



# Health and Social Care Act 2012

## 2012 CHAPTER 7

### PART 3

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

### CHAPTER 3

#### LICENSING

#### *Licensing procedure*

#### 85 Application for licence

- (1) A person seeking to hold a licence under this Chapter must make an application to [<sup>F1</sup>NHS England].
- (2) The application must be made in such form, and contain or be accompanied by such information, as [<sup>F2</sup>NHS England] requires.

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#### Textual Amendments

- F1** Words in s. 85(1) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 49](#); [S.I. 2022/734](#), reg. 2(a), [Sch.](#) (with regs. 13, 29, 30)
- F2** Words in s. 85(2) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), [Sch. 5 para. 49](#); [S.I. 2022/734](#), reg. 2(a), [Sch.](#) (with regs. 13, 29, 30)
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#### Commencement Information

- I1** S. 85 in force at 1.4.2013 for specified purposes by [S.I. 2013/671](#), [art. 2\(3\)](#)
- I2** S. 85 in force at 1.1.2014 by [S.I. 2013/2896](#), [art. 2\(1\)\(3\)](#)

*Changes to legislation: Health and Social Care Act 2012, Cross Heading: Licensing procedure is up to date with all changes known to be in force on or before 28 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. (See end of Document for details) View outstanding changes*

## 86 Licensing criteria

- (1) [<sup>F3</sup>NHS England] must set and publish the criteria which must be met by a person in order for that person to be granted a licence under this Chapter.
- (2) [<sup>F3</sup>NHS England] may revise the criteria and, if it does so, must publish them as revised.
- (3) [<sup>F3</sup>NHS England] may not set or revise the criteria unless the Secretary of State has by order approved the criteria or (as the case may be) revised criteria.

### Textual Amendments

**F3** Words in s. 86(1)-(3) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 50](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 6, 13, 29, 30)

### Commencement Information

**I3** S. 86 in force at 1.4.2013 for specified purposes by [S.I. 2013/671, art. 2\(3\)](#)  
**I4** S. 86 in force at 1.1.2014 by [S.I. 2013/2896, art. 2\(1\)\(3\)](#)

## 87 Grant or refusal of licence

- (1) This section applies where an application for a licence has been made under section 85.
- (2) If [<sup>F4</sup>NHS England] is satisfied that the applicant meets the criteria for holding a licence for the time being published under section 86 it must as soon as reasonably practicable grant the application; otherwise it must refuse it.
- (3) On granting the application, [<sup>F5</sup>NHS England] must issue a licence to the applicant.
- (4) A licence issued under this section is subject to—
  - (a) such of the standard conditions (see section 94) as are applicable to the licence, [<sup>F6</sup>and]
  - (b) such other conditions included in the licence by virtue of section 95 (referred to in this Chapter as “the special conditions”), [<sup>F7</sup>and]
  - (c) [<sup>F7</sup>any conditions included in the licence by virtue of section 111 (imposition of licence conditions on NHS foundation trusts during transitional period).]

### Textual Amendments

**F4** Words in s. 87(2) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 51](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

**F5** Words in s. 87(3) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 51](#); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

**F6** Word in s. 87(4)(a) inserted (coming into force immediately after the repeal of s. 111 as soon as there are no NHS foundation trusts in relation to which s. 111 has effect as a result of orders made under s. 112(1)-(4) of the amending Act or as soon as there are no such trusts in existence) by [Health and Social Care Act 2012 \(c. 7\), ss. 114\(1\)\(c\), 306\(4\)](#); S.I. 2013/671, art. 2(3)

**F7** S. 87(4)(c) and preceding word omitted (coming into force immediately after the repeal of s. 111 as soon as there are no NHS foundation trusts in relation to which s. 111 has effect as a result of orders made under s. 112(1)-(4) of the amending Act or as soon as there are no such trusts in existence) by virtue of [Health and Social Care Act 2012 \(c. 7\), ss. 114\(1\)\(d\), 306\(4\)](#); S.I. 2013/671, art. 2(3)

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#### Commencement Information

- I5** S. 87 in force at 1.4.2013 for specified purposes by [S.I. 2013/671](#), [art. 2\(3\)](#)  
**I6** S. 87 in force at 1.4.2014 in so far as not already in force by [S.I. 2014/39](#), [art. 2\(3\)](#)

#### [<sup>F8</sup>87A Application and grant: NHS trusts

- (1) An NHS trust established under section 25 of the National Health Service Act 2006 is to be treated, on its establishment, as—
- having made an application for a licence under section 85, and
  - having met the criteria for holding a licence for the time being published under section 86.
- (2) An NHS trust established under section 25 of the National Health Service Act 2006 before the day on which section 51(1) of the Health and Care Act 2022 comes into force is to be treated, for the purposes of subsection (1), as having been established on that day.]

