

HEALTH AND SOCIAL CARE ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 - Regulation of Health and Adult Social Care Services

Chapter 3 – Licensing

Licensing procedure

Sections 90, 91, 92 - Representations, notice and appeals

768. The first of these sections requires Monitor to give the relevant provider advance notice when it proposes to either refuse or revoke a licence; and to state the reasons for its intended course of action. This notice must also specify the period within which the provider may make written representations to Monitor, allowing them the opportunity to make a case against Monitor's proposal if they wish to. This period must be at least 28 days.
769. The next section specifies that once Monitor reaches a decision to either refuse or revoke a licence, it must notify the relevant provider of its decision and explain the right of appeal. The section also stipulates when Monitor's decision to revoke a licence becomes final. This is (a) if an appeal is brought, when the appeal is concluded or abandoned; (b) when the provider declares its intention not to appeal; or (c) the day after the day that the period for bringing an appeal ended.
770. The last of these sections provides for the process for appeals to the First-tier Tribunal against a decision of Monitor to refuse a licence application or revoke a licence. The Tribunal is the main appeals Tribunal in the UK, run by the Tribunals Service and established by Parliament under the Tribunals, Courts and Enforcement Act 2007. It is also used for Care Quality Commission registration appeals and for other appeals relating to care standards and mental health issues. It is also used for appeals against decisions by other regulators, including the Office of Fair Trading and the Environment Agency.
771. *Subsection (2)* specifies the possible grounds for appeal as an error of fact a mistake in law or unreasonableness. The Tribunal may either confirm Monitor's decision, direct that Monitor's decision is not to have effect, or send the case back to Monitor for reconsideration.