

SCHEDULES

SCHEDULE 12

Section 120

PROCEDURE ON REFERENCES UNDER SECTION 120

Contents etc. of reference

- 1 (1) A reference under section 120 must specify—
 - (a) Monitor’s reasons for proposing the method to which the reference relates, and
 - (b) its representations as to why the grounds referred to in section 121(4) do not apply.
- (2) Monitor must give notice of the reference to—
 - (a) the National Health Service Commissioning Board, and
 - (b) each objector.
- (3) The notice must be accompanied by a copy of the reference.
- (4) In this Schedule, “objector” means—
 - (a) in relation to a reference made where the condition in section 120(2)(a) is not met, each clinical commissioning group who objected to the proposed method to which the reference relates, and
 - (b) in relation to a reference made where the condition in section 120(2)(b) or (c) is not met, each relevant provider who objected to that proposed method.

Representations by objectors

- 2 (1) If an objector wishes to make representations to the Competition Commission on the matters specified in the reference for the purposes of paragraph 1(1), the objector must do so before the end of the period of 10 working days beginning with the day on which the objector receives the notice under paragraph 1(2).
- (2) The objector must give Monitor a copy of the representations.
- (3) If Monitor wishes to reply to representations under sub-paragraph (1), it must do so before the end of the period of 10 working days beginning with the day on which it receives the copy under sub-paragraph (2).
- (4) Monitor must send a copy of its reply to the objector who made the representations.
- (5) In this Schedule, “working day” means any day other than—
 - (a) a Saturday or a Sunday,
 - (b) Christmas Day or Good Friday, or
 - (c) a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971.

Status: This is the original version (as it was originally enacted).

Functions of Commission in relation to reference

- 3 (1) The following functions of the Competition Commission must be performed, in accordance with rules under paragraph 11, by a group selected for the purpose by the Chairman of the Commission—
- (a) considering a reference under section 120;
 - (b) making a determination on the reference;
 - (c) giving directions and taking other steps to give effect to the Commission’s determination on the reference.
- (2) A group selected under this paragraph must consist of three members of the Commission.
- (3) The Chairman of the Commission must appoint one of the members as chair of the group.
- (4) The Chairman of the Commission may select a member of the Commission to replace a person as a member of group if—
- (a) the person being replaced has ceased to be a member of the Commission,
 - (b) the Chairman is satisfied that the person being replaced will be unable, for a substantial period, to perform duties as a member of the group, or
 - (c) it appears to the Chairman that it is inappropriate, because of a particular interest of the person being replaced, for that person to remain a member of the group.
- (5) The replacement of a member of a group does not prevent the group from continuing after the replacement with anything begun before it.
- (6) The Chairman of the Commission may be appointed as, or may be selected to replace a person as, a member of a group (including as chair of the group).
- (7) A decision of a group is effective only if—
- (a) all the members of the group are present when it is made, and
 - (b) at least two members of the group are in favour of it.

Timetable for determination on reference

- 4 (1) The group with the function of making a determination on a reference must make the determination before the end of the period of 30 working days following the last day for the making by Monitor of a reply in accordance with paragraph 2.
- (2) If that group is satisfied that there are good reasons for departing from the normal requirements, it may (on one occasion only) extend that period by not more than 20 working days.
- (3) The Competition Commission must ensure that an extension under sub-paragraph (2) is notified to—
- (a) Monitor,
 - (b) the National Health Service Commissioning Board, and
 - (c) every objector who made representations in accordance with paragraph 2.

Matters to be considered on determination

- 5 (1) If the group with the function of determining a reference considers it necessary to disregard the matters referred to in sub-paragraph (2) in order to secure the making of the determination of the appeal within the period allowed by paragraph 4, it may do so.
- (2) The matters mentioned in sub-paragraph (1) are—
- (a) all matters raised by an objector in representations under paragraph 2 that the objector did not raise at the time of the consultation under section 118, and
 - (b) all matters raised by Monitor in replies under paragraph 2 that it did not include in the reference.

Production of documents

- 6 (1) The Competition Commission may by notice require a person to produce to it the documents specified or otherwise identified in the notice.
- (2) The power to require the production of a document is a power to require its production—
- (a) at the time and place specified in the notice, and
 - (b) in a legible form.
- (3) The Competition Commission may take copies of a document produced to it under this paragraph.

