



# Health and Social Care Act 2008

## 2008 CHAPTER 14

### PART 1

#### THE CARE QUALITY COMMISSION

### CHAPTER 6

#### MISCELLANEOUS AND GENERAL

#### *Inspections*

#### **60 Inspections**

- (1) The Commission may for the purposes of its regulatory functions carry out inspections of—
  - (a) the carrying on of a regulated activity,
  - (b) the provision of NHS care,
  - (c) the provision of adult social services, or
  - (d) the exercise of functions by an English NHS body.
- (2) For the purposes of this Part, the “regulatory functions” of the Commission are its functions under Chapters 2, 3 and 5 except—
  - (a) its functions under section 53 (information and advice),
  - (b) its functions under section 57 (reviews of data, studies and research), and
  - (c) its functions under regulations under section 59 (additional functions) to the extent that the regulations provide that they are not to be treated as regulatory functions for the purposes of this Part.

#### **61 Inspections carried out for registration purposes**

- (1) Regulations may prescribe—

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- (a) the frequency with which inspections are to be carried out under section 60 for the purposes of the Commission’s functions under Chapter 2,
  - (b) the manner in which they are to be carried out, and
  - (c) the type of person who may be authorised by the Commission to conduct them on its behalf.
- (2) Where an inspection is carried out under section 60 for the purposes of the Commission’s functions under Chapter 2, the Commission must—
- (a) prepare a report on the matters inspected, and
  - (b) without delay send a copy of the report to—
    - (i) the person who carries on the regulated activity in question, and
    - (ii) if a person is registered under that Chapter as a manager in respect of the activity, that person.
- (3) The Commission must publish a report prepared under subsection (2).
- (4) 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 such a report.

*Powers of entry etc.*

**62 Entry and inspection**

- (1) The power in subsection (2) is exercisable if the Commission considers it necessary or expedient for the purposes of any of its regulatory functions.
- (2) A person authorised by the Commission may enter and inspect any premises which are, or which the person reasonably believes to be, regulated premises.
- (3) Premises are “regulated premises” if they fall within one or more of the following descriptions—
- (a) they are used for the carrying on of a regulated activity,
  - (b) they are owned or controlled by an English NHS body or English local authority, or
  - (c) they are used or proposed to be used for or in connection with—
    - (i) the provision of NHS care,
    - (ii) the exercise of any functions of an English NHS body, or
    - (iii) the provision of adult social services.
- (4) If NHS care or an adult social service is provided to a person in premises used wholly or mainly as a private dwelling, the premises are not to be regarded as used for or in connection with the provision of that care or service.
- (5) A person who proposes to exercise the power conferred by subsection (2) must if so required produce some duly authenticated document showing the person’s authority to exercise the power.
- (6) “Premises” includes a vehicle.

### **63 Entry and inspection: supplementary**

- (1) This section applies where a person (“A”) is authorised by virtue of section 62 to enter and inspect premises.
- (2) If A considers it necessary or expedient for relevant purposes, A may—
  - (a) make any examination into the state and management of the premises or the treatment of persons receiving care there,
  - (b) inspect and take copies of any documents or records,
  - (c) have access to, and check the operation of, any computer, and any associated apparatus or material, which is or has been in use in connection with any documents or records,
  - (d) inspect any other item,
  - (e) seize and remove from the premises any documents, records or other items,
  - (f) interview in private—
    - (i) any person who carries on or manages a regulated activity, or who manages the provision of NHS care or adult social services, at the premises,
    - (ii) any person working at the premises, and
    - (iii) any person receiving care at the premises who consents to be interviewed, and
  - (g) if the conditions in subsection (3) are met, examine in private any person receiving care at the premises.
- (3) The conditions are—
  - (a) A is a registered medical practitioner or registered nurse,
  - (b) A has reason to believe that the person to be examined is not receiving proper care at the premises, and
  - (c) the person to be examined—
    - (i) is capable of giving consent to the examination and does so, or
    - (ii) is incapable of giving consent to the examination.
- (4) The power under subsection (2)(b) includes power—
  - (a) to require any person holding or accountable for documents or records (whether or not kept at the premises) to produce them for inspection at the premises, and
  - (b) to require any records which are kept by means of a computer to be produced in a form in which they are legible and can be taken away.
- (5) The power under subsection (2)(f)(i) to interview a person in private includes power, in the case of a body corporate, to interview in private—
  - (a) any director, manager, secretary or other similar officer of the body corporate, and
  - (b) where the body is an English NHS body or English local authority, any officer or member of the NHS body or local authority.
- (6) A may—
  - (a) require any person to afford A such facilities and assistance with respect to matters within the person’s control as are necessary to enable A to exercise powers under section 62 and this section, and

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- (b) take such measurements and photographs, and make such recordings, as A considers necessary to enable A to exercise those powers.
- (7) A person who without reasonable excuse—
- (a) obstructs the exercise of a power conferred by section 62 or this section, or
  - (b) fails to comply with a requirement imposed under this section,
- is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (8) In this section—
- (a) “relevant purposes” means the purposes of any of the Commission’s regulatory functions,
  - (b) any reference to documents or records includes a reference to personal and medical records, and
  - (c) any reference to a person receiving care at premises includes a reference to a person who is accommodated there.

