



Health and Care Act 2022

2022 CHAPTER 31

PART 1

HEALTH SERVICE IN ENGLAND: INTEGRATION, COLLABORATION AND OTHER CHANGES

Competition

82 Duty to provide assistance to the CMA

- (1) After section 13SB of the National Health Service Act 2006 (inserted by section 34(2) of this Act) insert—

“13SC Provision of regulatory information or assistance to the CMA

- (1) NHS England must give the Competition and Markets Authority (“the CMA”) —

- (a) any regulatory information that the CMA may require to enable the CMA to exercise its relevant functions,
- (b) any other regulatory information it considers would assist the CMA in exercising its relevant functions, and
- (c) any other assistance the CMA may require to assist the CMA in exercising its relevant functions.

- (2) In this section—

“regulatory information” means information held by NHS England in connection with—

- (a) its regulatory functions falling within section 13SB(2)(a) or (b),
or
- (b) its functions under—
 - (i) sections 6F and Schedule 1ZA (patient choice: enforcement);

- (ii) sections 27A and 27C (NHS trusts: oversight and support and recommendations about restructuring);

“relevant functions”, in relation to the CMA, means its functions under the Competition Act 1998 and the Enterprise Act 2002 so far as those functions are exercisable on behalf of the CMA by the CMA Board or a CMA group (within the meaning of Schedule 4 to the Enterprise and Regulatory Reform Act 2013).”

- (2) In the Health and Social Care Act 2012, omit section 80 (co-operation between monitor and CMA).

83 Mergers of providers: removal of CMA powers

- (1) After section 72 of the National Health Service Act 2006 insert—

“NHS trusts and foundation trusts: exemption from merger legislation

72A Exemption from Part 3 of the Enterprise Act 2002

- (1) For the purposes of Part 3 of the Enterprise Act 2002 (mergers), a relevant merger situation is not to be treated as having been created where two or more relevant NHS enterprises cease to be distinct enterprises.
- (2) But subsection (1) does not apply to a case where two or more relevant NHS enterprises and one or more enterprises that are not relevant NHS enterprises cease to be distinct enterprises.
- (3) In this section “relevant NHS enterprise” means the activities, or part of the activities, of—
 - (a) an NHS trust established under section 25;
 - (b) an NHS foundation trust.”
- (2) Omit section 79 of the Health and Social Care Act 2012 (competition: mergers involving NHS foundation trusts).

84 Removal of functions relating to competition etc

- (1) Omit sections 72 and 73 of the Health and Social Care Act 2012 (Monitor and CMA: concurrent functions).
- (2) Schedule 12 contains consequential amendments.

85 Removal of CMA’s involvement in licensing etc

- (1) The Health and Social Care Act 2012 is amended as follows.
- (2) In section 95 (licensing: special conditions), in subsection (1)—
 - (a) in paragraph (a), omit “with the consent of the applicant,”;
 - (b) in paragraph (b), omit “with the consent of the licence holder,”.
- (3) In section 100 (modification of standard conditions)—
 - (a) omit subsections (6) to (9);
 - (b) in subsection (11) omit “and section 101”.

- (4) Omit section 101 (modification references to the CMA).
- (5) In section 103 (standard condition as to transparency of certain criteria), in subsection (3)—
 - (a) in paragraph (a), for “the powers conferred on Monitor by sections 100, 101(7) and paragraph 7(2) of Schedule 10” substitute “the power conferred on NHS England by section 100”;
 - (b) omit paragraph (b) but not the “and” at the end.
- (6) In section 141 (levy on providers: consultation), in subsection (8), omit “and section 142”.
- (7) Omit section 142 (levy on providers: responses to consultation).
- (8) In section 304 (regulations, orders and directions), in subsection (5), omit paragraphs (d) and (j).
- (9) Omit Schedule 10 (references by Monitor to the CMA).