

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

758. These sections provide for the procedure for applying for a licence, and for Monitor granting, refusing or revoking a licence.

Section 85 - Application for licence

759. This section states that providers seeking a licence must apply to Monitor, who may require supporting information from them and specify the form in which applications may be made.

Section 86 - Licensing criteria

760. This section requires Monitor to set and publish the criteria that a provider must meet in order to be granted a licence. *Subsection (2)* provides that Monitor may revise the criteria and must publish any revised version. This is intended to enable Monitor to adapt the licence criteria as the health care market develops. *Subsection (3)* requires that these criteria, and any subsequent revisions, be approved by the Secretary of State by order. Later provisions require that the first such order must be subject to the affirmative procedure. The additional requirement for the Secretary of State's approval of the criteria for granting licences is to provide a check on their appropriateness.

761. Section 87 - Grant or refusal of licence

762. This section stipulates the process once an application for a licence has been made to Monitor. Where Monitor is satisfied that the provider has met the published criteria, it must approve the provider's application and, in accordance with *subsection (3)*, issue the licence to the applicant. If Monitor is not satisfied that the applicant meets the criteria, it must refuse the application.

763. *Subsection (4)* provides that licences are subject to both standard licence conditions and any special licence conditions. Further details about these types of conditions are in later sections. *Subsection (4)* also provides that licences granted to foundation trusts are subject to any licence conditions imposed under section 111 (imposition of licence conditions on NHS foundation trusts during the transitional period).

Section 88 - Application and grant: NHS foundation trusts

764. This section provides that Monitor must treat an NHS foundation trust in existence at commencement of this section, or an NHS trust which becomes a foundation trust at a later date, as having made an application and met the criteria for a licence. As a result of

this, the foundation trusts will not have to make a licence application. Foundation trusts will however still be regarded as applicants for the purpose of the power to include special conditions in an applicant's licence under section 95. Organisations have to go through a robust authorisation process in order to gain foundation trust status under Chapter 5 of Part 2 of the NHS Act. The automatic granting of licences to foundation trusts will limit the regulatory burden on them.

Section 89 - Revocation of licence

765. This section provides Monitor with the powers to revoke a licence, either because the licence holder has requested this, or because the provider has failed to comply with a licence condition. A revocation provision is common to regulatory regimes that rely on a licence to deliver regulatory functions.
766. It is intended that Monitor will not automatically revoke the licence of a provider at their request where the continuity of services they are providing is required. In this way, providers of such services will not be able to avoid their obligations to provide such services simply by requesting revocation of their licence.
767. It is also intended that before revoking a licence for failure to comply with a condition of it, Monitor will first consider whether it could address the situation using its licence enforcement powers.

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.

Section 93 - Register of licence holders

772. This section requires Monitor to keep and publish a register of licence holders. The register must contain such information as Monitor thinks necessary to keep the public informed about licence holders, including details of every licence granted or revoked. The information must be available to the public for inspection at Monitor's offices or available on request. However, there might be occasions on which it was not appropriate

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

to release certain information to the public. *Subsection (5)* therefore provides for regulations setting out what information should not be accessible. *Subsection (6)* provides Monitor with power to charge a fee for providing a copy or extract of the register.

773. This section makes very similar provision to that for the register kept by the Care Quality Commission (see section 38 of the Health and Social Care Act 2008).