

Health and Social Care Act 2008

2008 CHAPTER 14

An Act to establish and make provision in connection with a Care Quality Commission; to make provision about health care (including provision about the National Health Service) and about social care; to make provision about reviews and investigations under the Mental Health Act 1983; to establish and make provision in connection with an Office of the Health Professions Adjudicator and make other provision about the regulation of the health care professions; to confer power to modify the regulation of social care workers; to amend the Public Health (Control of Disease) Act 1984; to provide for the payment of a grant to women in connection with pregnancy; to amend the functions of the Health Protection Agency; and for connected purposes.

[21st July 2008]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:–

Introduction:

Pepper v Hart Note (see General Note: Pepper v Hart):

In introducing the Second Reading in the House of Commons of the Bill for this Act on 26th November 2007 the Secretary of State for Health (Alan Johnson) said as follows:

“This is an important Bill introducing improved and integrated regulation of the health and social care system as well as enhancing the regulation of health professionals who work within it. It will help to assure safety and quality of care for all patients and service users. The Bill will also set new regulatory measures where they are necessary, and enhanced regulation where it is appropriate. It will expunge provisions that are out of date and that no longer meet the needs of patients and service users. Those measures are essential to meet the challenges of 21st century health and social care provision.

... Regulation of health and social care must keep pace with new demands, demographic change and medical advances. This Bill will create a new integrated regulator for health and adult social care in England, the care quality commission, with tough new powers to inspect, investigate and intervene where providers fail to meet safety and quality requirements. Crucially, where infection control and hygiene are poor, the new commission will be able to act quickly and decisively. It will bring together functions from three existing statutory bodies—the Healthcare Commission, the Commission for

Social Care Inspection and the Mental Health Act Commission—and will build on the expertise of those organisations....

Social care must have parity in the new commission. That must be reflected on the board of the new commission and in everything that the commission does.

... I emphasise again that the Bill brings the vital role carried out by the Mental Health Act Commission into the heart of the care quality commission. That will strengthen the monitoring of the Mental Health Act 1983, and offer increased oversight of the treatment of patients subject to compulsory detention.

... For the first time, the regulation of the national health service, social care and independent sector providers will be carried out by the same organisation. As services become jointly commissioned and the boundaries between health and adult social care are broken down, it makes sense for our new integrated regulatory framework to work across those boundaries as well....

We expect that the vast majority of providers will continue to demonstrate that they deliver quality services in a safe, clean environment. However, the Bill will introduce a wide range of enforcement powers that the commission will be able to use when registered providers fail to deliver safe, high quality care.”

Part 1 THE CARE QUALITY COMMISSION

Chapter 1 INTRODUCTORY

1 The Care Quality Commission

- (1) There is to be a body corporate known as the Care Quality Commission (referred to in this Part as “the Commission”).
- (2) The Commission for Healthcare Audit and Inspection, the Commission for Social Care Inspection and the Mental Health Act Commission are dissolved.
- (3) Schedule 1 (which makes further provision about the Care Quality Commission) has effect.

Section 1

Introduction:

This section introduces Chapter 1 of Part 1 which deals with the new Care Quality Commission. Section 1 establishes the Commission and dissolves the Commission for Healthcare Audit and Inspection, the Commission for Social Care Inspection and the Mental Health Act Commission, which are replaced by the Care Quality Commission. The Commission’s constitution is provided for in Schedule 1.

Subsection (1):

See General Note: Bodies Corporate

2 The Commission's functions

- (1) The Commission has the functions conferred on it by or under any enactment.
 - (2) Those functions include—
 - (a) registration functions under Chapter 2,
 - (b) review and investigation functions under Chapter 3, and
 - (c) functions under the Mental Health Act 1983 (c. 20).
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Section 2

Introduction:

This section defines the functions of the Care Quality Commission.

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: "Section 2 sets out the main areas in which the Commission has functions. It also makes reference to functions the Commission may have under other enactments.

This could include, for example, functions it is intended that it will have for monitoring the application of new Deprivation of Liberty Safeguards under the Mental Capacity Act 2005, functions under regulations under the European Communities Act 1972 relating to medical exposure to ionising radiation, or functions that other bodies may, by agreement, delegate to the Commission."

Subsection (1):

Enactment - see General Note: Enactment.

3 The Commission's objectives

- (1) The main objective of the Commission in performing its functions is to protect and promote the health, safety and welfare of people who use health and social care services.
- (2) The Commission is to perform its functions for the general purpose of encouraging–
 - (a) the improvement of health and social care services,
 - (b) the provision of health and social care services in a way that focuses on the needs and experiences of people who use those services, and
 - (c) the efficient and effective use of resources in the provision of health and social care services.
- (3) In this Chapter “health and social care services” means the services to which the Commission's functions relate.

Section 3

Introduction:

This section outlines the Care Quality Commission's objectives about health and social care services and the people who use those services.

Pepper v Hart Note (see General Note: Pepper v Hart):

On Commons Consideration of Lords Amendments on the Bill for this Act on 15th July 2008 the Minister of State, Department of Health (Mr. Ben Bradshaw) said as follows:

“We have been clear throughout that the commission's main priority should be the safety and quality of services, and I said early on that I thought that its key functions and responsibilities were already set out in what was clause 2. However, we recognise that many people thought that this was not expressed clearly enough. The amendment introduces a clear, succinct statement of purpose, which resists the temptation to stray into other territory and create for the commission additional broad functions that it would have been unclear how it was to deliver, or to include a long list of objectives that could duplicate the functions of other statutory bodies. Instead, it emphasises that the welfare of patients and people who use social services should be at the heart of everything that the commission does.”

Subsection (1):

“Health and social care services” – see subs.(3).

4 Matters to which the Commission must have regard

- (1) In performing its functions the Commission must have regard to—
- (a) views expressed by or on behalf of members of the public about health and social care services,
 - (b) experiences of people who use health and social care services and their families and friends,
 - (c) views expressed by local involvement networks about the provision of health and social care services in their areas,
 - (d) the need to protect and promote the rights of people who use health and social care services (including, in particular, the rights of children, of persons detained under the Mental Health Act 1983, of persons who are deprived of their liberty in accordance with the Mental Capacity Act 2005 (c. 9), and of other vulnerable adults),
 - (e) the need to ensure that action by the Commission in relation to health and social care services is proportionate to the risks against which it would afford safeguards and is targeted only where it is needed,
 - (f) any developments in approaches to regulatory action, and
 - (g) best practice among persons performing functions comparable to those of the Commission (including the principles under which regulatory action should be transparent, accountable and consistent).
- (2) In performing its functions the Commission must also have regard to such aspects of government policy as the Secretary of State may direct.
- (3) In subsection (1)(c), “ local involvement network” has the meaning given by section 222(2) of the Local Government and Public Involvement in Health Act 2007 (c. 28).

Section 4

Introduction:

This section requires the Care Quality Commission to take into consideration the views and the rights of the public at large, the risks involved, the regulatory developments and best practices when exercising its functions.

Pepper v Hart Note (see General Note: Pepper v Hart):

In the Grand Committee in the House of Lords on the Bill for this Act the Parliamentary Under-Secretary of State, Department of Health (Lord Darzi of Denham) said as follows:

“It may be helpful to set out the rationale behind the Government’s approach to the key functions of the Care Quality Commission—those in Clause 2 ... In Clause 2, we have set out those key functions: first, by assuring that health and adult social care services are providing care to the levels of safety and quality—words that we heard many times in this debate—that patients and service users are entitled to expect, and in taking appropriate actions where they are not, through the registration and enforcement provisions in Chapter 2; secondly, by providing comparable information to patients and services users through the reviews proposed in Chapter 3; and, finally, through the vital role currently carried out by the Mental Health Act Commission in monitoring the use of provisions in the Mental Health Act. Moreover, in Clause 2 we have made it clear that in carrying out its functions, the commission must in everything it does have regard to a number of crucial issues in performing those functions. Noble Lords would agree that it is vital that the commission must have regard to the need to safeguard the rights of children and vulnerable adults when it carries out its functions. The commission must listen to the views of those who use services—patients, service users, carers—including representative bodies such as LINKs. The commission must also be required to take account of the Government’s five principles of good regulation, under which regulatory activity should be proportionate, accountable, consistent, transparent and targeted where needed.”

Subsection (1):

The Commission – the Care Quality Commission - see s.1.

See General Note: Have Regard To.

Health and social care services - see s.3(3).

Local involvement network – see subs.(3).

Subsection (2):

See General Note: Secretary of State

See General Note: Directions; see also s.161(3), (4). (For power to vary and requirement for writing, see s.165.)

Subsection (3):

“local involvement network” - means, by virtue of section 222(2) of the Local Government and Public Involvement in Health Act 2007, a person who carries out the Local Authority’s activities in that specific area. Activities under this purpose are listed in s.221(2).

5 Statement on user involvement

- (1) The Commission must publish a statement describing how it proposes to—
 - (a) promote awareness among service users and carers of its functions,
 - (b) promote and engage in discussion with service users and carers about the provision of health and social care services and about the way in which the Commission exercises its functions,
 - (c) ensure that proper regard is had to the views expressed by service users and carers, and
 - (d) arrange for any of its functions to be exercised by, or with the assistance of, service users and carers.
- (2) The Commission may from time to time revise the statement and must publish any revised statement.
- (3) Before publishing the statement (or revised statement) the Commission must consult such persons as it considers appropriate.
- (4) In this section—
 - (a) “service users” means people who use health or social care services, and
 - (b) “carers” means people who care for service users as relatives or friends.

Section 5

Introduction:

This section imposes a duty on the Care Quality Commission to publish an informative statement on how it intends to carry out its functions, post consultation with the relevant persons. The statement can also be revised and later published as revised.

Subsection (1):

The Commission – the Care Quality Commission - see s.1.

Subsection (3):

See General Note: Consultation

6 Transfers of property, rights and liabilities

Schedule 2 (which makes provision for the transfer of property, rights and liabilities) has effect.

Section 6

Introduction:

This section gives effect to Schedule 2 which enables the Secretary of State to make transfer schemes to transfer the property of the Commission for Healthcare Audit and Inspection, the Commission for Social Care Inspection and the Mental Health Act Commission (dissolved by s.1).

See General Note: Transfer Schemes.

7 Meaning of “health and social care services” in Chapter 1

In this Chapter “health and social care services” has the meaning given by section 3(3).

Section 7

This section defines “health and social care services”.

Question: What does s.7 add to s.3(3)? Answer: Apparently nothing – s.3(3) has already expressly applied its definition to the whole of Chapter 1.

Part 1 THE CARE QUALITY COMMISSION

Chapter 2 REGISTRATION IN RESPECT OF PROVISION OF HEALTH OR SOCIAL CARE

Introductory

8 “Regulated activity”

- (1) In this Part “regulated activity” means an activity of a prescribed kind.
- (2) An activity may be prescribed for the purposes of subsection (1) only if—
 - (a) the activity involves, or is connected with, the provision of health or social care in, or in relation to, England, and
 - (b) the activity does not involve the carrying on of any establishment or agency, within the meaning of the Care Standards Act 2000 (c. 14), for which Her Majesty's Chief Inspector of Education, Children's Services and Skills is the registration authority under that Act.
- (3) For the purposes of subsection (2), activities connected with the provision of health or social care include, in particular—
 - (a) the supply of staff who are to provide such care;
 - (b) the provision of transport or accommodation for those who require such care;
 - (c) the provision of advice in respect of such care.

Section 8

Introduction:

This section introduces Chapter 2 of Part 1 which deals with registration for provision of health or social care. It defines “regulated activity”.

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

"The Government publication *“The future regulation of health and adult social care in England”* (published November 2006) set out initial proposals for the broad types of activities that will be regulated activities. Subsequent to this, the Government published *“A consultation on the framework for the registration of health and adult social care providers”* (published March 2008), on the types of activities to be regulated, and the registration requirements to be imposed under section 20."