#### **64 Power to require documents and information etc.**

- (1) The Commission may require any person mentioned in subsection (2) to provide it with any information, documents, records (including personal and medical records) or other items which the Commission considers it necessary or expedient to have for the purposes of any of its regulatory functions.
- (2) The persons are—
- (a) an English NHS body,
  - (b) a person providing health care commissioned by a Primary Care Trust,
  - (c) an English local authority,
  - (d) a person providing adult social services commissioned by an English local authority, or
  - (e) a person who carries on or manages a regulated activity.
- (3) The power in subsection (1) to require the provision of information, documents or records includes, in relation to information, documents or records kept by means of a computer, power to require the provision of the information, documents or records in legible form.
- (4) A person who without reasonable excuse fails to comply with a requirement imposed under this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

#### **65 Power to require explanation**

- (1) The Secretary of State may by regulations make provision requiring prescribed persons to provide an explanation of any relevant matter to the Commission, or to persons authorised by the Commission, in circumstances where the Commission considers the explanation necessary or expedient for the purposes of any of its regulatory functions.
- (2) “Relevant matter” means—
- (a) any documents, records or other items inspected, copied or provided under sections 62 to 64,

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- (b) any information provided under those sections,
  - (c) any documents, records, other items or information otherwise provided to the Commission by any person for the purposes of the Commission’s regulatory functions, or
  - (d) any matters which are the subject of the exercise of any such functions.
- (3) Regulations under subsection (1) may require explanations to be provided at such times and places as may be specified by the Commission.
- (4) A person who without reasonable excuse fails to comply with a requirement imposed by virtue of this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

#### *Interaction with other authorities*

### **66 Interaction with other authorities**

Schedule 4 (interaction with other authorities) has effect.

### **67 Co-ordination of reviews or assessments**

The Commission must promote the effective co-ordination of reviews or assessments carried out by public bodies or other persons in relation to the carrying on of regulated activities.

### **68 Avoidance of unreasonable burdens in exercise of regulatory powers**

- (1) The Secretary of State may publish guidance about steps which regulatory authorities may take in exercising relevant powers with a view to avoiding the imposition of unreasonable burdens on those in respect of whom the powers are exercisable.
- (2) “Regulatory authorities” means—
- (a) the Commission, and
  - (b) such other bodies as may be prescribed.
- (3) A body may not be prescribed under subsection (2)(b) unless it has functions relating to the provision of health or social care.
- (4) “Relevant powers” means powers conferred by or under an enactment to—
- (a) carry out inspections, or
  - (b) require the provision of information,
- but, in relation to a body prescribed under subsection (2)(b), such powers are “relevant powers” only so far as they are exercisable in respect of a person in respect of whom the Commission has relevant powers.
- (5) The steps mentioned in subsection (1) might include for example—
- (a) co-operating with other regulatory authorities and co-ordinating the exercise of relevant powers,
  - (b) sharing information or the results of inspections, and
  - (c) seeking to obtain information from other sources before exercising a relevant power to require the provision of that information.

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- (6) In exercising relevant powers, regulatory authorities must have regard to any guidance published under subsection (1).
- (7) Nothing in this section is intended to limit the scope of a relevant power or affect a person's obligation to comply with a requirement imposed in the exercise of such a power.
- (8) In this section—
  - (a) “inspections” includes inspections of persons, premises or the carrying on of activities,
  - (b) a reference to a power to carry out inspections includes a reference to any power which is ancillary to that power (such as a power to enter premises or to require assistance), and
  - (c) a reference to a power to require the provision of information includes a reference to a power to require the production of documents, records or other items, a power to require the making of reports and a power to require explanations.

## **69 Co-operation between the Commission and Welsh Ministers**

- (1) The Commission and the Welsh Ministers must co-operate with each other for the efficient and effective discharge of their corresponding functions.
- (2) Their corresponding functions are—
  - (a) the Commission's functions, and
  - (b) any functions of the Welsh Ministers exercisable in or in relation to Wales which correspond or are similar to any of the Commission's functions.
- (3) The Commission and the Welsh Ministers may share information with each other for the purposes of subsection (1).

