Draft Order laid before Parliament under section 304(5)(c) of the Health and Social Care Act 2012, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2013 No.

NATIONAL HEALTH SERVICE, ENGLAND

The National Health Service (Approval of Licensing Criteria) Order 2013

Made - - - - ***

Coming into force in accordance with article 1

The Secretary of State for Health, in exercise of the powers conferred by section 86(3) of the Health and Social Care Act 2012(**a**), makes the following Order.

A draft of this Order was laid before Parliament in accordance with section 304(5)(c) of the Health and Social Care Act 2012, and was approved by resolution of each House of Parliament.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the National Health Service (Approval of Licensing Criteria) Order 2013 and comes into force immediately after section 86 (licensing criteria) of the 2012 Act comes fully into force (**b**).

(2) In this Order, the "2012 Act" means the Health and Social Care Act 2012.

Approval of criteria

2. For the purposes of section 86(3) of the 2012 Act, the Secretary of State approves the criteria listed in the Schedule as the criteria which Monitor must set and publish (criteria for granting a licence under Chapter 3 of Part 3 of that Act).

Signed by authority of the Secretary of State for Health

Name
Parliamentary Under-Secretary of State
Department of Health

Date

(**a**) 2012 c.7.
(**b**) Section 86 was commenced for limited purposes by section 306(1)(d) of the Health and Social Care Act 2012 and article 2(3) of the Health and Social Care Act 2012 (Commencement No.5, Transitional, Savings and Transitory Provisions) Order 2013 (S.I. 2013/671 (C.28)).

SCHEDULE

Article 2

Licensing criteria

The criteria to be set by Monitor for the purposes of granting a licence to a person under Chapter 3 of Part 3 of the Health and Social Care Act 2012 are specified below.

Criterion 1: requirement in relation to registration with the Care Quality Commission

1.—(1) The criterion in sub-paragraph (2) only applies in the case where a person, in providing a health care service for the purposes of the NHS(**a**), is, or on the grant of a licence would be, carrying on a regulated activity within the meaning of Chapter 2 of Part 1 (the Care Quality Commission) of the Health and Social Care Act 2008 ("the 2008 Act")(**b**).

(2) A person—

(a) must be registered with the Care Quality Commission in accordance with Chapter 2 (registration in respect of provision of health or social care) of Part 1 of the 2008 Act in respect of the carrying on of that regulated activity; or

(b) must have made an application pursuant to arrangements referred to in section 288(2)(b) (Monitor: duty to co-operate with Care Quality Commission) of the Health and Social Care Act 2012 and the Care Quality Commission has informed Monitor that the person will be registered with the Care Quality Commission in accordance with Chapter 2 of Part 1 of the 2008 Act in respect of the carrying on of that regulated activity at the date on which the licence is to be granted.

Criterion 2: requirement in relation to provider fitness

2.—(1) In this paragraph—

"1986 Act" means the Insolvency Act 1986(**c**);

"director" includes any individual who performs the functions of, or functions equivalent or similar to the functions of, a director of an NHS foundation trust, as conferred by any enactment(**d**), or of a company registered under the Companies Act 2006(**e**);

"governor" includes any individual who performs any of the functions of, or functions equivalent or similar to the functions of, a governor of an NHS foundation trust, as conferred by any enactment;

"parent body", in relation to a body corporate ("A"), means another body corporate which is the parent undertaking of A within the meaning of section 1162 (parent and subsidiary undertakings) of the Companies Act 2006; and

the reference to any "individual who performs any of the functions of, or functions equivalent or similar to the functions of" in the meaning given to "director" and "governor" includes a partner in a partnership.

(2) A person who provides a health care service for the purposes of the NHS and is required to hold a licence in accordance with section 81 (requirement for health service providers to be licensed) of the Health and Social Care Act 2012 and regulations made under that section, must meet the criterion of being fit to hold such a licence.