Pepper v Hart Note (see General Note: Pepper v Hart):

In the Grand Committee in the House of Lords on the Bill for this Act Baroness Thornton said as follows:

"Given the impact on services to be brought into or removed from the scope of registration, it is our intention that any change to the regulations would also be subject to public consultation. The removal of activities from the list of regulated activities is a serious matter and noble Lords and Members in the other place would wish there to be parliamentary oversight and debate of these decisions. Indeed, the Delegated Powers Committee took into account the fact that the affirmative procedure will apply to these regulations; in its judgment, this broad delegation was appropriate. Even within the scope of registration, the new commission will take a proportionate approach to regulation. This means that it will inspect some activities more than others, depending on the relative risk of carrying on those activities. We recognise that the list of regulated activities will need to be revised from time to time as new ways of delivering services are developed, as new techniques that make activities less risky are developed or, indeed, as my noble friend mentioned, as other activities are taken within the scope of the commission's work. This might mean that an activity can be removed from the list of activities requiring registration. That is precisely why the list is to be defined in secondary legislation as opposed to being on the face of the Bill."

Subsection (1):

Health and social care - see s.9.

Prescribed – by regulations - see s.97(1) – to be made by statutory instrument – see s.161(1) – subject to affirmative resolution procedure – see s.162(3).

9 “Health or social care”

- (1) This section has effect for the interpretation of this Part.
- (2) “Health care” includes all forms of health care provided for individuals, whether relating to physical or mental health, and also includes procedures that are similar to forms of medical or surgical care but are not provided in connection with a medical condition.
- (3) “Social care” includes all forms of personal care and other practical assistance provided for individuals who by reason of age, illness, disability, pregnancy, childbirth, dependence on alcohol or drugs, or any other similar circumstances, are in need of such care or other assistance.
- (4) “Health or social care” means health care or social care.

Section 9

Introduction:

This section defines “health care” and “social care”.

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

"The definition of health care includes provision of cosmetic procedures that are similar to procedures that might be provided in relation to a medical condition. It also includes public health services that provide health care to individuals. For example, this might include smoking cessation clinics, or sexual health clinics."

Pepper v Hart Note (see General Note: Pepper v Hart):

In the Grand Committee in the House of Lords on the Bill for this Act Baroness Thornton said as follows:

“Clause 5 defines health and adult social care; it is intended to be framed broadly enough to include not just those services that we know need to be covered, but those that could potentially be included in the future.”

Pepper v Hart Note (see General Note: Pepper v Hart):

In the Grand Committee in the House of Lords on the Bill for this Act Baroness Thornton said as follows:

“... I should like to give some examples of public health activities that might be registered and those that might be considered as part of a review. The definition of “health care” in Clause 5 explicitly includes all forms of healthcare provided to individuals. Any public health services that provide healthcare to individuals could therefore fall within the scope of registration under Chapter 2 and

might include, for example, a smoking cessation clinic or sexual health clinic. It seems appropriate for the Bill to allow for the possibility of providers of these services to be registered in the same way as providers of other sorts of healthcare. Therefore, although public health campaigns do not fall within this definition, we believe that it is important for the commission to be able to look at public health campaigns generally in respect of its other functions. For example, if a PCT runs a public health campaign, the commission should be able to consider that in its assessment of how well the PCT is meeting the needs of the local population. That is why Clause 92 clarifies that, although these kinds of activities do not fall within the definition of healthcare for the purpose of Chapter 2 only, they will fall within the definition for the purposes of reviews, special reviews, investigations and so on...”

Subsection (2):

Individuals – see General Note: Person.

Part 1 THE CARE QUALITY COMMISSION

Chapter 2 REGISTRATION IN RESPECT OF PROVISION OF HEALTH OR SOCIAL CARE

Registration of persons carrying on regulated activities

10 Requirement to register as a service provider

- (1) Any person who carries on a regulated activity without being registered under this Chapter in respect of the carrying on of that activity is guilty of an offence.
- (2) The Secretary of State may by regulations make provision for the purposes of this Chapter for determining, in relation to a regulated activity carried on by two or more persons acting in different capacities, which of those persons is to be regarded as the person who carries on the activity.
- (3) In the following provisions of this Part, the registration of a person under this Chapter in respect of the carrying on of a regulated activity by that person is referred to as registration “as a service provider” in respect of that activity.
- (4) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to a fine not exceeding £50,000, or to imprisonment for a term not exceeding 12 months, or to both;
 - (b) on conviction on indictment, to a fine, or to imprisonment for a term not exceeding 12 months, or to both.
- (5) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44), the reference in subsection (4)(a) to 12 months is to be read as a reference to 6 months.

Section 10

Introduction:

This section makes it an offence to carry on a regulated activity without being registered.

Pepper v Hart Note (see General Note: Pepper v Hart):

In the Grand Committee in the House of Lords on the Bill for this Act Baroness Thornton said as follows:

“Clause 6 currently provides that the person required to register is the, “person who carries on a regulated activity”. This may be a natural person, a partnership or a company. For example, a company may run a chain of care homes offering nursing care, while an individual may provide nursing care and accommodation to two or three vulnerable adults. If we assume that nursing will

be a regulated activity, both large and small providers of the regulated activity would require registration. ... The Bill as drafted does not make it an offence to work for a person or organisation providing care that is unregistered, nor does it make it an offence to deliver care under the employment of a registered person or organisation but without being registered separately. The purpose of the offence of carrying out a regulated activity without registration is to hold a person, whether an individual, a partnership or an organisation, accountable for registering with the commission."

Subsection (1):

Regulated activity - see s.8.

Subsection (2):

See General Note: Secretary of State.

Regulations - to be made by statutory instrument – see s.161(1) – subject to negative resolution procedure – see s.162(1).

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

"Where two or more legal persons are involved, in different capacities, in carrying on the activities, regulations may set out who will be treated as the service provider. It is intended that this will be the person responsible for ensuring the service complies with the requirements laid out in this (and any other relevant) legislation."

Subsection (3):

Defines "service provider".

Subsection (4):

See General Note: Offences: Summary.

See General Note: Offences: Indictment.

Subsection (5):

See General Note: Criminal Justice Act 2003, s.154.

11 Applications for registration as a service provider

- (1) A person seeking to be registered under this Chapter as a service provider must make an application to the Commission.
- (2) The application must be made in such form, and contain or be accompanied by such information, as the Commission requires.
- (3) In such cases as the Commission may determine, a person seeking to be registered as a service provider in respect of two or more regulated activities may make a single application in respect of them.

Section 11

Introduction:

This section requires applications for registration to provide health and social care services.

Subsection (1):

Service provider - see s.10(3).

The Commission – the Care Quality Commission - see s.1.

Subsection (2):

“requires” – entirely informally, apparently, and not by statutory instrument; the principles of administrative law would nevertheless apply to prevent, for example, arbitrary differences in the requirements imposed for different applicants.

Subsection (3):

Regulated activity - see s.8.

12 Grant or refusal of registration as a service provider

(1) Subsections (2) to (4) apply where an application under section 11 has been made in accordance with the provisions of this Chapter with respect to a regulated activity.

(2) If the Commission is satisfied that–

(a) the requirements of regulations under section 20, and

(b) the requirements of any other enactment which appears to the Commission to be relevant,

are being and will continue to be complied with (so far as applicable) in relation to the carrying on of the regulated activity, it must grant the application; otherwise it must refuse it.

(3) The application may be granted either unconditionally or subject to such conditions as the Commission thinks fit.

(4) On granting the application, the Commission must issue a certificate of registration to the applicant.

(5) The Commission may at any time–

(a) vary or remove any condition for the time being in force in relation to a person's registration as a service provider, or

(b) impose any additional condition.

(6) Subsections (3) and (5) have effect subject to section 13.

Section 12

Introduction:

This section deals with how the Care Quality Commission addresses applications for registration under s.11.

Subsection (1):

Regulated activity - see s.8.

Subsection (2):

The Commission – the Care Quality Commission - see s.1.

“satisfied” – See General Note: Levels of Certainty.

“appears” – See General Note: Levels of Certainty.

Subsection (3):

“thinks” – See General Note: Levels of Certainty.

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

"In granting registration as a service provider, the Commission can impose any conditions it thinks are necessary. Conditions may limit the types of services that a service provider may provide and where they may be provided. For example, the Commission will be able to impose conditions on the provision of care in residential homes, the effect of which would be to specify the categories of users of services and the number of residents that may be accommodated. The Commission may also impose a specific condition to take account of the circumstances of a particular case. For example, there might be a condition, the effect of which is that the provider is only permitted to operate from three specified sites. If the service provider is required under section 13 to appoint a registered manager, then this would also be a condition of their registration. The Commission can change the conditions of a service provider's registration at any time, which would allow additional conditions to be imposed. For example, there might be a condition requiring a particular hospital ward to be closed, or a restriction preventing further admissions until a breach of registration requirements has been corrected."

Subsection (5):

Service provider - see s.10(3).

Part 1 THE CARE QUALITY COMMISSION

Chapter 2 REGISTRATION IN RESPECT OF PROVISION OF HEALTH OR SOCIAL CARE

Registration of managers

13 Condition requiring registered manager

(1) The registration under this Chapter of a person (“ S”) as a service provider in respect of a regulated activity must in prescribed cases be subject to a registered manager condition.

(2) In deciding whether to impose a registered manager condition under section 12(3) or (5), in a case where subsection (1) does not require such a condition to be imposed, the Commission must have regard to prescribed matters.

(3) For the purposes of this Chapter, a registered manager condition is a condition that the activity as carried on by S, or the activity as carried on by S at or from particular premises, must be managed by an individual who is registered under this Chapter as a manager in respect of the activity, or the activity as carried on at or from those premises.

Section 13

Introduction:

This section requires service providers to have registered managers in certain cases.

Subsection (1):

Service provider - see s.10(3).

Regulated activity - see s.8.

Prescribed – by regulations - see s.97(1) – to be made by statutory instrument – see s.161(1) – subject to negative resolution procedure – see s.162(1).

Subsection (2):

The Commission – the Care Quality Commission - see s.1.

See General Note: Have Regard To.

14 Applications for registration as a manager

- (1) A person seeking to be registered under this Chapter as a manager in respect of a regulated activity in respect of which a registered manager condition has, or is to have, effect must make an application to the Commission.
- (2) The application must be made in such form, and contain or be accompanied by such information, as the Commission requires.
- (3) In such cases as the Commission may determine, a person seeking to be registered as a manager in respect of two or more regulated activities carried on by a person registered as a service provider may make a single application in respect of them.

Section 14

Introduction:

This section is about applications to the Care Quality Commission to be a registered manager.

Subsection (1):

Registered manager – see ss. 13(3), 44.

The Commission – the Care Quality Commission - see s.1.

Regulated activity - see s.8.

Subsection (2):

“requires” – entirely informally, apparently, and not by statutory instrument; the principles of administrative law would nevertheless apply to prevent, for example, arbitrary differences in the requirements imposed for different applicants.

15 Grant or refusal of registration as a manager

(1) Subsections (2) to (4) apply where an application under section 14 has been made in accordance with the provisions of this Chapter with respect to a regulated activity in respect of which a person is registered under this Chapter as a service provider and in respect of which a registered manager condition has effect.

(2) If the Commission is satisfied that—

(a) the requirements of regulations under section 20, and

(b) the requirements of any other enactment which appears to the Commission to be relevant,

are being and will continue to be complied with (so far as applicable) in relation to the carrying on of the regulated activity, it must grant the application; otherwise it must refuse it.

(3) The application may be granted either unconditionally or subject to such conditions as the Commission thinks fit.

(4) On granting the application, the Commission must issue a certificate of registration to the applicant.

(5) The Commission may at any time—

(a) vary or remove any condition for the time being in force in relation to a person's registration as a manager, or

(b) impose any additional condition.

Section 15

Introduction:

This section deals with how the Care Quality Commission addresses applications for registration as a manager under s.14.

Subsection (1):

Regulated activity - see s.8.

Registered manager – see ss. 13(3), 44.

Subsection (2):

The Commission – the Care Quality Commission - see s.1.

Satisfied – See General Note: Levels of Certainty.

See General Note: Enactment.

Appears – See General Note: Levels of Certainty.

Subsection (3):

Thinks - See General Note: Levels of Certainty.

Part 1 THE CARE QUALITY COMMISSION

Chapter 2 REGISTRATION IN RESPECT OF PROVISION OF HEALTH OR SOCIAL CARE

Further provision about registration as a service provider or manager

16 Regulations about registration

Regulations may make provision for the purposes of this Chapter about–

- (a) the keeping by the Commission of registers,
 - (b) the making of applications for registration as a service provider or manager,
 - (c) the registration of persons as service providers or managers, and
 - (d) the notification by registered persons to the Commission of an address for service of documents.
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Section 16

Introduction:

This section provides a power to make regulations on the details of the registration process.

