



Licensing application guidance

For independent providers

December 2020

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1. Introduction

1. In this document, references to NHS Improvement are references to Monitor.
2. The NHS provider licence is NHS Improvement's main tool for regulating providers of NHS services. The licence sets out conditions that healthcare providers must meet to ensure that the sector works for the benefit of patients.
3. This guidance is for independent providers. It explains:
 - how to work out whether you need to apply for a licence
 - the criteria you must meet to be granted a licence
 - how to apply for a licence and how long it generally takes to review your application
 - the questions on the online application form
 - what happens after you submit your application
 - the process for making representations and appeals in the event of an unsuccessful application.

Who should apply for an NHS provider licence?

4. All providers of NHS healthcare services must hold a licence, unless they are exempt. The Department of Health and Social Care (DHSC) has published detailed guidance on what it means to be a provider of NHS healthcare services and the licence exemptions (the [exemptions guidance](#)).

When is a NHS provider licence not required?

5. Providers of NHS healthcare services are exempt from the licensing requirement if they are:
 - NHS trusts
 - providers who are not required to register with the Care Quality Commission (CQC)
 - providers of primary medical or primary dental services only

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- small providers of NHS healthcare services, whose annual applicable turnover from the provision of NHS services is expected to be less than £10 million
 - providers of NHS continuing healthcare or NHS-funded nursing care only.
6. These exemptions do not apply if the provider's services have been designated by a commissioner as commissioner requested services (CRS). CRS providers need to apply for and obtain an NHS provider licence even if they would have otherwise been exempt. This paragraph does not apply to NHS trusts, as NHS trusts cannot be CRS designated.
 7. If you are currently exempt from the requirement to hold an NHS provider licence and your services are not CRS designated, you do not need to apply for a licence. However, if your circumstances change, you must apply for a licence as soon as you become aware that you are no longer exempt from licensing (see paragraph 73).
 8. You should seek independent legal advice if you are in any doubt as to whether your organisation is required to hold an NHS provider licence. You are advised to refer to the detailed explanation of the exemptions provided from paragraph 57 of this document as well as the [exemptions guidance](#).
 9. If you have any queries about this document, please contact NHS Improvement's licensing team at: NHSI.Licensing@nhs.net

What criteria must be met for a licence to be granted?

10. To be granted a licence, two licence criteria must be met:
 - **criterion 1:** the provider must be registered with CQC, which is the independent regulator of health and adult social care in England
 - **criterion 2:** relates to the 'fitness' of the provider. This is a test applied to persons involved in overseeing your organisation (see paragraphs 92 to 106).
11. The main rules giving NHS Improvement the powers to design and operate the licensing regime are set out in the Health and Social Care Act 2012 (the 2012 Act). The Department of Health (now the DHSC) has issued regulations regarding the licensing regime made under the 2012 Act, namely the National

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Health Service (Licence Exemptions, etc) Regulations 2013, the National Health Service (Approval of Licensing Criteria) Order 2013 and the National Health Service (Licence Exemptions, etc) Amendment Regulations 2015. Links to these and other relevant documents, including those describing the legal basis of our licensing regime are given in Section 10 of this guidance.

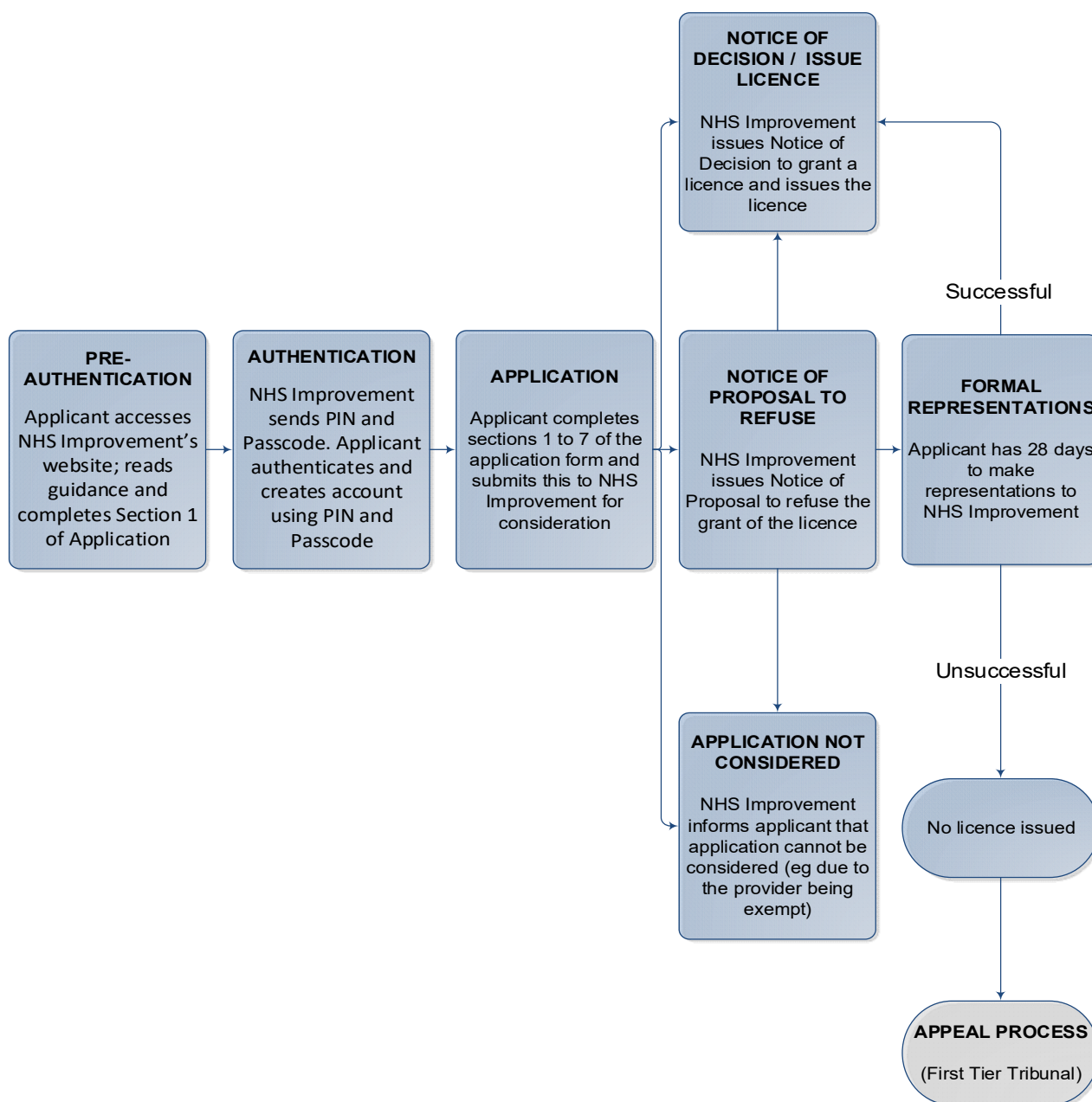
How can you apply for a licence?

