



Health and Social Care Act 2012

2012 CHAPTER 7

PART 3

REGULATION OF HEALTH AND ADULT SOCIAL CARE SERVICES

CHAPTER 3

LICENSING

Licence conditions

101 Modification references to the Competition Commission

- (1) Subsection (2) applies where—
 - (a) Monitor has given notice under section 95(2) of a proposal to include a special condition in a licence or modify such a condition, and
 - (b) the applicant or (as the case may be) licence holder concerned has refused consent to the inclusion of the condition or the making of the modifications.
- (2) Monitor may make a reference to the Competition Commission which is so framed as to require the Commission to investigate and report on the questions—
 - (a) whether any matters which relate to the provision, or proposed provision, of a health care service for the purposes of the NHS by the applicant or (as the case may be) licence holder concerned and which are specified in the reference, operate, or may be expected to operate, against the public interest, and
 - (b) if so, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by the inclusion of a special condition in the applicant's licence or by modifications of a special condition of the licence holder's licence.
- (3) Subsection (4) applies where—

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- (a) Monitor has given notice under section 100(2) of a proposal to make modifications to the standard conditions applicable to all licences under this Chapter, or to licences of a particular description, and
 - (b) section 100 operates to prevent Monitor from making the modifications.
- (4) Monitor may make a reference to the Competition Commission which is so framed as to require the Commission to investigate and report on the questions—
- (a) whether any matters which relate to the provision of health care services for the purposes of the NHS by the relevant licence holders, and which are specified in the reference, operate, or may be expected to operate, against the public interest, and
 - (b) if so, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by modifications of the standard conditions applicable to all licences under this Chapter, or to licences of a particular description.
- (5) Schedule 10 (which makes further provision about references to the Competition Commission) has effect in relation to a reference under subsection (2) or (4); and, for that purpose, the relevant persons are—
- (a) in paragraphs 3, 6(6) and 7(6)—
 - (i) the applicant or licence holder concerned or (as the case may be) relevant licence holders,
 - (ii) the National Health Service Commissioning Board, and
 - (iii) such clinical commissioning groups as are likely to be affected by matters to which the reference relates,
 - (b) in paragraph 5(6), the applicant or licence holder concerned or (as the case may be) relevant licence holders, and
 - (c) in paragraph 8(10)—
 - (i) the applicant or licence holder concerned or (as the case may be) relevant licence holders,
 - (ii) Monitor,
 - (iii) the National Health Service Commissioning Board, and
 - (iv) such clinical commissioning groups as are likely to be affected by the proposal concerned.
- (6) In investigating the question under subsection (2)(a) or (4)(a) the Competition Commission must have regard to—
- (a) the matters in respect of which Monitor has duties under section 62, and
 - (b) the matters to which Monitor must have regard by virtue of section 66.
- (7) Where the standard conditions applicable to all licences or (as the case may be) to licences of a particular description are modified pursuant to a reference made under subsection (4), Monitor—
- (a) may also make such incidental or consequential modifications as it considers necessary or expedient of any other conditions of a licence which is affected by the modifications,
 - (b) must make (as nearly as may be) the same modifications of those conditions for the purposes of their inclusion in all licences or (as the case may be) licences of that description granted after that time, and
 - (c) must publish any modifications made under this subsection.

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- (8) In this section, a reference to modifying a condition includes a reference to amending, omitting or adding a condition.