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

DRAFT STATUTORY INSTRUMENTS

2013 No. 0000

NATIONAL HEALTH SERVICE, ENGLAND

The National Health Service (Licensing and Pricing) Regulations 2013

Made - - - - 2013

Coming into force in accordance with regulation 1(1)

The Secretary of State for Health makes the following Regulations in exercise of the powers conferred by sections 100(7) to (9), 105(4), 118(14)(b), 120(2) and (6), 150(1) and 304(9) and (10) of the Health and Social Care Act 2012(**1**).

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

PART 1

General

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Health Service (Licensing and Pricing) Regulations 2013, and come into force on the day after the day on which these Regulations are made.

(2) In these Regulations—

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

"business year" means—

(a) in relation to an NHS foundation trust or an NHS trust, a financial year(**2**); and

(**1**) 2012 c. 7. *See* section 150(1) of the Health and Social Care Act 2012 ("the Act") for the meaning of "prescribed".
(**2**) *See* section 150(1) of the Act for the meaning of "financial year".

(b) in relation to any other person who provides health care services for the purposes of the NHS(**3**), a period of more than six months in respect of which that person or, if applicable, the business of which it forms part, prepares or is required to prepare accounts;

"relevant year" means—

(a) for the purposes of regulation 2, the last complete financial year preceding the date on which Monitor publishes a notice under section 100(2) of the Act (modification of standard conditions), or, where figures are not available for that financial year, the one immediately preceding it; and

(b) for the purposes of regulation 5, the last complete financial year preceding the date on which Monitor publishes a notice under section 118(2) of the Act (consultation on proposals for the national tariff), or, where figures are not available for that financial year, the one immediately preceding it.

PART 2

Licensing

Licence modifications

2.—(1) The percentage prescribed for the purposes of section 100(7)(b) of the Act (modification of standard conditions - "objection percentage") is 20 per cent.

(2) The percentage prescribed for the purposes of section 100(7)(c) of the Act ("share of supply percentage") is 20 per cent.

(3) The services prescribed for the purposes of section 100(8)(b) of the Act (meaning of "share of supply percentage") are health care services for the purposes of the NHS provided by relevant licence holders(**4**).

(4) For the purposes of section 100(7)(c) of the Act, a relevant licence holder's share of supply is the proportion (expressed as a percentage) of the total income received by relevant licence holders for the provision by them of health care services for the purposes of the NHS for the relevant year which is—

(a) received by that licence holder, and

(b) attributable to services provided by that licence holder—

(i) during that financial year, or

(ii) during that financial year and a following financial year where payment for the provision of the services becomes payable at the time that such provision first commences.

Calculation of turnover for the purposes of section 105(4) of the Act

3.—(1) For the purposes of section 105(4) of the Act (maximum amount of a variable monetary penalty), the turnover of a person (other than the National Health Service Commissioning Board or a clinical commissioning group) on whom a variable monetary penalty is imposed (P) is to be the applicable turnover in England—

(**3**) *See* section 64(3) and (4) of the Act for the meaning of "health care services" and "the NHS".
(**4**) *See* section 100(11) of the Act for the meaning of "relevant licence holder".

(a) during the business year preceding the date on which Monitor gives notice of a proposed variable monetary penalty to P under paragraph 1(1) of Schedule 11 to the Act (procedure for discretionary requirements); or

(b) if figures are not available for that business year, the one immediately preceding it.

(2) Where the business year preceding the date of the notice is more or less than 12 months, the turnover is to be the applicable turnover in that business year divided by the number of months in that business year and multiplied by 12.

(3) Where there is no preceding business year, the turnover is to be the applicable turnover of P for the period of 12 months ending on the last day of the month preceding the month in which the date of the notice falls.

(4) Where in the application of paragraph (3) the period for which P has applicable turnover is less than 12 months, the turnover is to be the applicable turnover in that period divided by the number of months in that period and multiplied by 12.

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

(6) In this regulation—

"applicable turnover" means the amounts, calculated in conformity with accounting practices and principles which are generally accepted in England, which are derived by P from the provision of health care services for the purposes of the NHS (whether or not a licence is required to provide such services), after deduction of trade discounts, value added tax and other taxes based on such amounts.

Calculation of turnover for the purposes of section 105(4) of the Act: NHS Commissioning Board and clinical commissioning groups

4.—(1) For the purposes of section 105(4) of the Act, the turnover of the National Health Service Commissioning Board or of a clinical commissioning group is to be the revenue resource use by the Board or the group—

(a) during the financial year preceding the date on which Monitor gives notice of a proposed variable monetary penalty to the Board or that group (as the case may be) under paragraph 1(1) of Schedule 11 to the Act (procedure for discretionary requirements); or

(b) if figures are not available for that financial year, the one immediately preceding it.

(2) Where the period during the preceding financial year for which the Board or a group has revenue resource use is less than 12 months, the turnover is to be the revenue resource use in that period divided by the number of months in that period and multiplied by 12.

(3) Where there is no preceding financial year for a group, the turnover is to be the revenue resource use of the group in the relevant period, divided by the number of months in that period and multiplied by 12.

(4) In this regulation—

"relevant period" means the period in the financial year in which the date of the notice falls ending on the last day of the month preceding the month in which that date falls;

"revenue resource use" means the expenditure of the Board or a clinical commissioning group which is attributable to the matters relating to administration prescribed in regulation 57