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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order brings into force provisions of the Health and Social Care Act 2012 (c. 7) (“the Act”). It is the third such Order to be made under the Act. It also amends the Health and Social Care Act 2012 (Commencement No.2 and Transitional, Savings and Transitory Provisions) Order 2012 (S.I. 2012/1831 (C. 71)).

Article 2(2) brings into force the following provisions of the Act on 1st November 2012—

- (a) section 61(2) and Schedule 8 (in part), which make general provision about Monitor as to membership, staff, superannuation, committees etc and other matters relating to its status as a body corporate;
- (b) sections 62 (in part) and 64 which impose a number of over-arching general duties on Monitor in the exercise of its functions;
- (c) section 63 which empowers the Secretary of State to publish guidance on Monitor’s duty to exercise its functions in a manner consistent with the performance by the Secretary of State of the duty under section 1(1) of the National Health Service Act 2006 (c. 41) (“the 2006 Act”);
- (d) section 66 (in part) which prescribes matters Monitor is to have regard to in the exercise of its functions;
- (e) section 67 (in part) which makes provision in relation to conflicts between Monitor’s functions and section 68 (in part) which imposes a duty on Monitor to review regulatory burdens;
- (f) sections 70 and 71 which concern the use of information obtained by Monitor or produced to Monitor in the course of exercising its functions and the powers of the Secretary of State where he considers that Monitor is failing to exercise its functions.
- (g) sections 94 to 98 and 103 (in part), which relate to standard and special licence conditions, are partially commenced to enable Monitor to prepare draft standard conditions for consultation, and to take preparatory steps in relation to special conditions insofar as they are relevant to NHS foundation trusts;
- (h) section 101 (in part) (which is modified by article 9 of the Order), and Schedule 10, which make provision as to the procedure to be followed in respect of referring a matter to the Competition Commission where a NHS foundation trust has refused consent to the inclusion of a special condition in a licence;
- (i) section 104 (in part) which concerns Monitor’s powers to require documents from particular bodies or persons in the exercise of its regulatory functions;
- (j) section 108 (in part) to enable Monitor to prepare and consult on guidance on the use of its enforcement powers;
- (k) section 144 (in part) which requires Monitor to undertake and publish a review of the operation during a financial year of the procedure for trust special administration for NHS foundation trusts under Chapter 5A of Part 2 of the 2006 Act;
- (l) sections 148 (in part) and 149 which relate to the service of documents and electronic communication under Part 3 of the Act;

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (m) section 150 (in part) and Schedule 13 (in part) which contains definitions, transitional provision and minor and consequential amendments relevant to the provisions in Part 3 of the Act being commenced by this Order;
- (n) section 156 (in part) which amends Schedule 7 to the 2006 Act to amend provision in respect of a an NHS foundation trust’s annual report and forward plan;
- (o) section 166 which substitutes section 48 of the 2006 Act as regards the Secretary of State’s power to require information from NHS foundation trusts; and
- (p) section 173 (partially) and sections 174 to 178 which contain provisions related to the failure of an NHS foundation trust, including the repeal of de-authorisation provisions in the 2006 Act, and the appointment of trust special administrators.

Article 2(3) brings into force the following provisions on 1st December 2012—

- (a) section 222 of the Act which changes the name of the Council for Healthcare Regulatory Excellence to the Professional Standards Authority for Health and Social Care, and makes related amendments to the National Health Service Reform and Healthcare Professions Act 2002 (c. 17) (“the 2002 Act”);
- (b) section 226 (in part) which makes changes to the membership of the Professional Standards Authority for Health and Social Care;
- (c) sections 228 and 229 which amend the 2002 Act to make provision in respect of the establishment of voluntary registers for health and social care professionals who are currently not part of a mandatory registration scheme, and also makes provision for the accreditation of such registers; and
- (d) section 230 (partially) and Part 3 of Schedule 15, which together make consequential amendments and savings in relation to the Professional Standards Authority for Health and Social Care.

