



Health and Social Care Act 2012

2012 CHAPTER 7

PART 3

REGULATION OF HEALTH AND ADULT SOCIAL CARE SERVICES

CHAPTER 3

LICENSING

Licence conditions

94 Standard conditions

- (1) [^{F1}NHS England] must determine and publish the conditions to be included in each licence under this Chapter (referred to in this Chapter as “the standard conditions”).
- (2) Different standard conditions may be determined for different descriptions of licences.
- (3) For the purposes of subsection (2) a description of licences may, in particular, be framed wholly or partly by reference to—
 - (a) the nature of the licence holder,
 - (b) the services provided under the licence, or
 - (c) the areas in which those services are provided.
- (4) But different standard conditions must not be determined for different descriptions of licences to the extent that the description is framed by reference to the nature of the licence holder unless [^{F2}NHS England] considers that at least one of requirements 1 and 2 is met.
- (5) Requirement 1 is that—
 - (a) the standard conditions in question relate to the governance of licence holders, and

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- (b) it is necessary to determine different standard conditions in order to take account of differences in the status of different licence holders.
- (6) Requirement 2 is that it is necessary to determine different standard conditions for the purpose of ensuring that the burdens to which different licence holders are subject as a result of holding a licence are broadly consistent.

^{F3}(7)
^{F3}(8)
^{F3}(9)
^{F3}(10)
^{F3}(11)

Textual Amendments

- F1** Words in s. 94(1) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 58\(2\); S.I. 2022/734, reg. 2\(a\), Sch.](#) (with regs. 13, 29, 30)
- F2** Words in s. 94(4) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 58\(2\); S.I. 2022/734, reg. 2\(a\), Sch.](#) (with regs. 13, 29, 30)
- F3** S. 94(7)-(11) omitted (1.7.2022) by virtue of [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 58\(3\); S.I. 2022/734, reg. 2\(a\), Sch.](#) (with regs. 13, 29, 30)

Commencement Information

- I1** S. 94 partly in force; s. 94 in force for specified purposes at Royal Assent, see [s. 306\(1\)\(d\)](#)
- I2** S. 94 in force at 1.4.2013 in so far as not already in force by [S.I. 2013/671, art. 2\(3\)](#)
- I3** S. 94(1)-(6) in force at 1.11.2012 for specified purposes by [S.I. 2012/2657, art. 2\(2\)](#)
- I4** S. 94(7)-(10)(11)(b)(c) in force at 1.11.2012 in so far as not already in force by [S.I. 2012/2657, art. 2\(2\)](#)

95 Special conditions

- (1) [^{F4}NHS England] may—
 - (a) ^{F5}... include a special condition in a licence under this Chapter, and
 - (b) ^{F6}... modify a special condition of a licence.
- (2) Before including a special condition or making such modifications [^{F7}NHS England] must give notice to—
 - (a) the applicant or the licence holder (as the case may be),
 - (b) the Secretary of State,
 - ^{F8}(c)
 - (d) such [^{F9}integrated care boards] as are likely to be affected by the proposed inclusion or modifications, and
 - (e) the Care Quality Commission and its Healthwatch England committee.
- (3) [^{F10}NHS England] must also publish the notice under subsection (2).
- (4) The notice under subsection (2) must—
 - (a) state that [^{F11}NHS England] proposes to include the special condition or make the modifications and set out its or their proposed effect,

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- (b) set out [^{F12}NHS England's] reasons for the proposal, and
 - (c) specify the period (“the notice period”) within which representations with respect to the proposal may be made to [^{F13}NHS England].
- (5) The notice period must be not less than 28 days beginning with the day after that on which the notice is published under subsection (3).
- (6) In this section, a reference to modifying a condition includes a reference to amending, omitting or adding a condition.