## **70 Co-operation between the Commission and the Independent Regulator of NHS Foundation Trusts**

- (1) The Commission and the Independent Regulator of NHS Foundation Trusts must co-operate with each other in the exercise of their respective functions.
- (2) In particular—
  - (a) the Commission must keep the Independent Regulator informed about the provision of health care by NHS foundation trusts, and
  - (b) the Independent Regulator must give the Commission any information the Independent Regulator has about the provision of health care by an NHS foundation trust which the Independent Regulator or the Commission considers would assist the Commission in the exercise of the Commission's functions.
- (3) Without prejudice to subsection (2)(a) the Commission must, on request, provide the Independent Regulator with any material relevant to—
  - (a) a review under section 46 or 49,
  - (b) a review or investigation under section 48, or
  - (c) a study promoted, or undertaken, by the Commission under section 54,
 so far as the material relates to the provision of health care by an NHS foundation trust.

## **71 Provision of information by Auditor General for Wales**

- (1) The Auditor General for Wales must, on request, provide the Commission with any information it may reasonably require for the purpose of making comparisons, in the exercise of its functions under section 54 so far as relating to health care or English NHS bodies, between English NHS bodies and Welsh NHS bodies.
- (2) In this section “Welsh NHS body” has the same meaning as in Part 3 of the Public Audit (Wales) Act 2004 (c. 23).

## **72 Provision of material to the Comptroller and Auditor General**

The Commission must, on request, provide the Comptroller and Auditor General with any material relevant to—

- (a) a review under section 46 or 49 in respect of an English NHS body,
- (b) a review or investigation under section 48 in respect of such a body, or
- (c) a study promoted, or undertaken, by the Commission under section 54.

## **73 Arrangements with Ministers**

- (1) The Commission and a Minister of the Crown may make arrangements for the Commission to—
  - (a) perform any of its functions in relation to a prescribed health scheme, or a prescribed social care scheme, for which the Minister has responsibility;
  - (b) provide services or facilities insofar as they are required by the Minister in connection with such a scheme.
- (2) Arrangements under this section may be made on such terms and conditions as may be agreed between the parties to the arrangements.
- (3) Those terms and conditions may include provision with respect to the making of payments to the Commission in respect of the cost to it of giving effect to the arrangements.
- (4) In this section—
  - “health scheme” means a scheme which appears to the Secretary of State to be a health or medical scheme paid for out of public funds;
  - “social care scheme” means a scheme which appears to the Secretary of State to be a social care scheme paid for out of public funds.

## **74 Arrangements with Northern Ireland Ministers**

- (1) The Commission and a Northern Ireland Minister may make arrangements for the Commission to—
  - (a) exercise on behalf of the Minister any function of the Minister which corresponds to a function of the Commission and relates to the Northern Ireland health service;
  - (b) provide services or facilities insofar as they are required by the Minister in connection with the exercise by the Minister of any such functions.
- (2) Arrangements under this section may be made on such terms and conditions as may be agreed between the parties to the arrangements.

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- (3) Those terms and conditions may include provision with respect to the making of payments to the Commission in respect of the cost to it of giving effect to the arrangements.
- (4) Any arrangements under subsection (1)(a) are not to affect the responsibility of the Minister on whose behalf the function is exercised.
- (5) In this section—
  - “Northern Ireland Minister” includes the First Minister, the deputy First Minister and a Northern Ireland department;
  - “Northern Ireland health service” means any of the health services under any enactment which extends to Northern Ireland and which corresponds to section 1(1) of the National Health Service Act 2006 (c. 41).

### *Inquiries*

#### **75 Inquiries**

- (1) The Secretary of State may cause an inquiry to be held into any matter connected with the exercise by the Commission of any of its functions.
- (2) Before an inquiry is begun, the Secretary of State may give a direction that it be held in private.
- (3) Where no such direction has been given, the person holding the inquiry may decide to hold it, or any part of it, in private.
- (4) Subsections (2) to (5) of section 250 of the Local Government Act 1972 (c. 70) (powers in relation to local inquiries) apply in relation to an inquiry under this section as they apply in relation to a local inquiry under that section.
- (5) The report of the person holding the inquiry is to be published, unless the Secretary of State considers that there are exceptional circumstances which make publication inappropriate.
- (6) Publication is to be in such manner as the Secretary of State considers appropriate.

### *Information*

#### **76 Disclosure of confidential personal information: offence**

- (1) This section applies to information which—
  - (a) has been obtained by the Commission on terms or in circumstances requiring it to be held in confidence, and
  - (b) relates to and identifies an individual.
- (2) A person is guilty of an offence if the person knowingly or recklessly discloses information to which this section applies during the lifetime of the individual.
- (3) A person guilty of an offence under this section is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both;



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- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both.
- (4) 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 (3)(a) to 12 months is to be read as a reference to 6 months.
- (5) For the purposes of subsection (1)(b), information obtained by the Commission is to be treated as identifying an individual if the individual can be identified from a combination of—
  - (a) that information, and
  - (b) other information obtained by the Commission.
- (6) Reference in this section and in sections 77 to 80 to information obtained or disclosed by the Commission includes information obtained or disclosed by a person authorised by the Commission.

