

2013 No. 671 (C. 28)

NATIONAL HEALTH SERVICE

**The Health and Social Care Act 2012 (Commencement No. 5,
Transitional, Savings and Transitory Provisions) Order 2013**

Made - - - -

19th March 2013

The Secretary of State for Health makes the following Order in exercise of the powers conferred by sections 304(10) and 306 of the Health and Social Care Act 2012(a).

Citation and interpretation

1.—(1) This Order may be cited as the Health and Social Care Act 2012 (Commencement No. 5, Transitional, Savings and Transitory Provisions) Order 2013.

(2) In this Order—

“the 2012 Act” means the Health and Social Care Act 2012; and

“the 2006 Act” means the National Health Service Act 2006(b).

Commencement of provisions

2.—(1) Insofar as they are not already in force(c), the following provisions of the 2012 Act are to come into force in accordance with this Order.

(2) Section 172(4) and (5)(b) (supplementary) come into force immediately before the coming into force of section 173 (repeal of de-authorisation provisions) in accordance with paragraph (3).

(3) 1st April 2013 is the day appointed for the coming into force of—

section 66 (matters to have regard to in exercise of functions);

section 67 (conflicts between functions);

section 68 (duty to review regulatory burdens);

section 69 (duty to carry out impact assessments);

section 74 (competition functions: supplementary);

section 81 (requirement for health service providers to be licensed), only insofar as it relates to NHS foundation trusts;

section 82 (deemed breach of requirement to be licensed);

sections 85 to 87 (application and criteria for, and grant of, licence), insofar as they relate to licences for NHS foundation trusts;

(a) 2012 c. 7.

(b) 2006 c. 41.

(c) See section 306(1) of the Health and Social Care Act 2012 (c. 7) (“the 2012 Act”) for the provisions which came into force on the day the 2012 Act was passed, and S.I. 2012/1319 (C. 47), 2012/1831 (C. 71), 2012/2657 (C. 107) and 2013/160 (C. 9) for provisions of the 2012 Act which came into force by Order on earlier dates.

section 88 (application and grant: NHS foundation trusts);
 section 89 (revocation of licence);
 section 90 (right to make representations), except subsection (1)(a);
 section 91 (notice of decisions), except subsection (1)(a);
 section 92 (appeals to the Tribunal), except subsection (1)(a);
 section 93 (register of licence holders);
 section 94 (standard conditions);
 section 95 (special conditions), except subsections (1)(b) and (6);
 section 97 (conditions: supplementary);
 section 98 (conditions relating to the continuation of the provision of services etc.);
 section 99 (notification of commissioners where continuation of services at risk);
 section 102 (modification of conditions by order under other enactments);
 section 103 (standard condition as to transparency of certain criteria), except insofar as it relates to Monitor's functions under section 100 and 101(7) of the 2012 Act;
 section 104(2)(b) and (4)(c) (power to require documents and information);
 section 105(1)(b) and (c), (2)(b) and (c) and (3) (discretionary requirements);
 section 106 (enforcement undertakings), except subsection (1)(a);
 section 108 (guidance as to use of enforcement powers);
 section 109 (publication of enforcement action);
 section 110 (notification of enforcement action);
 sections 111 to 114 (transitional provision);
 section 148 (service of documents);
 section 156(5) and (6) (annual report and forward plan);
 section 159 (authorisation), except subsection (4);
 section 163(2) and (7) to (9) (financial powers etc.);
 section 164 (goods and services);
 section 168 (mergers);
 section 169 (acquisitions);
 section 170 (separations);
 section 171 (dissolution);
 section 172 (supplementary);
 section 173 (repeal of de-authorisation provisions);
 section 289(4)(b) and (5), and section 289(1) insofar as it relates to those provisions (Care Quality Commission: duty to co-operate with Monitor); and
 in Schedule 11 (further provision about Monitor's enforcement powers)—

- (a) paragraph 1,
- (b) paragraph 2(1), (2) and (3)(a), (b), (d) and (e),
- (c) paragraph 3, except sub-paragraph (2)(c),
- (d) paragraph 4(a) and (c),
- (e) paragraphs 5 and 6,
- (f) paragraph 7(1) and (2)(b),
- (g) paragraph 8(b), and
- (h) paragraphs 9 to 14,

and section 107 insofar as it relates to those paragraphs.

(4) 1st July 2013 is the day appointed for the coming into force of—
section 95;
section 96(1)(c) (limits on Monitor’s functions to set or modify licence conditions);
section 100 (modification of standard conditions);
section 101 (modification references to the Competition Commission);
section 103;
section 105(2)(a), (4) and (5); and
section 107 and Schedule 11.