Textual Amendments

- F4** Words in s. 95(1) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 59\(2\); S.I. 2022/734, reg. 2\(a\), Sch.](#) (with regs. 13, 29, 30)
- F5** Words in s. 95(1)(a) omitted (1.7.2022) by virtue of [Health and Care Act 2022 \(c. 31\), ss. 85\(2\)\(a\), 186\(6\); S.I. 2022/734, reg. 2\(a\), Sch.](#) (with regs. 13, 29, 30)
- F6** Words in s. 95(1)(b) omitted (1.7.2022) by virtue of [Health and Care Act 2022 \(c. 31\), ss. 85\(2\)\(b\), 186\(6\); S.I. 2022/734, reg. 2\(a\), Sch.](#) (with regs. 13, 29, 30)
- F7** Words in s. 95(2) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 59\(3\)\(a\); S.I. 2022/734, reg. 2\(a\), Sch.](#) (with regs. 13, 29, 30)
- F8** S. 95(2)(c) omitted (1.7.2022) by virtue of [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 59\(3\)\(b\); S.I. 2022/734, reg. 2\(a\), Sch.](#) (with regs. 13, 29, 30)
- F9** Words in s. 95(2)(d) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 4 para. 176; S.I. 2022/734, reg. 2\(a\), Sch.](#) (with regs. 13, 29, 30)
- F10** Words in s. 95(3) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 59\(4\); S.I. 2022/734, reg. 2\(a\), Sch.](#) (with regs. 13, 29, 30)
- F11** Words in s. 95(4)(a) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 59\(5\)\(a\); S.I. 2022/734, reg. 2\(a\), Sch.](#) (with regs. 13, 29, 30)
- F12** Words in s. 95(4)(b) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 59\(5\)\(b\); S.I. 2022/734, reg. 2\(a\), Sch.](#) (with regs. 13, 29, 30)
- F13** Words in s. 95(4)(c) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 59\(5\)\(c\); S.I. 2022/734, reg. 2\(a\), Sch.](#) (with regs. 13, 29, 30)

Commencement Information

- I5** S. 95 in force at 1.11.2012 for specified purposes by [S.I. 2012/2657, art. 2\(2\)](#) (with art. 7)
- I6** S. 95(1)(a)(2)-(5) in force at 1.4.2013 in so far as not already in force by [S.I. 2013/671, art. 2\(3\)](#) (with art. 5)
- I7** S. 95(1)(b)(6) in force at 1.7.2013 in so far as not already in force by [S.I. 2013/671, art. 2\(4\)](#)

96 Limits on [^{F14}NHS England's] functions to set or modify licence conditions

- (1) This section applies to the following functions of [^{F15}NHS England] —
- (a) the duty to determine the standard conditions to be included in each licence under this Chapter or in licences of a particular description (see section 94);
 - (b) the powers to include a special condition in a licence and to modify such a condition (see section 95);
 - (c) the power to modify the standard conditions applicable to all licences, or to licences of a particular description (see section 100).
- (2) [^{F16}NHS England] may only exercise a function to which this section applies—
- (a) for the purpose of regulating the price payable for the provision of health care services for the purposes of the NHS;

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- (b) for the purpose of preventing anti-competitive behaviour in the provision of health care services for those purposes which is against the interests of people who use such services;
 - (c) for the purpose of protecting and promoting the right of patients to make choices with respect to treatment or other health care services provided for the purposes of the NHS;
 - (d) for the purpose of ensuring the continued provision of health care services for the purposes of the NHS;
 - [^{F17}(da) for the purpose of ensuring that decisions relating to the provision of health care services for the purposes of the NHS are made with regard to all their likely effects in relation to the matters referred to in subsection (2A);]
 - (e) for the purpose of enabling health care services provided for the purposes of the NHS to be provided in an integrated way where [^{F18}NHS England] considers that this would achieve one or more of the objectives referred to in subsection (3);
 - (f) for the purpose of enabling the provision of health care services provided for the purposes of the NHS to be integrated with the provision of health-related services or social care services where [^{F19}NHS England] considers that this would achieve one or more of the objectives referred to in subsection (3);
 - [^{F20}(g) for the purpose of enabling, promoting or securing co-operation between providers of health care services for the purposes of the NHS, or between such providers and—
 - (i) NHS bodies, within the meaning of section 72 of the National Health Service Act 2006, or
 - (ii) local authorities in England (and for this purpose “local authority” has the meaning given by section 275(1) of the National Health Service Act 2006);]
 - (h) for purposes connected with the governance of persons providing health care services for the purposes of the NHS;
 - (i) for purposes connected with [^{F21}NHS England’s] functions in relation to the register of NHS foundation trusts required to be maintained under section 39 of the National Health Service Act 2006;
 - (j) for purposes connected with the operation of the licensing regime established by this Chapter;
 - [^{F22}(k) for such other purposes as may be prescribed.]
- [^{F23}(2A) The matters referred to in subsection (2)(da) are—
- (a) the health and well-being of the people of England;
 - (b) the quality of services provided to individuals—
 - (i) by relevant bodies, or
 - (ii) in pursuance of arrangements made by relevant bodies,
 for or in connection with the prevention, diagnosis or treatment of illness, as part of the health service in England;
 - (c) efficiency and sustainability in relation to the use of resources by relevant bodies for the purposes of the health service in England.
- (2B) For the purposes of subsection (2)(da) (as read with subsection (2A))—
- (a) a reference to the effects of decisions in relation to the health and well-being of the people of England includes a reference to the effects of the decisions

