Act 2006 ([c. 41](#)) is amended by section 13 of the 2012 Act.

**Transitory modification in respect of the commencement of section 95 of the 2012 Act (special conditions)**

5. From 1st April 2013 until it comes fully into force, section 95 of the 2012 Act is to be read as if—

- (a) in subsection (2)—
  - (i) “or making such modifications” were omitted,
  - (ii) in paragraph (a), “or the licence holder (as the case may be)” were omitted, and
  - (iii) in paragraph (d), “or modifications” were omitted; and
- (b) in subsection (4)(a), for “or make the modifications” to the end of paragraph (a) there were substituted “and set out its proposed effect”.

Signed by authority of the Secretary of State for Health.

19th March 2013

*Earl Howe*  
Parliamentary Under-Secretary of State,  
Department of Health

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order brings into force provisions of the Health and Social Care Act 2012 (c. 7) (“the Act”). It is the fifth such Order to be made under the Act.

Article 2(2) brings into force section 172(4) and (5)(b) immediately before the coming into force of section 173 of the 2012 Act (which is commenced on 1st April 2013 by article 2(3)).

Article 2(2) brings into force the following provisions of the Act on 1st April 2013—

- (a) the remainder of section 66, which prescribes matters which Monitor is to have regard to in the exercise of its functions;
- (b) the remainder of sections 67 and 68 and the whole of section 69, which impose obligations on Monitor in relation to managing conflicts between its general duties and between certain of its functions, reviewing regulatory burdens and carrying out impact assessments;
- (c) the remainder of section 74, which makes supplementary provision in relation to the competition functions of Monitor;
- (d) sections 81 (partially), 82, 85 to 87 (partially), 88 (partially), 89, 90 (partially), 91 (partially), 92 (partially) and 93 which relate to the licensing of NHS foundation trusts to provide health care services for the purposes of the NHS;
- (e) sections 94 (remainder), 95 (partially), 97 (remainder), 98 (remainder), 99, 102 and 103 (partially) which relate to the conditions of licences to provide health care services for the purposes of the NHS;
- (f) section 104 (partially) which relates to Monitor’s power to require documents and information;
- (g) sections 105 (partially), 106 (partially), 108, 109 and 110 and Schedule 11 (partially) which relate to Monitor’s powers of enforcement of the licensing regime for providers of health care services for the purposes of the NHS;
- (h) sections 111 to 114 which make transitional provision in relation to the introduction of the licensing regime for providers of health care services for the purposes of the NHS as it applies to NHS foundation trusts;
- (i) the remainder of section 148 which relates to the service of documents under Part 3 of the Act;
- (j) sections 156 (partially), 159 (partially), 163 (partially), 164 (remainder), 168 to 171, 172 (remainder) and 173 (remainder) which relate to NHS foundation trusts; and
- (k) section 289 (partially), which amends section 70 of the Health and Social Care Act 2008 (c. 14) to make changes to the duty of co-operation between the Care Quality Commission and Monitor.

Article 2(4) brings into force the following provisions of the Act on 1st July 2013—

- (a) sections 95 (remainder), 96 (partially), 100 (remainder), 101 (remainder) and 103 (remainder) which relate to the conditions of licences to provide health care services for the purposes of the NHS; and

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- (b) section 105 (partially) and the remainder of section 107 and Schedule 11 which relate to Monitor’s powers of enforcement of the licensing regime for providers of health care services for the purposes of the NHS.

Article 2(5) brings into force, on 1st September 2013, sections 120 to 123 of the Act and Schedule 12 to the Act, which relate to Monitor’s functions in relation to the pricing of health care services for the purposes of the NHS, insofar as they relate to consultation on a tariff to be published by Monitor under section 116 of the Act.

Article 3 makes transitory modification to section 32 of the National Health Service Act 2006 (c. 41), which by virtue of paragraph 10(2) of Schedule 13 to the Act continues to have effect until the commencement of section 179 of the Act (abolition of NHS trusts in England), as from 1st April 2013 section 3 of the National Health Service Act 2006 (relating to the provision of certain health services) will place duties on clinical commissioning groups instead of the Secretary of State.

Article 4 makes transitory modification to section 91(2) of the Act in order to omit references to “applicant” until section 85 of the Act (application for licence) comes fully into force.

Article 5 makes transitory modifications to section 95 of the Act (special conditions) from 1st April 2013 to the time that it comes fully into force, as the power to modify a special condition of a licence will not apply until section 95 comes fully into force.

