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

DRAFT STATUTORY INSTRUMENTS

2013 No.

NATIONAL HEALTH SERVICE, ENGLAND

The National Health Service (Licence Exemptions, etc.) Regulations 2013

Made - - - -	*2013*
Coming into force - -	*1st April 2014*

The Secretary of State for Health makes the following Regulations in exercise of the powers conferred by sections 81(2), 83, 150(1) and 304(9) and (10) of the Health and Social Care Act 2012(**1**).

In accordance with section 83(4) to (7) of that Act, the Secretary of State has given notice to Monitor, the National Health Service Commissioning Board, and the Care Quality Commission and its Healthwatch England committee and published that notice.

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

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Health Service (Licence Exemptions, etc.) Regulations 2013 and come into force on 1st April 2014.

(2) In these Regulations—

"the 2006 Act" means the National Health Service Act 2006(**2**);

"the 2012 Act" means the Health and Social Care Act 2012;

"applicable turnover" means—

(a) the amounts, calculated in conformity with accounting practices and principles which are generally accepted in England, which are derived by a person from the provision of health care services for the purposes of the NHS(**3**), after deduction of trade discounts, value added tax and other taxes based on such amounts,

(**1**) 2012 c. 7. *See* section 150(1) of the Health and Social Care Act 2012 ("the 2012 Act") for the meaning of "prescribed".
(**2**) 2006 c. 41.
(**3**) *See* section 64(3) and (4) of the 2012 Act for the meaning of "health care services" and "the NHS".

(b) less turnover from providing medical services under Part 4 of the 2006 Act or dental services under Part 5 of that Act, and

(c) before 1st April 2015, less turnover from providing NHS Continuing Healthcare or NHS funded nursing care;

"business year" means a period of more than 6 months in respect of which a person who provides health care services for the purposes of the NHS or, if applicable, the business of which that person forms part, prepares or is required to prepare accounts;

"NHS Continuing Healthcare" means a package of care arranged and funded solely through the NHS for an individual aged 18 or over who has been assessed as having a primary health need, where such care is provided to meet physical or mental health needs which have arisen as a result of disability, accident or illness;

"NHS funded nursing care" means nursing care provided by a registered nurse which is funded by the NHS to support the provision in a home providing such care; and

"nursing care provided by a registered nurse" means any services provided by a registered nurse where such services involve—

(a) the provision of care, or

(b) the planning, supervision or delegation of the provision of care,

other than any services which, having regard to their nature and the circumstances in which they are provided, do not need to be provided by a registered nurse.

(3) Where a person's business consists of two or more parts that each prepare accounts, the applicable turnover is to be calculated by adding together the applicable turnover of each of those parts, save that no account is to be taken of any turnover resulting from the supply of services by one part to another.

Persons to be regarded as the person who provides a health care service

2.—(1) This regulation applies for the purposes of determining, in relation to a health care service provided by two or more persons acting in different capacities, which of those persons is providing the health care service for the purposes of Chapter 3 of Part 3 of the 2012 Act (Monitor: licensing).

(2) A person (A) is to be regarded as the person providing a health care service where that service is provided by A and one or more other persons who are—

(a) individuals, and

(b) employees of A for the purposes of providing that service.

(3) For the purposes of paragraph (2), a person is an employee of A where that person—

(a) is employed by A under a contract of service, an apprenticeship, a contract for services or otherwise than under a contract, or

(b) has been granted practising privileges by A.

(4) In paragraph (3)(a), the reference to "otherwise than under a contract" includes an agreement between A and a temporary work agency for the supply of an agency worker to A.

(5) Except where paragraph (2) applies, both a person (B) and another person (C) are to be regarded as the person who provides the health care service where—

(a) B has contracted with the National Health Service Commissioning Board(**4**) or a clinical commissioning group(**5**) to provide that service, and

(**4**) The National Health Service Commissioning Board is established by section 1H of the National Health Service Act 2006 (c. 41) ("the 2006 Act"). Section 1H is inserted by section 9(1) of the 2012 Act.

(b) C provides that service under arrangements made between B and C.

(6) In this regulation—

"agency worker" and "temporary work agency" have the same meaning as in the Agency Workers Regulations 2010(**6**); and

"practising privileges" means the grant by A to a registered medical practitioner of permission to practise as a medical practitioner in a hospital (as defined in section 275 of the 2006 Act) managed by A.

Exemptions from the requirement under section 81(1) of the 2012 Act to hold a licence: application to NHS foundation trusts

3. Insofar as they could apply, none of the exemptions granted under these Regulations is to apply to an NHS foundation trust.

Exemption from the requirement to hold a licence: NHS trusts

4. An NHS trust established under section 25 of the 2006 Act is exempt from the requirement to hold a licence.

Exemption from the requirement to hold a licence: primary medical and dental services

5. A person is exempt from the requirement to hold a licence to the extent that the health care services provided by that person for the purposes of the NHS are—

(a) medical services provided under Part 4 of the 2006 Act (primary medical services), or

(b) dental services provided under Part 5 of the 2006 Act (primary dental services).

Exemption from the requirement to hold a licence: NHS Continuing Healthcare and NHS funded nursing care

6.—(1) A person is exempt from the requirement to hold a licence to the extent that the health care services provided by that person for the purposes of the NHS are NHS Continuing Healthcare or NHS funded nursing care.

(2) Paragraph (1) ceases to have effect after 31st March 2015.

Exemption from the requirement to hold a licence: activities not required to be registered with Care Quality Commission

7.—(1) A person who provides health care services for the purposes of the NHS is exempt from the requirement to hold a licence if the provision of such services is not a regulated activity for the purposes of registration with the Care Quality Commission under Chapter 2 of Part 1 of the Health and Social Care Act 2008(**7**) (registration in respect of provision of health care).

(2) The exemption granted to a person under paragraph (1) is withdrawn at the same time as that person is required, in respect of the provision of any one or more of the health care services provided by them for the purposes of the NHS, to be registered under Chapter 2 of Part 1 of the Health and Social Care Act 2008.

(**5**) A clinical commissioning group is a body established under section 14D of the 2006 Act. Section 14D is inserted by section 25(1) of the 2012 Act. *See also* section 1I of the 2006 Act, inserted by section 10 of the 2012 Act.
(**6**) S.I. 2010/93. Relevant amendments were made by S.I. 2011/1941.
(**7**) 2008 c. 14.