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- in relation to inequalities between the people of England with respect to their health and well-being;
- (b) a reference to effects of decisions in relation to the quality of services provided to individuals includes a reference to the effects of the decisions in relation to inequalities between individuals with respect to the benefits that they can obtain from those services.
- (2C) In subsection (2A) “relevant bodies” means—
- (a) NHS England,
 - (b) integrated care boards,
 - (c) NHS trusts established under section 25, and
 - (d) NHS foundation trusts.]
- (3) The objectives referred to in subsection (2)(e), [^{F24}] and (f) are—
- (a) improving the quality of health care services provided for the purposes of the NHS (including the outcomes that are achieved from their provision) or the efficiency of their provision,
 - (b) reducing inequalities between persons with respect to their ability to access those services, and
 - (c) reducing inequalities between persons with respect to the outcomes achieved for them by the provision of those services.
- (4) [^{F25}NHS England] must not exercise a function to which this section applies in a way which it considers would result in a particular licence holder or holders of licences of a particular description being put at an unfair advantage or disadvantage in competing with others in the provision of health care services for the purposes of the NHS as a result of—
- (a) being in the public or (as the case may be) private sector, or
 - (b) some other aspect of its or their status.
- (5) In subsection (2)(f), “health-related services” and “social care services” each have the meaning given in section 62(11).

Textual Amendments

- F14** Words in s. 96 heading substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 5 para. 60(2); S.I. 2022/734, reg. 2(a), Sch.** (with regs. 13, 29, 30)
- F15** Words in s. 96(1) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 5 para. 60(3); S.I. 2022/734, reg. 2(a), Sch.** (with regs. 13, 29, 30)
- F16** Words in s. 96(2) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 5 para. 60(4)(a); S.I. 2022/734, reg. 2(a), Sch.** (with regs. 13, 29, 30)
- F17** S. 96(2)(da) inserted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), ss. **76(a), 186(6); S.I. 2022/734, reg. 2(a), Sch.** (with regs. 13, 29, 30)
- F18** Words in s. 96(2)(e) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 5 para. 60(4)(b); S.I. 2022/734, reg. 2(a), Sch.** (with regs. 13, 29, 30)
- F19** Words in s. 96(2)(f) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 5 para. 60(4)(c); S.I. 2022/734, reg. 2(a), Sch.** (with regs. 13, 29, 30)
- F20** S. 96(2)(g) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), ss. **75(4)(a), 186(6); S.I. 2022/734, reg. 2(a), Sch.** (with regs. 13, 29, 30)
- F21** Words in s. 96(2)(i) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 5 para. 60(4)(d); S.I. 2022/734, reg. 2(a), Sch.** (with regs. 13, 29, 30)

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- F22 S. 96(2)(k) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 60\(4\)\(e\)](#); [S.I. 2022/734, reg. 2\(a\), Sch.](#) (with [regs. 13, 29, 30](#))
 - F23 S. 96(2A)-(2C) inserted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), ss. 76\(b\), 186\(6\)](#); [S.I. 2022/734, reg. 2\(a\), Sch.](#) (with [regs. 13, 29, 30](#))
 - F24 Words in [s. 96\(3\)](#) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), ss. 75\(4\)\(b\), 186\(6\)](#); [S.I. 2022/734, reg. 2\(a\), Sch.](#) (with [regs. 13, 29, 30](#))
 - F25 Words in [s. 96\(4\)](#) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 60\(5\)](#); [S.I. 2022/734, reg. 2\(a\), Sch.](#) (with [regs. 13, 29, 30](#))
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Commencement Information