Regulations - to be made by the Secretary of State – s.97(1) – by statutory instrument – see s.161(1) – subject to negative resolution procedure – see s.162(1).

The Commission – the Care Quality Commission - see s.1.

Service provider - see s.10(3).

17 Cancellation of registration

(1) The Commission may at any time cancel the registration of a person (“ R”) under this Chapter as a service provider or manager in respect of a regulated activity–

- (a) on the ground that R has been convicted of, or admitted, a relevant offence;
- (b) on the ground that any other person has been convicted of any relevant offence in relation to the regulated activity;
- (c) on the ground that the regulated activity is being, or has at any time been, carried on otherwise than in accordance with the relevant requirements;
- (d) on the ground that R has failed to comply with a requirement imposed by or under Chapter 6;
- (e) on any ground specified by regulations.

(2) The Commission must cancel the registration of a person under this Chapter as a manager in respect of a regulated activity if–

- (a) no-one is registered under this Chapter as a service provider in respect of the activity, or
- (b) the registration of a person under this Chapter as a service provider in respect of the activity ceases to be subject to a registered manager condition.

(3) For the purposes of this section, the following are relevant offences–

- (a) a Part 1 offence,
- (b) an offence under the Registered Homes Act 1984 (c. 23) or regulations made under it,
- (c) an offence under Part 2 of the Care Standards Act 2000 (c. 14) or regulations made under it, and
- (d) any other offence which appears to the Commission to be relevant.

(4) In this section “ relevant requirements” means– (a) any requirements or conditions imposed by or under this Chapter, and

(b) the requirements of any other enactment which appears to the Commission to be relevant.

Section 17

Introduction:

This section allows the Care Quality Commission to cancel the registration of a service provider or manger.

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: "Cancellation of registration would not normally be the first step in formal enforcement action. It is more likely to be used where other actions, such as issuing a warning notice or penalty notice or prosecution for an offence, have failed to ensure compliance, though this will depend on the severity of the breach. If a registered service provider or manager is convicted of a relevant offence, such as breaching a condition of registration (an offence under section 33) and fails to remedy the breach, the Commission could then cancel the person's registration."

Subsection (1):

Registered manager – see ss. 13(3), 44.

Service provider - see s.10(3).

The Commission – the Care Quality Commission - see s.1.

Regulated activity - see s.8.

Subsection (1)(e):

Regulations - to be made by the Secretary of State – s.97(1) – by statutory instrument – see s.161(1) – subject to negative resolution procedure – see s.162(1).

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: " Further grounds for cancelling registration may be specified in regulations. For instance, regulations may require that all staff receive appropriate training in handling medicines, and state that failure to provide this training would be grounds for cancellation."

Subsection (3):

Part 1 offence - see s.97.

“Appears” - See General Note: Levels of Certainty.

18 Suspension of registration

- (1) The Commission may at any time suspend a person's registration under this Chapter as a service provider or manager for a specified period.
 - (2) Except where the Commission gives notice under section 31, the power conferred by subsection (1) is exercisable only on the ground that—
 - (a) the regulated activity is being, or has at any time been, carried on otherwise than in accordance with the relevant requirements, or
 - (b) the person has failed to comply with a requirement imposed by or under Chapter 6.
 - (3) The suspension of a person's registration does not affect the continuation of the registration (but see sections 34 and 36 as to offences).
 - (4) A period of suspension may be extended under subsection (1) on one or more occasions.
 - (5) In this section “relevant requirements” has the same meaning as in section 17.
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Section 18

Introduction:

This section allows the Care Quality Commission to suspend a service provider's or manager's registration.

Subsection (1):

Registered manager – see ss.13(3), 44.

Service provider - see s.10(3).

The Commission – the Care Quality Commission - see s.1.

Subsection (2):

Relevant requirements – see subs.(5) and s.17(4).

Regulated activity - see s.8.

Subsection (3):

Question: What is the point of continuous registration if it cannot be relied upon for practical purposes during suspension?

19 Applications by registered persons

- (1) Except in case A or B, a person registered under this Chapter as a service provider or manager (“ R”) may apply to the Commission–
- (a) for the variation or removal of any condition for the time being in force in relation to the registration, other than a registered manager condition required by section 13(1),
 - (b) for the cancellation of the registration, or
 - (c) for the cancellation of, or the variation of the period of, any suspension of the registration.
- (2) Case A is where–
- (a) the Commission has given R notice under section 26(4)(a) of a proposal to cancel the registration, and
 - (b) the Commission has not decided not to take that step.
- (3) Case B is where–
- (a) the Commission has given R notice under section 28(3) of its decision to cancel the registration, and
 - (b) either the time within which an appeal may be brought has not expired or, if an appeal has been brought, it has not yet been determined.
- (4) An application under subsection (1) must be made in such form, and contain or be accompanied by such information, as the Commission requires.
- (5) If the Commission decides to grant an application under subsection (1)(a), it must serve notice in writing of its decision on the applicant (stating, where applicable, the condition as varied) and issue a new certificate of registration.
- (6) If the Commission decides to grant an application under subsection (1)(c), it must serve notice in writing of its decision on the applicant (stating, where applicable, the period as varied).

Section 19

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

"Section 19 enables registered service providers and registered managers to apply: to change the conditions of their registration (for example to change the number of people they are registered to accommodate); voluntarily to cancel their registration (for example, if they plan to close or sell the business); or to amend or lift any suspension of their registration (for example, if they believe they can demonstrate that they are once again complying with any relevant requirements)."

Subsection (1):

Registered manager – see ss. 13(3), 44.

Service provider - see s.10(3).

The Commission – the Care Quality Commission - see s.1.

Subsection (4):

“requires” – entirely informally, apparently, and not by statutory instrument; the principles of administrative law would nevertheless apply to prevent, for example, arbitrary differences in the requirements imposed for different applicants.

Subsection (6):

See General Note: Writing.

Health and Social Care Act 2008 c. 14

Part 1 THE CARE QUALITY COMMISSION

Chapter 2 REGISTRATION IN RESPECT OF PROVISION OF HEALTH OR SOCIAL CARE

Regulation, code of practice and guidance

20 Regulation of regulated activities

- (1) Regulations may impose in relation to regulated activities any requirements which the Secretary of State thinks fit for the purposes of this Chapter.
- (2) Regulations under this section may in particular make provision with a view to—
 - (a) securing that any service provided in the carrying on of a regulated activity is of appropriate quality, and
 - (b) securing the health, safety and welfare of persons for whom any such service is provided.
- (3) Regulations under this section may in particular—
 - (a) make provision as to the persons who are fit to carry on or manage a regulated activity;
 - (b) make provision as to the manner in which a regulated activity is carried on;
 - (c) make provision as to the persons who are fit to work for the purpose of the carrying on of a regulated activity;
 - (d) make provision as to the management and training of persons who work for the purpose of the carrying on of a regulated activity;
 - (e) make provision as to the fitness of premises;
 - (f) impose requirements as to the keeping of records and accounts;
 - (g) impose requirements as to the provision of information;
 - (h) impose requirements as to the financial position of a person registered as a service provider;
 - (i) impose requirements as to the making available to the public of information as to any charges made for the provision of any services provided in the carrying on of a regulated activity;
 - (j) impose requirements as to the review of the quality of any services provided in the carrying on of a regulated activity, as to the preparation of reports of such reviews, and as to the making available to the public of such reports;

(k) make provision as to the handling of complaints and disputes and the application of lessons learnt from them.

(4) Regulations made under this section by virtue of subsection (3)(b) may in particular include provision as to the control and restraint, in appropriate cases, of persons receiving health or social care or other services in connection with the carrying on of a regulated activity.

(5) Regulations made under this section may make provision for the prevention and control of health care associated infections and may include such provision as the Secretary of State considers appropriate for the purpose of safeguarding individuals (whether receiving health or social care or otherwise) from the risk, or any increased risk, of being exposed to health care associated infections or of being made susceptible, or more susceptible, to them.

(6) In this Chapter “health care associated infection” means any infection to which an individual may be exposed or made susceptible (or more susceptible) in circumstances where—

(a) health or social care is being, or has been, provided to that or any other individual, and

(b) the risk of exposure to the infection, or of susceptibility (or increased susceptibility) to it, is directly or indirectly attributable to the provision of that care.

(7) But “health care associated infection” does not include an infection to which the individual is deliberately exposed as part of any health care.

(8) Before making regulations under this section, except regulations which amend other regulations under this section and do not, in the opinion of the Secretary of State, effect any substantial change in the provision made by those regulations, the Secretary of State must consult such persons as the Secretary of State considers appropriate.

(9) Consultation undertaken by the Secretary of State before the commencement of this section is as effective for the purposes of this section as consultation undertaken after that time.

Section 20

Introduction:

This section gives the Secretary of State a general power to make regulations imposing any requirements he sees fit in relation to regulated activities.

Subsection (1):

Regulated activity - see s.8.

Regulations - to be made by the Secretary of State – s.97(1) – to be made by statutory instrument – see s.161(1) – subject to affirmative or negative resolution procedure – see s.162(1), (3).

See General Note: Secretary of State

Thinks fit – See General Note: Levels of Certainty.

Subsection (2):

Note:

A combination of “thinks fit” in subs.(1) and “with a view to” in this subsection is that the vires are subjective, and on a challenge by way of judicial review it would be sufficient for the Secretary of State to show that there had been a reasonable expectation that the regulations would advance one of the specified purposes – the courts would uphold the regulations if satisfied that the expectation was not wholly unreasonable, whether or not they agreed with it.

Subsection (3):

Service provider - see s.10(3).

Subsection (4):

Health or social care - see ss. 9(4), 97.

Subsection (5):

Health care associated infection – see ss. 20(6), (7), 44.

Subsection (8):

“In the opinion of” - See General Note: Levels of Certainty.

See General Note: Consultation.

21 Code of practice relating to health care associated infections

- (1) The Secretary of State may issue a code of practice about compliance with any requirements of regulations under section 20 which relate to the prevention or control of health care associated infections.
- (2) The code may–
 - (a) operate by reference to provisions of other documents specified in it (whether published by the Secretary of State or otherwise);
 - (b) provide for any reference in it to such a document to take effect as a reference to that document as revised from time to time;
 - (c) make different provision for different cases or circumstances.
- (3) The Secretary of State must keep the code under review and may from time to time–
 - (a) revise the whole or any part of the code, and
 - (b) issue a revised code.

Section 21

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: "Under section 21 the Secretary of State may also issue a code of practice about compliance with the requirements relating to the prevention and control of [health care associated infections]. This code will replace the code that NHS bodies currently follow (issued under sections 47A to 47C of the Health and Social Care (Community Health and Standards) Act 2003, as amended by the NHS Act 2006). The new code will apply to all regulated activities, rather than only those carried out by NHS bodies."

Subsection (1):

See General Note: Secretary of State

See General Note: Codes of Practice.

Health care associated infection – see ss. 20(6), (7), 44.

Subsection (2)(c):

See General Note: Statutory Instruments: Different Provision for Different Purposes.

22 Consultation etc. in relation to code of practice under s. 21

(1) Where the Secretary of State proposes to issue a code of practice under section 21, the Secretary of State must—

- (a) prepare a draft of the code, and
- (b) consult such persons as the Secretary of State considers appropriate about the draft.

(2) Where the Secretary of State proposes to issue under section 21 a revised code which in the opinion of the Secretary of State would result in a substantial change in the code, the Secretary of State must—

- (a) prepare a draft of the revised code, and
- (b) consult such persons as the Secretary of State considers appropriate about the change.

(3) Where, following consultation under subsection (1) or (2), the Secretary of State issues the code or revised code (whether in the form of the draft or with such modifications as the Secretary of State thinks fit), it comes into force at the time when it is issued by the Secretary of State.

(4) Where—

- (a) any document by reference to whose provisions the code operates as mentioned in section 21(2)(a) and (b) is a document published by the Secretary of State in connection with the Secretary of State's functions relating to health or social care,
- (b) the Secretary of State proposes to revise the document, and
- (c) in the opinion of the Secretary of State, the revision would result in a substantial change in the code,

the Secretary of State must, before revising the document, consult such persons as the Secretary of State considers appropriate about the change.

(5) Where—

- (a) any document by reference to whose provisions the code operates as mentioned in section 21(2)(a) and (b) is not one to which subsection (4)(a) of this section applies, (b) the document is revised, and
- (c) in the opinion of the Secretary of State, the revision results in a substantial change in the code,

the Secretary of State must consult such persons as the Secretary of State considers appropriate about whether the code should be revised in connection with the change.

