

HEALTH AND SOCIAL CARE ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 - Regulation of Health and Adult Social Care Services

Chapter 1 – Monitor

Section 62 – General duties

666. This section provides for Monitor’s principal overarching duty and certain other general duties. Monitor’s main duty is to exercise its functions so as to protect and promote the interests of people who use health care services, by promoting the provision of health care services that are economic, efficient and effective and which maintain or improve the quality of services. It is intended that in ‘protecting’ interests Monitor will act to ensure that the interests of people who use health services are not diminished; whilst ‘promote’ is intended to mean furthering their interests. *Subsection (2)* provides that Monitor, in carrying out this duty, must consider the likely future demand for health services. These general duties will apply to the exercise of all of Monitor’s functions, including those functions it will continue to exercise under the NHS Act.
667. *Subsection (3)* provides that Monitor must exercise its functions with a view to preventing anti-competitive behaviour in the provision of NHS health care services, where such behaviour is against the interests of NHS patients. For example, if providers colluded to fix prices or to restrict the range of services available to commissioners (eg. to restrict provision of care in patients’ homes rather than in a clinic or hospital setting), against the interests of patients, then such behaviour may be anti-competitive.
668. *Subsections (4) to (6)* concern the integration of NHS healthcare services, and between health and social care services. Subsections (4) and (5) require Monitor to exercise its functions with a view to enabling the integration of health care services or the integration of health care services with other health-related services or social care services, provided it considers certain conditions are met. These are that the integration of services would:
- improve the outcomes from or other aspects of the quality of services,
 - improve the efficiency with which they are provided,
 - reduce inequalities in access to services,
 - reduce inequalities between patients in the outcomes services achieved.
669. An example of a health-related service in this context could be a pharmaceutical service.
670. *Subsection (6)* should ensure that, in enabling the integration of services, Monitor works effectively with, and where appropriate takes its lead from, commissioners. The subsection requires Monitor, when enabling the integration of services, to have regard to the duties on the NHS Commissioning Board and on commissioners to promote the integration of services.

*These notes refer to the Health and Social Care Act 2012
(c.7) which received Royal Assent on 27 March 2012*

671. *Subsection (7)* requires Monitor to make proper provision for the involvement of patients and the wider public in its work. It would be for Monitor to decide what arrangements for patient and public involvement would be appropriate to particular aspects of its work and how to secure that involvement. The subsection excludes decisions that Monitor makes in individual cases (such as whether or not to award a licence to a particular provider). There is specific provision elsewhere in the Act for Monitor to consult particular organisations and people when exercising certain functions, for example under section 118 (consultation on proposals for the national tariff).
672. *Subsection (8)* requires Monitor, as appropriate, to secure professional clinical and public health advice to help it to discharge its functions effectively. It would be for Monitor to decide what clinical and public health advice would be appropriate to particular aspects of its work and how to secure that advice.
673. The Secretary of State has a duty under section 1(1) of the NHS Act to promote a comprehensive health service, and *subsection (9)* requires Monitor to exercise its functions in a manner consistent with the Secretary of State's performance of that duty.
674. *Subsection (10)* is intended to ensure that Monitor does not, exercise its function for the purpose of causing any variation in the proportion of NHS health care services that are delivered by a particular description of provider, where that description is by reference to whether the provider is public or private sector or some other aspect of their status. The Act provides for similar duties on the Secretary of State and the NHS Commissioning Board.