- I8 S. 96 partly in force; s. 96 in force for specified purposes at Royal Assent, see [s. 306\(1\)\(d\)](#)
- I9 S. 96 in force at 1.11.2012 for specified purposes by [S.I. 2012/2657, art. 2\(2\)](#)
- I10 S. 96(1)(a)(b)(2)-(5) in force at 1.4.2014 in so far as not already in force by [S.I. 2014/39, art. 2\(3\)](#)
- I11 S. 96(1)(c) in force at 1.7.2013 in so far as not already in force by [S.I. 2013/671, art. 2\(4\)](#)

97 Conditions: supplementary

- (1) The standard or special conditions of a licence under this Chapter may, in particular, include conditions—
 - (a) requiring the licence holder to pay to [^{F26}NHS England] such fees of such amounts as [^{F26}NHS England] may determine in respect of the exercise by [^{F26}NHS England] of its functions under this Chapter,
 - (b) requiring the licence holder to comply with any requirement imposed on it by [^{F27}NHS England] under Chapter 6 (financial assistance in special administration cases),
 - (c) requiring the licence holder to do, or not to do, specified things or things of a specified description (or to do, or not to do, any such things in a specified manner) within such period as may be specified in order to prevent anti-competitive behaviour in the provision of health care services for the purposes of the NHS which is against the interests of people who use such services,
 - (d) requiring the licence holder to give notice to the [^{F28}CMA] before entering into an arrangement under which, or a transaction in consequence of which, the licence holder's activities, and the activities of one or more other businesses, cease to be distinct activities,
 - (e) requiring the licence holder to provide [^{F29}NHS England] with such information as [^{F29}NHS England] considers necessary for the purposes of the exercise of its functions under this Part,
 - (f) requiring the licence holder to publish such information as may be specified or as [^{F30}NHS England] may direct,
 - (g) requiring the licence holder to charge for the provision of health care services for the purposes of the NHS in accordance with [^{F31}the NHS payment scheme (see section 114A)],
 - (h) requiring the licence holder to comply with other rules published by [^{F32}NHS England] about the charging for the provision of health care services for the purposes of the NHS,
 - (i) requiring the licence holder—
 - (i) to do, or not to do, specified things or things of a specified description (or to do, or not to do, any such things in a specified manner) within such period as may be specified in order to ensure the continued

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- provision of one or more of the health care services that the licence holder provides for the purposes of the NHS,
- (ii) to give [^{F33}NHS England] notice (of such period as may be determined by or under the licence) of the licence holder's intention to cease providing a health care service for the purposes of the NHS, and
 - (iii) if [^{F34}NHS England] so directs, to continue providing that service for a period determined by [^{F34}NHS England],
- (j) about the use or disposal by the licence holder of assets used in the provision of health care services for the purposes of the NHS in order to ensure the continued provision of one or more of the health care services that the licence holder provides for those purposes, and
 - (k) about the making by the licence holder of investment in relation to the provision of health care services for the purposes of the NHS in order to ensure the continued provision of one or more of the health care services that the licence holder provides for those purposes.
- (2) In subsection (1) “specified” means specified in a condition.
- (3) [^{F35}NHS England] must not include a condition under subsection (1)(c) that requires the licence holder (A) to provide another licence holder with access to facilities of A.
- (4) A condition under subsection (1)(d)—
- (a) may be included only in the licence of an NHS foundation trust or a body which (or part of which) used to be an NHS trust established under section 25 of the National Health Service Act 2006, and
 - (b) ceases to have effect at the end of the period of five years beginning with the day on which it is included in the licence.
- (5) The references in subsection (1)(d) to the activities of a licence holder or other business include a reference to part of the activities concerned.
- (6) The references in subsections (1)(d) and (5) to the activities of a business include a reference to the activities of an NHS foundation trust in so far as its activities would not otherwise be the activities of a business.
- (7) A condition of a licence under this Chapter may provide that it is to have effect, or cease to have effect, at such times and in such circumstances as may be determined by or under the conditions.