12. Applications for the NHS providers licence are generally expected to be made via the [online application form](#). There are some exceptions to this: NHS-controlled providers, which should refer to [the licensing application guidance for NHS-controlled providers](#), and providers that are not already registered with CQC (see paragraphs 17 and 18).
13. If you are unable to make an application online, please contact us at: NHSI.Licensing@nhs.net.
14. There is no fee for applying for a licence.

Application process

15. Providers that become required to hold an NHS provider licence and are already registered with CQC should apply to us for a licence through the application process described in Figure 1 below.

Figure 1: Single licence application process



How long does it take us to process your application?

16. We aim to process your application and issue you with a formal decision within 20 working days of receiving a complete application, unless queries or concerns are raised. Applications which raise queries or concerns may take longer.

Joint licensing and registration

17. A provider that is not already registered with CQC can choose to apply for both a CQC registration and NHS provider licence on the same form, called the Joint Licensing and Regulation (JLaR) form. The joint application consists of two parts: Part A (CQC registration) and Part B (NHS provider licence). Applicants will be able to access the form via CQC's website. Providers will need to complete both Parts A and B of the JLaR form and submit it to CQC's National Customer Service Centre by email or post. The JLaR form and further details on how it operates are available on [CQC's website](#).
18. Further information on the representations and appeals process under JLaR is given in the [JLaR guidance for providers](#).

What information is needed to complete the application?

Pre-authentication stage

19. The first stage of the licence application process involves giving us some basic information to authenticate you as a provider. You will be asked for:
 - information about the applicant: name, registered address, contact details, company/charity registration number, and legal status
 - your CQC provider ID number
 - key contact correspondence details
 - the completed appendix to your application if we have asked you to provide one. This is likely if you provide services that have been designated as CRS (see paragraph 81).

Post-authentication stage

20. The second stage of the application process is more detailed. For this you will need:
 - details of your financial year end for the last business year

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- information regarding any services you provide that have been designated as CRS
- details of your directors and governors or those with similar or equivalent functions and their dates of birth
- details of your ultimate controller, if any
- details of CQC conditions and enforcement actions
- details of any past applications you have made to NHS Improvement for a licence.

21. The sections of the application form are summarised in Figure 2 below.

Who should complete the licence application?

22. Where the provider is an individual, the individual will access and complete the online application form. Where the provider is an organisation, you will be asked to designate a key contact. The application will be completed and submitted by the provider's key contact. The key contact must have the authority to complete the application on the provider's behalf and act as our main contact during the application process.
23. We may contact the key contact if we have questions about your application or need additional information to support your application. Once licensed, providers can amend their account to designate a new key contact, add users or change contact details.

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Figure 2: Sections of the application

Section 1: Licence applicant details	<ul style="list-style-type: none">• Questions relating to the identity of the applicant and the key contact completing the application form.
Section 2: Provision of healthcare service(s) for the purpose of the NHS	<ul style="list-style-type: none">• Questions to establish whether the applicant provides healthcare services for the NHS and whether this is under a direct contract or through an arrangement with other providers.
Section 3: Licence exemptions	<ul style="list-style-type: none">• Questions to understand whether the applicant is exempt from the requirement to hold a licence.
Section 4: Licensing grant criteria	<ul style="list-style-type: none">• Questions to determine whether the applicant meets the licensing criteria.
Section 5: Care Quality Commission registration conditions	<ul style="list-style-type: none">• Questions to understand whether the applicant has any conditions on its CQC registration.
Section 6: Additional information request	<ul style="list-style-type: none">• Questions to gather additional information required for NHS Improvement's functions, including information required to start licensee monitoring in the event that the provider is licensed.
Section 7: Licence application declaration	<ul style="list-style-type: none">• General declaration to be signed by a person authorised to submit this application on behalf of the applicant.

Who should be contacted for more information?

24. For any general or administrative enquiries regarding the licence application process or for technical queries on the completion of the form, please contact us at NHSI.Licensing@nhs.net.
25. Please note that it is your responsibility to ensure your compliance with all applicable legal requirements, taking independent professional advice if needed.

2. Application questions

Section 1: Licence applicant details

26. The first section requests the information we need to authorise and authenticate your application. You should confirm that you have read and understood the guidance. The key guidance documents you will need for completing your application are:
- this document
 - the [exemptions guidance](#), issued by DHSC.
27. If we ask you to fill in and return an additional appendix, you will need to confirm that you have done so when prompted. This applies in particular to providers of CRS (see paragraph 81).
28. The key contact should enter the applicant's CQC provider ID, confirm the provider name and registered address, and enter the key contact's name, job title, correspondence address and email.

Section 1 questions

1.1 CQC provider ID number

1.2 Provider information

Your (provider) name, name(s) you trade under (if different), company registration number (if applicable), charity registration number (if applicable), address of registered office, website address, telephone number, legal status (drop-down list: PLC, limited company, charity, partnership, joint venture and 'other').

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1.3 Key contact information

Job title, first name, last name, address for correspondence (selected from a drop-down list of addresses from CQC related to the provider's ID number or 'not listed' and provide information), email address and business telephone number.

CQC provider ID

29. The CQC provider ID is a unique registration number given to a provider by CQC on granting CQC registration. You cannot use a CQC provider ID that is being used for another application or has been previously used to generate a licence. The licensing system will warn you that there is a duplicate licence application in process. You will be unable to continue with the application using the CQC provider ID you entered.