## **77 Defence**

- (1) It is a defence for a person charged with an offence under section 76 to prove that at the time of the alleged offence—
  - (a) any of the circumstances in subsection (2) applied in relation to the disclosure, or
  - (b) the person reasonably believed that any of them so applied.
- (2) The circumstances are—
  - (a) that the disclosure was made in a form in which the individual to whom the information relates is not identified;
  - (b) that the disclosure was made with the consent of that individual;
  - (c) that the information disclosed had previously been lawfully disclosed to the public;
  - (d) that the disclosure was made under or pursuant to regulations under section 113 or 114 of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43) (complaints about health care or social services);
  - (e) that the disclosure was made in accordance with any enactment or court order;
  - (f) that the disclosure was necessary or expedient for the purposes of protecting the welfare of any individual;
  - (g) that the disclosure was made to any person or body in circumstances where it was necessary or expedient for the person or body to have the information for the purpose of exercising functions of that person or body under any enactment.
- (3) It is also a defence for a person charged with an offence under section 76 to prove that the disclosure was made—
  - (a) for the purpose of facilitating the exercise of any of the Commission's functions,
  - (b) in connection with the investigation of a criminal offence (whether or not in the United Kingdom), or
  - (c) for the purpose of criminal proceedings (whether or not in the United Kingdom).

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- (4) If a person charged with an offence under section 76 relies on a defence in subsection (1) or (3), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.
- (5) For the purposes of subsection (2)(a), information disclosed by a person is to be treated as being in a form in which an individual is identified if the individual can be identified from a combination of—
  - (a) the information, and
  - (b) other information disclosed by the person or by the Commission.

## **78 Use of information etc.**

Information obtained by, or documents or records produced to, the Commission in connection with any of its functions may be used by the Commission in connection with any of its other functions.

## **79 Permitted disclosures**

- (1) Subsections (2) and (3) apply to any information obtained by the Commission in the course of exercising any of its functions.
- (2) In the case of information relating to an individual, the Commission may disclose the information if—
  - (a) the disclosure is made in a form in which the individual is not identified, or
  - (b) the disclosure is made with the consent of the individual.
- (3) In all cases (whether or not relating to an individual), the Commission may disclose the information if—
  - (a) the information has previously been lawfully disclosed to the public,
  - (b) the disclosure is made under or pursuant to regulations under section 113 or 114 of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43) (complaints about health care or social services),
  - (c) the disclosure is made in accordance with any enactment or court order,
  - (d) the disclosure is necessary or expedient for the purposes of protecting the welfare of any individual,
  - (e) the disclosure is made to any person or body in circumstances where it is necessary or expedient for the person or body to have the information for the purpose of exercising functions of that person or body under any enactment,
  - (f) the disclosure is made for the purpose of facilitating the exercise of any of the Commission's functions,
  - (g) the disclosure is made in connection with the investigation of a criminal offence (whether or not in the United Kingdom), or
  - (h) the disclosure is made for the purpose of criminal proceedings (whether or not in the United Kingdom).
- (4) Subsections (2) and (3) have effect notwithstanding any rule of common law which would otherwise prohibit or restrict the disclosure.

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- (5) For the purposes of subsection (2)(a), information disclosed by the Commission is to be treated as being in a form in which an individual is identified if the individual can be identified from a combination of—
- (a) the information, and
  - (b) other information disclosed by the Commission.

## **80 Code of practice on confidential personal information**

- (1) The Commission must prepare and publish a code in respect of the practice it proposes to follow in relation to confidential personal information.
- (2) The code must in particular make provision—
- (a) about the obtaining by the Commission of information which, once obtained, will be confidential personal information, and
  - (b) about the handling, use and disclosure by the Commission of confidential personal information.
- (3) Before publishing the code, the Commission must consult—
- (a) the National Information Governance Board for Health and Social Care, and
  - (b) such other persons as it considers appropriate.
- (4) The Commission must keep the code under review and, if it considers it appropriate, from time to time publish a revised code (and references in this section to the code include any revised code).
- (5) In this section “confidential personal information” means information which—
- (a) is obtained by the Commission on terms or in circumstances requiring it to be held in confidence, and
  - (b) relates to and identifies an individual.
- (6) For the purposes of subsection (5)(b), information obtained by the Commission is to be treated as identifying an individual if the individual can be identified from a combination of—
- (a) the information, and
  - (b) other information obtained by the Commission.