(6) Consultation undertaken by the Secretary of State before the commencement of this section is as effective for the purposes of this section as consultation undertaken after that time.

Section 22

Introduction:

This section requires consultation before the Secretary of State issues a code of practice under section 21.

Subsection (1):

See General Note: Secretary of State

See General Note: Consultation

Considers appropriate - See General Note: Levels of Certainty.

Subsection (3):

“At the time when it is issued” – Question: What exactly does that mean in practice, there being no prescribed formalities for issue? Answer: Since there is no prescribed formality for issue, it is not possible to determine with precision when the statutory requirement to issue is complied with. In practice, the Secretary of State is likely to disseminate a new code in a number of ways, including publication on a website and sending copies to particularly interested parties. The safest course will be assume that the code is not to be regarded as being in force until all of those methods of publication have been achieved (including, in the case of copies, a reasonable time to allow for delivery).

Subsection (4):

“Health or social care” has the meaning given by section 9(4) – see s.97.

“In the opinion of” - See General Note: Levels of Certainty.

Subsection (6):

See General Note: Commencement

23 Guidance as to compliance with requirements

- (1) The Commission must issue guidance about compliance with the requirements of regulations under section 20, other than requirements which relate to the prevention or control of health care associated infections.
- (2) The guidance may, if the Commission thinks fit, also relate to compliance for the purposes of this Chapter with the requirements of any other enactments.
- (3) The guidance may–
 - (a) operate by reference to provisions of other documents specified in it (whether published by the Commission or otherwise);
 - (b) provide for any reference in it to such a document to take effect as a reference to that document as revised from time to time;
 - (c) make different provision for different cases or circumstances.
- (4) The Commission may from time to time revise guidance issued by it under this section and issue the revised guidance.

Section 23

Introduction:

This section requires the Care Quality Commission to issue guidance on compliance with the regulations under section 20.

Subsection (1):

The Commission – the Care Quality Commission - see s.1.

See General Note: Guidance

Health care associated infection – see ss. 20(6), (7), 44.

Subsection (2):

“Thinks fit” - See General Note: Levels of Certainty.

See General Note: Enactment

Subsection (3)(a):

Question: What does this provision achieve that silence would not? Answer: The provision avoids argument about whether adoption of provisions of other documents is unlawful sub-delegation (see General Note: Sub-delegation). Section 24(4)(c) and (5)(c) show that the provision is intended to allow the ambulatory adoption of other documents, including future amendments.

24 Consultation in relation to guidance under s. 23

(1) Where the Commission proposes to issue guidance under section 23, it must–

- (a) prepare a draft of the guidance, and
- (b) consult such persons as the Commission considers appropriate about the draft.

(2) Where the Commission proposes to issue under section 23 revised guidance which in its opinion would result in a substantial change in the guidance, the Commission must–

- (a) prepare a draft of the revised guidance, and
- (b) consult such persons as the Commission considers appropriate about the change.

(3) Where, following consultation under subsection (1) or (2), the Commission issues the guidance or revised guidance (whether in the form of the draft or with such modifications as the Commission thinks fit), it comes into force at the time when it is issued by the Commission.

(4) Where–

- (a) any document by reference to whose provisions the guidance operates as mentioned in section 23(3)(a) and (b) is a document published by the Commission,
- (b) the Commission proposes to revise the document, and
- (c) in the opinion of the Commission, the revision would result in a substantial change in the guidance,

the Commission must, before revising the document, consult such persons as the Commission considers appropriate about the change.

(5) Where–

- (a) any document by reference to whose provisions the guidance operates as mentioned in section 23(3)(a) and (b) is not one to which subsection (4)(a) of this section applies,
- (b) the document is revised, and (c) in the opinion of the Commission, the revision results in a substantial change in the guidance,

the Commission must consult such persons as the Commission considers appropriate about whether the guidance should be revised in connection with the change.

(6) Consultation undertaken by the Commission before the commencement of this section is as effective for the purposes of this section as consultation undertaken after that time.

Section 24

Introduction:

This section requires the Care Quality Commission to consult before issuing guidance under section 23.

Subsection (1):

The Commission – the Care Quality Commission - see s.1.

See General Note: Consultation.

Considers appropriate – See General Note: Levels of Certainty.

Subsection (2):

“In its opinion” - See General Note: Levels of Certainty.

Subsection (3):

“At the time when it is issued” – Question: What exactly does that mean in practice, there being no prescribed formalities for issue? Answer: Since there is no prescribed formality for issue, it is not possible to determine with precision when the statutory requirement to issue is complied with. In practice, the Commission is likely to disseminate guidance in a number of ways, including publication on a website and sending copies to particularly interested parties. The safest course will be assume that guidance is not to be regarded as being in force until all of those methods of publication have been achieved (including, in the case of copies, a reasonable time to allow for delivery).

Subsection (6): See General Note: Commencement

25 Effect of code under s. 21 and guidance under s. 23

(1) A code of practice under section 21 and guidance under section 23 are to be taken into account–

- (a) in the making of any decision by the Commission under this Chapter;
- (b) in any proceedings for the making of an order under section 30;
- (c) in any proceedings on an appeal against such a decision or order;
- (d) in any proceedings for an offence under section 33 or under regulations under section 20.

(2) A code of practice under section 21 or guidance under section 23 is also admissible in evidence in other criminal or civil proceedings.

(3) A failure to observe any provision of a code of practice under section 21 or guidance under section 23 does not of itself make a person liable to any criminal or civil proceedings.

Section 25

Introduction:

This section sets out the effect of a code of practice under section 21 and guidance under section 23.

Subsection (1):

“Taken into account” - See General Note: Have Regard To.

The Commission – the Care Quality Commission - see s.1.

Section 33 – failure to comply with conditions.

Subsections (2) and (3):

The combined effect of these provision is that a failure to comply with a code or guidance could be used as evidence of, for example, negligence, by showing that a person’s standards had fallen short of those expected of the industry generally – but failure to comply would not itself provide a cause of action (as distinct from providing evidence in respect of a cause of action such as negligence). The Government’s Explanatory Notes (see General Note: Explanatory Notes) say:

" Although a failure to comply with either the code of practice or the Commission’s own guidance does not in itself constitute an offence, they may both be used as evidence in criminal or civil proceedings as examples of what is expected behaviour in the areas they cover."

Part 1 THE CARE QUALITY COMMISSION

Chapter 2 REGISTRATION IN RESPECT OF PROVISION OF HEALTH OR SOCIAL CARE

Registration procedure

26 Notice of proposals

- (1) Subsections (2) and (3) apply where a person applies for registration as a service provider or manager in respect of a regulated activity.
- (2) If the Commission proposes to grant the application subject to any condition which has not been agreed in writing between it and the applicant, other than a registered manager condition required by section 13(1), it must give the applicant notice in writing of its proposal and of the conditions subject to which it proposes to grant the application.
- (3) The Commission must give the applicant notice in writing of a proposal to refuse the application.
- (4) Except where it makes an application under section 30 or gives notice under section 31, the Commission must give any person registered as a service provider or manager in respect of a regulated activity notice in writing of a proposal—
 - (a) to cancel the registration (otherwise than by virtue of section 17(2) or in accordance with an application under section 19(1)(b)),
 - (b) to suspend the registration or extend a period of suspension,
 - (c) to vary or remove (otherwise than in accordance with an application under section 19(1)(a)) any condition for the time being in force in relation to the registration, or
 - (d) to impose in relation to the registration any additional condition.
- (5) The Commission must give the applicant notice in writing of a proposal to refuse an application under section 19(1)(a), (b) or (c).
- (6) A notice under this section must give the Commission's reasons for its proposal.

Section 26

Introduction:

This section requires the Care Quality Commission to give notice before taking certain actions.

Subsection (1):

Regulated activity - see s.8.

Service provider - see s.10(3).

Registered manager – see ss. 13(3), 44.

Subsection (2):

The Commission – the Care Quality Commission - see s.1.

See General Note: Writing.

27 Right to make representations

- (1) A notice under section 26 must state that within 28 days of service of the notice any person on whom it was served may make written representations to the Commission concerning any matter which that person wishes to dispute.
 - (2) Where a notice has been served under section 26, the Commission must not determine any matter to which the notice relates until either—
 - (a) any person on whom the notice was served has made written representations to it concerning the matter,
 - (b) any such person has notified the Commission in writing that the person does not intend to make such representations, or
 - (c) the period during which any such person could have made representations has elapsed.
-

Section 27

Introduction:

This section gives a recipient of notice under section 26 the right to make representations.

Subsection (1):

The Commission – the Care Quality Commission - see s.1.

See General Note: Service.

See General Note: Written.

28 Notice of decisions

(1) If the Commission decides to grant an application for registration as a service provider or manager in respect of a regulated activity–

- (a) unconditionally, or
- (b) subject only to conditions each of which is either required by section 13(1) or agreed in writing between the Commission and the applicant,

it must give the applicant notice in writing of the decision.

(2) A notice under subsection (1) must state the conditions subject to which registration is granted.

(3) If the Commission decides to adopt a proposal of which it was required to give notice under section 26, it must give notice in writing of its decision to any person to whom it was required by section 26 to give notice of the proposal.

(4) A notice under subsection (3) must–

- (a) explain the right of appeal conferred by section 32,
- (b) in the case of a decision to adopt a proposal under section 26(2), state the conditions subject to which the application is granted,
- (c) in the case of a decision to adopt a proposal under section 26(4)(b), state the period (or extended period) of suspension, and
- (d) in the case of a decision to adopt a proposal under section 26(4)(c) or (d), state the condition as varied, the condition which is removed or (as the case may be) the additional condition imposed.

(5) Where a person (“ M”) is registered as a manager in respect of a regulated activity, the Commission must–

- (a) give M a copy of any notice given under subsection (3) to the person (“ S”) registered as a service provider in respect of the regulated activity, and

(b) give S a copy of any such notice given under that subsection to M. (6) Subject to subsection (7), a decision of the Commission to adopt a proposal under section 26(2) or (4) takes effect–

- (a) at the end of the period of 28 days referred to in section 32(2), or
- (b) if an appeal is brought, on the determination or abandonment of the appeal.

(7) Where the applicant notifies the Commission in writing before the end of the period mentioned in subsection (6)(a) that the applicant does not intend to appeal, the decision is to take effect when the Commission receives the applicant's notification.

Section 28

Introduction:

This section requires the Care Quality Commission to give notice of certain decisions.

Subsection (1):

Regulated activity - see s.8.

Service provider - see s.10(3).

Registered manager – see ss. 13(3), 44.

The Commission – the Care Quality Commission - see s.1.

See General Note: Writing.

29 Warning notice

(1) If it appears to the Commission that a person who is registered under this Chapter as a service provider or manager in respect of a regulated activity has failed to comply with the relevant requirements, the Commission may give the registered person a warning notice.

(2) A warning notice is a notice in writing—

(a) specifying the conduct which appears to the Commission to constitute a failure to comply with the relevant requirements,

(b) specifying the requirement concerned, and

(c) where it appears to the Commission that the failure is continuing—

(i) requiring the registered person to comply with the requirement concerned within a specified time, and

(ii) stating that, if the registered person fails to do so within that time, the Commission may take action to secure compliance with the relevant requirements.

(3) Subsections (4) and (5) apply where—

(a) a warning notice has been given to any person, and

(b) where any failure to comply with a requirement is specified under subsection (2)(c), the requirement has been complied with within the specified time.

(4) The failure to which the notice relates, so far as occurring before the relevant time, is not to constitute a ground for the cancellation or suspension of registration, the variation of the conditions of registration, the removal of a condition or the imposition of any additional condition.

(5) No proceedings may be brought against any person registered in respect of the regulated activity for a Part 1 offence that arises out of the failure to which the notice relates, so far as occurring before the relevant time.

(6) In subsections (4) and (5) “the relevant time” means—

(a) where a time is specified under subsection (2)(c)(i), the time so specified, and

(b) in any other case, the date on which the notice was given.

(7) In this section “relevant requirements” means—

(a) any requirements or conditions imposed by or under this Chapter or Chapter 6, and

(b) the requirements of any other enactment which appears to the Commission to be relevant.