Provider

30. The licence requirement applies to the provider of healthcare services for the purposes of the NHS. 'Healthcare' means all forms of healthcare, whether relating to physical or mental health.¹
31. The provider is the person (natural or legal) – that is, the legal entity that provides healthcare services. The [exemptions guidance](#) provides guidance on the definition of a provider.

Name and registered address

32. Based on the CQC provider ID you have entered, the licensing system will display a drop-down menu detailing the provider name, registered company address, and any other location address that CQC has listed. The key contact needs to confirm that the provider name and registered address are correct.
33. If the provider name and/or registered address are incorrect, please contact us at: NHSI.Licensing@nhs.net.

¹ See the 2012 Act, s64(3)

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34. You cannot continue with the application until the registered address is correct.

Trading name

35. If your company trades under a name which is different from its registered name, that name must be included.

Company/charity registration number

36. A registration number is a unique number (company number or LLP number) allocated by Companies House. The Charity Commission issues unique registration numbers for charities.

Legal status

37. Select the legal status of the applicant from the drop-down menu to tell us whether the applicant is: a limited company; a public limited company; a partnership; a charity; a joint venture; or other.

Charity

38. If you are either a charitable trust, or a charitable incorporated organisation, select the charity from the drop-down menu.
39. If you are a limited company with a charitable purpose, you should still select either 'limited company' or 'public limited company' even if you have a charitable purpose. In such situations, you would identify your organisation as either a 'limited company' or 'public company' based on the legal status of your company, as set out in paragraph 37.

Other

40. If your organisation's legal status is not indicated on the drop-down menu, please select 'other' and provide details when prompted.

Key contact information

41. You are asked for the name and job title of the key contact, as well as a correspondence address. You can select either the CQC registered address or one of the other location addresses held by CQC and displayed in the drop-down menu. If the correspondence address that you wish to use is not listed, you may type in a new one.
42. A typed in address must be accompanied by either a URL for the provider's website that gives the publicly listed address or the name, job title and contact details of a director of the provider who we can contact to confirm that the address is valid. If we cannot validate this address, we will notify you by email using the address you have provided and, to proceed, you will need to provide a further correspondence address that can be validated.
43. The key contact also needs to provide their own contact details, including an email address. When you submit your application, we will ask you to confirm that this email address can be used for administrative correspondence as well as formal notices, including our decisions (as explained in paragraph 120). The email address will then be used throughout the process as our main way to correspond with you, including to update you on the progress of your application.

Authentication

44. Once you have submitted section 1 of the application form, we will post a passcode to the correspondence address on your application. We will also send you a PIN by email. You will need both the passcode and the PIN to authenticate your account and continue with your application. The passcode must be used within 28 days from the date of the letter in which it is sent; otherwise it will expire.
45. You must use your CQC provider ID, PIN and passcode to authenticate your provider's account. Once the account is authenticated, you will be prompted to set up a username and password.
46. Once you have set up your account, you will be able to access the entire online application. You will now be able to complete the application and

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submit it. The next section provides guidance on how to complete the application.

After authentication

47. After your contact details have been authenticated, you can proceed to sections 2 to 7 of the online application. Your answers to these questions provide us with the information we require to make a decision on your application. They will also assist us with the monitoring of licensees.

Section 2: Requirement for licence – provision of healthcare service(s) for the purposes of the NHS

48. We will ask you to provide information about the type of healthcare services you provide. This information is relevant to the question asking if you provide healthcare services for the purposes of the NHS.
49. The 2012 Act requires every provider of a healthcare service for the purposes of the NHS to hold a licence unless they are exempt.² Providers that do not provide any healthcare services for the purposes of the NHS are not required to hold a licence.

Section 2 questions

Q2. Do you provide healthcare service(s) for the purposes of the NHS? (Y/N)

Q2.1.1 Do you provide healthcare service(s) for the purposes of the NHS through a contract directly with a clinical commissioning group(s) (CCG) and/or NHS England? (Y/N)

Q2.1.1.1 Do you provide any healthcare service(s) for the purposes of the NHS through a multi-party contract with a CCG(s) and/or NHS England and other provider(s)? (Y/N)

² See the 2012 Act, ss81–83

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Q2.1.2 Do you provide healthcare service(s) for the purposes of the NHS through an arrangement with another provider? (Y/N)

50. You can be a provider of healthcare services for the purposes of the NHS if you provide services as a contractor commissioned directly by a CCG or NHS England. This also applies if you provide services as a subcontractor.
51. NHS healthcare services can be provided through an arrangement with another provider. If you provide healthcare services through an arrangement with another provider, such as subcontracted services, you need to consider if you are required to hold a licence independently.³
52. For guidance on the definition of a provider of NHS healthcare services to assist you in determining whether you may be required to hold a licence, please refer to the [exemptions guidance](#).

Section 3: Requirement for licence – licence exemptions

53. Section 3 of the application form asks for the information that allows us to assess whether or not you are exempt.
54. On completion of this section an advisory message may be displayed indicating that you may be exempt from the licensing requirement. In such situations, you will have four options:
 1. to stop the application
 2. to continue with the application
 3. to review/amend the answers you have provided and then continue with the application or
 4. to save the form and return at a future point.
55. If, based on the information you submit in your application, we assess that you are exempt from the requirement to hold a licence, we will not consider your

³ The National Health Service (Licence Exemptions etc) Regulations 2013, reg. 2(5)

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application further and we will not issue a licence. Please see paragraph 125 for further details regarding applications we cannot consider.

56. It remains the provider's responsibility to ensure compliance with all the legal rules of the licensing regime, including compliance with the requirement to hold a licence if applicable. If you fail to obtain a licence when you are required to do so, you will be acting in breach of legal rules and you could be subject to enforcement action, including potentially being fined. For more information, please see paragraph 148.