Textual Amendments

- F26** Words in s. 97(1)(a) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 61; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F27** Words in s. 97(1)(b) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 61; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F28** Word in s. 97(1)(d) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 193 (with art. 3)
- F29** Words in s. 97(1)(e) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 61; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F30** Words in s. 97(1)(f) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 61; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

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- F31 Words in s. 97(1)(g) substituted (1.7.2022 for specified purposes, 1.4.2023 in so far as not already in force) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 10 para. 2; S.I. 2022/734, reg. 2(b) (with regs. 13, 29, 30); S.I. 2023/371, reg. 2(d)
- F32 Words in s. 97(1)(h) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 61; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F33 Words in s. 97(1)(i)(ii) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 61; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F34 Words in s. 97(1)(i)(iii) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 61; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F35 Words in s. 97(3) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 61; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

- I12 S. 97 partly in force; s. 97 in force for specified purposes at Royal Assent, see s. 306(1)(d)
- I13 S. 97 in force at 1.11.2012 for specified purposes by S.I. 2012/2657, art. 2(2)
- I14 S. 97 in force at 1.4.2013 in so far as not already in force by S.I. 2013/671, art. 2(3)

98 Conditions relating to the continuation of the provision of services etc.

- (1) The things which a licence holder may be required to do by a condition under section 97(1)(i)(i) include, in particular—
 - (a) providing information to the commissioners of services to which the condition applies and to such other persons as [F³⁶NHS England] may direct,
 - (b) allowing [F³⁷NHS England] to enter premises owned or controlled by the licence holder and to inspect the premises and anything on them, and
 - (c) co-operating with such persons as [F³⁸NHS England] may appoint to assist in the management of the licence holder's affairs, business and property.
- (2) A commissioner of services to which a condition under section 97(1)(i), (j) or (k) applies must co-operate with persons appointed under subsection (1)(c) in their provision of the assistance that they have been appointed to provide.
- (3) Where a licence includes a condition under section 97(1)(i), (j) or (k), [F³⁹NHS England] must carry out an ongoing assessment of the risks to the continued provision of services to which the condition applies.
- (4) [F⁴⁰NHS England] must publish guidance—
 - (a) for commissioners of a service to which a condition under section 97(1)(i), (j) or (k) applies about the exercise of their functions in connection with the licence holders who provide the service, and
 - (b) for such licence holders about the conduct of their affairs, business and property at a time at which such a condition applies.
- (5) A commissioner of services to which a condition under section 97(1)(i), (j), or (k) applies must have regard to guidance under subsection (4)(a).
- [F⁴¹(5A) In subsections (4)(a) and (5) “commissioner” does not include NHS England.]
- (6) [F⁴²NHS England] may revise guidance under subsection (4) and, if it does so, must publish the guidance as revised.
- (7) Before publishing guidance under subsection (4) or (6), [F⁴³NHS England] must obtain the approval of—

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- (a) the Secretary of State, ^{F44} ...
^{F44}(b)

Textual Amendments

- F36** Words in s. 98(1)(a) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 62(2); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F37** Words in s. 98(1)(b) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 62(2); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F38** Words in s. 98(1)(c) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 62(2); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F39** Words in s. 98(3) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 62(3); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F40** Words in s. 98(4) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 62(4); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F41** S. 98(5A) inserted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 62(5); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F42** Words in s. 98(6) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 62(6); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F43** Words in s. 98(7) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 62(7)(a); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F44** S. 98(7)(b) and word omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 62(7)(b); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

- I15** S. 98 partly in force; s. 98 in force for specified purposes at Royal Assent, see s. 306(1)(d)
- I16** S. 98 in force at 1.4.2013 in so far as not already in force by S.I. 2013/671, art. 2(3)
- I17** S. 98(1)(2) in force at 1.11.2012 for specified purposes by S.I. 2012/2657, art. 2(2)
- I18** S. 98(4)(7) in force at 1.11.2012 in so far as not already in force by S.I. 2012/2657, art. 2(2) (with art. 8)

99 Notification of commissioners where continuation of services at risk

- (1) This section applies where [^{F45}NHS England]—
- takes action in the case of a licence holder in reliance on a condition in the licence under section 97(1)(i), (j) or (k), and
 - does so because it is satisfied that the continued provision for the purposes of the NHS of health care services to which that condition applies is being put at significant risk by the configuration of certain health care services provided for those purposes.
- (2) In subsection (1), a reference to the provision of services is a reference to their provision by the licence holder or any other provider.
- [^{F46}(3) NHS England must as soon as reasonably practicable notify such integrated care boards as NHS England considers appropriate—
- of the action it has taken, and
 - of its reasons for being satisfied as mentioned in subsection (1)(b).]
- (4) [^{F47}NHS England] must publish for each financial year a list of the notifications under this section that it has given during that year; and the list must include for each

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notification a summary of [^{F48}NHS England's] reasons for being satisfied as mentioned in subsection (1)(b).