### *Further provisions about functions of Commission*

## **81 Publication of programme of reviews etc.**

- (1) The Commission must from time to time prepare and publish a document setting out—
- (a) the special reviews and investigations that it proposes to conduct under section 48,
  - (b) the studies that it proposes to undertake under section 54, and
  - (c) the reviews that it proposes to conduct under section 57.
- (2) Before preparing a document under subsection (1) the Commission must consult—
- (a) the Secretary of State, and
  - (b) any other person or body specified by an order made by the Secretary of State, and it must send each of those persons or bodies a copy of the document once it is prepared.

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- (3) The Commission may determine that any document or combination of documents prepared for the purposes of any other enactment or enactments is to be treated as a document prepared for the purposes of subsection (1) (so long as the requirements of subsection (2) are complied with in relation to the document or documents concerned).
- (4) Nothing in a document published under subsection (1) is to be regarded—
  - (a) as affecting any power of the Secretary of State to require a review or investigation to be conducted or a study to be undertaken, or
  - (b) as preventing the Commission from conducting an investigation under section 48 where the Commission considers there to be a risk to the health, safety or welfare of persons receiving health or social care.

## **82 Failure by the Commission in discharge of its functions**

- (1) The Secretary of State may give a direction to the Commission if the Secretary of State considers that the Commission—
  - (a) is failing or has failed to discharge any of its functions, or
  - (b) is failing or has failed properly to discharge any of its functions.
- (2) A direction under subsection (1) may direct the Commission to discharge such of those functions, and in such manner and within such period or periods, as may be specified in the direction.
- (3) If the Commission fails to comply with a direction under subsection (1), the Secretary of State may—
  - (a) discharge the functions to which the direction relates, or
  - (b) make arrangements for any other person to discharge them on the Secretary of State's behalf.

## **83 Reports for each financial year etc.**

- (1) As soon as possible after the end of each financial year, the Commission must make a report on each of the following matters—
  - (a) the way in which it has exercised its functions during the year,
  - (b) the provision of NHS care during the year,
  - (c) the provision of adult social services during the year,
  - (d) the carrying on of regulated activities during the year, and
  - (e) the steps taken by it during the year to implement the proposals in its statement under section 5 (statement on user involvement).
- (2) The Commission may comply with subsection (1) by preparing a single document or separate documents on each of the matters mentioned there.
- (3) If the Secretary of State so directs, a report under subsection (1) must include separate reports on such aspects of the matters mentioned in that subsection as may be specified in the direction.
- (4) The Commission must—
  - (a) lay before Parliament a copy of each report made under subsection (1), and
  - (b) send a copy of each such report to the Secretary of State.

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- (5) The Commission must also provide the Secretary of State with such reports and information relating to the exercise of its functions as the Secretary of State may from time to time request.
- (6) Subsection (1)(a) does not apply to the Commission's functions under the Mental Health Act 1983 (c. 20).
- (7) In this section, "financial year" means—
  - (a) the period beginning with the date on which the Commission is established and ending with the next 31 March following that date, and
  - (b) each successive period of 12 months ending with 31 March.

## **84 Reports and information**

- (1) Subsections (2) and (3) apply to a report published by the Commission under any provision of this Part or of the Mental Health Act 1983.
- (2) The Commission must make copies of the report available for inspection at its offices by any person at any reasonable time.
- (3) Any person who requests a copy of the report is entitled to have one on payment of such reasonable fee (if any) as the Commission considers appropriate.
- (4) The Commission may charge a person such reasonable fee as it considers appropriate where it provides the person, on request, with any other information relevant to the exercise of the Commission's functions under this Part.

### *Fees*

## **85 Fees**

- (1) The Commission may with the consent of the Secretary of State from time to time make and publish provision—
  - (a) requiring a fee to be paid in respect of—
    - (i) an application for registration as a service provider or manager under Chapter 2,
    - (ii) the grant or subsistence of any such registration, or
    - (iii) an application under section 19(1);
  - (b) requiring English NHS bodies, English local authorities, persons registered under Chapter 2 and such other persons as may be prescribed to pay a fee in respect of the exercise by the Commission of such of its other functions under this Part as may be prescribed.
- (2) The amount of a fee payable under provision under subsection (1) is to be such as may be specified in, or calculated or determined under, the provision.
- (3) Provision under subsection (1) may include provision—
  - (a) for different fees to be paid in different cases,
  - (b) for different fees to be paid by persons of different descriptions,
  - (c) for the amount of a fee to be determined by the Commission in accordance with specified factors, and
  - (d) for determining the time by which a fee is to be payable.