Assessing whether an exemption applies

57. The exemptions to the requirement to hold a licence are set out in regulations.⁴ It is the responsibility of providers, taking independent advice if necessary, to check if a licence is required in their particular circumstances. NHS Improvement can take enforcement action, as described above, against providers that do not hold a licence when required to do so.
58. The following are not required to hold a licence:
- NHS trusts
 - providers that are not required to register with CQC
 - providers of primary medical or primary dental services only
 - small providers of NHS healthcare services – that is, those whose annual applicable turnover from the provision of NHS services is expected to be less than £10 million
 - providers of NHS continuing healthcare or NHS-funded nursing care only.
59. However, all providers of CRS will be required to hold a licence, even if they are otherwise exempt.
- 60-. The definitions of primary medical and primary dental services, annual applicable turnover, NHS continuing healthcare and NHS-funded nursing care are set out by DHSC in the National Health Service (Licence Exemptions, etc) Amendment Regulations 2019 and are described in more detail in the

⁴ The National Health Service (Licence Exemptions etc) Regulations 2013

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[exemption regulations](#). More details on CRS can be found from paragraph 76 onward.

61. If you cease to qualify for an exemption, you must obtain a licence. For example, if you are exempt on the basis of the provision of non-regulated activities, but then start providing regulated activities (as defined in paragraph 65), and are required to register with CQC, you will need a licence unless you qualify for another exemption.⁵ For guidance on the timeframe that applies when an exemption ceases to apply, see paragraph 73.
62. The exemptions to the requirement to hold a licence are set out in paragraph 57. For guidance on assessing whether you are exempt or need to apply for a licence, please see the [exemptions guidance](#).

Section 3 questions

Q3.1 Are any or all of the healthcare services you currently provide for the purposes of the NHS regulated activities for the purposes of registration with CQC under Chapter 2 of Part 1 of the Health and Social Care Act 2008? [Y/N]

Q3.1.1 Are you registered with CQC in accordance with Chapter 2 of Part 1 of the Health and Social Care Act 2008 in respect of the carrying out of all regulated activities? [Y/N]

CQC registration

63. CQC is the independent regulator of health and social care in England. It requires those that undertake regulated activities to register with it.
64. Providers that are not required to register with CQC are not required to hold a provider licence unless they provide CRS (see paragraph 76 onwards).

⁵ The National Health Service (Licence Exemptions, etc) Regulations 2013, reg 7

What are the ‘regulated activities’ referred to in Q3.1 and Q3.1.1 of the application?

65. Question 3.1 asks whether you provide regulated activities for the purpose of registration with CQC. Regulated activities are those listed in Schedule 1 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.⁶ They are:

- personal care
- accommodation for persons who require nursing or personal care
- accommodation for persons who require treatment for substance misuse
- treatment of disease, disorder or injury
- assessment or medical treatment for persons detained under the Mental Health Act 1983
- surgical procedures
- diagnostic and screening procedures
- management of supply of blood and blood-derived products, tissues and tissue-derived products, donor organs, stem cells, bone marrow, etc
- transport services, triage and medical advice provided remotely
- maternity and midwifery services
- termination of pregnancies
- services in slimming clinics
- nursing care
- family planning services.

66. See [CQC’s website](#) for more information on what constitutes a regulated activity and to find out if you need to register with CQC.⁷

67. Question 3.1.1 asks whether you are registered in respect of all the regulated activities you carry out. Question 4.1 asks you which regulated activities you are registered with CQC to provide.

⁶ As amended by the Health and Social Care Act 2008 (Regulated Activities) (Amendment) Regulations 2015.

⁷ CQC gives information on what constitutes a regulated activity:

<http://www.cqc.org.uk/organisations-we-regulate/registering-first-time/regulated-activities>

Primary medical and dental care services, NHS continuing healthcare and NHS-funded nursing care

Section 3 questions

Q3.2 Do all the healthcare services you provide for the purposes of the NHS fall into one or more of the categories below:

- primary medical services
- primary dental services
- NHS continuing healthcare.
- NHS-funded nursing care?

Q3.2.1 Please indicate which of the following healthcare services you provide for the purposes of the NHS. (Options include: primary medical services, primary dental services, NHS continuing healthcare, NHS-funded care.)

68. Providers that only deliver primary medical services or primary dental services are exempt from the requirement to hold a licence. Primary medical and primary dental services are those provided under Parts 4 and 5 of the NHS Act 2006, known as general medical services (GMS), personal medical services (PMS), alternative provider medical services (APMS) and general dental services (GDS). Similarly, providers that only deliver nursing care, defined as providing either NHS continuing healthcare or NHS-funded nursing care, are not required to hold a licence.
69. For guidance that will help you understand whether you are a provider of NHS primary medical or dental services, NHS continuing healthcare or NHS-funded nursing care, please see the [exemptions guidance](#).

Applicable turnover

Section 3 question

Q3.3 Is your applicable turnover for the next 12 months expected to be £10 million or more?

70. Providers are exempt if their annual applicable turnover from the provision of NHS services is less than £10 million. To qualify for this exemption, providers are required to undertake a forward-looking estimate of their applicable turnover for the 12-month period beginning on the date they started providing NHS services, and at the end of every month thereafter, for determining whether their applicable turnover is reasonably expected to be less than the £10 million exemption threshold. The 12-month period begins on the same date of each month i.e. the date on which the provider first started providing the services.
71. Applicable turnover is defined in regulation 2(2) of the National Health Service (Licence Exemptions, etc) Amendment Regulations 2015 as the turnover from the provision of NHS healthcare services, minus any turnover from the provision of primary medical or primary dental services, or from the provision of NHS continuing healthcare and NHS-funded nursing care.
72. The exemption will apply on the basis of knowledge or reasonable expectation of the applicable turnover. For further guidance and examples, please see the [exemptions guidance](#).
73. You must notify us as soon as you realise that this exemption no longer applies. The exemption will be withdrawn 60 days from the date on which the provider becomes aware that the exemption no longer applies.⁸ You will need to apply and obtain a licence from us within this 60-day period.

⁸ The National Health Service (Licence Exemptions etc) Regulations 2013, reg. 8(5)

Multiple services

74. Where a company provides a number of different NHS services, more than one exemption may apply. Therefore, you should consider whether or not an exemption applies by considering each NHS service provided. For example, a provider of primary care services, sexual health and community services is not required to hold a licence in respect of the primary care services provided under Parts 4 and 5 of the 2006 Act. That provider may be required to hold a licence for the other services it provides. However, if the income (calculated in terms of applicable turnover) is less than £10 million, then the provider does not require a licence.

