



# Health and Social Care Act 2012

## 2012 CHAPTER 7

### PART 3

#### REGULATION OF HEALTH AND ADULT SOCIAL CARE SERVICES

### CHAPTER 6

#### FINANCIAL ASSISTANCE IN SPECIAL ADMINISTRATION CASES

##### *Levy on providers*

#### **142 Responses to consultation**

- (1) If Monitor receives objections from one or more potentially liable providers to its proposals, it may not give notice under section 143(1)(b) unless—
  - (a) the conditions in subsection (2) are met, or
  - (b) where those conditions are not met, Monitor has made a reference to the Competition Commission.
- (2) The conditions referred to in subsection (1)(a) are that—
  - (a) one or more potentially liable providers object to the proposals within the consultation period, and
  - (b) the objection percentage and the share of supply percentage are each less than the prescribed percentage.
- (3) In subsection (2)—
  - (a) the “objection percentage” is the proportion (expressed as a percentage) of the potentially liable providers who objected to the proposals, and
  - (b) the “share of supply percentage” is the proportion (expressed as a percentage) of the potentially liable providers who objected to the proposals, weighted according to their share of the supply in England of such services as may be prescribed.

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*Status: This is the original version (as it was originally enacted).*

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- (4) A reference under subsection (1)(b) must be so framed as to require the Competition Commission to investigate and report on the questions—
- (a) whether in making the proposals, Monitor failed to give sufficient weight to the matters in section 66,
  - (b) if so, whether that failure operates, or may be expected to operate, against the public interest, and
  - (c) if so, whether the effects adverse to the public interest which that failure has or may be expected to have could be remedied or prevented by changes to the proposals.
- (5) Schedule 10 (which makes further provision about references to the Competition Commission) has effect in relation to a reference under subsection (1)(b); and for that purpose—
- (a) paragraph 1 is to be ignored,
  - (b) in paragraph 5(2), the reference to six months is to be read as a reference to two months,
  - (c) in paragraph 5(4), the reference to six months is to be read as a reference to one month,
  - (d) in paragraph 7, sub-paragraphs (4) to (7) and (9) are to be ignored (and, in consequence of that, in sub-paragraph (8), the words from the beginning to “sub-paragraph (4)(c)” are also to be ignored), and
  - (e) the references to relevant persons are to be construed in accordance with subsection (6).
- (6) The relevant persons referred to in Schedule 10 are—
- (a) in paragraphs 3, 5(6) and 6(6)—
    - (i) the National Health Service Commissioning Board, and
    - (ii) the potentially liable providers who objected to the proposals, and
  - (b) in paragraph 8(10)—
    - (i) Monitor, and
    - (ii) the potentially liable providers who objected to the proposals.
- (7) In investigating the question under subsection (4)(a), the Competition Commission must have regard to the matters in relation to which Monitor has duties under this Chapter.
- (8) Regulations prescribing a percentage for the purposes of subsection (2)(b) may include provision prescribing the method used for determining a provider’s share of the supply in England of the services concerned.