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- (4) Before making provision under subsection (1) the Commission must consult such persons as it thinks appropriate.
- (5) If the Secretary of State considers it necessary or desirable to do so, the Secretary of State may by regulations make provision determining the amount of a fee payable to the Commission by virtue of this section, and the time at which it is payable, instead of those matters being determined in accordance with provision made under subsection (1).
- (6) Before making any regulations under this section, the Secretary of State must consult the Commission and such other persons as the Secretary of State thinks appropriate.
- (7) For the purpose of determining the fee payable by a person by virtue of this section, the person must provide the Commission with such information, in such form, as the Commission may require.
- (8) A fee payable by virtue of this section may, without prejudice to any other method of recovery, be recovered summarily as a civil debt.

### *Enforcement*

#### **86 Penalty notices**

- (1) Where the Commission is satisfied that a person has committed a fixed penalty offence, the Commission may give the person a penalty notice in respect of the offence.
- (2) A fixed penalty offence is any Part 1 offence that is prescribed for the purposes of this section.
- (3) A penalty notice is a notice offering the person the opportunity of discharging any liability to conviction for the offence to which the notice relates by payment of a penalty in accordance with the notice.
- (4) Where a person is given a penalty notice, proceedings for the offence to which the notice relates may not be instituted before the end of such period as may be prescribed.
- (5) Where a person is given a penalty notice, the person cannot be convicted of the offence to which the notice relates if the person pays a penalty in accordance with the notice.
- (6) Penalties under this section are payable to the Commission.
- (7) Penalties received by the Commission under this section must be paid to the Secretary of State.

#### **87 Penalty notices: supplementary provision**

- (1) Regulations may make—
  - (a) provision as to the form and content of penalty notices,
  - (b) provision as to the monetary amount of the penalty and the time by which it is to be paid,
  - (c) provision determining the methods by which penalties may be paid,
  - (d) provision as to the records to be kept in relation to penalty notices,
  - (e) provision for or in connection with the withdrawal, in prescribed circumstances, of a penalty notice, including—

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- (i) repayment of any amount paid by way of penalty under a penalty notice which is withdrawn, and
      - (ii) prohibition of the institution or continuation of proceedings for the offence to which the withdrawn notice relates,
    - (f) provision for a certificate—
      - (i) purporting to be signed by or on behalf of a prescribed person, and
      - (ii) stating that payment of any amount paid by way of penalty was or, as the case may be, was not received on or before a date specified in the certificate,
  - to be received in evidence of the matters so stated,
  - (g) provision as to the action to be taken if a penalty is not paid in accordance with a penalty notice, and
  - (h) such other provision in relation to penalties or penalty notices as the Secretary of State thinks necessary or expedient.
- (2) Regulations under subsection (1)(b)—
- (a) may make provision for penalties of different amounts to be payable in different cases, including provision for the penalty payable under a penalty notice to differ according to the time by which it is paid, but
  - (b) must secure that the amount of any penalty payable in respect of any offence does not exceed one half of the maximum amount of the fine to which a person committing the offence would be liable on summary conviction.
- (3) In this section—
- “penalty” means a penalty under a penalty notice;
  - “penalty notice” has the meaning given by section 86(3).

## **88 Guidance by the Commission in relation to enforcement action**

- (1) The Commission must issue guidance about how it will exercise its functions under any of the following provisions of this Part—
- (a) section 12(5) (variation, removal or imposition of condition in relation to registration as a service provider),
  - (b) section 15(5) (variation, removal or imposition of condition in relation to registration as a manager),
  - (c) sections 17 and 18 (cancellation or suspension of registration),
  - (d) section 29 (warning notice),
  - (e) section 86 (penalty notices), and
  - (f) section 89 (publication of information).
- (2) The guidance may also include guidance, in relation to any Part 1 offence, as to the circumstances in which the Commission is likely to take criminal proceedings for the offence.
- (3) The Commission may from time to time revise guidance published by it under this section and issue the revised guidance.
- (4) Before issuing any guidance or revised guidance under this section, the Commission must consult—
- (a) such persons as may be prescribed, and
  - (b) such other persons as the Commission considers appropriate.

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## **89 Publication of information relating to enforcement action etc.**

- (1) Regulations may authorise or require the publication by the Commission of prescribed information relating to—
  - (a) the cancellation or suspension of a person’s registration under Chapter 2;
  - (b) the conviction of any person in respect of a Part 1 offence and the penalty imposed;
  - (c) the variation or removal under section 12(5)(a) or 15(5)(a) of any condition for the time being in force in relation to a person’s registration;
  - (d) the imposition under section 12(5)(b) or 15(5)(b) of any additional condition;
  - (e) a warning notice under section 29;
  - (f) the payment by any person of a penalty in accordance with a penalty notice issued under section 86, and the offence to which the notice relates.
- (2) Any regulations made by virtue of subsection (1)(e) must require the Commission, before publishing information relating to a warning notice under section 29, to provide the person to whom the notice was given with an opportunity to make representations to the Commission relating to the matters dealt with in the notice.
- (3) The regulations may prescribe the time when, and manner in which, any information is to be published.