#### Textual Amendments

- F8** S. 87A inserted (1.4.2023) by [Health and Care Act 2022 \(c. 31\)](#), [ss. 51\(2\)](#), 186(6); [S.I. 2023/371](#), [reg. 2\(c\)](#)

#### 88 Application and grant: NHS foundation trusts

- [<sup>F9</sup>(1) This section applies where—
- an NHS trust becomes an NHS foundation trust in pursuance of section 36 of the National Health Service Act 2006 (effect of authorisation of NHS foundation trust), or
  - an NHS foundation trust is established under sections 56 or 56B of that Act (mergers and separations).]

(2) The NHS foundation trust is to be treated by [<sup>F10</sup>NHS England] as having—

    - duly made an application for a licence under section 85, and
    - met the criteria for holding a licence for the time being published under section 86.

(3) An NHS foundation trust in existence on the day on which this section comes into force is to be treated for the purposes of this section as having become an NHS foundation trust pursuant to section 36 of the National Health Service Act 2006 on that day.

#### Textual Amendments

- F9** S. 88(1) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), [ss. 61](#), 186(6); [S.I. 2022/734](#), [reg. 2\(a\)](#), [Sch. \(with regs. 13, 29, 30\)](#)  
**F10** Words in s. 88(2) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), [s. 186\(6\)](#), [Sch. 5 para. 52](#); [S.I. 2022/734](#), [reg. 2\(a\)](#), [Sch. \(with regs. 13, 29, 30\)](#)

#### Commencement Information

- I7** S. 88 in force at 1.4.2013 by [S.I. 2013/671](#), [art. 2\(3\)](#)

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## 89 Revocation of licence

[<sup>F11</sup>NHS England] may at any time revoke a licence under this Chapter—

- (a) on the application of the licence holder, or
- (b) if [<sup>F11</sup>NHS England] is satisfied that the licence holder has failed to comply with a condition of the licence.

### Textual Amendments

**F11** Words in s. 89 substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 53; S.I. 2022/734, reg. 2\(a\), Sch. \(with regs. 13, 29, 30\)](#)

### Commencement Information

**I8** S. 89 in force at 1.4.2013 by [S.I. 2013/671, art. 2\(3\)](#)

## 90 Right to make representations

- (1) [<sup>F12</sup>NHS England] must give notice—
  - (a) to an applicant for a licence under this Chapter of a proposal to refuse the application;
  - (b) to the licence holder of a proposal to revoke a licence under section 89(b).
- (2) A notice under this section must—
  - (a) set out [<sup>F13</sup>NHS England's] reasons for its proposal;
  - (b) specify the period within which representations with respect to the proposal may be made to [<sup>F14</sup>NHS England].
- (3) The period so specified must be not less than 28 days beginning with the day after that on which the notice is received.

### Textual Amendments

**F12** Words in s. 90(1) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 54\(2\); S.I. 2022/734, reg. 2\(a\), Sch. \(with regs. 13, 29, 30\)](#)

**F13** Words in s. 90(2)(a) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 54\(3\)\(a\); S.I. 2022/734, reg. 2\(a\), Sch. \(with regs. 13, 29, 30\)](#)

**F14** Words in s. 90(2)(b) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\), s. 186\(6\), Sch. 5 para. 54\(3\)\(b\); S.I. 2022/734, reg. 2\(a\), Sch. \(with regs. 13, 29, 30\)](#)

### Commencement Information

**I9** S. 90(1)(a) in force at 1.4.2014 by [S.I. 2014/39, art. 2\(3\)](#)

**I10** S. 90(1)(b)(2)(3) in force at 1.4.2013 by [S.I. 2013/671, art. 2\(3\)](#)

## 91 Notice of decisions

- (1) This section applies if [<sup>F15</sup>NHS England] decides to—
  - (a) refuse an application for a licence under section 87, or
  - (b) revoke a licence under section 89(b).
- (2) [<sup>F16</sup>NHS England] must give notice of its decision to the applicant or the licence holder (as the case may be).

