



# Health and Social Care Act 2012

## 2012 CHAPTER 7

### PART 3

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

### CHAPTER 3

#### LICENSING

##### *Licensing requirement*

#### **81 Requirement for health service providers to be licensed**

- (1) Any person who provides a health care service for the purposes of the NHS must hold a licence under this Chapter.
- (2) Regulations may make provision for the purposes of this Chapter for determining, in relation to a service provided by two or more persons acting in different capacities, which of those persons is to be regarded as the person who provides the service.

#### **82 Deemed breach of requirement to be licensed**

- (1) This section applies where a licence holder—
  - (a) in providing a health care service for the purposes of the NHS, carries on a regulated activity (within the meaning of Part 1 of the Health and Social Care Act 2008), but
  - (b) is not registered under Chapter 2 of Part 1 of that Act in respect of the carrying on of that activity.
- (2) The licence holder is to be regarded as providing the service in breach of the requirement under section 81 to hold a licence.

### **83 Exemption regulations**

- (1) Regulations (referred to in this section and section 84 as “exemption regulations”) may provide for the grant of exemptions from the requirement under section 81 in respect of—
  - (a) a prescribed person or persons of a prescribed description;
  - (b) the provision of a prescribed health care service or a health care service of a prescribed description.
- (2) Exemption regulations may grant an exemption—
  - (a) either generally or to the extent prescribed;
  - (b) either unconditionally or subject to prescribed conditions;
  - (c) indefinitely, for a prescribed period or for a period determined by or under the exemption.
- (3) Conditions subject to which an exemption may be granted include, in particular, conditions requiring any person providing a service pursuant to the exemption—
  - (a) to comply with any direction given by Monitor about such matters as are specified in the exemption or are of a description so specified,
  - (b) except to the extent that Monitor otherwise approves, to do, or not to do, such things as are specified in the exemption or are of a description so specified (or to do, or not to do, such things in a specified manner), and
  - (c) to refer for determination by Monitor such questions arising under the exemption as are specified in the exemption or are of a description so specified.
- (4) Before making exemption regulations the Secretary of State must give notice to—
  - (a) Monitor,
  - (b) the National Health Service Commissioning Board, and
  - (c) the Care Quality Commission and its Healthwatch England committee.
- (5) The Secretary of State must also publish a notice under subsection (4).
- (6) A notice under subsection (4) must—
  - (a) state that the Secretary of State proposes to make exemption regulations and set out their proposed effect,
  - (b) set out the Secretary of State’s reasons for the proposal, and
  - (c) specify the period (“the notice period”) within which representations with respect to the proposal may be made.
- (7) The notice period must be not less than 28 days beginning with the day after that on which the notice is published under subsection (5).
- (8) Where an exemption is granted the Secretary of State—
  - (a) if the exemption is granted to a prescribed person, must give notice of it to that person, and
  - (b) must publish the exemption.

### **84 Exemption regulations: supplementary**

- (1) Regulations may revoke exemption regulations by which an exemption was granted to a person, or amend such regulations by which more than one exemption was so granted so as to withdraw any of the exemptions—

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

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- (a) at the person's request,
  - (b) in accordance with any provision of the exemption regulations by which the exemption was granted, or
  - (c) if the Secretary of State considers it to be inappropriate for the exemption to continue to have effect.
- (2) Regulations may revoke exemption regulations by which an exemption was granted to persons of a prescribed description, or amend such regulations by which more than one exemption was so granted so as to withdraw any of the exemptions—
  - (a) in accordance with any provision of the exemption regulations by which the exemption was granted, or
  - (b) if the Secretary of State considers it to be inappropriate for the exemption to continue to have effect.
- (3) The Secretary of State may by direction withdraw an exemption granted to persons of a description prescribed in exemption regulations for any person of that description—
  - (a) at the person's request,
  - (b) in accordance with any provision of the exemption regulations by which the exemption was granted, or
  - (c) if the Secretary of State considers it to be inappropriate for the exemption to continue to have effect in the case of the person.
- (4) Subsection (5) applies where the Secretary of State proposes to—
  - (a) make regulations under subsection (1)(b) or (c) or (2), or
  - (b) give a direction under subsection (3)(b) or (c).
- (5) The Secretary of State must—
  - (a) consult the following about the proposal—
    - (i) Monitor;
    - (ii) the National Health Service Commissioning Board;
    - (iii) the Care Quality Commission and its Healthwatch England committee;
  - (b) where the Secretary of State is proposing to make regulations under subsection (1)(b) or (c), give notice of the proposal to the person to whom the exemption was granted;
  - (c) where the Secretary of State is proposing to make regulations under subsection (2), publish the notice;
  - (d) where the Secretary of State is proposing to give a direction under subsection (3)(b) or (c), give notice of the proposal to the person from whom the Secretary of State proposes to withdraw the exemption.
- (6) The notice must—
  - (a) state that the Secretary of State proposes to make the regulations or give the direction (as the case may be),
  - (b) set out the Secretary of State's reasons for the proposal, and
  - (c) specify the period within which representations with respect to the proposal may be made.
- (7) The period so specified must be not less than 28 days beginning with the day after that on which the notice is received or (as the case may be) published.