- (5) ^{F49} ... [^{F50}Integrated care boards], having received a notification under this section, must have regard to it in arranging for the provision of health care services for the purposes of the NHS.

Textual Amendments

- F45 Words in s. 99(1) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 63(2); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F46 S. 99(3) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 63(3); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F47 Words in s. 99(4) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 63(4)(a); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F48 Words in s. 99(4) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 63(4)(b); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F49 Words in s. 99(5) omitted (1.7.2022) by virtue of Health and Care Act 2022 (c. 31), s. 186(6), Sch. 5 para. 63(5); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F50 Words in s. 99(5) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 4 para. 177; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

- I19 S. 99 in force at 1.4.2013 by S.I. 2013/671, art. 2(3)

100 Modification of standard conditions

(1) [^{F51}NHS England] may, subject to the requirements of this section, modify the standard conditions applicable to all licences under this Chapter or to licences of a particular description.

[^{F52}(1A) Before making modifications under subsection (1) that NHS England consider to be a major change, NHS England must—

- (a) carry out an assessment of the likely impact of the modifications, or
- (b) publish a statement setting out its reasons for concluding that such assessment is not needed.]

(2) Before making any [^{F53}modifications under subsection (1)][^{F54}NHS England] must give notice to—

- (a) each relevant licence holder,
- (b) the Secretary of State,
- ^{F55}(c)
- (d) every [^{F56}integrated care board], and
- (e) the Care Quality Commission and its Healthwatch England committee.

(3) [^{F57}NHS England] must also publish the notice under subsection (2).

(4) The notice under subsection (2) must—

- (a) state that [^{F58}NHS England] proposes to make the modifications,
- (b) set out the proposed effect of the modifications,
- [^{F59}(ba) set out any impact assessment carried out by NHS England under subsection (1A)(a),]

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- (c) set out [^{F60}NHS England's] reasons for the proposal, and
- (d) specify the period (“the notice period”) within which representations with respect to the proposal may be made to [^{F61}NHS England].
- (5) The notice period must be not less than 28 days beginning with the day after that on which the notice is published under subsection (3).
- ^{F62}(6)
- ^{F62}(7)
- ^{F62}(8)
- ^{F62}(9)
- (10) Where [^{F63}NHS England] modifies the standard conditions applicable to all licences or (as the case may be) to licences of a particular description under this section, [^{F63}NHS England]—
- (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 the modifications.
- (11) In this section^{F64} ... , “relevant licence holder”—
- (a) in relation to proposed modifications of the standard conditions applicable to all licences, means any licence holder, and
- (b) in relation to proposed modifications of the standard conditions applicable to licences of a particular description, means a holder of a licence of that description.
- (12) In this section, a reference to modifying a condition includes a reference to amending, omitting or adding a condition.

Textual Amendments

- F51** Words in s. 100(1) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 64\(2\); S.I. 2022/734, reg. 2\(a\), Sch.](#) (with regs. 13, 29, 30)
- F52** S. 100(1A) inserted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), ss. 35\(2\), 186\(6\); S.I. 2022/734, reg. 2\(a\), Sch.](#) (with regs. 13, 29, 30)
- F53** Words in s. 100(2) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), ss. 35\(3\), 186\(6\); S.I. 2022/734, reg. 2\(a\), Sch.](#) (with regs. 13, 29, 30)
- F54** Words in s. 100(2) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 64\(3\)\(a\); S.I. 2022/734, reg. 2\(a\), Sch.](#) (with regs. 13, 29, 30)
- F55** S. 100(2)(c) omitted (1.7.2022) by virtue of [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 64\(3\)\(b\); S.I. 2022/734, reg. 2\(a\), Sch.](#) (with regs. 13, 29, 30)
- F56** Words in s. 100(2)(d) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 4 para. 178; S.I. 2022/734, reg. 2\(a\), Sch.](#) (with regs. 13, 29, 30)
- F57** Words in s. 100(3) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 64\(4\); S.I. 2022/734, reg. 2\(a\), Sch.](#) (with regs. 13, 29, 30)
- F58** Words in s. 100(4)(a) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 64\(5\)\(a\); S.I. 2022/734, reg. 2\(a\), Sch.](#) (with regs. 13, 29, 30)