Article 2(4) brings into force the following provisions on 1st February 2013—

- (a) sections 9 (in part), 10 (in part), 13 and 14 (in part), 15, 17 (in part), 23 (in part), 26 (in part), 40 (in part), 55 (in part) and paragraphs 2 and 9 of Schedule 4 (in part) both to enable the National Health Service Commissioning Board and clinical commissioning groups to enter into commissioning contracts under which services are to be provided as part of the health service on or after 1st April 2013, and because they are relevant to the exercise of that function by the Board or those groups;
- (b) section 20 which inserts a new section 6E in to the 2006 Act which contains a power to make regulations as to the exercise of functions by the Board or clinical commissioning groups (known as “standing rules”);
- (c) section 78 of the Act which, pursuant to the transitory modification of section 78 in article 6 of the Order, empowers (rather than requires) Monitor to publish guidance about compliance with requirements imposed by regulations under section 75 of the Act and how it will exercise powers conferred by such regulations; and
- (d) Schedule 21 and section 297 (in part) which make amendments to legislation that applies in Wales, Scotland and Northern Ireland that are relevant to the relationships between the health services of England, Wales, Scotland and Northern Ireland.

Article 3 makes a transitory modification to section 64(4) of the Act to modify the meaning of “the NHS” contained in that provision until section 9(1) of the Act comes fully into force. The effect of the modification is to remove the reference to the exclusion of the public health functions of the Secretary of State and local authorities from the definition of “the NHS” as they will not have those functions until section 9(1) comes fully into force.

Articles 4, 5 and 11 make transitory modifications in respect of the commencement of sections 67 and 71 of, and paragraph 13 of Schedule 8 to, the Act to omit references to other sections of the Act that have not yet been commenced, until those other sections come into force.

Articles 7 and 9 make transitory modification to sections 95, 101 and 104 in order to modify references to “applicant” to “NHS foundation trust”.

Article 8 makes a transitory modification of section 98(4) of the Act which means that, until the commencement of section 81(1) of the Act, Monitor may produce guidance on matters in respect of conditions relating to the continuation of the provision of services etc. rather than being under a duty to do so. Section 81(1) of the Act concerns the requirement for health service providers to be licensed.

Article 10 makes a saving provision in respect of section 48(1)(b) and (2) of the 2006 Act, prior to any amendment made by section 166 of the Act, to ensure that Monitor continues to have sufficient powers to require information until the provisions relating to licensing requirements in section 81(1) of the Act are brought fully into force.

Article 12 makes a saving provision in respect of section 32 of the 2006 Act as regards Monitor’s general duties so that they continue to apply to its functions relating to NHS foundation trusts.

Article 13 makes a transitory modification of section 206(1) of the National Health Service (Wales) Act 2006 (2006 c. 42) in order to preserve a reference to Strategic Health Authorities in the definition of “NHS body” pending the coming into force of section 33 of the Act, which abolishes Strategic Health Authorities.

Article 14 makes transitory modifications in respect of the commencement of paragraph 43(3) of Schedule 21 to the Act to modify references in article 8(1) of the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I. 1)) pending the coming into force of other provisions in the Act relating to the establishment of the National Institute for Health and Care Excellence and the Health and Social Care Information Centre, and the abolition of NHS trusts.

Article 15 amends the Health and Social Care Act 2012 (Commencement No.2 and Transitional, Savings and Transitory Provisions) Order 2012 (S.I. 2012/1831 (C. 71)) to remove a restriction on the powers of clinical commissioning groups and the Board to enter into commissioning contracts: the effect of this is to enable them, from 1st February 2013, to enter into commissioning contracts under which services are to be provided as part of the health service on or after 1st April 2013.

A full impact assessment has not been produced for this instrument as the Order itself has no impact on the private sector or civil society organisations. A full Impact Assessment has been produced in relation to the provisions of the Act, including provisions that are commenced by the Order, and a copy is available at [http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH\\_123583](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_123583) .