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- (3) A notice under this section must explain the right of appeal conferred by section 92.
- (4) A decision of [<sup>F17</sup>NHS England] to revoke a licence under section 89(b) takes effect on such day as may be specified by [<sup>F17</sup>NHS England], being a day no earlier than—
  - (a) if an appeal is brought under section 92, the day on which the decision on appeal is confirmed or the appeal is abandoned,
  - (b) where the licence holder notifies [<sup>F17</sup>NHS England] before the end of the period for bringing an appeal under section 92 that the licence holder does not intend to appeal, the day on which [<sup>F17</sup>NHS England] receives the notification, or
  - (c) the day after that period.

#### Textual Amendments

- F15** Words in s. 91(1) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 55**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F16** Words in s. 91(2) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 55**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F17** Words in s. 91(4) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 55**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

#### Commencement Information

- I11** S. 91(1)(a) in force at 1.4.2014 by S.I. 2014/39, **art. 2(3)**
- I12** S. 91(1)(b)(2)-(4) in force at 1.4.2013 by S.I. 2013/671, **art. 2(3)** (with art. 4)

## 92 Appeals to the Tribunal

- (1) An appeal lies to the First-tier Tribunal against a decision of [<sup>F18</sup>NHS England] to—
  - (a) refuse an application for a licence under section 87, or
  - (b) revoke a licence under section 89(b).
- (2) The grounds for an appeal under this section are that the decision was—
  - (a) based on an error of fact,
  - (b) wrong in law, or
  - (c) unreasonable.
- (3) On an appeal under this section, the First-tier Tribunal may—
  - (a) confirm [<sup>F19</sup>NHS England's] decision,
  - (b) direct that the decision is not to have effect, or
  - (c) remit the decision to [<sup>F20</sup>NHS England].

#### Textual Amendments

- F18** Words in s. 92(1) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 56(2)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F19** Words in s. 92(3)(a) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 56(3)(a)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F20** Words in s. 92(3)(c) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 5 para. 56(3)(b)**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

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#### Commencement Information

- I13** S. 92(1)(a) in force at 1.4.2014 by [S.I. 2014/39](#), **art. 2(3)**  
**I14** S. 92(1)(b)(2)(3) in force at 1.4.2013 by [S.I. 2013/671](#), **art. 2(3)**

### 93 Register of licence holders

- (1) [<sup>F21</sup>NHS England] must maintain and publish a register of licence holders.
- (2) The register may contain such information as [<sup>F21</sup>NHS England] considers appropriate for the purpose of keeping members of the public informed about licence holders including, in particular, information about the revocation of any licence under this Chapter.
- (3) [<sup>F21</sup>NHS England] must secure that copies of the register are available at its offices for inspection at all reasonable times by any person.
- (4) Any person who asks [<sup>F21</sup>NHS England] for a copy of, or an extract from, the register is entitled to have one.
- (5) Regulations may provide that subsections (3) and (4) do not apply—
  - (a) in such circumstances as may be prescribed, or
  - (b) to such parts of the register as may be prescribed.
- (6) A fee determined by [<sup>F22</sup>NHS England] is payable for the copy or extract except—
  - (a) in such circumstances as may be prescribed, or
  - (b) in any case where [<sup>F22</sup>NHS England] considers it appropriate to provide the copy or extract free of charge.

#### Textual Amendments

- F21** Words in s. 93(1)-(4) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 5 para. 57**; [S.I. 2022/734](#), reg. 2(a), Sch. (with regs. 13, 29, 30)  
**F22** Words in s. 93(6) substituted (1.7.2022) by [Health and Care Act 2022 \(c. 31\)](#), s. 186(6), **Sch. 5 para. 57**; [S.I. 2022/734](#), reg. 2(a), Sch. (with regs. 13, 29, 30)

#### Commencement Information

- I15** S. 93 partly in force; s. 93 in force for specified purposes at Royal Assent, see [s. 306\(1\)\(d\)](#)  
**I16** S. 93 in force at 1.4.2013 in so far as not already in force by [S.I. 2013/671](#), **art. 2(3)**

**Changes to legislation:**

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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. 251 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\(5\)](#)