

HEALTH AND SOCIAL CARE ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 - Regulation of Health and Adult Social Care Services

Chapter 2 – Competition

Section 74 - Competition functions: supplementary

719. This section makes a number of supplementary provisions relating to Monitor's competition functions.
720. *Subsection (1)* states that the concurrent nature of Monitor's powers means that there can be no valid objection that its actions under these powers should have been carried out by the OFT.
721. *Subsections (2) and (3)* make provision about the relationship between Monitor's competition functions and its general duties. Chapter 1 of this Part makes provision about Monitor's general duties and matters to which Monitor must have regard in exercising its functions. *Subsection (2)* provides that those duties and matters do not apply where Monitor is carrying out its concurrent competition functions under Chapter 2, unless they are matters to which the OFT can also have regard. For example, whilst Monitor and the OFT may both have regard to patients' interests in relation to the provision of healthcare services for the purposes of the NHS, the OFT would not always have regard to considerations relating to promoting research into matters relevant to the NHS. This provision is to avoid inconsistency in the application of competition law, depending on which regulator is exercising the function in a particular instance.
722. *Subsection (4)* adds Monitor to the list of regulators in the Company Directors Disqualification Act 1986 with powers to apply to a court to make a company director disqualification order, where the director's organisation had committed a breach of competition law. The Company Directors Disqualification Act 1986 specifies the issues courts should consider when assessing whether to issue a disqualification order against a director following a breach of competition law.
723. The OFT already has the power to apply to a court to disqualify directors in the health care sector and other industries where there has been a breach of the 1998 Act.
724. *Subsections (5) to (7)* amend the 1998 Act and the 2002 Act to include Monitor in provisions of those Acts which are relevant to Monitor's concurrent powers.