(5) Insofar as they relate to consultation under section 118 and 119 of the 2012 Act (consultation on proposals for the national tariff, and consultation: further provision) in relation to a tariff published by Monitor under section 116 of the 2012 Act (the national tariff), 1st September 2013 is the day appointed for the coming into force of—
section 120 (responses to consultation) and Schedule 12 (procedure on references under section 120);
section 121 (determination on reference under section 120);
section 122 (changes following determination on reference under section 120); and
section 123 (power to veto changes proposed under section 122).

Transitory modification in respect of the commencement of section 62 of the 2012 Act (Monitor’s general duties)

3. From 1st April 2013 until the saving provision in paragraph 10(2) of Schedule 13 to the 2012 Act (continued effect of section 32 of the 2006 Act pending the commencement of section 179 of the 2012 Act) ceases to have effect, section 32 of the 2006 Act is to be read as if—

- (a) “, 3” were omitted(a); and
- (b) at the end there were inserted “and with the performance by clinical commissioning groups of their duty under section 3(1)”(b).

Transitory modification in respect of the commencement of section 91 of the 2012 Act (notice of decisions)

4. Until section 85 of the 2012 Act comes fully into force, section 91(2) of the 2012 Act is to be read as if “the applicant or” were omitted.

Transitory modification in respect of the commencement of section 95 of the 2012 Act (special conditions)

5. From 1st April 2013 until it comes fully into force, section 95 of the 2012 Act is to be read as if—

- (a) in subsection (2)—
 - (i) “or making such modifications” were omitted,
 - (ii) in paragraph (a), “or the licence holder (as the case may be)” were omitted, and
 - (iii) in paragraph (d), “or modifications” were omitted; and
- (b) in subsection (4)(a), for “or make the modifications” to the end of paragraph (a) there were substituted “and set out its proposed effect”.

(a) Section 62 of the 2012 Act is commenced in full on 1st April 2013 by article 2(2) of S.I. 2013/160.
(b) Section 3 of the National Health Service Act 2006 (c. 41) is amended by section 13 of the 2012 Act.

Signed by authority of the Secretary of State for Health.

Earl Howe
Parliamentary Under-Secretary of State,
Department of Health

19th March 2013

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 fifth such Order to be made under the Act.

Article 2(2) brings into force section 172(4) and (5)(b) immediately before the coming into force of section 173 of the 2012 Act (which is commenced on 1st April 2013 by article 2(3)).

Article 2(2) brings into force the following provisions of the Act on 1st April 2013—

- (a) the remainder of section 66, which prescribes matters which Monitor is to have regard to in the exercise of its functions;
- (b) the remainder of sections 67 and 68 and the whole of section 69, which impose obligations on Monitor in relation to managing conflicts between its general duties and between certain of its functions, reviewing regulatory burdens and carrying out impact assessments;
- (c) the remainder of section 74, which makes supplementary provision in relation to the competition functions of Monitor;
- (d) sections 81 (partially), 82, 85 to 87 (partially), 88 (partially), 89, 90 (partially), 91 (partially), 92 (partially) and 93 which relate to the licensing of NHS foundation trusts to provide health care services for the purposes of the NHS;
- (e) sections 94 (remainder), 95 (partially), 97 (remainder), 98 (remainder), 99, 102 and 103 (partially) which relate to the conditions of licences to provide health care services for the purposes of the NHS;
- (f) section 104 (partially) which relates to Monitor’s power to require documents and information;
- (g) sections 105 (partially), 106 (partially), 108, 109 and 110 and Schedule 11 (partially) which relate to Monitor’s powers of enforcement of the licensing regime for providers of health care services for the purposes of the NHS;
- (h) sections 111 to 114 which make transitional provision in relation to the introduction of the licensing regime for providers of health care services for the purposes of the NHS as it applies to NHS foundation trusts;
- (i) the remainder of section 148 which relates to the service of documents under Part 3 of the Act;
- (j) sections 156 (partially), 159 (partially), 163 (partially), 164 (remainder), 168 to 171, 172 (remainder) and 173 (remainder) which relate to NHS foundation trusts; and
- (k) section 289 (partially), which amends section 70 of the Health and Social Care Act 2008 (c. 14) to make changes to the duty of co-operation between the Care Quality Commission and Monitor.

