



**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 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: St John Ambulance

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?

To ensure that the NHS services are more responsive to the needs of patients, carers and the wider public we believe the decision to exempt NHS trusts should be monitored and formal MoU setup between Monitor and the NHS Trust Development Authority (NHSTDA) to ensure the principles of the licensing framework are achieved.
We agree that Commissioner Requested Services (CSR) delivered by NHS Trusts should require a Licence.

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.

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?

Question 15: Is there anything you want to add?

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?

Question 18: Is there anything you want to add?

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?

Until the full scope of the licensing framework has been agreed (decisions taken on the exemption requirements) and relevant data available on share of supply, we do not believe it is beneficial or appropriate to implement a share of supply percentage.

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?

Question 25: Is there anything you want to add?

- Reviewing Monitor consultation on 'The new NHS provider licence' alongside the DoH consultation document 'Protecting and promoting patients' interests – licensing providers of NHS services' we believe there is confusion regarding the scope of the exemption.
 - Monitor asks respondents if they support Monitor's provisional conclusion 'on the allocation of the licence where, but for providing Commissioner Request Services, a licence holder would be exempt from the requirement to hold a licence.' This does not agree with appendix B of the DoH consultation document.
 - The text of the DoH consultation document does not support the proposed exemptions flowchart provided in appendix B of the consultation. This flowchart shows independent sector provider of ambulance services being exempt from licensing whilst being required to respond to Monitor's request for information. (NB consultation document does not provide details of the mechanism that will enable this information request.)

As a result we contacted licence.exemptions@dh.gsi.gov.uk and the reply we received stated that where an independent ambulance provider does provide NHS funded services and is registered with CQC, then the intention is that they will, like any other private provider of such services, be subject to licensing, but also subject to the de minimise exemptions.

In addition, we were informed that the Health and Social Care Act gives Monitor the power to request information from all providers of NHQ services, including licensed providers and providers exempt from the requirement to hold a licence. It may have been useful to have given this background information in the DoH consultation document to aid the reader's understanding.

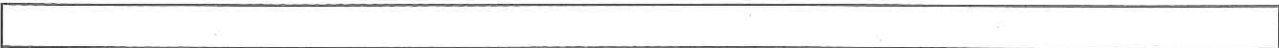
We were also informed that the current proposal is that there will be no distinction between main contractors and sub-contractors for licensing. There is no guidance within this consultation document on the issue of sub-contracting and until we received the response from licence.emption@dh.gsi.gov.uk we had wrongly assumed that sub-contractors would be outside of the scope of the licensing framework. We believe that future consultations should all include a detailed description of the definition of NHQ funded services.
- We currently feel that the language used within both the DoH and Monitor consultations relating to the licensing framework is too NHS focused and that consideration should be given to the accessibility of these and future documents on independent and third sector providers.

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

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 website¹.

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

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).

¹ <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>