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STATUTORY INSTRUMENTS

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**2013 No. 257**

**The National Health Service (Procurement, Patient Choice and Competition) Regulations 2013**

**PART 3**

Investigations, declarations, directions and undertakings

**Powers of Monitor to investigate**

**13.**—(1) Monitor may investigate a complaint received by it that a relevant body has failed to comply with a requirement imposed by regulations 2 to 12, or by regulations 39(1), 42 or 43 of the 2012 Regulations (choice of health service provider)(2).

(2) Monitor may on its own initiative investigate whether a relevant body has failed to comply with a requirement imposed by regulation 10.

(3) Monitor may not investigate a matter which is raised by a complaint under paragraph (1) where the person making the complaint has brought an action under the Public Contracts Regulations 2006(3) in relation to that matter.

(4) A relevant body must provide Monitor with such information in its possession as Monitor may specify for the purposes of an investigation carried out by virtue of paragraph (1) or (2).

(5) The power of Monitor under paragraph (4) includes—

- (a) power to require the relevant body to provide an explanation of such information as it provides, and
- (b) in relation to information kept by means of a computer, power to require the information in legible form.

**Declaration of ineffectiveness**

**14.**—(1) Monitor may declare that an arrangement for the provision of health care services for the purposes of the NHS is ineffective(4).

(2) Monitor may only make a declaration under paragraph (1) where it is satisfied that—

- (a) in relation to that arrangement, a relevant body has failed to comply with a requirement imposed by regulation 2, 3(1) to (4), 4(2) and (3), 5 to 8 or 10(1), and
- (b) the failure is sufficiently serious.

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(1) Regulation 39 of the 2012 Regulations is subject to regulations 40 and 41 of the 2012 Regulations.  
(2) Section 76(2) of the 2012 Act provides that Monitor may only investigate a complaint received by it where it is satisfied that the person making the complaint has sufficient interest in the arrangement to which the complaint relates.  
(3) [S.I. 2006/5](#), as amended by [S.I. 2007/3542](#), [2008/2256](#), [2008/2683](#), [2008/2848](#), [2009/1307](#), [2009/2992](#), [2010/976](#), [2011/1043](#), [2011/1848](#), [2011/2053](#), [2011/2581](#) and [2011/3058](#).  
(4) Section 76(5) of the 2012 Act provides that where such a declaration is made the arrangement is void; but that does not affect: (a) the validity of anything done pursuant to the agreement, (b) any right acquired or liability incurred under the arrangement, or (c) any proceedings or remedy in respect of such a right or liability.

(3) Monitor may declare that a term or condition of an arrangement for the provision of health care services for the purposes of the NHS is ineffective where it is satisfied that—

- (a) in relation to that term or condition, a relevant body has failed to comply with regulation 10(2), and
- (b) the failure is sufficiently serious.

(4) On a declaration being made under paragraph (3), the term or condition is void; but that does not affect—

- (a) the validity of anything done pursuant to the term or condition,
- (b) any right acquired or liability incurred under the term or condition, or
- (c) any proceedings or remedy in respect of such a right or liability.

### **Power to give directions**

**15.** Monitor may direct a relevant body—

- (a) to put in place measures for the purpose of preventing failures to comply with a requirement imposed by regulations 2 to 12, or by regulations 39, 42 or 43 of the 2012 Regulations;
- (b) to put in place measures for the purpose of mitigating the effect of such failures;
- (c) to vary or withdraw an invitation to tender for the provision of health care services for the purposes of the NHS to prevent or remedy a failure to comply with a requirement imposed by regulations 2 to 8 and 10;
- (d) to vary an arrangement for the provision of health care services for the purposes of the NHS made in consequence of putting the provision of services out to tender to remedy a failure to comply with a requirement imposed by regulations 2 to 8;
- (e) to vary an arrangement for the provision of health care services for the purposes of the NHS to remedy a failure to comply with regulation 10;
- (f) to otherwise remedy a failure to comply with a requirement referred to in subparagraph (a).

### **Undertakings**

**16.** Monitor may accept an undertaking from a relevant body to take such action of a kind mentioned in regulation 15(a) to (f)(5) as is specified in the undertaking within such period as is so specified.

### **Actions brought under the Public Contracts Regulations 2006**

**17.** A person who has brought an action under the Public Contracts Regulations 2006 for loss or damage may not bring an action under section 76(7) of the Health and Social Care Act 2012(6) in respect of the whole or part of the same loss or damage.

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(5) Section 77(3) to (5) and Schedule 9 of the 2012 Act make further provision in relation to any undertakings accepted by Monitor under these Regulations. In particular, Monitor may not continue with any investigation in relation to the matter in question, or make a declaration of ineffectiveness in relation to the arrangement in question.

(6) Section 76(7) of the 2012 Act provides that a failure to comply with a requirement imposed by regulations made under section 75 of that Act which causes loss or damage is actionable.