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

- (a) sections 95 (remainder), 96 (partially), 100 (remainder), 101 (remainder) and 103 (remainder) which relate to the conditions of licences to provide health care services for the purposes of the NHS; and
- (b) section 105 (partially) and the remainder of section 107 and Schedule 11 which relate to Monitor’s powers of enforcement of the licensing regime for providers of health care services for the purposes of the NHS.

Article 2(5) brings into force, on 1st September 2013, sections 120 to 123 of the Act and Schedule 12 to the Act, which relate to Monitor’s functions in relation to the pricing of health care services for the purposes of the NHS, insofar as they relate to consultation on a tariff to be published by Monitor under section 116 of the Act.

Article 3 makes transitory modification to section 32 of the National Health Service Act 2006 (c. 41), which by virtue of paragraph 10(2) of Schedule 13 to the Act continues to have effect until the commencement of section 179 of the Act (abolition of NHS trusts in England), as from 1st April 2013 section 3 of the National Health Service Act 2006 (relating to the provision of certain health services) will place duties on clinical commissioning groups instead of the Secretary of State.

Article 4 makes transitory modification to section 91(2) of the Act in order to omit references to “applicant” until section 85 of the Act (application for licence) comes fully into force.

Article 5 makes transitory modifications to section 95 of the Act (special conditions) from 1st April 2013 to the time that it comes fully into force, as the power to modify a special condition of a licence will not apply until section 95 comes fully into force.

A full impact assessment has not been produced for this instrument as this 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 this Order, and a copy is available at http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_123583.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

The following provisions of the Health and Social Care Act 2012 have been brought into force by commencement orders made before the date of this Order:

| <i>Provision</i> | <i>Date of Commencement</i> | <i>S.I. No.</i> |
|------------------------|-----------------------------|-----------------|
| Section 1 (partially) | 1st October 2012 | S.I. 2012/1831 |
| Section 1 (remainder) | 1st April 2013 | S.I. 2013/160 |
| Sections 2 to 7 | 1st April 2013 | S.I. 2013/160 |
| Section 8 | 1st June 2012 | S.I. 2012/1319 |
| Section 9 (partially) | 1st October 2012 | S.I. 2012/1831 |
| | 1st February 2013 | S.I. 2012/2657 |
| Section 9 (remainder) | 1st April 2013 | S.I. 2013/160 |
| Section 10 (partially) | 1st October 2012 | S.I. 2012/1831 |
| | 1st February 2013 | S.I. 2012/2657 |
| Section 10 (remainder) | 1st April 2013 | S.I. 2013/160 |
| Sections 11 and 12 | 1st April 2013 | S.I. 2013/160 |
| Section 13 (partially) | 1st February 2013 | S.I. 2012/2657 |
| Section 13 (remainder) | 1st April 2013 | S.I. 2013/160 |
| Section 14 (partially) | 1st February 2013 | S.I. 2012/2657 |
| Section 14 (remainder) | 1st April 2013 | S.I. 2013/160 |
| Section 15 | 1st February 2012 | S.I. 2012/2657 |
| Section 16 | 1st April 2013 | S.I. 2013/160 |
| Section 17 (partially) | 1st October 2012 | S.I. 2012/1831 |
| | 1st February 2013 | S.I. 2012/2657 |
| Section 17 (remainder) | 1st April 2013 | S.I. 2013/160 |
| Sections 18 and 19 | 1st April 2013 | S.I. 2013/160 |
| Section 20 | 1st February 2013 | S.I. 2012/2657 |
| Section 21 | 1st October 2012 | S.I. 2012/1831 |

