



Health and Social Care Act 2012

2012 CHAPTER 7

PART 3

REGULATION OF HEALTH AND ADULT SOCIAL CARE SERVICES

CHAPTER 2

COMPETITION

76 Requirements under section 75: investigations, declarations and directions

- (1) Regulations under section 75 may confer on Monitor—
 - (a) a power to investigate a complaint that the National Health Service Commissioning Board or a clinical commissioning group has failed to comply with a requirement imposed by the regulations;
 - (b) a power to investigate on its own initiative whether the Board or a clinical commissioning group has failed to comply with a requirement imposed by virtue of section 75(1)(c);
 - (c) a power to require the Board or a clinical commissioning group to provide it with such information as Monitor may specify for the purposes of an investigation it carries out by virtue of paragraph (a) or (b);
 - (d) a power to require the Board or a clinical commissioning group to provide an explanation of such information as it provides by virtue of paragraph (c).
- (2) A power conferred by virtue of subsection (1)(a) is exercisable only where Monitor considers that the person making the complaint has sufficient interest in the arrangement to which the complaint relates.
- (3) Regulations under section 75 may confer on Monitor a power to declare that an arrangement for the provision of health care services for the purposes of the NHS is ineffective.

Status: This is the original version (as it was originally enacted).

- (4) A power conferred by virtue of subsection (3) is exercisable only in prescribed circumstances and subject to prescribed restrictions and only where Monitor is satisfied that—
 - (a) the National Health Service Commissioning Board or a clinical commissioning group has failed to comply with a requirement of regulations under section 75, and
 - (b) the failure is sufficiently serious.
- (5) On a declaration being made by virtue of subsection (3), the arrangement is void; but that does not affect—
 - (a) the validity of anything done pursuant to the arrangement,
 - (b) any right acquired or liability incurred under the arrangement, or
 - (c) any proceedings or remedy in respect of such a right or liability.
- (6) Regulations under section 75 may confer on Monitor a power to direct the National Health Service Commissioning Board or a clinical commissioning group—
 - (a) to put in place measures for the purpose of preventing failures to comply with requirements imposed by the regulations or mitigating the effect of such failures;
 - (b) to remedy a failure to comply with such a requirement;
 - (c) not to exercise in a prescribed manner prescribed functions in relation to arrangements for the provision of health care services;
 - (d) to vary or withdraw an invitation to tender for the provision of health care services;
 - (e) to vary an arrangement for the provision of health care services made in consequence of putting the provision of the services out to tender.
- (7) A failure to comply with a requirement imposed by regulations under section 75 which causes loss or damage is actionable, except in so far as the regulations restrict the right to bring such an action.
- (8) Regulations under section 75 may—
 - (a) provide for a specified defence to such an action;
 - (b) prevent a person who has brought such an action under the Public Contracts Regulations 2006 ([S.I. 2006/5](#)) from bringing such an action under the regulations under section 75 in respect of the whole or part of the same loss or damage.