Oral hearings

- 7 (1) For the purposes of this Schedule, an oral hearing may be held, and evidence may be taken on oath by a group with the function of making a determination on a reference under section 120.
- (2) A group with that function may administer oaths for the purposes of this Schedule.
- (3) The Competition Commission must give notice to each objector who has made representations in accordance with paragraph 2 of the time and place at which an oral hearing is to be held.
- (4) The Competition Commission may by notice require a person—
- (a) to attend at a time and place specified in the notice, and
 - (b) to give evidence at that time and place to a group with that function.
- (5) At an oral hearing, the group conducting the hearing may require a person who comes within sub-paragraph (6), if present at the hearing, to give evidence or to make representations.
- (6) A person comes within this sub-paragraph if the person is—
- (a) an objector who has made representations in accordance with paragraph 2,
 - (b) a person attending the hearing as a representative of a person mentioned in paragraph (a), or
 - (c) a person attending the hearing as a representative of Monitor.
- (7) A person who gives oral evidence at the hearing may be cross-examined by or on behalf of any other person who is present at the hearing and comes within sub-paragraph (6).

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- (8) If a person is not present at a hearing and so cannot be made subject to a requirement under sub-paragraph (5)—
- (a) the Competition Commission is not obliged to require the person to attend the hearing, and
 - (b) the group conducting the hearing may make a determination on the reference without hearing that person’s evidence or representations.
- (9) Where a person is required under this paragraph to attend at a place more than 10 miles from that person’s place of residence, the Competition Commission must pay the person the necessary expenses of attending.

Written statements

- 8 (1) The Commission may by notice require a person to produce a written statement with respect to a matter specified in the notice to a group with the function of making a determination on a reference under section 120.
- (2) The power to require the production of a written statement includes power to specify the time and place at which it is to be produced.
- (3) The written statement must be verified in accordance with a statement of truth.
- (4) In this paragraph and paragraph 9, “statement of truth” means a statement that the person producing the document which includes the statement believes the matters stated as facts in the document to be true.

Defaults in relation to evidence

- 9 (1) This paragraph applies if a person (“the defaulter”)—
- (a) fails to comply with a notice or other requirement under paragraph 6, 7 or 8,
 - (b) in complying with a notice under paragraph 8, makes a statement that is false in a material particular, or
 - (c) in providing information otherwise verified in accordance with a statement of truth required by rules under paragraph 11, provides information that is false in a material particular.
- (2) A member of the Commission may certify the failure, or the fact that a false statement has been made, to the High Court.
- (3) The High Court may inquire into a matter so certified.
- (4) If the High Court, having heard any witness on behalf of or against the defaulter and any statement in the defaulter’s defence, is satisfied that the defaulter did, without reasonable excuse, the act referred to in sub-paragraph (1), it may punish the defaulter as if the defaulter had been guilty of contempt of court.

General provisions relating to evidence

- 10 (1) No person may be compelled to give evidence under paragraph 6, 7 or 8 which the person could not be compelled to give in civil proceedings in the High Court.
- (2) A notice under paragraph 6, 7 or 8 may be given on the Competition Commission’s behalf by a member of the Commission or its secretary.

Procedural rules

- 11 (1) The Competition Commission may make rules of procedure for determinations on references under section 120.
- (2) Those rules may include provision supplementing the provisions of this Schedule in relation to any notice, hearing or requirement for which this Schedule provides; and that provision may, in particular, impose time limits or other restrictions on—
- (a) the taking of evidence at an oral hearing, or
 - (b) the making of representations at an oral hearing.
- (3) The rules may apply, with or without modification, provision included in appeal rules under Schedule 22 to the Energy Act 2004.
- (4) The Commission must publish rules made under this paragraph.
- (5) Before making rules under this paragraph, the Commission must consult such persons as it considers appropriate.
- (6) Rules under this paragraph may make different provision for different cases.

Costs

- 12 (1) A group that makes a determination on a reference under section 120 must make an order requiring the payment to the Competition Commission of the costs incurred by the Commission in connection with the reference.
- (2) Where it is determined that the method to which the reference relates is not appropriate, the order must require those costs to be paid by Monitor.
- (3) Where it is determined that the method to which the reference relates is appropriate, the order must require those costs to be paid by such objectors as are specified in the order.
- (4) Where the order specifies more than one objector, it may specify the proportions in which the objectors are to be liable for the costs.
- (5) The group that makes a determination on a reference under section 120 may also make an order requiring Monitor or an objector who made representations in accordance with paragraph 2 to make payments to the other in respect of costs incurred by the other in connection with the determination.
- (6) A person required by an order under this paragraph to pay a sum to another person must comply with the order before the end of the period of 28 days beginning with the day after the making of the order.
- (7) Sums required to be paid by an order under this paragraph but not paid within that period are to carry interest at such rate as may be determined in accordance with provision in the order.

Power to modify time limits

- 13 The Secretary of State may by order vary any period specified in this Schedule as the period within which something must be done.