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- F59 S. 100(4)(ba) inserted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), ss. 35\(4\), 186\(6\); S.I. 2022/734, reg. 2\(a\), Sch.](#) (with [regs. 13, 29, 30](#))
- F60 Words in s. 100(4)(c) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 64\(5\)\(b\); S.I. 2022/734, reg. 2\(a\), Sch.](#) (with [regs. 13, 29, 30](#))
- F61 Words in s. 100(4)(d) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 64\(5\)\(c\); S.I. 2022/734, reg. 2\(a\), Sch.](#) (with [regs. 13, 29, 30](#))
- F62 S. 100(6)-(9) omitted (1.7.2022) by virtue of [Health and Care Act 2022 \(c. 31\), ss. 85\(3\)\(a\), 186\(6\); S.I. 2022/734, reg. 2\(a\), Sch.](#) (with [regs. 13, 29, 30](#))
- F63 Words in s. 100(10) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 64\(6\); S.I. 2022/734, reg. 2\(a\), Sch.](#) (with [regs. 13, 29, 30](#))
- F64 Words in s. 100(11) omitted (1.7.2022) by virtue of [Health and Care Act 2022 \(c. 31\), ss. 85\(3\)\(b\), 186\(6\); S.I. 2022/734, reg. 2\(a\), Sch.](#) (with [regs. 13, 29, 30](#))

Commencement Information

- I20 S. 100 partly in force; s. 100 in force for specified purposes at Royal Assent, see s. 306(1)(d)
- I21 S. 100 in force at 1.7.2013 in so far as not already in force by [S.I. 2013/671, art. 2\(4\)](#)

^{F66}101 Modification references to the [^{F65}CMA]

Textual Amendments

- F65 Word in s. 101 heading substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 6 para. 128\(6\); S.I. 2014/416, art. 2\(1\)\(d\)](#) (with [Sch.](#))
- F66 S. 101 omitted (1.7.2022) by virtue of [Health and Care Act 2022 \(c. 31\), ss. 85\(4\), 186\(6\); S.I. 2022/734, reg. 2\(a\), Sch.](#) (with [regs. 13, 29, 30](#))

102 Modification of conditions by order under other enactments

- (1) This section applies where the [^{F67}CMA] or Secretary of State (the “relevant authority”) makes a relevant order.
- (2) A relevant order may modify—
 - (a) the conditions of a particular licence, or
 - (b) the standard conditions applicable to all licences under this Chapter or to licences of a particular description.
- (3) The modifications which may be made by a relevant order are those which the relevant authority considers necessary or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.
- (4) In this section “relevant order” means—
 - (a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the Enterprise Act 2002 where one or more of the enterprises which have, or may have, ceased to be distinct enterprises were engaged in the provision of health care services for the purposes of the NHS;
 - (b) an order under any of those provisions of that Act where one or more of the enterprises which will or may cease to be distinct enterprises is engaged in the provision of health care services for the purposes of the NHS;

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- (c) an order under section 160 or 161 of that Act where the feature, or combination of features, of the market [^{F68}or markets] in the United Kingdom for goods or services which prevents, restricts or distorts competition relates to—
 - (i) the commissioning by [^{F69}NHS England] or [^{F70}an integrated care board] of health care services for the purposes of the NHS, or
 - (ii) the provision of those services.
- (5) The modification under subsection (2)(a) of part of a standard condition of a licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Chapter.
- (6) Where the relevant authority modifies the standard conditions applicable to all licences or (as the case may be) to licences of a particular description under this section, the relevant authority—
 - (a) may, after consultation with [^{F71}NHS England], make such incidental or consequential modifications as the relevant authority considers necessary or expedient of any other conditions of any licence which is affected by the modifications,
 - (b) must also 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 it makes under paragraph (b).
- (7) Expressions used in subsection (4) and in Part 3 or (as the case may be) Part 4 of the Enterprise Act 2002 have the same meaning in that subsection as in that Part.
- (8) In this section, a reference to modifying a condition includes a reference to amending, omitting or adding a condition.