Information provision

75. All exemptions (except those for NHS trusts) are conditional on providers complying with requests from NHS Improvement for any information we consider necessary or expedient to have to perform our regulatory functions.⁹

Commissioner requested services

Section 3 questions

Q3.4 Do you, at the date the application is submitted, provide healthcare services for the purposes of the NHS that are designated as CRS?

Q3.4.1 Please provide a list of all the commissioners you provide CRS for with the specified details.

76. CRS are services which NHS England or commissioners may determine as requiring additional regulation to protect the interests of patients who use those services in the event that the provider gets into financial difficulty. Services are designated as CRS based on guidance from NHS Improvement.

⁹The National Health Service (Licence Exemptions etc) Regulations 2013, reg. 9(4)

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77. Under the exemption regulations, if a provider would otherwise be exempt from the requirement to hold a licence, the designating commissioner should make a request to NHS Improvement that the provider be licensed.

How are services designated as commissioner requested services?

78. To designate your service as a CRS, your commissioner(s) must first inform you in writing that they are proposing to designate your service as a CRS. Your commissioner should give you 28 days to object to the designation in writing and giving your reasons.
79. The commissioner must also submit a formal request to NHS Improvement for you to be licensed under the exemption regulations. Commissioners should use the form developed by NHS Improvement to complete their CRS request.
80. NHS Improvement may grant or refuse the request.¹⁰ If we decide to grant a request for licensing, you are required to obtain a licence even if you are otherwise exempt from the licensing requirement. We will formally notify you and the commissioner(s) of our decision in response to the request for licensing.
81. If you are applying for a licence because your commissioner(s) has designated your service as a CRS, you should forward the notification you received from us or your commissioner(s) as an appendix to your application. This should be sent to nhsi.crs@nhs.net. At the start of completing your application, you will also be prompted to confirm that you have submitted an appendix to your application. Once you have confirmed this you can progress as normal with your application. Should we require any additional information to consider your application under the above circumstances, we will contact you as soon as possible to discuss our requirement.

When should CRS designated providers apply for a licence?

82. If you are exempt from the requirement to hold a licence and NHS Improvement subsequently grants a commissioner's request for licensing, it is

¹⁰ The National Health Service (Licence Exemptions, etc) Regulations 2013, para. 9(2)

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your responsibility to apply for a licence. When we grant a request for licensing, commissioners have a duty to send a formal notification to the provider. Once you receive this notification, you have a maximum of 60 days to obtain a licence. Should you fail to do so, we can take any necessary action against you. However, you do not need to wait to be notified by the commissioner – you can apply as soon as we grant the request. Where we receive an application under these circumstances, we first confirm with the relevant commissioner(s) that such a designation exists.

83. We aim to complete the review of your application within a reasonable timeframe to ensure that you will have a licence in place within 60 days. However, it may take longer to make our final decision if we need to request additional information.
84. If at the date your application is submitted, your services have not been designated as CRS, your response to question 3.4 should reflect this. This would be the case if, for example, you are currently bidding for a contract for services that would be CRS designated. In such a situation, if you would otherwise be exempt from the licensing requirement, you may wish to wait for the outcome of your bid before submitting your application.
85. If you receive notification that NHS Improvement has granted a commissioner's request for licensing after you submit your application to us but before we have issued a licence or a Notice of Refusal, you will need to amend your application. For further information on amending your application, see paragraph 126 of this guidance.

Information about CRS contracts

86. Question 3.4.1 requests information about the contracting arrangements under which you provide CRS. We need this information to reconcile a provider with the commissioner that has designated the services as CRS.
87. In response to question 3.4.1, please provide:
 - the name of the commissioners you provide CRS for (eg NHS Barnet CCG)
 - your contract reference (this can be a reference number or the name that appears on the contract documentation)
 - a short description of the services and value of the contract

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- the contract start date
- the contract end date
- the name of the parties to the contract.

Section 4: Licence – licensing grant criteria

88. Section 4 of the application form asks for information that allows us to assess if you meet criteria 1 and 2 below and therefore whether we can grant you a licence.

Criterion 1: CQC registration

89. If, in providing a healthcare service for the purposes of the NHS, an applicant carries out a regulated activity, they must be registered with CQC in respect of that regulated activity. Therefore, we must consider whether or not an applicant that is required to be registered with CQC – because it is carrying out a regulated activity – is in fact registered.
90. A provider that is not required to register with CQC may still be required to hold a licence. Where the provider does not provide an activity that is regulated by CQC, but provides services that have been designated as CRS, that provider will still be required to hold a licence. A provider that is required to register with CQC still has to satisfy criterion 2.

Section 4 question

Q4.1 If you have answered yes to question 3.1.1 above confirming that you are registered for all regulated activities you carry out, please select either yes (Y) or no (N) below to confirm all your registered activities:

- personal care [Y/N]
- accommodation for persons who require nursing or personal care [Y/N]

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- accommodation for persons who require treatment for substance misuse [Y/N]
- treatment of disease, disorder or injury [Y/N]
- assessment of medical treatment for persons detained under the Mental Health Act 1983 [Y/N]
- surgical procedures [Y/N]
- diagnostic and screening procedures [Y/N]
- management of supply of blood and blood-derived products, tissues and tissue-derived products, donor organs, stem cells, bone marrow, etc [Y/N]
- transport services, triage and medical advice provided remotely [Y/N]
- maternity and midwifery services [Y/N]
- termination of pregnancies [Y/N]
- services in slimming clinics [Y/N]
- nursing care [Y/N]
- family planning services [Y/N].

91. Question 4.1 requires you to indicate the regulated activities that you engage in for the purposes of CQC registration. Please see paragraphs 65 to 67 for more information about regulated activities.

Criterion 2: Provider fitness

Section 4 questions

Q4.2 Please provide below the required details for all directors, governors and those performing equivalent or similar functions of: your organisation (which is applying for a licence); your corporate director(s) (if applicable); and the parent body (bodies) of all your corporate director(s) (if applicable).

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If you are an individual provider, please provide your own name, surname and date of birth. For 'function' please select 'Equivalent/similar to director or governor' and for 'organisation' please select 'Applicant organisation'.

