

# HEALTH AND SOCIAL CARE ACT 2008

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## EXPLANATORY NOTES

### TERRITORIAL EXTENT

#### *Territorial application: Wales*

#### **Part 1 – the Care Quality Commission**

#### *Chapter 1 – Introductory*

#### *Section 1: The Care Quality Commission*

105. *Section 1* establishes the Commission and abolishes CHAI, CSCI, and MHAC. It also gives effect to Schedule 1.

#### *Schedule 1: The Care Quality Commission*

106. *Schedule 1* deals with the constitution of the Commission. *Paragraphs 1* and *2* set out its status and general powers and duties. *Paragraphs 3* to *5* relate to the appointment and remuneration of the Commission's members and employees. In particular, *paragraph 3* provides that the appointment of the chair and other members of the Commission will be carried out by the Secretary of State. It is expected that the Secretary of State will appoint the chair following pre-appointment scrutiny by Parliament, in line with proposals in the Government Green Paper on the Governance of Britain, but will delegate appointment of other members to the Appointments Commission under the Health Act 2006. In appointing the chair and other members of the Commission, the Secretary of State is required to ensure that, collectively, they include people with experience and knowledge relating to health care, social care and the Mental Health Act. Such experience and knowledge could, as an example, include experience a person has gained by involvement with groups who represent service users or carers.
107. *Paragraph 6* requires the Commission to establish an advisory committee, and to have regard to the advice and information provided by it when deciding how it should exercise its functions. The purpose of this provision is to ensure that the Commission takes account of the views of those with an interest in its work, such as those with relevant expertise in the provision of health or social care. *Paragraph 7* enables the Commission to arrange for any of its committees (but not the advisory committee), sub-committees, members or employees or any other person to exercise any of its functions. *Paragraph 8* enables it to arrange for persons to assist in the exercise of its functions.
108. *Paragraphs 9* and *10* deal with payments and loans to the Commission and its accounts. The Commission may only borrow money from the Secretary of State. It is required to produce annual accounts and provide copies to the Secretary of State, and the Comptroller and Auditor General. The Commission's annual accounts will also cover its functions under the Mental Health Act.
109. *Paragraphs 11* and *12* set out arrangements for the application of the Commission's seal and provide for documents purporting to be signed or sealed by or on behalf of the Commission to be accepted as evidence in court.

### ***Section 2: The Commission's functions***

110. **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.

### ***Section 3: The Commission's objectives***

111. **Section 3** provides that the main objective of the Commission, in carrying out its functions, is to protect and promote the health, safety and welfare of people who use health and social care services. It also requires the Commission to perform its functions for the general purpose of encouraging: improvement in the activities within its remit; a focus on the needs of patients and other service users; and the efficient and effective use of resources. Subsection (3) provides a definition of health and social care services, which applies throughout Chapter 1.

### ***Section 4: Matters to which the Commission must have regard***

112. **Section 4** sets out the matters to which the Commission should have regard in performing its functions. These include requirements for the Commission to have regard to:
- the experiences of people who use health and social care services and their families and friends;
  - views expressed by members of the public about health and social care services, or on their behalf by representative bodies, such as charities, and views expressed by Local Involvement Networks about the provision of health and social care services in their areas;
  - the need to protect and promote the rights of people who use health and social care services including, in particular, the rights of children and the rights of people detained under the Mental Health Act or deprived of their liberty under the Mental Capacity Act 2005;
  - the Government's five principles of good regulation (as set out in the Legislative and Regulatory Reform Act 2006), under which regulatory activity should be proportionate, accountable, consistent, transparent and targeted where it is needed;
  - such aspects of Government policy as may be directed.

### ***Section 5: Statement on user involvement***

113. **Section 5** requires the Commission to publish a statement on user involvement, following consultation with such people as the Commission considers appropriate. The statement must include the Commission's proposals for promoting awareness among service users and carers of its functions and for engaging in discussion with them both about the provision of health and social care services and about the way in which the Commission exercises its functions. It must also set out the Commission's proposals for ensuring that proper regard is had to the views expressed by service users and carers and for arranging for any of its functions to be exercised by, or with the assistance of, service users and carers. The Commission is free to revise the statement from time to time but must consult again on any revision and publish the revised version. The Commission is required to report, as part of its annual report to Parliament under section 83, on the steps it has taken to implement the proposals in its statement on user involvement.

***Section 6: Transfers of property, rights and liabilities***

114. This section gives effect to Schedule 2.

***Schedule 2: Transfers of property and staff etc.***

115. *Paragraph 1(1)* of Schedule 2 enables the Secretary of State to make transfer schemes in order to transfer the property, rights and liabilities of CSCI and CHAI to the new Commission or to the Crown. It also enables transfer schemes to be made for the transfer of property, rights and liabilities of MHAC to the new Commission, to the Welsh Ministers or to the Crown. Transfer schemes may also transfer property, rights and liabilities of the Crown to the new Commission. *Paragraphs 3* and *4* set out matters in relation to the transfer of staff to the new Commission.

***Chapter 2 – Registration in Respect of Provision of Health Or Social Care***

**Introductory**

***Sections 8 and 9: Introductory***

116. *Section 8* enables regulations to be made to define what kind of health and social care activities will trigger the requirement to register with the Commission. These activities are to be known as regulated activities. Anybody who carries on a regulated activity will have to be registered. 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.
117. *Subsection (2)* of section 8 provides that an activity must involve or be connected with the provision of health or social care in, or in relation to England, in order to be defined in regulations as a ‘regulated activity’. In addition it must not involve the provision of care which is regulated by CIECSS.
118. *Subsection (3)* of section 8 explains further the sorts of activities that are to be considered as being connected with the provision of health or social care. These might include the supply of nursing or care home staff, transport services for elderly or disabled people, and healthcare advice provided by phone.
119. *Section 9* defines the terms ‘health care’ and ‘social care’ for the purposes of Part 1 of the Act. 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.