Section 29

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: " Section 29 allows the Commission to give a warning notice to a registered person when they have failed to comply with the relevant requirements. For example, the Commission may issue a warning notice where a registered person has failed to comply with regulations made under section 20."

Subsection (1):

The Commission – the Care Quality Commission - see s.1.

Regulated activity - see s.8.

Service provider - see s.10(3).

Registered manager – see ss. 13(3), 44.

Subsection (2):

See General Note: Writing.

Subsection (5):

Part 1 offence - see s.97.

30 Urgent procedure for cancellation

(1) If–

(a) the Commission applies to a justice of the peace for an order cancelling the registration of a person as a service provider or manager in respect of a regulated activity, and

(b) it appears to the justice that, unless the order is made, there will be a serious risk to a person's life, health or well-being,

the justice may make the order, and the cancellation has effect from the time when the order is made.

(2) An application under subsection (1) may, if the justice thinks fit, be made without notice having been given to the registered person.

(3) As soon as practicable after the making of an application under this section, the Commission must give notice of the application–

(a) to such Primary Care Trust or English local authority as may be determined in accordance with regulations,

(b) where the person registered as a service provider is a Primary Care Trust or National Health Service trust, to such Strategic Health Authority as may be so determined,

(c) where the person registered as a service provider is an NHS foundation trust, to the Independent Regulator of NHS Foundation Trusts, and

(d) to such other persons as the Commission considers appropriate.

(4) An order under subsection (1) must be in writing.

(5) Where such an order is made, the Commission must, as soon as practicable after the making of the order, serve on the person registered as a service provider or manager in respect of the regulated activity–

(a) a copy of the order, and

(b) notice of the right of appeal conferred by section 32.

Section 30

Introduction:

This section allows the Care Quality Commission to cancel registration without giving a warning notice in urgent cases.

Subsection (1):

The Commission – the Care Quality Commission - see s.1.

See General Note: Justice of the Peace.

Regulated activity - see s.8.

Service provider - see s.10(3).

Registered manager – see ss. 13(3), 44.

Appears – See General Note: Levels of Certainty.

Note:

It seems that the justice of the peace does not have the option to delay commencement of the cancellation.

Subsection (2):

Question: How do you find out whether the justice of the peace will permit an application without notice to the registered person without making an application? Answer: Technically speaking, it would be necessary to begin by making an application to make an application – but no procedure is prescribed for such a step and in practice doubtless the whole process would be conflated. So what this amounts to in practice is that an application can be begun without notice to the registered person, but at the earliest stage the justice of the peace will decide whether the person needs to be present and, if so, adjourn the application while notice is given to the person.

Subsection (3):

English local authority — see s.97; see also General Note: Local Authorities.

Regulations - to be made by the Secretary of State – s.97(1) – by statutory instrument – see s.161(1) – subject to negative resolution procedure – see s.162(1).

Primary Care Trust – see National Health Service Act 2006, s. 18.

NHS Trust – see National Health Service Act 2006, s. 25.

Strategic Health Authority – see National Health Service Act 2006, s. 13.

Subsection (4):

See General Note: Writing.

Subsection (5):

See General Note: Service.

31 Urgent procedure for suspension, variation etc.

(1) If the Commission has reasonable cause to believe that unless it acts under this section any person will or may be exposed to the risk of harm, the Commission may, by giving notice in writing under this section to a person registered as a service provider or manager in respect of a regulated activity, provide for any decision of the Commission that is mentioned in subsection (2) to take effect from the time when the notice is given.

(2) Those decisions are—

(a) a decision under section 12(5) or 15(5) to vary or remove a condition for the time being in force in relation to the registration or to impose an additional condition;

(b) a decision under section 18 to suspend the registration or extend a period of suspension.

(3) The notice must—

(a) state that it is given under this section,

(b) state the Commission's reasons for believing that the circumstances fall within subsection (1),

(c) specify the condition as varied, removed or imposed or the period (or extended period) of suspension, and

(d) explain the right of appeal conferred by section 32.

Section 31

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

"Section 31 allows the Commission to immediately suspend, or extend the period of suspension of, a person's registration as a service provider or registered manager, or to change the conditions that apply to a person's registration, where it believes that any person will or may be exposed to the risk of harm."

Subsection (1):

The Commission – the Care Quality Commission - see s.1.

Regulated activity - see s.8.

Service provider - see s.10(3).

Registered manager – see ss. 13(3), 44.

See General Note: Writing.

32 Appeals to the Tribunal

(1) An appeal against–

(a) any decision of the Commission under this Chapter, other than a decision to give a warning notice under section 29, or

(b) an order made by a justice of the peace under section 30,

lies to the [First-tier Tribunal]¹.

(2) No appeal against a decision or order may be brought by a person more than 28 days after service on the person of notice of the decision or order.

(3) On an appeal against a decision of the Commission, other than a decision to which a notice under section 31 relates, the [First-tier Tribunal]¹ may confirm the decision or direct that it is not to have effect.

(4) On an appeal against an order made by a justice of the peace the [First-tier Tribunal]¹ may confirm the order or direct that it is to cease to have effect.

(5) On an appeal against a decision to which a notice under section 31 relates, the [First-tier Tribunal]¹ may confirm the decision or direct that it is to cease to have effect.

(6) On an appeal against a decision or order, the [First-tier Tribunal]¹ also has power–

(a) to vary any discretionary condition for the time being in force in respect of the regulated activity to which the appeal relates,

(b) to direct that any such discretionary condition is to cease to have effect,

(c) to direct that any such discretionary condition as the [First-tier Tribunal]¹ thinks fit shall have effect in respect of the regulated activity, or

(d) to vary the period of any suspension.

(7) In this section–

“ discretionary condition” , in relation to registration under this Chapter, means any condition other than a registered manager condition required by section 13(1) [.]²

[...] ²

1. Word substituted by Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009/56 Sch.1 para.474(a) (April 1, 2009)

2. Definition repealed by Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009/56 Sch.1 para.474(b) (April 1, 2009)

Introduction:

This section confers a right of appeal against decisions made by or on the application of the Commission.

Subsection (1):

The Commission – the Care Quality Commission - see s.1.

The Tribunal – the First-tier Tribunal – see subs.(7); see also General Note: First-tier Tribunal.

Subsection (2):

See General Note: Service.

Subsection (6):

“Thinks” - See General Note: Levels of Certainty.

Regulated activity - see s.8.

Part 1 THE CARE QUALITY COMMISSION

Chapter 2 REGISTRATION IN RESPECT OF PROVISION OF HEALTH OR SOCIAL CARE

Offences

33 Failure to comply with conditions

A person who–

(a) is registered under this Chapter in respect of a regulated activity (whether as a service provider or manager), and

(b) fails, without reasonable excuse, to comply with any condition for the time being in force by virtue of this Chapter in relation to the registration,

is guilty of an offence and liable on summary conviction to a fine not exceeding £50,000.

Section 33

Introduction:

This section makes it an offence to fail to comply with conditions of registration.

Service provider - see s.10(3).

Registered manager – see ss. 13(3), 44.

See General Note: Offences: Summary.

34 Offences relating to suspension or cancellation of registration

- (1) If a person (“ S”) who is registered under this Chapter as a service provider in respect of a regulated activity carries on that activity while S's registration is suspended, S is guilty of an offence.
- (2) A person (“ M”) whose registration under this Chapter as a manager in respect of a regulated activity is suspended is guilty of an offence if, during the period of suspension, M manages that activity at a time when no one else has been registered under this Chapter as a manager in respect of the activity since the suspension of M's registration.
- (3) A person (“ M”) whose registration under this Chapter as a manager in respect of a regulated activity has been cancelled is guilty of an offence if M manages that activity at a time when–
- (a) a person (“ S”) remains registered under this Chapter as a service provider in respect of the activity,
 - (b) S's registration remains subject to a registered manager condition, and
 - (c) no-one has been registered under this Chapter as a manager in respect of the activity since the cancellation of M's registration.
- (4) If a person (“ M”) who is registered under this Chapter as a manager in respect of a regulated activity manages that activity while the registration of the person registered under this Chapter as a service provider in respect of the activity is suspended, M is guilty of an offence if M knows or could reasonably be expected to know of the suspension.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding £50,000.

Section 34

Introduction:

This section makes it an offence to carry on regulated activities during suspension of a registration.

Subsection (1):

Regulated activity - see s.8.

Service provider - see s.10(3).

Subsection (2):

Registered manager – see ss. 13(3), 44.

Subsection (5):

See General Note: Offences: Summary.

35 Contravention of regulations

Regulations under this Chapter may provide that a contravention of or failure to comply with any specified provision of the regulations is to be an offence, but may not provide for an offence to be triable on indictment or to be punishable with imprisonment or with a fine exceeding—

- (a) in the case of regulations under section 20 (regulation of regulated activities),
£50,000, or
- (b) in any other case, level 4 on the standard scale.

Section 35

Introduction:

This section allows regulations under this Chapter to create offences.

See General Note: Offences: Indictment

See General Note: Standard Scale.

36 False description of concerns, premises etc.

- (1) Any person who, with intent to deceive any person—
- (a) applies any name to any concern carried on in England or to any premises in England, or
 - (b) in any way describes such a concern or such premises or holds such a concern or such premises out,

so as to indicate, or reasonably be understood to indicate, that the carrying on of the concern is a regulated activity or that the premises are used for the carrying on of a regulated activity is guilty of an offence unless the conditions in subsection (2) are met.

- (2) Those conditions are—
- (a) that a person is registered under this Chapter as a service provider in respect of the regulated activity in question, and
 - (b) that the registration has not been suspended.

(3) Any person who, with intent to deceive any person, in any way describes or holds out any person registered under this Chapter as a service provider in respect of a regulated activity as able to provide a service or do any thing the provision or doing of which would contravene a condition for the time being in force by virtue of this Chapter in relation to the regulated activity is guilty of an offence.

(4) A person guilty of an offence under subsection (1) or (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) In this section “concern” includes any organisation.

Section 36

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

"Section 36 makes it an offence for a person, with intent to deceive another, to claim that a concern is carrying on regulated activities, or that premises are used for carrying on regulated activities, if a person is not registered with the Commission to carry on those activities, or a person is registered to carry them on but their registration has been suspended. This would apply to someone who provides care to people under false pretences, for example a hotel claiming to be a nursing home. It also makes it an offence for a person, with intent to deceive another, to claim that any person who is registered as a service provider is able to provide a particular service or do anything which would contravene a condition of their registration."

Subsection (1):

Regulated activity - see s.8.

See General Note: Person

See General Note: England and Wales.

Subsection (2):

Service provider - see s.10(3).

Subsection (4):

See General Note: Offences: Summary

See General Note: Standard Scale.

37 False statements in applications

(1) Subsection (2) applies to any application under this Chapter by a person (“ A ”)–

- (a) for registration,
- (b) for the variation or removal of any condition in force in relation to A's registration,
- (c) for the variation or cancellation of any suspension of A's registration, or
- (d) for the cancellation of A's registration.

(2) If, in an application to which this subsection applies, A knowingly makes a statement which is false or misleading in a material respect, A is guilty of an offence.

(3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Section 37

Introduction:

This section makes it an offence to give false statements when making an application.

Note:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: " Application forms will inform people of this offence so that they are aware of the potential result of failing to complete their applications accurately."

Subsection (3):

See General Note: Offences: Summary

See General Note: Standard Scale.

Part 1 THE CARE QUALITY COMMISSION

Chapter 2 REGISTRATION IN RESPECT OF PROVISION OF HEALTH OR SOCIAL CARE

Information to be available to public

38 Provision of copies of registers

(1) Subject to subsection (3), the Commission must secure that copies of any register kept for the purposes of this Chapter are available at its offices for inspection at all reasonable times by any person.

(2) Subject to subsections (3) and (4), any person who asks the Commission for a copy of, or an extract from, a register kept for the purposes of this Chapter is entitled to have one.

(3) Regulations may provide that subsections (1) and (2) do not apply–

- (a) in such circumstances as may be prescribed, or
- (b) to such parts of a register as may be prescribed.

(4) A fee determined by the Commission is payable for the copy or extract except–

- (a) in prescribed circumstances, or
- (b) in any case where the Commission considers it appropriate to provide the copy or extract free of charge.

Section 38

Introduction:

This section requires the Commission to provide public access to the registers.

Subsection (1):

The Commission – the Care Quality Commission - see s.1.

Subsection (3):

Regulations - to be made by the Secretary of State – s.97(1) – by statutory instrument – see s.161(1) – subject to negative resolution procedure – see s.162(1).