Q4.2.1 to 4.2.2.3: Detailed questions on provider fitness

92. The second criterion we must consider is whether or not the provider of healthcare services for the purposes of the NHS is fit to hold a licence.¹¹ The criterion sets out two definitions of unfit persons, one for individuals and one for corporate bodies, and how these are to be applied to assess their fitness to hold a licence respectively. The definitions of unfit persons are set out below.

Applications from individuals (natural persons)

93. Where the provider is an individual, NHS Improvement must consider that person's fitness only by reference to the definition of individual unfit persons.

Applications from others/those that are not individuals, including companies and other entities (legal persons)

94. Where the provider is not an individual, such as a company or other entity, we must consider that provider's fitness by reference to:

- all its directors (if any) and all its governors (if any), none of whom must fall within the definition of individual unfit persons
- all its corporate directors (if any) in the following way:
 - the corporate directors, none of whom must fall within the definition of corporate unfit persons (note that this definition includes reference to parent bodies of such corporate directors if any)
 - the individual directors or governors of that corporate director, and of any parent body of that corporate director, none of whom must fall within the definition of individual unfit persons
- all those performing equivalent or similar functions to directors or governors (if any) as described below.

¹¹ The National Health Service (Approval of Licensing Criteria) Order 2013, Schedule 1, para. 2

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Directors and governors

95. The regulations define ‘director’ as including “any individual who performs the functions of ... a director of an NHS foundation trust ... or of a company registered under the Companies Act 2006”.¹² Therefore, those who have been formally appointed as directors of registered companies are directors for the purpose of this criterion.
96. The regulations define ‘governor’ as including any “individual who performs any of the functions of ... a governor of an NHS foundation trust, as conferred by any enactment”.¹³ Therefore, those who have been formally appointed or elected as governors of NHS foundation trusts are governors for the purpose of this criterion.
97. The regulations provide that any individual who performs any of the functions of, or equivalent or similar to, ‘director’ and ‘governor’, includes a partner in a partnership.¹⁵

Those performing equivalent or similar functions to directors or governors

98. In responding to question 4.2, it is the responsibility of providers to consider whether they have within their organisations any people who are performing equivalent or similar functions to directors or governors. The details of all individuals performing these functions must be listed in your application. We will accept the responses of providers unless alerted to information indicating that these responses need to be queried further or challenged.
99. In considering this point, providers should have in mind, as described in the explanation of the regulations,¹⁴ that the aim of this part of the regulations is to include within the fitness test those other than the actual directors or governors who are involved in overseeing the provider and thus influencing the provision of healthcare services by that provider in a comparable way to directors and governors.
100. Providers should consider this point by taking into account all the relevant facts and circumstances. In each case, the role performed by the relevant

¹² The National Health Service (Approval of Licensing Criteria) Order 2013, Schedule 1, para. 2(1)

¹³ The National Health Service (Approval of Licensing Criteria) Order 2013, Schedule 1, para. 2(1)

¹⁴ See the Explanatory Memorandum to The National Health Service (Approval of Licensing Criteria) Order 2013

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person must be considered in the context of the governance of your organisation given its size, operations and financial status. The focus of any assessment must be the substance of the role performed by the relevant person and not their job title alone. Paragraph 101 sets out a non-exhaustive list of considerations for this assessment by reference to the roles of actual directors and governors.

101. If a person holds themselves out as a director and carries out the role of director even if not formally appointed as such, that person is to be regarded as performing functions of, or similar or equivalent to, a director. This position is consistent with that taken under the Companies Act 2006, which states ‘director’ includes “any person occupying the position of director by whatever name called”.¹⁵
102. We consider that any of the following can indicate that a person may be regarded as performing a function equivalent or similar to a director:
- the person presumes to act as if they were a director
 - the person is either solely directing the affairs of the company, or they have a predominant influence and force with respect to those affairs
 - the degree of their involvement with the management of the company is at least equivalent to that of the named directors
 - the functions performed are ones that would generally be undertaken by a director, rather than a manager or other employee below board level
 - the person is not accountable to others in their organisation, other than at board level, for their decisions.
103. A person in accordance with whose directions or instructions the directors of a company are accustomed to act, referred to as a ‘shadow director’, will also be considered to be a person performing functions of, or similar or equivalent to, a director.
104. To assess whether someone is performing equivalent or similar functions to an NHS foundation trust governor, providers should have regard to governors’ statutory functions and consider whether they have a person other than an actual director or governor performing such functions.

¹⁵ s250 Companies Act 2006

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105. NHS foundation trust governors perform a range of functions, prescribed by statute,¹⁶ and these include the following:

- appoint and, if appropriate, remove the chair of the board of directors
- decide the remuneration and allowances and other terms and conditions of office of the chair and the other non-executive directors
- approve (or not) any new appointment of a chief executive
- approve an application by the trust to enter into a merger, acquisition, separation or dissolution.

106. Given the relatively unique combination of functions of foundation trust governors, when considering if someone performs equivalent or similar functions to their statutory functions, providers should consider the role that such functions enable governors to play in the governance of their organisations, including in relation to strategic, operational, regulatory or financial matters.

CQC registration conditions and additional information requests

107. In sections 5 and 6 of the application we request additional information with which to monitor licence holders. This information is not used to decide whether or not to grant you a licence. Licensed providers are also asked to provide further information within a month of being licensed (see section 7 of this guidance) and we will let you know in advance about this.

Section 5: CQC registration conditions

Section 5 question

Q5.1 Is your registration with CQC subject to any conditions? [Y/N] If yes, please provide details below.

¹⁶ NHS Act 2006, Schedule 7, paragraphs 17 to 18 (as amended by the 2012 Act, s151)

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108. We need to know if your registration with CQC is subject to conditions. We do not need to know about the routine ‘restrictive conditions’ which are made during the initial registration process, such as the location where a regulated activity can be provided and the need to have a regulated manager. However, we do require you to provide information regarding:

- any restrictive conditions imposed by CQC at the time of registration because it had concerns about compliance
- any restrictive conditions imposed after initial registration because CQC had concerns about compliance.

109. The information provided should be the:

- text of all conditions as they currently stand (that is, after variation if relevant)
- dates all conditions were imposed.