Textual Amendments

- F67** Word in s. 102(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 129**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F68** Words in s. 102(4)(c) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 194** (with art. 3)
- F69** Words in s. 102 substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 1 para. 1(1)(2); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F70** Words in s. 102(4)(c)(i) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 4 para. 179**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F71** Words in s. 102(6)(a) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 65**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Commencement Information

- I22** S. 102 partly in force; s. 102 in force for specified purposes at Royal Assent, see s. 306(1)(d)
- I23** S. 102 in force at 1.4.2013 in so far as not already in force by S.I. 2013/671, art. 2(3)

103 Standard condition as to transparency of certain criteria

- (1) The standard conditions applicable to any licence under this Chapter must include a condition requiring the licence holder to—
 - (a) set transparent eligibility and selection criteria, and

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- (b) apply those criteria in a transparent way to persons who, having a choice of persons from whom to receive health care services for the purposes of the NHS, choose to receive them from the licence holder.
- (2) “Eligibility and selection criteria”, in relation to a licence holder, means criteria for determining—
- (a) whether a person is eligible, or is to be selected, to receive health care services provided by the licence holder for the purposes of the NHS, and
 - (b) if the person is selected, the manner in which the services are provided to the person.
- (3) The following powers must not be exercised so as to omit the condition mentioned in subsection (1) from any licence under this Chapter—
- (a) [F⁷²the power conferred on NHS England by section 100] to modify the standard conditions applicable to all licences, or to licences of a particular description,
 - F⁷³(b) and
 - (c) the powers conferred by section 102 on the [F⁷⁴CMA] and Secretary of State to modify those conditions or the conditions of a particular licence.

Textual Amendments

- F72 Words in s. 103(3)(a) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), ss. 85\(5\)\(a\), 186\(6\); S.I. 2022/734, reg. 2\(a\), Sch.](#) (with [regs. 13, 29, 30](#))
- F73 S. 103(3)(b) omitted (1.7.2022) by virtue of [Health and Care Act 2022 \(c. 31\), ss. 85\(5\)\(b\), 186\(6\); S.I. 2022/734, reg. 2\(a\), Sch.](#) (with [regs. 13, 29, 30](#))
- F74 Word in s. 103(3)(c) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 6 para. 130\(b\); S.I. 2014/416, art. 2\(1\)\(d\)](#) (with [Sch.](#))

Commencement Information

- I24 S. 103 in force at 1.4.2013 for specified purposes by [S.I. 2013/671, art. 2\(3\)](#)
- I25 S. 103 in force at 1.7.2013 in so far as not already in force by [S.I. 2013/671, art. 2\(4\)](#)
- I26 S. 103(1)(2) in force at 1.11.2012 for specified purposes by [S.I. 2012/2657, art. 2\(2\)](#)

Changes to legislation:

Health and Social Care Act 2012, Cross Heading: Licence conditions is up to date with all changes known to be in force on or before 30 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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Changes and effects yet to be applied to :

- specified provision(s) amendment to earlier commencing SI 2012/1831 art. 10 by [S.I. 2012/2657 art. 15](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Pt. 9 Ch. 1B inserted by [2022 c. 31 s. 96](#)
- s. 102(4)(ba) inserted by S.I. 2019/93, Sch. 1 para. 13(3) (as substituted) by [S.I. 2019/1245 reg. 28](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 105(3A)(3B) inserted by [2013 c. 24 Sch. 14 para. 21](#)
- s. 106(3A)(3B) inserted by [2013 c. 24 Sch. 14 para. 22](#)
- s. 250(2)-(2B) substituted for s. 250(2) by [2022 c. 31 s. 95\(2\)\(a\)](#)
- s. 250(6)-(6D) substituted for s. 250(6) by [2022 c. 31 s. 95\(2\)\(d\)](#)
- s. 251251ZA substituted for s. 251 by [2022 c. 31 s. 95\(3\)](#)
- s. 251C(6A) inserted by [2022 c. 31 s. 95\(4\)\(a\)](#)
- s. 259(1)(aa)(b) substituted for s. 259(1)(b) by [2022 c. 31 s. 98\(b\)](#)
- s. 259(1)(aa) words substituted by [S.I. 2023/98 Sch. para. 17\(11\)\(a\)\(iii\)](#) (This amendment comes in force at the same time as 2022 c. 31, s. 98 comes into force)
- s. 259(10A)(10B) inserted by [2022 c. 31 s. 98\(h\)](#)
- s. 304(5)(ja) inserted by [2022 c. 31 s. 95\(5\)](#)