



Health and Social Care Act 2012

2012 CHAPTER 7

PART 3

REGULATION OF HEALTH AND ADULT SOCIAL CARE SERVICES

CHAPTER 2

COMPETITION

76 Requirements under section 75: investigations, declarations and directions

- (1) Regulations under section 75 may confer on Monitor—
 - (a) a power to investigate a complaint that the National Health Service Commissioning Board or a clinical commissioning group has failed to comply with a requirement imposed by the regulations;
 - (b) a power to investigate on its own initiative whether the Board or a clinical commissioning group has failed to comply with a requirement imposed by virtue of section 75(1)(c);
 - (c) a power to require the Board or a clinical commissioning group to provide it with such information as Monitor may specify for the purposes of an investigation it carries out by virtue of paragraph (a) or (b);
 - (d) a power to require the Board or a clinical commissioning group to provide an explanation of such information as it provides by virtue of paragraph (c).
- (2) A power conferred by virtue of subsection (1)(a) is exercisable only where Monitor considers that the person making the complaint has sufficient interest in the arrangement to which the complaint relates.
- (3) Regulations under section 75 may confer on Monitor a power to declare that an arrangement for the provision of health care services for the purposes of the NHS is ineffective.

Status: Point in time view as at 17/06/2021. This version of this provision has been superseded.

Changes to legislation: Health and Social Care Act 2012, Section 76 is up to date with all changes known to be in force on or before 09 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (4) A power conferred by virtue of subsection (3) is exercisable only in prescribed circumstances and subject to prescribed restrictions and only where Monitor is satisfied that—
- (a) the National Health Service Commissioning Board or a clinical commissioning group has failed to comply with a requirement of regulations under section 75, and
 - (b) the failure is sufficiently serious.
- (5) On a declaration being made by virtue of subsection (3), the arrangement is void; but that does not affect—
- (a) the validity of anything done pursuant to the arrangement,
 - (b) any right acquired or liability incurred under the arrangement, or
 - (c) any proceedings or remedy in respect of such a right or liability.
- (6) Regulations under section 75 may confer on Monitor a power to direct the National Health Service Commissioning Board or a clinical commissioning group—
- (a) to put in place measures for the purpose of preventing failures to comply with requirements imposed by the regulations or mitigating the effect of such failures;
 - (b) to remedy a failure to comply with such a requirement;
 - (c) not to exercise in a prescribed manner prescribed functions in relation to arrangements for the provision of health care services;
 - (d) to vary or withdraw an invitation to tender for the provision of health care services;
 - (e) to vary an arrangement for the provision of health care services made in consequence of putting the provision of the services out to tender.
- (7) A failure to comply with a requirement imposed by regulations under section 75 which causes loss or damage is actionable, except in so far as the regulations restrict the right to bring such an action.
- (8) Regulations under section 75 may—
- (a) provide for a specified defence to such an action;
 - (b) prevent a person who has brought such an action under [^{F1}the Public Contracts Regulations 2015 (S.I. 2015/102)] [^{F2}or the Concession Contracts Regulations 2016 (S.I. 2016/273)] from bringing such an action under the regulations under section 75 in respect of the whole or part of the same loss or damage.

Textual Amendments

- F1** Words in s. 76(8)(b) substituted (26.2.2015) by [The Public Contracts Regulations 2015 \(S.I. 2015/102\)](#), reg. 1(2), **Sch. 6 para. 9**
- F2** Words in s. 76(8)(b) inserted (18.4.2016) by [The Public Procurement \(Amendments, Repeals and Revocations\) Regulations 2016 \(S.I. 2016/275\)](#), reg. 1(1), **Sch. 1 para. 9** (with reg. 5)

Modifications etc. (not altering text)

- C1** S. 76(7) excluded (1.4.2013) by [The National Health Service \(Procurement, Patient Choice and Competition\) Regulations 2013 \(S.I. 2013/257\)](#), regs. 1(1), **17** (with reg. 1(4))
- C2** S. 76(7) excluded (1.4.2013) by [The National Health Service \(Procurement, Patient Choice and Competition\) \(No. 2\) Regulations 2013 \(S.I. 2013/500\)](#), regs. 1(1), **17** (with reg. 1(4))

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Commencement Information

- I1** S. 76 partly in force; s. 76 in force for specified purposes at Royal Assent, see [s. 306\(1\)\(d\)](#)
- I2** S. 76 in force at 1.4.2013 in so far as not already in force by [S.I. 2013/160](#), [art. 2\(2\)](#) (with [arts. 7-9](#))

Status:

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