A full impact assessment has not been produced for this instrument as this Order itself has no impact on the private sector or civil society organisations. A full Impact Assessment has been produced in relation to the provisions of the Act, including provisions that are commenced by this Order, and a copy is available at [http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH\\_123583](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_123583).

#### **NOTE AS TO EARLIER COMMENCEMENT ORDERS**

*(This note is not part of the Order)*

The following provisions of the Health and Social Care Act 2012 have been brought into force by commencement orders made before the date of this Order:

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Section 1 (partially)	1st October 2012	S.I. 2012/1831
Section 1 (remainder)	1st April 2013	S.I. 2013/160
Sections 2 to 7	1st April 2013	S.I. 2013/160
Section 8	1st June 2012	S.I. 2012/1319
Section 9 (partially)	1st October 2012	S.I. 2012/1831
	1st February 2013	S.I. 2012/2657
Section 9 (remainder)	1st April 2013	S.I. 2013/160
Section 10 (partially)	1st October 2012	S.I. 2012/1831
	1st February 2013	S.I. 2012/2657
Section 10 (remainder)	1st April 2013	S.I. 2013/160
Sections 11 and 12	1st April 2013	S.I. 2013/160
Section 13 (partially)	1st February 2013	S.I. 2012/2657
Section 13 (remainder)	1st April 2013	S.I. 2013/160

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Section 14 (partially)	1st February 2013	S.I. 2012/2657
Section 14 (remainder)	1st April 2013	S.I. 2013/160
Section 15	1st February 2012	S.I. 2012/2657
Section 16	1st April 2013	S.I. 2013/160
Section 17 (partially)	1st October 2012	S.I. 2012/1831
	1st February 2013	S.I. 2012/2657
Section 17 (remainder)	1st April 2013	S.I. 2013/160
Sections 18 and 19	1st April 2013	S.I. 2013/160
Section 20	1st February 2013	S.I. 2012/2657
Section 21	1st October 2012	S.I. 2012/1831
Section 22 (partially)	1st October 2012	S.I. 2012/1831
Section 22 (remainder)	1st April 2013	S.I. 2013/160
Section 23 (partially)	1st October 2012	S.I. 2012/1831
	1st February 2013	S.I. 2012/2657
Section 23 (remainder)	1st April 2013	S.I. 2013/160
Section 24 (partially)	1st October 2012	S.I. 2012/1831
Section 24 (remainder)	1st April 2013	S.I. 2013/160
Section 25 (partially)	1st October 2012	S.I. 2012/1831
Section 25 (remainder)	1st April 2013	S.I. 2013/160
Section 26 (partially)	1st October 2012	S.I. 2012/1831
	1st February 2013	S.I. 2012/2657
Section 26 (remainder)	1st April 2013	S.I. 2013/160
Section 27 (partially)	1st October 2012	S.I. 2012/1831
Section 27 (remainder)	1st April 2013	S.I. 2013/160
Section 28	1st April 2013	S.I. 2013/160
Section 29 to 34	1st April 2013	S.I. 2013/160
Section 35 (partially), in relation to England only	1st April 2013	S.I. 2013/160
Section 36 (partially), in relation to England only	1st April 2013	S.I. 2013/160
Section 37 (partially), in relation to England only	1st April 2013	S.I. 2013/160
Section 38	1st April 2013	S.I. 2013/160
Section 39	1st July 2012	S.I. 2012/1319
Section 40 (partially)	1st February 2013	S.I. 2012/2657

