

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 67 - Conflicts between functions

688. This section places requirements on Monitor when it considers that conflicts arise between its general duties under sections 62 and 66. The requirements include resolving any such conflict in the manner Monitor considers best, and publishing statements of conflicts that have arisen that are of particular significance, how they have been resolved and the reasons for resolving them in the manner chosen. The guiding principle for Monitor in resolving any such conflicts would be its overarching duty to ‘protect and promote patients’ interests by promoting healthcare services which (a) is economic, efficient and effective, and (b) maintains or improves the quality of the services.
689. *Subsection (2)* requires that Monitor must carry out its functions so that there is not, and could not reasonably be regarded as being, any conflict between: (a) its exercise of the functions it has under the NHS Act and paragraph 17 of Schedule 8 to this Act, and its transitional functions under sections 111 and 113 of this Act, and (b) its exercise of any of its other functions.
690. *Subsection (3)* provides that Monitor must ignore any consideration of its transitional functions under sections 111 and 113 when exercising its competition functions, under Chapter 2, or its pricing functions under Chapter 4. For example, Monitor would need to establish “chinese walls” within its organisation so that any information relating to the exercise of its functions under sections 111 and 113 in individual cases could not influence the exercise of its competition and pricing functions .
691. *Subsections (4) and (5)* create additional requirements for Monitor to act transparently by publishing a statement on how it has resolved any conflict between its general duties that may arise in a particular case. Such a statement must set out: the nature of the conflict; the manner in which Monitor decided to resolve it; and, its reasons for deciding to resolve it in that manner. The cases to which these further requirements apply are ones, which either: involve a major change to Monitor’s activities, including a major change to standard licence conditions under section 94; or are likely to have a significant impact upon persons who provide, or persons who use, NHS services, or the upon the general public in England (or a particular part of England); or, which, Monitor considers are otherwise of unusual importance.
692. Every year, Monitor must include in its annual report a statement setting out the arrangements it has made to avoid conflicts arising in the exercise of its functions, under subsection (2), and a summary of how it has resolved any conflicts arising in particular cases under subsection (5).