Subsection (4):

See General Note: Fees.

Prescribed – by regulations - see s.97(1) – to be made by statutory instrument – see s.161(1) – subject to negative resolution procedure – see s.162(1).

“Considers” – See General Note: Levels of Certainty.

Part 1 THE CARE QUALITY COMMISSION

Chapter 2 REGISTRATION IN RESPECT OF PROVISION OF HEALTH OR SOCIAL CARE

Miscellaneous

39 Bodies required to be notified of certain matters

(1) Where the Commission gives a notice to which this section applies in respect of a regulated activity, it must give a copy of the notice—

(a) to such Primary Care Trust or English local authority as may be determined in accordance with regulations,

(b) where the person registered as a service provider in respect of the activity is a Primary Care Trust or National Health Service trust, to such Strategic Health Authority as may be so determined,

(c) where the person registered as a service provider in respect of the activity is an NHS foundation trust, to the Independent Regulator of NHS Foundation Trusts, and

(d) to such other persons as the Commission considers appropriate.

(2) This section applies to the following notices—

(a) a notice under section 26 (notice of proposals),

(b) a notice under subsection (1) or (3) of section 28 (notice of decisions),

(c) a warning notice under section 29 (warning notice), and

(d) a notice under section 31 (urgent procedure for suspension, variation etc.).

(3) The Commission must notify each of the persons mentioned in subsection (1)(a) to (d) of either of the following events in relation to a person registered under this Chapter—

(a) the payment of a penalty in accordance with a penalty notice issued under section 86, or

(b) the commencement of proceedings in respect of a Part 1 offence.

(4) Regulations may prescribe cases in which subsection (1) or (3) does not apply.

Section 39

Introduction:

This section requires the Commission to notify various bodies when giving notices under this Chapter.

Subsection (1):

The Commission – the Care Quality Commission - see s.1.

Regulated activity - see s.8.

Primary Care Trust – see National Health Service Act 2006, s. 18.

English local authority — see s.97; see also General Note: Local Authorities.

NHS Trust – see National Health Service Act 2006, s. 25.

NHS Foundation Trust – see section 97

Strategic Health Authority – see National Health Service Act 2006, s. 13.

Subsection (2):

Warning Notice - see section 29

Subsection (3):

Part 1 offence - see s.97.

Subsection (4):

Regulations - to be made by the Secretary of State – s.97(1) – by statutory instrument – see s.161(1) – subject to negative resolution procedure – see s.162(1).

40 Periodic returns

- (1) Regulations may require the person carrying on a regulated activity to make a return to the Commission at such intervals as may be prescribed.
- (2) Provision may be made by the regulations as to the contents of the return and the period in respect of which and date by which it is to be made.

Section 40

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

"Section 40 enables regulations to be made requiring persons who are registered to carry on regulated activities to make returns to the Commission. The regulations may also specify the frequency of the returns, their content, the period that the returns relate to, and the date by which returns must be made."

Subsection (1):

Regulations - to be made by the Secretary of State – s.97(1) – by statutory instrument – see s.161(1) – subject to negative resolution procedure – see s.162(1).

The Commission – the Care Quality Commission - see s.1.

Regulated activity - see s.8.

41 Liquidators etc.

(1) Regulations may–

- (a) require any person to whom this section applies to give notice of the person's appointment to the Commission;
- (b) require any person to whom this section applies to appoint a person to manage the regulated activity in question.

(2) This section applies to any person appointed as–

- (a) a receiver or manager of the property of a relevant company,
- (b) the liquidator or provisional liquidator of a relevant company, or
- (c) the trustee in bankruptcy of a relevant individual.

(3) In this section–

“company” includes a partnership;

“relevant company” means a company which is registered under this Chapter as a service provider in respect of a regulated activity;

“relevant individual” means an individual who is registered under this Chapter as a service provider in respect of a regulated activity.

Section 41

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

"Section 41 provides for regulations to be made which deal with the process that applies when companies or individuals that are registered as service providers go into liquidation or receivership, or are declared bankrupt. The regulations may require the Commission to be notified and a suitably qualified manager to be appointed to manage the regulated activities."

Subsection (1):

The Commission – the Care Quality Commission - see s.1.

Regulated activity - see s.8.

Regulations - to be made by the Secretary of State – s.97(1) – by statutory instrument – see s.161(1) – subject to negative resolution procedure – see s.162(1).

42 Death of registered person

(1) Regulations may–

(a) provide for the provisions of this Chapter to apply with prescribed modifications in cases where a person who was the only person registered under this Chapter as a service provider in respect of a regulated activity has died;

(b) require the personal representatives of a deceased person who was registered as a service provider in respect of a regulated activity to notify the Commission of the person's death.

(2) Regulations under subsection (1)(a) may in particular–

(a) provide for the regulated activity to be carried on for a prescribed period by a person who is not registered in respect of it, and

(b) include provision for the prescribed period to be extended by such further period as the Commission may allow.

Section 42

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

"Regulations under section 42 may require the Commission to be notified if a person who is registered as a service provider dies. They may also enable someone else to continue to carry on, for a limited period, the regulated activities which the deceased person was carrying on, and for the sections of the Act to apply in a modified way to allow for this."

Subsection (1):

Regulated activity - see s.8.

Service provider - see s.10(3).

The Commission – the Care Quality Commission - see s.1.

Regulations - to be made by the Secretary of State – s.97(1) - to be made by statutory instrument – see s.161(1) – subject to negative resolution procedure – see s.162(1).

Part 1 THE CARE QUALITY COMMISSION

Chapter 2 REGISTRATION IN RESPECT OF PROVISION OF HEALTH OR SOCIAL CARE

Power to modify provisions of Chapter

43 Power to modify Chapter in relation to newly regulated activities

(1) Regulations may modify the provisions of this Chapter in their application to any newly regulated activity of a prescribed description.

(2) A “newly regulated activity” is any regulated activity other than one which—

(a) consists of or includes the carrying on of a relevant concern,

(b) under the 2000 Act as it has effect immediately before commencement, is regulated under Part 2 of that Act by virtue of regulations under section 42 of that Act (power to extend application of that Part), or

(c) consists of the provision of health care by a National Health Service body, as defined by section 121 of that Act.

(3) For this purpose a “relevant concern” is anything which, under the 2000 Act as it has effect immediately before commencement, would for the purposes of that Act be—

(a) an independent hospital,

(b) an independent clinic,

(c) an independent medical agency,

(d) a care home,

(e) a domiciliary care agency, or

(f) a nurses agency.

(4) Any regulated activity carried on by or on behalf of the Crown is for this purpose a newly regulated activity.

(5) In this section—

“the 2000 Act” means the Care Standards Act 2000 (c. 14);

“commencement” means the commencement of section 10 of this Act.

Section 43

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

"Section 43 enables the Secretary of State to make regulations modifying Chapter 2 in its application to newly regulated activities of a prescribed description. The registration provisions are designed to work to cover care which is already subject to regulation and to cover care directly provided by NHS bodies. When other forms of care are eventually brought within the ambit of the registration regime, there may be unforeseen issues which necessitate modification of the registration procedures. This power allows for that eventuality. The power to modify the Act under this section does not apply to the registration of NHS bodies or providers currently subject to regulation under the Care Standards Act 2000 but it will apply to regulated activities carried on by or on behalf of the Crown."

Subsection (1):

Regulations – to be made by the Secretary of State – see s.97(1) – to be made by statutory instrument – see s.161(1) – subject to affirmative resolution procedure – see s.162(3).

Subsection (2):

Health care - see ss.9(2), 97(1), (2).

English NHS body– see section 97

Subsection (4):

See General Note: The Crown.

Subsection (5):

Section 10 came into force on 21st July 2008.

Part 1 THE CARE QUALITY COMMISSION

Chapter 2 REGISTRATION IN RESPECT OF PROVISION OF HEALTH OR SOCIAL CARE

Interpretation

44 Interpretation of Chapter 2

In this Chapter—

“health care associated infection” is to be read in accordance with section 20(6) and (7);

“registered manager condition” is to be read in accordance with section 13(3).

Section 44

Introduction:

This section lists terms defined for Chapter 2.

Part 1 THE CARE QUALITY COMMISSION

Chapter 3 QUALITY OF HEALTH AND SOCIAL CARE

Health care standards

45 Standards set by Secretary of State

- (1) The Secretary of State may prepare and publish statements of standards in relation to the provision of NHS care.
- (2) The Secretary of State must keep the standards under review and may publish amended statements whenever the Secretary of State considers it appropriate.
- (3) The Secretary of State may direct a person—
 - (a) to prepare a draft statement of standards for the purposes of subsection (1), submit it to the Secretary of State for approval and publish it in the form approved or modified by the Secretary of State;
 - (b) to keep standards under review for the purposes of subsection (2) and, whenever the person considers it appropriate, submit a draft amended statement to the Secretary of State for approval and publish it in the form approved or modified by the Secretary of State.
- (4) The Secretary of State must consult such persons as the Secretary of State considers appropriate—
 - (a) before publishing a statement under subsection (1) or approving a statement under subsection (3)(a);
 - (b) before publishing under subsection (2), or approving under subsection (3)(b), any amended statement which in the opinion of the Secretary of State effects a substantial change in the standards.

Section 45

Introduction:

This section introduces Chapter 3 of Part 1, which deals with the quality of health and social care. It allows the Secretary of State to issue statements of standards for the provision of care in the National Health Service.

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

"Section 45 gives the Secretary of State the power to prepare and publish statements of standards in relation to health care provided or commissioned by PCTs and to amend these statements from time to time. PCTs will be required to have regard to these standards in discharging their duty under the

new section 23A of the NHS Act 2006 (see section 139) to secure continuous improvement in the quality of health care provided or commissioned by them."

Subsection (1):

See General Note: Secretary of State

NHS care – “means health care provided by Primary Care Trusts or commissioned by Primary Care Trusts (whether from other English NHS providers or not)” – see s.97.

Subsection (3):

Question: Whom could the Secretary of State direct and would they have to comply? Answer: In theory any person could be chosen (see General Note: Person): but the rules of administrative law would prevent the choice of any person without appropriate experience and resources; again in theory, a power to direct implies a duty to comply with a direction – but in practice this provision is probably more about ensuring that the Secretary of State has power to ask someone else to prepare the standards (see General Note: Sub-delegation) and less about compelling someone to prepare them – a direction is likely to be consensual. The Government's Explanatory Notes (see General Note: Explanatory Notes) say: " In *“High Quality Care for All”*, published on 30 June 2008, the Government indicated its intention to ask the National Institute for Clinical Excellence to develop these standards, with reference to the clinical priorities set out by a new National Quality Board, to be chaired by the NHS Chief Executive." - the phrase "intention to ask" seems to confirm the consensual intentions.

Subsection (4):

See General Note: Consultation.

Part 1 THE CARE QUALITY COMMISSION

Chapter 3 QUALITY OF HEALTH AND SOCIAL CARE

Reviews and investigations

46 Periodic reviews

- (1) In respect of each Primary Care Trust the Commission must—
 - (a) conduct reviews of the provision of health care provided or commissioned by the Trust,
 - (b) assess the Trust's performance following each such review, and
 - (c) publish a report of its assessment.
- (2) In respect of each English NHS provider the Commission must—
 - (a) conduct reviews of the provision of health care by the provider,
 - (b) assess the provider's performance following each such review, and
 - (c) publish a report of its assessment.
- (3) In respect of each English local authority the Commission must—
 - (a) conduct reviews of the provision of adult social services provided or commissioned by the authority,
 - (b) assess the authority's performance following each such review, and
 - (c) publish a report of its assessment.
- (4) The assessment of a body's performance is to be by reference to such indicators of quality as the Secretary of State may devise or approve.
- (5) The Secretary of State may direct the Commission to devise indicators for the purposes of subsection (4) and submit them to the Secretary of State for approval.
- (6) The Commission must—
 - (a) prepare a statement describing the method that it proposes to use in assessing and evaluating a body's performance under this section, and
 - (b) submit the statement to the Secretary of State for approval. (7) Different indicators may be devised or approved, and different methods may be described, for different cases.
- (8) The Commission must publish—
 - (a) the indicators devised or approved from time to time by the Secretary of State, and

(b) the method statement approved from time to time by the Secretary of State.

(9) The Secretary of State may, after consulting the Commission, by regulations make provision as to the procedure to be followed in respect of the making of representations to the Commission before the publication of a report under this section.

