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# **Protecting and promoting patients' interests – licensing providers of NHS services**

*Your response to the consultation*

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# Protecting and promoting patients' interests – licensing providers of NHS services

*Your response to the consultation*

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# Background

This document should be read in conjunction with the document entitled “Protecting and promoting patients' interests – licensing providers of NHS services– a consultation on the proposals’. The Department of Health has launched a public consultation on the proposed regulations on Licensing of health providers and invites you to respond.

The Licensing consultation is about:

- who will need to hold a licence from a Monitor;
- the circumstances in which providers who are licensed can have a say in any changes to the standard conditions in their licence;
- the fines Monitor will be able to impose if a provider breaches its licence conditions, delivers services without a licence or fails to supply Monitor with required information.

Please return your responses, no later than **Monday 22 October 2012** to:

By email: [Licensing.Exemptions@DH.gsi.gov.uk](mailto:Licensing.Exemptions@DH.gsi.gov.uk) with the subject ‘Licensing Exemptions Consultation’.

By post to:

Licensing Consultation  
Department of Health  
Room 235 Richmond House  
79 Whitehall  
London SW1A 2NS

Many thanks for your response to this consultation. Please note that responses may be made public unless you state otherwise.

# Personal Details

Organisation(s) represented: Cotswold Care Hospice

## NHS trusts

**Question 1: Do you think NHS trusts should be exempt from the requirement to hold a licence, but expected to meet equivalent requirements to those in the general, pricing (where appropriate), choice and competition and integrated care sectors of Monitor's licence?**

Yes

No

**Question 2: Is there anything you want to add?**

If licensing is to be applied to be applied to organisations that receive DH funding to provide health services, it should apply to all organisations, unless exempted due to their small size.

## Private and voluntary providers of hospital and community services

**Question 3: Do you agree that it is not appropriate to license small and micro providers of NHS funded services, at this stage, pending further review of costs and benefits?**

Do you agree?  Yes

No, proceed to question 7.

**Question 4: If so, do you agree that providers of NHS services with fewer than 50 employees (FTEs) and income from the provision of NHS hospital and community healthcare services of less than £10 million should be exempt from the requirement to hold a licence?**

Do you agree?  Yes, proceed to question 7  No

**Question 5: Alternatively, do you think a *de minimis* threshold based on a provider fulfilling one of the two conditions would be more appropriate (eg. <50 staff (WTEs) or <£10m turnover)?**

Yes

No, proceed to question 6

**If so, which?**

<50 Staff (WTEs)

<£10m turnover

**Question 6: If not, on what basis should small and micro providers be exempt?**

This clause should be 'or' not 'and' but there needs to be greater clarity on the number of employees clause.

Firstly, employees should be specified in relation to the provision of NHS hospital and community healthcare services, not overall workforce; our charity employs over 100 WTE but this includes retail staff, fundraisers etc, not just care staff, so this would slow our results.

Secondly, many of our care staff are employed flexibly on a zero hours 'bank' contract and guidance would be required as to the method to calculate WTE. For example, should overall hours worked in the organisation per week be divided by 37.5 to derive WTE, as many of our staff work only one or two days per week?

**Question 7: Is there anything you want to add?**

We agree with the cost/benefit trade off in principle as a method of determining the threshold for licensing of small and micro organisations. However, both the costs and benefits of licensing are unknown at this stage and may duplicate provisions and safeguards already provided via the Care Quality Commission and the Charity Commission, both of which regulate our sector.

## Family Health Services

**Question 8: Do you agree that providers of primary medical services and primary dental services under contracts with the NHS Commissioning Board should initially be exempt from the requirement to hold a licence from Monitor?**

**Do you agree?**

Yes

No

**Question 9: Is there anything you want to add?**

If licensing is to be applied to be applied to organisations that receive DH funding to provide health services, it should apply to all organisations, unless exempted due to their small size.