(3) A person ("B") meets the criterion referred to in sub-paragraph (2) if—

(**a**) See section 64(3) and (4) of the Health and Social Care Act 2012 ("2012 Act") for the meaning of "health care services" and "the NHS".

(**b**) 2008 c.14. Relevant amendments are made to Part 1 of the 2008 Act by sections 55(2) and 289 of, and Schedule 5 to, the 2012 Act. The Care Quality Commission is established by section 1 of the 2008 Act.

(**c**) 1986 c.45.

(**d**) See section 150(1) of the 2012 Act for the meaning of "enactment".

(**e**) 2006 c.46.

(a) in the case where B is an individual, B does not fall within the description of an unfit person in sub-paragraph (4)(a); and

(b) in the case where B is not an individual—

(i) no director or governor of B falls within the description of an unfit person in sub-paragraph (4)(a); and

(ii) where any director or governor of B is a body corporate, none of the directors or governors of that body or its parent body (if it has a parent body) fall within the description of an unfit person in sub-paragraph (4)(a) and that body does not fall within the description of an unfit person in sub-paragraph (4)(b).

(4) A person is an unfit person if—

(a) in the case of an individual—

(i) that person is a person who has been adjudged bankrupt, or whose estate has been sequestrated, and (in either case) the bankruptcy or sequestration has not been discharged or the bankruptcy order has not been annulled;

(ii) that person is a person in relation to whom a moratorium period under a debt relief order applies under Part VIIA (debt relief orders) of the 1986 Act(**a**);

(iii) that person is a person who has made a composition or arrangement with, or granted a trust deed for, that person's creditors and has not been discharged in respect of that composition, arrangement or deed;

(iv) within the preceding 5 years ending on the date the application for a licence is made, that person has been convicted in the British Islands of any offence and a sentence of imprisonment (whether suspended or not) for a period of not less than 3 months (without the option of a fine) was imposed on that person; or

(v) that person is subject to a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986(**b**); and

(b) in the case of a body corporate—

(i) that body or its parent body (if it has a parent body) is subject to a proposal for a voluntary arrangement made in accordance with section 1 (those who may propose an arrangement) of the 1986 Act(**c**);

(ii) a receiver, including an administrative receiver (within the meaning of section 29(2) (definitions) of the 1986 Act) has been appointed for the whole or any material part of that body's or its parent body's (if it has a parent body) property or undertaking;

(iii) an administrator has been appointed in respect of that body or its parent body (if it has a parent body), to manage its affairs, business and property in accordance with section 8 of, and Schedule B1 (administration) to, the 1986 Act(**d**); or

(iv) that body or its parent body (if it has a parent body) has passed a resolution for winding up or is subject to an order of the High Court for winding up under Part IV (winding up of companies registered under the Companies Acts) of the 1986 Act.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision in relation to the licensing of providers of a health care service for the purposes of the NHS under Chapter 3 of Part 3 of the Health and Social Care Act 2012 ("the 2012 Act") (Monitor: licensing).

(**a**) Part 7A is inserted by section 108 of, and Schedule 17 to, the Tribunals, Courts and Enforcement Act 2007 (c.15).
(**b**) 1986 c.46.
(**c**) Section 1 is amended by section 248 of, and Schedule 17 to, the Enterprise Act 2002 (c.40); section 2 of, and Schedule 2 to, the Insolvency Act 2000 (c.39); and S.Is 2002/1240, 2005/879 and 2009/1941.
(**d**) Section 8 and Schedule B1 is inserted by section 248 of, and Schedule 16 to, the Enterprise Act 2002.

Article 2 makes provision in respect of the approval by the Secretary of State of the criteria which Monitor must set and publish and which must be met by a person in order for that person to be granted a licence under Chapter 3 of Part 3 of the 2012 Act. The Schedule sets out the criteria which Monitor has set and which the Secretary of State has approved.

A full impact assessment has not been produced for this instrument.

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