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|---|-------------------|----------------|
| Section 22 (partially) | 1st October 2012 | S.I. 2012/1831 |
| Section 22 (remainder) | 1st April 2013 | S.I. 2013/160 |
| Section 23 (partially) | 1st October 2012 | S.I. 2012/1831 |
| | 1st February 2013 | S.I. 2012/2657 |
| Section 23 (remainder) | 1st April 2013 | S.I. 2013/160 |
| Section 24 (partially) | 1st October 2012 | S.I. 2012/1831 |
| Section 24 (remainder) | 1st April 2013 | S.I. 2013/160 |
| Section 25 (partially) | 1st October 2012 | S.I. 2012/1831 |
| Section 25 (remainder) | 1st April 2013 | S.I. 2013/160 |
| Section 26 (partially) | 1st October 2012 | S.I. 2012/1831 |
| | 1st February 2013 | S.I. 2012/2657 |
| Section 26 (remainder) | 1st April 2013 | S.I. 2013/160 |
| Section 27 (partially) | 1st October 2012 | S.I. 2012/1831 |
| Section 27 (remainder) | 1st April 2013 | S.I. 2013/160 |
| Section 28 | 1st April 2013 | S.I. 2013/160 |
| Section 29 to 34 | 1st April 2013 | S.I. 2013/160 |
| Section 35 (partially), in relation to England only | 1st April 2013 | S.I. 2013/160 |
| Section 36 (partially), in relation to England only | 1st April 2013 | S.I. 2013/160 |
| Section 37 (partially), in relation to England only | 1st April 2013 | S.I. 2013/160 |
| Section 38 | 1st April 2013 | S.I. 2013/160 |
| Section 39 | 1st July 2012 | S.I. 2012/1319 |
| Section 40 (partially) | 1st February 2013 | S.I. 2012/2657 |
| Section 40 (remainder) | 1st April 2013 | S.I. 2013/160 |
| Section 41 | 1st April 2013 | S.I. 2013/160 |
| Section 42 | 1st July 2012 | S.I. 2012/1319 |
| Section 43 | 1st April 2013 | S.I. 2013/160 |
| Section 44 | 1st July 2012 | S.I. 2012/1319 |
| Sections 45 to 54 | 1st April 2013 | S.I. 2013/160 |
| Section 55 (partially) | 1st July 2012 | S.I. 2012/1319 |
| | 1st October 2012 | S.I. 2012/1831 |
| | 1st February 2013 | S.I. 2012/2657 |
| | 1st April 2013 | S.I. 2013/160 |
| Section 56 to 58 | 1st April 2013 | S.I. 2013/160 |
| Section 59 | 1st July 2012 | S.I. 2012/1319 |
| Section 60 | 1st April 2013 | S.I. 2013/160 |
| Section 61 (partially) | 1st July 2012 | S.I. 2012/1319 |
| Section 61 (remainder) | 1st November 2012 | S.I. 2012/2657 |
| Section 62 (partially) | 1st November 2012 | S.I. 2012/2657 |
| Section 62 (remainder) | 1st April 2013 | S.I. 2013/160 |
| Section 63 | 1st November 2012 | S.I. 2012/2657 |
| Section 64 (partially) | 1st June 2012 | S.I. 2012/1319 |
| | 1st July 2012 | S.I. 2012/1319 |
| Section 64 (remainder) | 1st November 2012 | S.I. 2012/2657 |
| Section 66 (partially) | 1st November 2012 | S.I. 2012/2657 |
| Section 67 (partially) | 1st November 2012 | S.I. 2012/2657 |
| Section 68 (partially) | 1st November 2012 | S.I. 2012/2657 |
| Section 70 | 1st November 2012 | S.I. 2012/2657 |
| Section 71 | 1st November 2012 | S.I. 2012/2657 |
| Sections 72 and 73 | 1st April 2013 | S.I. 2013/160 |
| Section 74 (partially) | 1st April 2013 | S.I. 2013/160 |

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| Sections 75 to 77 | 1st April 2013 | S.I. 2013/160 |
| Section 78 | 1st February 2013 | S.I. 2012/2657 |
| Section 79 | 1st July 2012 | S.I. 2012/1319 |
| Section 80 | 1st April 2013 | S.I. 2013/160 |
| Section 94 (partially) | 1st November 2012 | S.I. 2012/2657 |
| Section 95 (partially) | 1st November 2012 | S.I. 2012/2657 |
| Section 96 (partially) | 1st November 2012 | S.I. 2012/2657 |
| Section 97 (partially) | 1st November 2012 | S.I. 2012/2657 |
| Section 98 (partially) | 1st November 2012 | S.I. 2012/2657 |
| Section 101 (partially) | 1st November 2012 | S.I. 2012/2657 |
| Section 103 (partially) | 1st November 2012 | S.I. 2012/2657 |
| Section 104 (partially) | 1st November 2012 | S.I. 2012/2657 |
| | 1st April 2013 | S.I. 2013/160 |
| Section 108 (partially) | 1st November 2012 | S.I. 2012/2657 |
| Section 116 (partially) | 1st April 2013 | S.I. 2013/160 |
| Section 117 (partially) | 1st April 2013 | S.I. 2013/160 |
| Section 118 (partially) | 1st April 2013 | S.I. 2013/160 |
| Section 119 (partially) | 1st April 2013 | S.I. 2013/160 |
| Section 144 (partially) | 1st November 2012 | S.I. 2012/2657 |
| Section 147 (partially) | 1st October 2012 | S.I. 2012/1831 |
| Section 147 (remainder) | 1st April 2013 | S.I. 2013/160 |
| Section 148 (partially) | 1st November 2012 | S.I. 2012/2657 |
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| | 1st April 2013 | S.I. 2013/160 |
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| Section 154 | 1st October 2012 | S.I. 2012/1831 |
| Section 156 (partially) | 1st November 2012 | S.I. 2012/2657 |
| Section 157 | 1st April 2013 | S.I. 2013/160 |
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| Section 160 | 1st July 2012 | S.I. 2012/1319 |
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| Section 163 (partially) | 1st April 2013 | S.I. 2013/160 |
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| Section 165 | 1st October 2012 | S.I. 2012/1831 |
| Section 166 | 1st November 2012 | S.I. 2012/2657 |
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| Section 173 (partially) | 1st November 2012 | S.I. 2012/2657 |
| Sections 174 to 178 | 1st November 2012 | S.I. 2012/2657 |
| Section 181 (partially) | 1st October 2012 | S.I. 2012/1831 |
| Section 181 (remainder) | 1st April 2013 | S.I. 2013/160 |
| Sections 182 to 200 | 1st April 2013 | S.I. 2013/160 |
| Section 201 | 1st July 2012 | S.I. 2012/1319 |
| Sections 202 to 206 | 1st April 2013 | S.I. 2013/160 |
| Section 207 (partially) | 1st July 2012 | S.I. 2012/1319 |
| Section 207 (remainder) | 1st April 2013 | S.I. 2013/160 |
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| Section 212 (partially) | 1st October 2012 | S.I. 2012/1831 |
| Section 212 (remainder) | 1st August 2012 | S.I. 2012/1319 |
| Sections 213 to 218 | 1st August 2012 | S.I. 2012/1319 |