110. As part of our ongoing monitoring, we may discuss these conditions, including their basis, with CQC. You do not need to tell us about those conditions that have been removed.

Section 6: Additional information requests

Information related to provision of CRS

Section 6 question

Q6.1 Do you have an ultimate controller(s)? If yes provide: name of ultimate controller(s); company registration number(s) (if applicable); website address(es); key contact(s) at ultimate controller(s), job title, first name, last name, address for correspondence, email address, business telephone.

110. An ultimate controller is any body that could instruct the licensee to carry out particular actions so long as that body cannot be required to act in accordance with the instructions of another. In practice, the ultimate controller would usually be the parent company of a subsidiary company that has been

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licensed by NHS Improvement. If no body can instruct the licensee in this way, the licensee does not have an ultimate controller.

111. Where a licence holder has an ultimate controller, they will be required to put in place a legally enforceable agreement with their ultimate controller, called an ultimate controller undertaking. This is a regulatory instrument designed to prevent parent companies from taking actions that would cause a licensee to breach its licence. The agreement between the licensee and the ultimate controller requires the ultimate controller to refrain from taking any action that would cause the licence holder to breach its licence obligations.
112. It may be unusual for a provider to have more than one ultimate controller. However, if you consider that you have two or more ultimate controllers, please provide the specified details for all of them.

CQC enforcement action

Section 6 question

Q6.2 Are you currently subject to enforcement action by the CQC? [Y/N] If yes, please provide details below (including date of issue).

113. CQC has the power to regulate services and take enforcement action against those that fail to comply with the relevant legislation (eg the Health and Social Care Act 2008 (as amended by the Care Act 2014) and the regulations made under it). We ask here whether the applicant is currently subject to enforcement action by CQC.¹⁷

¹⁷ The CQC Enforcement policy outlines the enforcement action that may be taken by the CQC: https://www.cqc.org.uk/sites/default/files/20150209_enforcement_policy_v1-1.pdf

Financial records

Section 6 questions

Q6.3 What was the date of your last financial year end?

Q6.4 What is the date of your establishment/date of incorporation?

Q6.5 If your last financial year was not 12 months, please indicate the period it covered.

Q6.6 What is the date of your next financial year end?

114. We require certain information about the way you maintain your financial records. This is to assist us, if you are licensed, with our monitoring of licence holders.

Licence previously held/applied for

Section 6 questions

Q6.7 Have you previously held an NHS provider licence? [Y/N] If yes, please provide details (provider name, licence number and date granted).

Q6.8 Have you ever applied for an NHS provider licence and been refused? [Y/N] If yes, please provide details (including provider name(s), date(s) and reason(s)) for refusal of the licence.

Q6.9 Have you ever withdrawn an application for an NHS provider licence before NHS Improvement made its decision to grant or refuse this? [Y/N] If yes, please provide details (including provider name(s), date(s) and reason(s) for withdrawal of the application).

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115. You need to tell us if you have previously held, or applied for, a licence. If you have, please provide the name of the licence holder, the licence number, and the date the licence was granted or refused. If the application was withdrawn before a decision to grant or refuse was made by us, please state the applicant name, the date of the application and the reason why the application was withdrawn.

Section 7: Licence application declaration and submission

Key contact

116. All organisations other than individuals should have a key contact. This is a person who will act as the main contact with us. The key contact must be a person who has the authority to complete the application and we can contact if we need further clarification or information relating to your application.

Declaration

117. The person who is submitting an application must sign the declaration on the application. For an individual applicant, that individual signs the declaration. Where an organisation is submitting an application, a person (that is, the key contact) who has been duly authorised to do so must make the required declaration.

118. Pursuant to the declaration, the individual or key contact must:

- acknowledge that they have the authority to submit the application
- confirm that the information provided on the application is accurate, complete and not misleading, to the best of the applicant's knowledge and belief at the time of entry (for non-individuals this means to the best of the key contact's knowledge and belief)
- undertake that where information entered on the application is no longer accurate, complete and not misleading, updated information, which is accurate, complete and not misleading, will be provided promptly to NHS Improvement
- acknowledge that NHS Improvement will use the information provided on the form, including personal data, and any other relevant information that

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NHS Improvement obtains or receives, for the purpose of performing its regulatory functions.

119. When signing the declaration, you must include the date on which the declaration is made. This should be entered in the DD/MM/YYYY format.
120. Before submitting your application you will be asked, by ticking the relevant box, if you consent to the receipt of formal notices electronically, and that the email address provided in response to question 1.3 can be used for that purpose.¹⁸
121. We may share the information you provide on the application with other regulators and public bodies, including CQC. In particular, we have an obligation to share information with CQC where that information would assist CQC with the exercise of its functions.¹⁹
122. If any of the information you have provided changes before you receiving a Notice of Decision, pursuant to this declaration, you must inform us as soon as reasonably practicable.

Submitted applications

123. We will send an email to you confirming receipt of the application.
124. Following this, your application is assessed. If we require additional information, we will ask for it via email; please provide it to us promptly.
125. In some circumstances, we may contact an applicant to state that we are unable to consider the application. This could be because the answers given under section 3 of the application demonstrate that the provider is exempt, or because of inconsistencies in the application. An applicant will be advised as to how to proceed if this is the case.

Amended application

126. Once you have submitted your application, NHS Improvement will process it. If we require further information, we will let you know. If you subsequently need to amend any details of your application, please send the full details of

¹⁸ See the 2012 Act, ss148-9.

¹⁹ See the 2012 Act, s288.

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the requested amendments by email to our licensing team at NHSI.Licensing@nhs.net. You will not be able to amend this information yourself. If you want to change the email address we hold for correspondence, please confirm also if you agree for this new address to be used by NHS Improvement to send you formal legal notices as well as for administrative purposes (see paragraph 120).

127. If you want to change the correspondence address of the key contact, you will need to provide us with all the relevant key contact details (see paragraphs 41 to 43).

Incomplete applications

128. We cannot process incomplete applications. These will be rejected and we will let you know if this is the case. We strongly advise you to take care to complete your application fully and accurately, as gaps or inaccuracies will delay your application. Please note that you can, however, save your application and return to it later.