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<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Section 40 (remainder)	1st April 2013	S.I. 2013/160
Section 41	1st April 2013	S.I. 2013/160
Section 42	1st July 2012	S.I. 2012/1319
Section 43	1st April 2013	S.I. 2013/160
Section 44	1st July 2012	S.I. 2012/1319
Sections 45 to 54	1st April 2013	S.I. 2013/160
Section 55 (partially)	1st July 2012	S.I. 2012/1319
	1st October 2012	S.I. 2012/1831
	1st February 2013	S.I. 2012/2657
	1st April 2013	S.I. 2013/160
Section 56 to 58	1st April 2013	S.I. 2013/160
Section 59	1st July 2012	S.I. 2012/1319
Section 60	1st April 2013	S.I. 2013/160
Section 61 (partially)	1st July 2012	S.I. 2012/1319
Section 61 (remainder)	1st November 2012	S.I. 2012/2657
Section 62 (partially)	1st November 2012	S.I. 2012/2657
Section 62 (remainder)	1st April 2013	S.I. 2013/160
Section 63	1st November 2012	S.I. 2012/2657
Section 64 (partially)	1st June 2012	S.I. 2012/1319
	1st July 2012	S.I. 2012/1319
Section 64 (remainder)	1st November 2012	S.I. 2012/2657
Section 66 (partially)	1st November 2012	S.I. 2012/2657
Section 67 (partially)	1st November 2012	S.I. 2012/2657
Section 68 (partially)	1st November 2012	S.I. 2012/2657
Section 70	1st November 2012	S.I. 2012/2657
Section 71	1st November 2012	S.I. 2012/2657
Sections 72 and 73	1st April 2013	S.I. 2013/160
Section 74 (partially)	1st April 2013	S.I. 2013/160
Sections 75 to 77	1st April 2013	S.I. 2013/160
Section 78	1st February 2013	S.I. 2012/2657
Section 79	1st July 2012	S.I. 2012/1319
Section 80	1st April 2013	S.I. 2013/160
Section 94 (partially)	1st November 2012	S.I. 2012/2657
Section 95 (partially)	1st November 2012	S.I. 2012/2657



<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Section 96 (partially)	1st November 2012	S.I. 2012/2657
Section 97 (partially)	1st November 2012	S.I. 2012/2657
Section 98 (partially)	1st November 2012	S.I. 2012/2657
Section 101 (partially)	1st November 2012	S.I. 2012/2657
Section 103 (partially)	1st November 2012	S.I. 2012/2657
Section 104 (partially)	1st November 2012	S.I. 2012/2657
	1st April 2013	S.I. 2013/160
Section 108 (partially)	1st November 2012	S.I. 2012/2657
Section 116 (partially)	1st April 2013	S.I. 2013/160
Section 117 (partially)	1st April 2013	S.I. 2013/160
Section 118 (partially)	1st April 2013	S.I. 2013/160
Section 119 (partially)	1st April 2013	S.I. 2013/160
Section 144 (partially)	1st November 2012	S.I. 2012/2657
Section 147 (partially)	1st October 2012	S.I. 2012/1831
Section 147 (remainder)	1st April 2013	S.I. 2013/160
Section 148 (partially)	1st November 2012	S.I. 2012/2657
Section 149	1st November 2012	S.I. 2012/2657
Section 150 (partially)	1st July 2012	S.I. 2012/1319
	1st November 2012	S.I. 2012/2657
	1st April 2013	S.I. 2013/160
Section 151 (partially)	1st October 2012	S.I. 2012/1831
	1st April 2013	S.I. 2013/160
Sections 152 and 153	1st April 2013	S.I. 2013/160
Section 154	1st October 2012	S.I. 2012/1831
Section 156 (partially)	1st November 2012	S.I. 2012/2657
Section 157	1st April 2013	S.I. 2013/160
Section 158	1st October 2012	S.I. 2012/1831
Section 160	1st July 2012	S.I. 2012/1319
Sections 161 and 162	1st April 2013	S.I. 2013/160
Section 163 (partially)	1st April 2013	S.I. 2013/160
Section 164 (partially)	1st October 2012	S.I. 2012/1831
Section 165	1st October 2012	S.I. 2012/1831
Section 166	1st November 2012	S.I. 2012/2657
Section 167	1st April 2013	S.I. 2013/160