Section 46

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: " In place of the annual reviews currently conducted by CHAI and CSCI, the Commission will carry out periodic reviews under section 46 of Primary Care Trusts, NHS providers in England and local authorities in England. PCTs and local authorities provide health and adult social services but they also commission from other organisations health and adult social services that they consider necessary to meet the needs of their local populations. For example, a local authority might pay for people with particular kinds of needs to be cared for in a private facility that specialises in catering for such people. The Commission will therefore carry out reviews of the effectiveness of commissioning by reviewing the overall provision of health care in PCT areas under subsection (1) and of adult social services in English local authority areas under subsection (3). These reviews will assess how well the services they put in place, whether provided directly or commissioned from other people, are meeting the needs of their local populations."

Pepper v Hart Note (see General Note: Pepper v Hart):

At the Report Stage in the House of Lords on the Bill for this Act the Parliamentary Under-Secretary of State, Department of Health (Lord Darzi of Denham) said as follows: "It is also helpful to put on the record points about what the Care Quality Commission's periodic reviews, and special reviews and investigations under Clause 44, can cover in respect of commissioning. As an example, a review could ask whether a PCT had assessed the health needs of its population and consider whether those needs were being met. Similarly, as we discussed in relation to Amendment No. 33, the new regulator's reviews may cover how well local authorities are carrying out their duty to assess the needs of those who appear to them to need adult social services and, therefore, how well they are commissioning services for those who meet the eligibility criteria. The regulator's reviews or investigations could also consider value for money of commissioned care, quality, availability and access, and overall care outcomes."

Subsection (1):

The Commission – the Care Quality Commission - see s.1.

Primary Care Trust: see sections 97 and 139.

Subsection (2):

English NHS provider— see section 97

Subsection (3):

English local authority — see s.97; see also General Note: Local Authorities.

Adult social services – see section 97

Subsection (4):

See General Note: Secretary of State

Subsection (5):

See General Note: Directions; see also s.161(3), (4). (For power to vary and requirement for writing, see s.165.)

Subsection (7):

See General Note: Statutory Instruments: Different Provision for Different Purposes.

Subsection (9):

See General Note: Consultation

Regulations - to be made by statutory instrument – see s.161(1) – subject to negative resolution procedure – see s.162(1).

47 Frequency and period of review

- (1) The Commission must—
 - (a) prepare a document setting out the frequency with which reviews under section 46 are to be conducted and the period to which they are to relate, and
 - (b) submit the document to the Secretary of State for approval.
 - (2) The document may make different provision for different cases.
 - (3) The Commission may revise the document from time to time with the approval of the Secretary of State.
 - (4) The Commission must publish the document as approved by the Secretary of State and as revised from time to time.
-

Section 47

Introduction:

This section requires the Care Quality Commission to publish a document, as approved by the Secretary of State, determining the frequency of reviews under section 46.

Subsection (1):

The Commission – the Care Quality Commission - see s.1.

See General Note: Secretary of State

Subsection (2):

See General Note: Statutory Instruments: Different Provision for Different Purposes.

48 Special reviews and investigations

- (1) The Commission may conduct any special review or investigation, and must do so if the Secretary of State so requests.
- (2) A special review or investigation is a review (other than a periodic review) of or an investigation into—
 - (a) the provision of NHS care,
 - (b) the provision of adult social services, or
 - (c) the exercise of functions by English Health Authorities.
- (3) Such a review or investigation may relate—
 - (a) to the overall provision of NHS care or adult social services or to the provision of NHS care or adult social services of a particular description;
 - (b) to the overall exercise of functions or to the exercise of functions of a particular description;
 - (c) to the provision of care or services or the exercise of functions by bodies or persons generally or by particular bodies or persons.
- (4) Where the Commission conducts a review or investigation under this section, it must publish a report.
- (5) The Commission must consider whether the report raises anything on which it ought to give advice to the Secretary of State under section 53(2).
- (6) If the review or investigation gives rise to a duty to act under section 50(2) or (3) in respect of an English local authority, subsection (5) does not apply in relation to so much of the report as relates to that local authority.
- (7) The Secretary of State may, after consulting the Commission, by regulations make provision as to the procedure to be followed in respect of the making of representations to the Commission before the publication of a report under subsection (4).
- (8) In this section “English Health Authority” means—
 - (a) a Strategic Health Authority, or (b) a Special Health Authority performing functions only or mainly in respect of England.

Section 48

Introduction:

This section allows the Care Quality Commission to carry out special reviews or investigations on general health care provisions.

Note:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

"Reviews and investigations under this section could look specifically or generally at any issue to do with different kinds of health or adult social care, including the commissioning of that care, how particular functions are carried out or provision by particular people or bodies. Investigations may be carried out where the Commission identifies a risk to a care recipient's health or welfare. For instance, the Commission might investigate older people's services in a particular area, and then nationally where there is evidence to suggest a problem is more widespread. The Commission may also carry out reviews into topics of particular interest, for instance, it may carry out a review of care pathways for people with longterm conditions. The Commission must carry out a particular review or investigation if requested by the Secretary of State."

Pepper v Hart Note (see General Note: Pepper v Hart):

At the Report Stage in the House of Lords on the Bill for this Act the Parliamentary Under-Secretary of State, Department of Health (Lord Darzi of Denham) said as follows: "It is also helpful to put on the record points about what the Care Quality Commission's periodic reviews, and special reviews and investigations under Clause 44, can cover in respect of commissioning. As an example, a review could ask whether a PCT had assessed the health needs of its population and consider whether those needs were being met. Similarly, as we discussed in relation to Amendment No. 33, the new regulator's reviews may cover how well local authorities are carrying out their duty to assess the needs of those who appear to them to need adult social services and, therefore, how well they are commissioning services for those who meet the eligibility criteria. The regulator's reviews or investigations could also consider value for money of commissioned care, quality, availability and access, and overall care outcomes."

Subsection (1):

The Commission – the Care Quality Commission - see s.1.

See General Note: Secretary of State

Subsection (2):

NHS care – "means health care provided by Primary Care Trusts or commissioned by Primary Care Trusts (whether from other English NHS providers or not)" – see s.97.

Adult social services – see section 97

Subsection (5):

See section 53(2)

Subsection (6):

English local authority — see s.97; see also General Note: Local Authorities.

Subsection (7):

See General Note: Consultation

Regulations - to be made by statutory instrument – see s.161(1) – subject to negative resolution procedure – see s.162(1).

49 Power to extend periodic review function

- (1) The Secretary of State may by regulations require the Commission to–
- (a) conduct periodic reviews of the carrying on of regulated activities by registered service providers, and
 - (b) either–
 - (i) publish reports of such reviews, or
 - (ii) assess the performance of registered service providers following such reviews and publish reports of its assessment.
- (2) Regulations under subsection (1) may require the Commission to conduct periodic reviews in relation to–
- (a) all regulated activities or regulated activities of a particular description;
 - (b) all registered service providers or particular registered service providers;
 - (c) the whole of a regulated activity or a particular aspect of it.
- (3) In the case of a regulated activity carried on by a Primary Care Trust, another English NHS provider or an English local authority–
- (a) subsection (1) does not apply to the carrying on of that activity by that body to the extent that the carrying on of that activity by that body is already subject to periodic review under section 46, but
 - (b) this does not prevent the Secretary of State from requiring the Commission to conduct periodic reviews of a particular aspect of the activity as carried on by that body.
- (4) If regulations under subsection (1) require the Commission to conduct periodic reviews, the following provisions have effect in relation to the reviews as they have effect in relation to reviews under section 46–
- (a) section 46(4) to (9), and
 - (b) section 47. (5) In this section “registered service provider” means a person registered under Chapter 2 as a service provider.

Section 49

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

"Whereas section 46 provides for periodic reviews of publicly funded health and social care, this section enables the Secretary of State to make regulations requiring the Commission to carry out periodic reviews of the carrying on of regulated activities by any registered service provider. The

regulations can also require the Commission to publish reports of its reviews or assess the performance of registered service providers following such reviews and publish reports of its assessment. Section 49 also allows for a greater degree of specificity about what is covered by the review. Regulations under this section can require the Commission to carry out periodic reviews of some or all registered service providers, in respect of some or all of the regulated activities they provide, or even in respect of particular aspects of a regulated activity. Direct overlap with section 46 is prevented by subsection (3) but this subsection still permits a particular aspect of the carrying on of a regulated activity by a PCT, other English NHS provider or English local authority to be reviewed separately, despite the fact that it may already have formed part of a broader review under section 46. This will allow the Commission to look at certain types of services. For instance, it is the Government's intention to use this power to require the Commission to review and assess all residential premises providing adult social care, whether run privately or by a local authority, as the CSCI has done through its "Quality Ratings" scheme. Similarly, regulations could require that all maternity services should be reviewed by the Commission. This will be possible even if these services have already been covered under the review of health care provision in a PCT area under section 46(1). In other cases, the Secretary of State may want the Commission to publish information on a particular aspect of a service. For instance, many NHS Trusts subcontract with private hospitals to provide additional capacity for routine surgery such as hip operations. Although these services would be covered by reviews by the Commission (under section 46) of the overall provision of health care by a Trust, the Secretary of State may want the Commission separately to review the quality of provision under such arrangements."

Subsection (1):

See General Note: Secretary of State

The Commission – the Care Quality Commission - see s.1.

Regulations - to be made by statutory instrument – see s.161(1) – subject to negative resolution procedure – see s.162(1).

Service provider - see s.10(3).

Regulated Activity- see section 8

Subsection (3):

Primary Care Trust: see sections 97 and 139

English NHS provider – see section 97

English local authority — see s.97; see also General Note: Local Authorities.

50 Failings by English local authorities

- (1) This section applies where the Commission conducts a review under section 46 or 49, or a review or investigation under section 48, in respect of an English local authority.
- (2) If the Commission considers that the local authority is failing to discharge any of its adult social services functions to an acceptable standard, then subject to subsection (3) the Commission must—
- (a) inform the Secretary of State of that fact, and
 - (b) recommend any special measures which it considers the Secretary of State should take.
- (3) If the Commission considers that the failure is not substantial, it may instead—
- (a) give the local authority a notice under subsection (4), and
 - (b) inform the Secretary of State that it has done so.
- (4) A notice under this subsection is a notice which specifies—
- (a) the respects in which the Commission considers that the local authority is failing,
 - (b) the action which the Commission considers the local authority should take to remedy the failure, and
 - (c) the time by which the Commission considers the action should be taken.
- (5) If the Commission recommends that the Secretary of State should take special measures in relation to the local authority, the Commission must, if the Secretary of State so requests—
- (a) conduct a further review under section 48 in relation to the authority, and
 - (b) include in its report under subsection (4) of that section a report on such matters as the Secretary of State may specify.

Section 50

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: "Section 50 sets out steps which the Commission must or may take when, following a review under section 46 or 49, or a review or investigation under section 48, it judges that there are failings in an English local authority's discharge of its adult social services functions."

Subsection (1):

English local authority — see s.97; see also General Note: Local Authorities.

The Commission – the Care Quality Commission - see s.1.

Subsection (2):

See General Note: Secretary of State

Adult social services – see section 97

51 Failings by Welsh NHS bodies

(1) Following a review under section 46 or 49, or a review or investigation under section 48, the Commission must inform the Welsh Ministers if it considers that—

- (a) there are significant failings in relation to the provision of health care by or pursuant to arrangements made by a Welsh NHS body,
- (b) there are significant failings in the running of a Welsh NHS body, or
- (c) there are significant failings in the running of a body, or the practice of an individual, providing health care pursuant to arrangements made by a Welsh NHS body.

(2) The Commission may also recommend to the Welsh Ministers that, with a view to remedying those failings, the Welsh Ministers take special measures—

- (a) in a case falling within subsection (1)(a) or (b), in relation to the Welsh NHS body concerned;
- (b) in a case falling within subsection (1)(c), in relation to the body or individual concerned (except an English NHS body or a cross-border Special Health Authority).

(3) In this section “ Welsh NHS body” has the same meaning as in Part 2 of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43).

Section 51

Introduction:

This section is the equivalent of s.50 for Welsh Health Authorities.

Subsection (1):

The Commission – the Care Quality Commission - see s.1.

See General Note: Welsh Ministers.

Health care - see section 9(2) and see section 97.

