

HEALTH AND SOCIAL CARE ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 - Regulation of Health and Adult Social Care Services

Chapter 3 – Licensing

Licence conditions

Section 101 – Modification references to the Competition Commission

797. Under *subsection (2)* Monitor may make a reference to the Competition Commission when the applicant or licence holder refused to accept a proposal to include, modify or omit a special licence condition. Under *subsection (4)* a reference may also be made where Monitor is unable to modify the standard licence conditions because the number of licence holders objecting to the change exceeded one or both of the proportions set out in regulations made under section 100(7).
798. The Competition Commission is required to investigate and report on the matters contained in the reference from Monitor. Subsections (2) and (4) set the parameters for the Commission's investigations and reports under this section. In all cases, the Commission must consider whether any of the matters specified in the reference and which relate to the provision (or potential provision in the case of special licence conditions) of healthcare services are operating, or could be expected to operate, against the public interest. The Commission could not, therefore, consider references in terms of the impact on competition as an end in itself. Where a reference is made under subsection (2) and hence follows the refusal by an applicant or licence holder to include, modify or omit a special licence condition, the Commission must also investigate and report on whether the inclusion, modification or omission of a special condition in a licence would remedy or prevent the detriment to the public interest. Where a reference is made under subsection (4) and hence following objections from licence holders to proposals for standard licence conditions, the Commission must also investigate and report on whether the inclusion, modification or omission of standard licence conditions (applicable to all or a group of providers) would remedy or prevent the detriment to the public interest. Hence, in considering references from Monitor under this section, the Competition Commission's prime concern is whether the proposed licence condition or modifications would be in the public interest.
799. *Subsection (5)* gives effect to Schedule 10, which makes provision about investigations by the Competition Commission. Paragraph 7(2) of Schedule 10 requires Monitor to make changes to licence conditions in line with reports by the Commission following these investigations.
800. *Subsection (7)* enables Monitor to make incidental or consequential changes to the other conditions in a licence, where one or more conditions in the licence is changed following a reference to the Competition Commission under this section. Monitor must also modify the conditions in licences it issued in future, so that these conditions, as they

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

would apply to all providers or all providers of a particular description, are the same. This provision avoids the need for Monitor to give notice and consult where it modifies standard licence conditions following a report by the Competition Commission under this section.