## Adult social care

**Question 10: Do you think providers of adult social care who also provide NHS services should be required to hold a licence, unless they fall below a *de minimis* threshold?**

Yes

No, proceed to question 15

**Question 11: If so, do you think that threshold should be fewer than 50 employees (FTEs) and income from the provision of NHS hospital and community healthcare services of less than £10 million?**

Yes

No, proceed to question 13

**Question 12: Alternatively, do you think a *de minimis* threshold based on an adult social care provider fulfilling one of the two conditions would be more appropriate (ie <50 staff (FTEs) or <£10m turnover)?**

Yes

No

If so, which?

<50 Staff (FTEs)

<£10m Turnover

**Question 13: Do you know of any adult social care providers who also provide NHS services who would not fall below this specific *de minimis* threshold?**

**Option 1: For fewer than 50 employees and income <£10m?**

Yes

No

**Option 2: For fewer than 50 employees only?**

Yes

No

**Option 3: For income <£10m only?**

Yes

No

If yes to any of the above, please provide details:



**Question 14: If you think there should be a different *de minimis* threshold, what is that threshold?**

This clause should be 'or' not 'and' but there needs to be greater clarity on the number of employees clause (see Q6 above).

**Question 15: Is there anything you want to add?**

No

**Objection percentage threshold**

**Question 16: Do you think a 20% threshold would be suitable for the standard condition modification objection percentage?**

**Yes**

**No**

**Question 17: If not, what figure do you think would be suitable?**

N/A

**Question 18: Is there anything you want to add?**

No

**Share of supply objection percentage**

**Question 19: Do you think the share of supply threshold should be calculated by defining share of supply as the number of licence holders affected by the proposed modification, weighted by NHS turnover?**

Yes

No

**Question 20: Do you think the threshold itself should be 20% as with the objections percentage?**

Yes

No

**Question 21: Do you think variations in the costs of providing NHS services should be taken into account when calculating share of supply?**

Yes

No

**Question 22: Is there anything you want to add?**

No

**How Monitor will enforce licence conditions**

**Question 23: Do you think the calculation of turnover for the purposes of the variable monetary penalty maximum should be based on turnover from provision of NHS funded turnover?**

Yes

No

**Question 24: If not, how do you think turnover should be calculated?**

N/A

**Question 25: Is there anything you want to add?**

No

## Equalities Issues

**Question 26: Do you have any evidence that the proposals in this document will impact adversely or unfairly on any protected groups?**

Do you have any evidence?  Yes  No

**If so, please provide details.**

## How to Respond

The deadline for responses to this consultation is **22 October 2012**.

e-mail [licence.exemptions@dh.gsi.gov.uk](mailto:licence.exemptions@dh.gsi.gov.uk)

contact Licensing Providers of NHS services  
Department of Health  
Room 235  
Richmond House  
79 Whitehall  
London  
SW1A 2NS

online An online response form is available on the DH website<sup>1</sup>.

### Comments on the consultation process itself

If you have concerns or comments which you would like to make relating specifically to the consultation process itself please

contact Consultations Coordinator  
Department of Health  
3E48, Quarry House  
Leeds  
LS2 7UE

e-mail [consultations.co-ordinator@dh.gsi.gov.uk](mailto:consultations.co-ordinator@dh.gsi.gov.uk)

**Please do not send consultation responses to this address.**

### Confidentiality of information

We manage the information you provide in response to this consultation in accordance with the Department of Health's Information Charter.

Information we receive, including personal information, may be published or disclosed in accordance with the access to information regimes (primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

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<sup>1</sup> <http://www.dh.gov.uk/health/category/publications/consultations/>

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and, in most circumstances, this will mean that your personal data will not be disclosed to third parties.

### Summary of the consultation

A summary of the response to this consultation will be made available before or alongside any further action, such as laying legislation before Parliament, and will be placed on the consultations website at

<http://www.dh.gov.uk/en/Consultations/Responsestoconsultations/index.htm>