

HEALTH AND SOCIAL CARE ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3 - Regulation of Health and Adult Social Care Services

Chapter 3 – Licensing

Licence conditions

Section 98 – Conditions relating to the continuation of the provision of services etc.

788. This section makes further provision about Monitor’s licensing powers to support commissioners in securing continuity of health care services for the purposes of the NHS. *Subsection (1)* provides that Monitor may, in particular (but not by way of limitation), set conditions under section 97(1)(i)(i) requiring a licence holder: to provide information to commissioners and other persons as directed by Monitor; to allow Monitor to enter and inspect its premises; and to co-operate with persons appointed by Monitor to assist in the management of the licence holder’s affairs, business and property. *Subsection (2)* requires commissioners to also co-operate with any such persons appointed by Monitor. Monitor may set such other licence conditions for the purposes of ensuring a provider continues to be able to provide NHS services under the terms of its licence as Monitor considers appropriate, subject to sections 94-96. This may include, for example, requirements relating to liquidity and, where appropriate, actions to ensure the provision of services is effective, efficient and economic in the long term.
789. Monitor could take a number of measures under licence conditions set under section 97(1)(i)(i) to protect the continuity of NHS services in the case of a provider in financial difficulties (in “distress”). For example, Monitor could direct a provider in distress to appoint a “turnaround team”, or require a provider to provide information and access to their records and premises to a continuity of service planning team appointed by Monitor. The aim of such measures would be, wherever possible, to return the provider to normal operation as soon as possible and ensure the continuity of services which required protection.
790. *Subsection (3)* requires Monitor to carry out an on-going assessment of the risks to the continued provision of services to which a licence condition under section 97(1)(i), (j) or (k) applies. This enables Monitor to intervene early to assist providers to reduce any unacceptable risk.
791. *Subsection (4)* requires Monitor to publish guidance for licence holders on the requirements placed on them via licence conditions under section 97(1)(i), (j) or (k) for ensuring the continuity of services. Monitor must also publish guidance for commissioners of services subject to such conditions on the exercise of their functions in connection with the licence holders who provide those services. This could include guidance on their role in the turnaround of licence holders in distress, or in taking steps to plan for possible unsustainability of a licence holder. Before publishing

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

such guidance (whether initially or as revised), Monitor must obtain the approval of the NHS Commissioning Board and the Secretary of State. *Subsection (5)* requires commissioners of services which are subject to continuity of service conditions to have regard to such guidance.