## **90 Proceedings for offences**

- (1) Proceedings in respect of a Part 1 offence may not, without the written consent of the Attorney General, be taken by any person other than—
  - (a) the Commission, or
  - (b) in relation to any functions of the Commission which the Secretary of State is for the time being discharging by virtue of section 82, the Secretary of State.
- (2) Proceedings for a Part 1 offence may be brought within a period of 12 months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the prosecutor’s knowledge; but no such proceedings are to be brought by virtue of this subsection more than 3 years after the commission of the offence.

## **91 Offences by bodies corporate**

- (1) This section applies where a Part 1 offence is committed by a body corporate.
- (2) If the offence is proved to have been committed by, or with the consent or connivance of, or to be attributable to any neglect on the part of—
  - (a) any director, manager or secretary of the body corporate, or
  - (b) any person who was purporting to act in any such capacity,that director, manager, secretary or person purporting to act as such (as well as the body corporate) is guilty of the offence and liable to be proceeded against and punished accordingly.
- (3) The reference in subsection (2) to a director, manager or secretary of a body corporate includes a reference—
  - (a) to any other similar officer of the body, and



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- (b) where the body is an English NHS body or English local authority, to any officer or member of the NHS body or local authority.

## **92 Unincorporated associations**

- (1) Proceedings for a Part 1 offence alleged to have been committed by an unincorporated association are to be brought in the name of the association (and not in that of any of the members).
- (2) Rules of court relating to the service of documents have effect as if the unincorporated association were a body corporate.
- (3) In proceedings for a Part 1 offence brought against an unincorporated association, section 33 of the Criminal Justice Act 1925 (c. 86) and Schedule 3 to the Magistrates' Courts Act 1980 (c. 43) apply as they apply in relation to a body corporate.
- (4) A fine imposed on an unincorporated association on its conviction for a Part 1 offence is to be paid out of the funds of the association.
- (5) If a Part 1 offence committed by an unincorporated association is proved—
  - (a) to have been committed with the consent or connivance of an officer of the association or a member of its governing body, or
  - (b) to be attributable to any neglect on the part of such an officer or member, the officer or member (as well as the association) is guilty of the offence and liable to be proceeded against and punished accordingly.

### *Service of documents*

## **93 Service of documents**

- (1) Any notice required under this Part to be given to a person (“R”) may be given to R—
  - (a) by being delivered personally to R,
  - (b) by being sent to R—
    - (i) by a registered post service, as defined by section 125(1) of the Postal Services Act 2000 (c. 26), or
    - (ii) by a postal service which provides for the delivery of the document to be recorded, or
  - (c) subject to section 94, by being sent to R by an electronic communication.
- (2) Where a notice is given as mentioned in subsection (1)(b), it is, unless the contrary is proved, to be taken to have been received on the third day after the day on which it is sent.
- (3) Any notice required under this Part to be given to a body corporate or firm is duly given if it is given to the secretary or clerk of that body or a partner of that firm.
- (4) For the purposes of section 7 of the Interpretation Act 1978 (c. 30) in its application to this section, the proper address of a person is—
  - (a) in the case of a person registered under Chapter 2 who has notified the Commission under regulations under section 16 (regulations about registration) of an address for service, that address, and
  - (b) in any other case, the address determined in accordance with subsection (5).

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- (5) That address is—
- (a) in the case of a secretary or clerk of a body corporate, the address of the registered or principal office of the body,
  - (b) in the case of a partner of a firm, the address of the principal office of the firm, and
  - (c) in any other case, the last known address of the person.
- (6) In this section and in section 94—
- (a) “electronic communication” has the same meaning as in the Electronic Communications Act 2000 (c. 7),
  - (b) “notice” includes any other document, and
  - (c) a reference to a notice being given by or to a person includes a reference to a notice being served by or on a person.

## **94 Electronic communications**

- (1) If a notice required or authorised under this Part to be given by or to a person is sent by an electronic communication, it is to be treated as given only if the requirements of subsection (2) or (3) are met.
- (2) If the person required or authorised to give the notice is the Commission—
  - (a) the person to whom the notice is required or authorised to be given must have indicated to the Commission the person’s willingness to receive notices by an electronic communication and provided an address suitable for that purpose, and
  - (b) the notice must be sent to the address provided by that person.
- (3) If the person required or authorised to give the notice is not the Commission, the notice must be sent in such manner as the Commission may require.
- (4) An indication given for the purposes of subsection (2) may be given generally for the purposes of notices required or authorised to be given by the Commission under this Part or may be limited to notices of a particular description.
- (5) A requirement imposed by the Commission under subsection (3) must be published in such manner as the Commission thinks appropriate for the purpose of bringing it to the attention of persons who are likely to be affected by it.