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| Sections 220 and 221 | 1st August 2012 | S.I. 2012/1319 |
| Section 222 | 1st December 2012 | S.I. 2012/2657 |
| Section 223 (partially) | 1st August 2012 | S.I. 2012/1319 |
| | 1st October 2012 | S.I. 2012/1831 |
| Section 226 (partially) | 1st December 2012 | S.I. 2012/2657 |
| Section 227 | 1st July 2012 | S.I. 2012/1319 |
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| Section 230 (partially) | 1st August 2012 | S.I. 2012/1319 |
| Section 230 (remainder) | 1st December 2012 | S.I. 2012/2657 |
| Section 231 | 1st July 2012 | S.I. 2012/1319 |
| Sections 232 to 277 | 1st April 2013 | S.I. 2013/160 |
| Section 278 | 1st July 2012 | S.I. 2012/1319 |
| Section 279 | 31st October 2012 | S.I. 2012/1831 |
| Section 280 | 1st April 2013 | S.I. 2013/160 |
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| Section 290 (partially) | 1st October 2012 | S.I. 2012/1831 |
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| Sections 300 to 302 (partially) | 1st July 2012 | S.I. 2012/1319 |
| | 1st October 2012 | S.I. 2012/1831 |
| Sections 300 to 302 (remainder) | 1st April 2013 | S.I. 2013/160 |
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| Schedule 2 (partially) | 1st October 2012 | S.I. 2012/1831 |
| Schedule 2 (remainder) | 1st April 2013 | S.I. 2013/160 |
| Schedule 3 | 1st April 2013 | S.I. 2013/160 |
| Schedule 4 (partially) | 1st July 2012 | S.I. 2012/1319 |
| | 1st October 2012 | S.I. 2012/1831 |
| | 1st February 2013 | S.I. 2012/2657 |
| Schedule 4 (remainder) | 1st April 2013 | S.I. 2013/160 |
| Schedule 5 (partially) | 1st October 2012 | S.I. 2012/1831 |
| | 1st April 2013 | S.I. 2013/160 |
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| | 1st October 2012 | S.I. 2012/1831 |
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| Schedule 10 | 1st November 2012 | S.I. 2012/2657 |
| Schedule 13 (partially) | 1st July 2012 | S.I. 2012/1319 |

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| | 1st November 2012 | S.I. 2012/2657 |
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| Schedule 21 (partially) | 1st February 2013 | S.I. 2012/2657 |
| | 1st April 2013 | S.I. 2013/160 |
| Schedules 22 and 23 (partially) | 1st July 2012 | S.I. 2012/1319 |
| | 1st October 2012 | S.I. 2012/1831 |
| Schedules 22 and 23 (remainder) | 1st April 2013 | S.I. 2013/160 |

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STATUTORY INSTRUMENTS

2013 No. 671 (C. 28)

NATIONAL HEALTH SERVICE

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