129. If your application is incomplete, we will request further information from you. Failure to provide the requested information without a reasonable explanation will be deemed as your withdrawal from the application process (see also paragraphs 131 and 132).

130. Please note that it remains the provider's responsibility to ensure compliance with all the legal rules of the licensing regime, including compliance with the requirement to hold a licence if applicable. If you fail to obtain a licence when you are required to do so, you will be acting in breach of legal rules and you could be subject to enforcement action, including potentially a fine.

Withdraw an application

131. If at any point in the application process, you want to withdraw your application, we ask you to confirm this by email, with the reasons why you are withdrawing your application, to: NHSI.Licensing@nhs.net

132. If you withdraw your application before we make our final decision to grant or refuse a licence, this may lead to further information requests and/or action

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from us; for example, if we consider that you may not be exempt from the requirement to hold a licence.

Notice of Decision

133. If NHS Improvement is satisfied that the applicant meets criteria 1 and 2, as soon as reasonably practicable, we will grant the application and send a Notice of Decision.²⁰ We will aim to issue a decision within 20 working days of accepting a fully completed application, unless queries or concerns are raised which cannot be addressed in that timeframe.
134. If the decision is to issue a licence, the applicant, or in the case of a non-individual, the key contact, will be able to view the licence on the provider's portal. We will provide further information via the portal once you are licensed. Once licensed, the key contact will also be able to set up further account users within the provider. The Register of Licence Holders on NHS Improvement's website will also be updated.

²⁰ See the 2012 Act, s.87.

3. Information requested following grant of licence

135. If a licence is granted, you will be asked to send us additional information within one month of this grant, via the provider portal. The information sought includes financial information and information regarding CRS, if relevant.

Information to be provided by all licensed providers

The value of your applicable turnover and total turnover in £ for the previous business year.

136. The definition of ‘applicable turnover’ for the purpose of this calculation is the same as used in relation to the de minimis exemption to the requirement to hold a licence. This is set out in section 7 of the [exemptions guidance](#). Also see paragraphs 70 to 73 of this document.

137. Total turnover is the total turnover of the provider in the previous business year.

CRS revenue disclosures

138. We require this information to understand what proportion of the provider’s turnover is derived from the provision of NHS healthcare services.

Information to be provided only by CRS providers

139. We require information about the value and nature of CRS as well as the way in which they are delivered. We seek information, in particular, on whether or not CRS are provided by prime contractors or subcontractors as well as the information regarding who has commissioned CRS. We also seek information regarding the financial position of providers of CRS.

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The list of services designated as CRS in the specified format and the value in £ of the CRS you have been contracted to deliver by commissioner at the time you submit this information to NHS Improvement.

140. You need to provide us with a list of all the services you provide which have been formally designated by a commissioner as CRS and state the annual contractual value of the CRS you have been contracted to deliver. This information should be current: that is, the annual contractual value as at the date the information is submitted.

Other CRS disclosures

If you are providing healthcare services (excluding CRS) to the NHS as a prime contractor, have you entered into subcontracting arrangements with one or more other providers for them to provide part or all of these services?

If you are providing CRS as a prime contractor, have you entered into subcontracting arrangements with one or more other providers for them to provide part or all of these services? If so, please provide the specified details.

Ultimate controller undertaking in accordance with the requirements of Condition CoS4 of the NHS provider licence.

141. Under Continuity of Services licence condition 4 (CoS4), a CRS provider who has an ultimate controller must provide an undertaking declaration from its ultimate controller. We will provide a template for the undertaking.

Last available credit rating (if you have one).

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142. Please provide your latest credit rating, agency and date of that credit rating, if you have one. If you do not already have a credit rating, you do not have to provide this information.

Information relating to your transactions.

Information relating to your financial plans.

Last full set of annual report and accounts.

Exceptional events

143. We request routine information about your planned transactions, as well as about your financial planning generally.

4. Representations and appeals

144. We must refuse an application for a licence where the licence grant criteria are not met.²¹ In such cases NHS Improvement will give a Notice of Proposal to Refuse (including its reasons) and will specify the period within which the applicant may make representations to NHS Improvement with respect to the above Notice. This period will be no less than 28 days.²²
145. If we do not accept your representations, we will confirm our proposal through a Notice of Decision to Refuse. You can appeal against our decision to the Care Standards jurisdiction of the First-tier Tribunal, which is an independent tribunal.²³
146. The Notice of Decision will explain the right of appeal.²⁴ Appeals may be made based on errors of fact, errors of law or on the unreasonableness of a decision. More information on the First-tier Tribunal is [available](#). The tribunal service's address is:

Care Standards Tribunal
HM Courts and Tribunals Service
1st Floor
Darlington Magistrates' Court
Parkgate
DL1 1RU

²¹ The 2012 Act, s87

²² The 2012 Act, s90

²³ The 2012 Act, s92

²⁴ The 2012 Act, s91(3)

5. Compliance

147. Licensed persons have a duty to make sure that the regulated activities they are responsible for are carried out and managed in a way that complies with their licence conditions. Licence conditions can take the form of [standard conditions](#), which apply to all licence holders or to particular types of licence holder, and special conditions, which will apply to an individual provider.
148. We have powers under the 2012 Act to take action against actual or suspected licence breaches. These include the power to take action to stop a breach continuing, rectify the breach and/or to impose a fine. We also have the power to revoke a licence. Our [enforcement guidance](#) sets out the principles we would follow in taking enforcement action.
149. Please visit our [website](#) for the most current information on how we regulate providers of NHS healthcare services.

Annex A: Associated documents

[The Health and Social Care Act 2012](#)

[The National Health Service Act 2006](#)

[The National Health Service \(Approval of Licensing Criteria\) Order 2013 and Explanatory Memorandum](#)

[The National Health Service \(Licence Exemptions, etc\) Amendment Regulations 2015](#)

[Protecting and promoting patients' interests: Licence exemptions: guidance for providers](#) (Department of Health and Social Care document)

NHS Improvement publications

[Enforcement guidance](#)

[The new NHS provider licence](#) and its annex [NHS provider licence standard conditions](#)

[Guidance for commissioners on ensuring the continuity of healthcare services](#)

[Risk assessment framework: addendum for assessing risk at independent providers of commissioner requested services](#)

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