Subsection (2):

Cross-border Special Health Authority - means a Special Health Authority not performing functions only or mainly in respect of England or only or mainly in respect of Wales – see s.97(1).

English NHS body– see section 97

Part 1 THE CARE QUALITY COMMISSION

Chapter 4 FUNCTIONS UNDER MENTAL HEALTH ACT 1983

52 Transfer and amendment of functions under Mental Health Act 1983

(1) The functions of the Secretary of State under the following provisions of the Mental Health Act 1983 (c. 20) (“ the MHA”) are transferred to the Commission–

- (a) section 57(2)(a) (appointment of registered medical practitioners and other persons),
- (b) section 58(3)(a) (appointment of registered medical practitioners),
- (c) section 61(1) (receipt of reports on treatment),
- (d) section 61(3) (power to disapply Part 4 certificates),
- (e) section 64H(4) (receipt of reports on treatment),
- (f) section 64H(5) (power to disapply Part 4A certificates),
- (g) section 118(2) (code of practice) so far as it relates to the appointment of registered medical practitioners,
- (h) section 119(1) (power to make provision for payment to practitioners etc.), and
- (i) section 120 (duty to keep matters under review etc.).

(2) Registered medical practitioners, and other persons, appointed or authorised by the Commission in the exercise of a function under the MHA may include members or employees of the Commission.

(3) The functions of the Mental Health Act Commission under the MHA are transferred–

- (a) in relation to England, to the Care Quality Commission;
- (b) in relation to Wales, to the Welsh Ministers.

(4) Section 121 of the MHA (which makes provision about the Mental Health Act Commission and requires the Secretary of State and the Welsh Ministers to delegate some of their functions to it) ceases to have effect.

(5) Schedule 3 (which makes amendments to the MHA consequential on the provisions of this section, and other amendments to the MHA relating to the functions of the Commission and the Welsh Ministers) has effect.

Introduction:

This section is the only provision of Chapter 4 of Part 1. It transfers certain functions under the Mental Health Act 1983 from the Secretary of State or the Mental Health Act Commission to the Care Quality Commission or the Welsh Ministers.

Subsection (1):

See General Note: Secretary of State.

The Commission – the Care Quality Commission - see s.1.

Subsection (3):

Mental Health Act Commission – had the function of appointing medical practitioners for certain purposes of the Mental Health Act 1983 – see 1983 Act, s.121 (repealed by subs.(4)).

Part 1 THE CARE QUALITY COMMISSION

Chapter 5 FURTHER FUNCTIONS

53 Information and advice

(1) The Commission must keep the Secretary of State informed about the following matters–

- (a) the provision of NHS care;
- (b) the provision of adult social services;
- (c) the carrying on of regulated activities.

(2) The Commission may at any time give the Secretary of State advice on anything connected with those matters.

(3) Advice under subsection (2) may in particular include advice on any changes that the Commission thinks should be made to–

- (a) regulations under section 20 (regulation of regulated activities),
- (b) a code of practice under section 21 (code of practice relating to health care associated infections), or
- (c) a statement of standards under section 45 (health care standards set by the Secretary of State).

(4) When requested to do so by the Secretary of State, the Commission must give the Secretary of State such advice or information in connection with a matter mentioned in subsection (1) as may be specified in the request.

(5) The Commission may give advice–

- (a) to the Secretary of State or an English NHS body about the establishment or conduct of any inquiry held, or to be held, by the Secretary of State or NHS body in relation to the provision of health care by or pursuant to arrangements made by that body;
- (b) to the Secretary of State or an English local authority about the establishment or conduct of any inquiry held, or to be held, by the Secretary of State or local authority in relation to the provision of adult social services by or pursuant to arrangements made by that authority.

Section 53

Introduction:

This section introduces Chapter 5 of Part 1 which confers miscellaneous functions on the Care Quality Commission. Section 53 requires the Commission to keep the Secretary of State informed about the provision of NHS health care and adult social services in general, and about the carrying on of regulated activities.

Subsection (1):

The Commission – the Care Quality Commission - see s.1.

See General Note: Secretary of State

NHS care – “means health care provided by Primary Care Trusts or commissioned by Primary Care Trusts (whether from other English NHS providers or not)” – see s.97.

Regulated Activity- see section 8

Adult social services – see section 97

Subsection (3):

Regulations - to be made by statutory instrument – see s.161(1) – subject to negative resolution procedure – see s.162(1).

Subsection (5):

English local authority — see s.97; see also General Note: Local Authorities.

Health care - see ss.9(2), 97(1), (2).

English NHS body– see section 97

54 Studies as to economy, efficiency etc.

(1) The Commission may undertake or promote comparative or other studies designed to enable it to make recommendations—

(a) for improving economy, efficiency and effectiveness in any activity mentioned in subsection (2),

(b) for improving the management, other than the financial management, of an English NHS body, or

(c) for improving the management of an English local authority in its provision of adult social services.

(2) Those activities are—

(a) the provision of health care by an English NHS provider,

(b) the making of arrangements by a Primary Care Trust for the provision of health care,

(c) the provision of adult social services by an English local authority, and

(d) the making of arrangements by an English local authority for the provision of adult social services.

(3) The Commission may also undertake or promote studies designed to enable it to prepare reports as to the impact of—

(a) the operation of any particular statutory provisions, or

(b) any directions or guidance given by a Minister of the Crown (whether pursuant to any such provisions or otherwise),

on economy, efficiency and effectiveness in an activity mentioned in subsection (2)(c) or (d).

(4) The Commission must undertake or promote a study falling within subsection (1) or (3) if the Secretary of State so requests.

(5) The reference in subsection (1) to an English NHS body does not include a reference to a Special Health Authority.

Section 54**Introduction:**

The Government's Explanatory Notes (see General Note: Explanatory Notes) say:

"Section 54 enables the Commission to undertake wider studies that are designed to enable it to make recommendations for improving economy, efficiency, and effectiveness in the provision of health care by an English NHS provider, or the provision of adult social services by an English local

authority, or the way in which health care or adult social services are commissioned. The Commission may also undertake studies that will enable it to make recommendations for improving the management of an English local authority with regard to the provision of adult social services, or the management (but not the financial management) of an English NHS body."

Subsection (1):

The Commission – the Care Quality Commission - see s.1.

Adult social services – see section 97

English local authority — see s.97; see also General Note: Local Authorities.

English NHS body– see section 97

Subsection (2):

Primary Care Trust – see National Health Service Act 2006, s. 18.

English NHS provider– see section 97

Health care - see ss.9(2), 97(1), (2).

Subsection (3):

See General Note: Minister of the Crown

Subsection (4):

See General Note: Secretary of State

Subsection (5):

Special Health Authority – see section 97

55 Publication of results of studies under s. 54

(1) The Commission must publish–

- (a) any recommendations made by it under subsection (1) of section 54, and
- (b) the result of any studies undertaken or promoted under that section.

(2) The Secretary of State may, after consulting the Commission, by regulations make provision as to the procedure to be followed in respect of the making of representations to the Commission before the publication under subsection (1) of any recommendations or the result of any studies.

Section 55

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: "Section 55 requires the Commission to publish recommendations made, and results of studies undertaken, under section 54."

Subsection (1):

The Commission – the Care Quality Commission - see s.1.

Subsection (2):

See General Note: Secretary of State

See General Note: Consultation

Regulations - to be made by statutory instrument – see s.161(1) – subject to negative resolution procedure – see s.162(1).

56 Role of Audit Commission

- (1) Subsection (2) applies to any function of the Commission under section 54 or 55 so far as relating to health care or English NHS bodies, except the function of being consulted under section 55(2).
- (2) A function to which this subsection applies may be exercised on the Commission's behalf by the Audit Commission, if the Audit Commission and the Commission so agree.
- (3) Where the Audit Commission exercises functions under subsection (2), it must do so on such terms, including terms as to payment, as the Commission and the Audit Commission may agree.
- (4) The Commission and the Audit Commission may exercise jointly their respective functions under—
- (a) section 54 (and section 60 in its application to functions under that section) so far as relating to English local authorities, and
 - (b) sections 33 and 34 of the Audit Commission Act 1998 (c. 18).
- (5) The Commission and the Audit Commission must have regard to any guidance issued by the Secretary of State as to which of the Commission and the Audit Commission should promote or undertake studies which could be promoted or undertaken by either of them.
- (6) Subsection (4) is not to be taken to prejudice any other power of the Commission and the Audit Commission to act jointly.
- (7) In this section “the Audit Commission” means the Audit Commission for Local Authorities and the National Health Service in England.

Section 56

Introduction:

The Government's Explanatory Notes (see General Note: Explanatory Notes) say: "Section 56 allows the Audit Commission to carry out studies relating to health care or English NHS bodies (under sections 54 and 55) on the Commission's behalf, with the Commission's agreement. Where a matter could be considered to fall within the remit of both organisations, as is the case for studies regarding economy, efficiency, and effectiveness in relation to adult social care, subsection (5) directs them to have regard to any guidance issued by the Secretary of State as to who should carry them out."

Subsection (1):

The Commission – the Care Quality Commission - see s.1.

English NHS body— see section 97

Health care - see ss.9(2), 97(1), (2).

Subsection (2):

See General Note: Audit Commission.

Subsection (5):

See General Note: Guidance

See General Note: Secretary of State

See General Note: Have Regard To.

57 Reviews of data, studies and research

- (1) The Commission may review—
 - (a) studies and research undertaken by others, or the quality of data obtained by others, in relation to the provision of NHS care or adult social services or the carrying on of regulated activities,
 - (b) the methods used in undertaking such studies and research or in collecting and analysing such data, and
 - (c) the validity of conclusions drawn from such studies and research or from such data.
 - (2) The Commission must conduct a review under subsection (1) if the Secretary of State so requests.
 - (3) If the Commission conducts a review under this section it must publish a report.
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Section 57

Introduction:

This section allows the Care Quality Commission to review studies and research done by others.

Subsection (1):

The Commission – the Care Quality Commission - see s.1.

NHS care – “means health care provided by Primary Care Trusts or commissioned by Primary Care Trusts (whether from other English NHS providers or not)” – see s.97.

Adult social services – see section 97

Regulated activity - see s.8.

Subsection (2):

See General Note: Secretary of State

58 Publication of information

- (1) The Commission may make available to the public information relating to—
 - (a) the provision of NHS care;
 - (b) the provision of adult social services;
 - (c) the carrying on of regulated activities.
 - (2) Subsection (1) is subject to sections 76 and 79(2).
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Section 58

Introduction:

This section allows the Commission to publish information.

NHS care – “means health care provided by Primary Care Trusts or commissioned by Primary Care Trusts (whether from other English NHS providers or not)” – see s.97.

Adult social services – see section 97

Regulated activity - see s.8.

59 Additional functions

(1) The Secretary of State may by regulations provide that the Commission is to have such additional functions as may be specified in the regulations in relation to any of the following–

- (a) the provision of NHS care;
- (b) the exercise in respect of England of functions by cross-border Special Health Authorities;
- (c) the improvement of–
 - (i) economy, efficiency and effectiveness in the exercise of the functions of English NHS bodies, and
 - (ii) the financial or other management, or operations, of English NHS bodies;
- (d) the provision of adult social services;
- (e) the carrying on of regulated activities;
- (f) the exercise of powers or the discharge of duties conferred or imposed by the Mental Health Act 1983 (c. 20) as mentioned in section 120(1) of that Act.

(2) The Secretary of State must consult the Independent Regulator of NHS Foundation Trusts before making provision under subsection (1) in relation to NHS foundation trusts.

Section 59

Introduction:

This section allows the Secretary of State to confer additional functions on the Care Quality Commission.

Subsection (1):

The Commission – the Care Quality Commission - see s.1.

See General Note: Secretary of State

Regulations - to be made by statutory instrument – see s.161(1) – subject to negative resolution procedure – see s.162(1).

NHS care – “means health care provided by Primary Care Trusts or commissioned by Primary Care Trusts (whether from other English NHS providers or not)” – see s.97.

Cross-border Special Health Authority - means a Special Health Authority not performing functions only or mainly in respect of England or only or mainly in respect of Wales – see s.97(1).

English NHS body– see section 97

Adult social services – see section 97

Regulated activity - see s.8.

Subsection (2):

See General Note: Consultation

Independent Regulator of NHS Foundation Trusts – see 31 of the National Health Service Act 2006.

The remainder of this Act has not been reproduced for the purposes of this sample.