

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

# HEALTH AND SOCIAL CARE ACT 2012

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 3 - Regulation of Health and Adult Social Care Services**

##### *Chapter 2 – Competition*

##### *Section 75 – Requirements as to procurement, patient choice and competition*

725. This section enables the Secretary of State to make regulations imposing requirements on the NHS Commissioning Board and CCGs in order to ensure good practice in relation to procurement, to ensure the protection and promotion of patients' rights to make choices regarding their NHS treatment and to prevent anti-competitive behaviour by commissioners with regard to health care services. This may include requirements on the use of competitive tendering by commissioners and on securing services without competition (in which case the requirements which would apply would depend on the decision by the commissioner as to which approach would be in patients' best interests). The regulations could also include requirements to manage potential conflicts between the interests involved in commissioning services and the interests involved in providing them (*subsection (3)*). Where a contract is for goods and services, *subsection (2)* provides that the regulations will only apply where the value of the part of the contract for services is greater than the value of the goods. This is intended to ensure that the regulations only capture contracts that are primarily for services rather than goods.
726. *Subsection (4)* allows for regulations to provide for exemptions in relation to particular arrangements.