### *Further amendments*

## **95 Further amendments relating to Part 1**

Schedule 5 (which contains further amendments relating to the provisions of this Part) has effect.

### *Crown application*

## **96 Application of Part 1 to Crown**

- (1) Any provision made by or under Chapter 2 or 3 or this Chapter binds the Crown, but does not affect Her Majesty in her private capacity.

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- (2) Subsection (1)—
- (a) does not require regulations made under section 8 to be made so as to apply to activities carried on by or on behalf of the Crown, and
  - (b) is to be read as if section 38(3) of the Crown Proceedings Act 1947 (c. 44) (references to Her Majesty in her private capacity) were contained in this Act.
- (3) No contravention of any provision made by or under Chapter 2 or 3 or this Chapter is to make the Crown criminally liable; but the High Court may declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (4) The provisions of Chapters 2 and 3 and this Chapter apply to persons in the public service of the Crown as they apply to other persons.
- (5) If the Secretary of State certifies that it appears to the Secretary of State requisite or expedient in the interests of national security that the powers of entry and inspection conferred by sections 62 and 63—
- (a) should not be exercisable in relation to any premises which are used by or on behalf of the Crown and are specified in the certificate, or
  - (b) should not be exercisable in relation to any premises which are so used and are specified in the certificate, except in circumstances specified in the certificate,
- those powers are not exercisable in relation to those premises or (as the case may be) are not exercisable in relation to those premises except in those circumstances.

### *Interpretation*

## **97 General interpretation of Part 1**

- (1) In this Part—
- “adult social services” means—
- (a) services which are provided or commissioned by an English local authority in the exercise of its adult social services functions, and
  - (b) services which are provided or commissioned by an English local authority under section 2(1)(b) of the Local Government Act 2000 (c. 22) and which are similar in nature to a service which could be provided by the authority in the exercise of any of its adult social services functions;
- “adult social services functions” means social services functions (within the meaning of the Local Authority Social Services Act 1970 (c. 42)) so far as relating to persons aged 18 or over, excluding any function to which Chapter 4 of Part 8 of the Education and Inspections Act 2006 (c. 40) applies;
- “the Commission” means the Care Quality Commission;
- “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;
- “enactment” includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30));
- “English local authority” means—
- (a) a county council in England,
  - (b) a metropolitan district council,

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- (c) a non-metropolitan district council for an area for which there is no county council,
  - (d) a London borough council,
  - (e) the Common Council of the City of London, or
  - (f) the Council of the Isles of Scilly;
- “English NHS body” means—
- (a) a Primary Care Trust,
  - (b) a Strategic Health Authority,
  - (c) a National Health Service trust all or most of whose hospitals, establishments and facilities are situated in England,
  - (d) an NHS foundation trust, or
  - (e) a Special Health Authority performing functions only or mainly in respect of England;
- “English NHS provider” means—
- (a) a Primary Care Trust,
  - (b) a National Health Service trust all or most of whose hospitals, establishments and facilities are situated in England, or
  - (c) an NHS foundation trust;
- “health care” has the meaning given by section 9(2) (but see subsection (2) below);
- “health or social care” has the meaning given by section 9(4);
- “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 (c. 26);
- “NHS care” means health care provided by Primary Care Trusts or commissioned by Primary Care Trusts (whether from other English NHS providers or not);
- “Part 1 offence” means an offence under this Part or under regulations under this Part;
- “prescribed” means prescribed by regulations;
- “regulated activity” has the meaning given by section 8;
- “regulations” means regulations made by the Secretary of State;
- “regulatory functions”, in relation to the Commission, is to be read in accordance with section 60(2);
- “social care” has the meaning given by section 9(3).
- (2) Except in Chapter 2, any reference in this Part to the provision of health care includes a reference to—
    - (a) the provision of services connected with the provision of health care, and
    - (b) the promotion and protection of public health.
  - (3) Any reference in this Part to health care commissioned by a Primary Care Trust is a reference to health care provided by other persons pursuant to arrangements made by the Trust.
  - (4) Any reference in this Part to adult social services commissioned by an English local authority is a reference to adult social services provided by other persons pursuant to arrangements made by the authority.
  - (5) Any reference in this Part to a person who carries on a regulated activity includes a reference to a person who carries it on otherwise than for profit.

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- (6) Any reference in this Part to the provision of health care, or adult social services, by a person includes a reference to the provision of that care, or those services, by that person's agent or sub-contractor.
- (7) In its application to a function conferred on the Commission by regulations under section 59(1)(b), Chapter 6 has effect as if any reference in Chapter 6 to an English NHS body included a reference to a cross-border Special Health Authority.