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<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Section 173 (partially)	1st November 2012	S.I. 2012/2657
Sections 174 to 178	1st November 2012	S.I. 2012/2657
Section 181 (partially)	1st October 2012	S.I. 2012/1831
Section 181 (remainder)	1st April 2013	S.I. 2013/160
Sections 182 to 200	1st April 2013	S.I. 2013/160
Section 201	1st July 2012	S.I. 2012/1319
Sections 202 to 206	1st April 2013	S.I. 2013/160
Section 207 (partially)	1st July 2012	S.I. 2012/1319
Section 207 (remainder)	1st April 2013	S.I. 2013/160
Sections 209 to 211	1st August 2012	S.I. 2012/1319
Section 212 (partially)	1st October 2012	S.I. 2012/1831
Section 212 (remainder)	1st August 2012	S.I. 2012/1319
Sections 213 to 218	1st August 2012	S.I. 2012/1319
Sections 220 and 221	1st August 2012	S.I. 2012/1319
Section 222	1st December 2012	S.I. 2012/2657
Section 223 (partially)	1st August 2012	S.I. 2012/1319
	1st October 2012	S.I. 2012/1831
Section 226 (partially)	1st December 2012	S.I. 2012/2657
Section 227	1st July 2012	S.I. 2012/1319
Sections 228 and 229	1st December 2012	S.I. 2012/2657
Section 230 (partially)	1st August 2012	S.I. 2012/1319
Section 230 (remainder)	1st December 2012	S.I. 2012/2657
Section 231	1st July 2012	S.I. 2012/1319
Sections 232 to 277	1st April 2013	S.I. 2013/160
Section 278	1st July 2012	S.I. 2012/1319
Section 279	31st October 2012	S.I. 2012/1831
Section 280	1st April 2013	S.I. 2013/160
Section 281	1st October 2012	S.I. 2012/1831
Section 282	1st April 2013	S.I. 2013/160
Section 283	1st July 2012	S.I. 2012/1319
Sections 284 to 287	1st April 2013	S.I. 2013/160
Section 288 (partially)	1st July 2012	S.I. 2012/1319
	1st April 2013	S.I. 2013/160
Section 289 (partially)	1st July 2012	S.I. 2012/1319

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Section 290 (partially)	1st October 2012	S.I. 2012/1831
Section 290 (remainder)	1st April 2013	S.I. 2013/160
Section 291	1st October 2012	S.I. 2012/1831
Sections 292 and 293	1st April 2013	S.I. 2013/160
Section 294	1st October 2012	S.I. 2012/1831
Sections 295 and 296 (partially)	1st October 2012	S.I. 2012/1831
Sections 295 and 296 (remainder)	1st April 2013	S.I. 2013/160
Section 297 (partially)	1st February 2013	S.I. 2012/2657
	1st April 2013	S.I. 2013/160
Section 298	1st October 2012	S.I. 2012/1831
Section 299	1st June 2012	S.I. 2012/1319
Sections 300 to 302 (partially)	1st July 2012	S.I. 2012/1319
	1st October 2012	S.I. 2012/1831
Sections 300 to 302 (remainder)	1st April 2013	S.I. 2013/160
Schedule 1 (partially)	1st October 2012	S.I. 2012/1831
Schedule 1 (remainder)	1st April 2013	S.I. 2013/160
Schedule 2 (partially)	1st October 2012	S.I. 2012/1831
Schedule 2 (remainder)	1st April 2013	S.I. 2013/160
Schedule 3	1st April 2013	S.I. 2013/160
Schedule 4 (partially)	1st July 2012	S.I. 2012/1319
	1st October 2012	S.I. 2012/1831
	1st February 2013	S.I. 2012/2657
Schedule 4 (remainder)	1st April 2013	S.I. 2013/160
Schedule 5 (partially)	1st October 2012	S.I. 2012/1831
	1st April 2013	S.I. 2013/160
Schedule 6 (partially)	1st July 2012	S.I. 2012/1319
	1st October 2012	S.I. 2012/1831
Schedule 7	1st April 2013	S.I. 2013/160
Schedule 8	1st November 2012	S.I. 2012/2657
Schedule 9	1st April 2013	S.I. 2013/160
Schedule 10	1st November 2012	S.I. 2012/2657
Schedule 13 (partially)	1st July 2012	S.I. 2012/1319
	1st November 2012	S.I. 2012/2657
	1st April 2013	S.I. 2013/160

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Schedule 15 (partially)	1st July 2012	<a href="#">S.I. 2012/1319</a>
	1st August 2012	<a href="#">S.I. 2012/1319</a>
Schedule 15 (remainder)	1st December 2012	<a href="#">S.I. 2012/2657</a>
Schedules 16, 17, 18 and 19	1st April 2013	<a href="#">S.I. 2013/160</a>
Schedule 20, Part 1	1st July 2012	<a href="#">S.I. 2012/1319</a>
Schedule 20, Part 2	31st October 2012	<a href="#">S.I. 2012/1831</a>
Schedule 20, Part 3	1st April 2013	<a href="#">S.I. 2013/160</a>
Schedule 21 (partially)	1st February 2013	<a href="#">S.I. 2012/2657</a>
	1st April 2013	<a href="#">S.I. 2013/160</a>
Schedules 22 and 23 (partially)	1st July 2012	<a href="#">S.I. 2012/1319</a>
	1st October 2012	<a href="#">S.I. 2012/1831</a>
Schedules 22 and 23 (remainder)	1st April 2013	<a href="#">S.I. 2013/160</a>