

*These notes refer to the Health and Social Care Act 2008
(c.14) which received Royal Assent on 21 July 2008*

HEALTH AND SOCIAL CARE ACT 2008

EXPLANATORY NOTES

ANNEX: TERRITORIAL APPLICATION TO WALES AND FUNCTIONS OF THE WELSH MINISTERS

PART 1 – THE CARE QUALITY COMMISSION

1. By section 1, the Commission is established and CHAI, CSCI and MHAC are abolished. The Welsh Ministers will remain responsible for reviewing the provision of health care in Wales and regulating the provision of social care in Wales (the Care Standards Act 2000 is preserved and amended in relation to Wales (see below)). Section 52(3) transfers the functions of MHAC under the Mental Health Act in relation to Wales to the Welsh Ministers.
2. [Section 51](#) provides that where, following a review or investigation under Chapter 3, the Commission considers there are significant failings in the provision of health care by or for a Welsh NHS body or in the running of a Welsh NHS body or in the running of a body, or the practice of an individual, providing health care for a Welsh NHS body, the Commission is required to inform the Welsh Ministers. The Commission may recommend that the Welsh Ministers take special measures to improve the situation.
3. [Section 69](#) requires the Commission and the Welsh Ministers to co-operate with each other for the efficient and effective discharge of their corresponding functions. Duties are also placed on the Commission and the Auditor General for Wales, by section 71 and by paragraph 77 of Schedule 5 (which amends section 64 of the Public Audit (Wales) Act 2004), to share information for the purpose of comparative studies of care provided by English NHS bodies and Welsh NHS bodies.
4. [Schedule 5](#) (which is introduced by section 95) also makes a number of amendments to the powers that Welsh Ministers have under the Care Standards Act 2000. These amendments provide: a new power to suspend registration and to suspend registration urgently; a provision to change registration conditions urgently by notice; a new power to impose a penalty notice where the Welsh Ministers are satisfied that a person has committed a prescribed offence; and an extension to the time limit in section 29 of the Act within which criminal proceedings must be brought, from 6 months to 12 months. These powers apply in respect of persons registered with the Welsh Ministers in relation to establishments or agencies under Part 2 of the 2000 Act and are comparable to new powers conferred by this Act on the Commission.

PART 2 – REGULATION OF HEALTH PROFESSIONS AND HEALTH AND SOCIAL CARE WORKFORCE

5. All of Part 2 applies to Wales. Under section 124 on the regulation of the social care workforce, powers to make regulations in relation to Wales are given to the Welsh Ministers. Regulation-making powers are also conferred on the Welsh Ministers by sections 120 (additional responsibilities of responsible officers), 121 (co-operation between prescribed bodies), in relation to Welsh health bodies and Welsh social services bodies, and 126 (education and training of AMHPs). By virtue of the new section 45E(2) of the Medical Act 1983 inserted by section 119 of this Act, the Secretary of State must consult the Welsh Ministers before making regulations which apply to Wales under new section 45A of the 1983 Act (about responsible officers).
6. [Section 125](#) provides that the standard of proof applicable to any proceedings before a committee of CCW, CCW itself or any officer of CCW is that applicable to civil proceedings.

PART 3 – PUBLIC HEALTH PROTECTION

7. All of Part 3 applies to Wales. Regulation-making powers exercisable under Part 3 in relation to Wales (including the sea adjacent to Wales out as far as the seaward boundary of the territorial sea) are conferred on the Welsh Ministers.

PART 4 – HEALTH IN PREGNANCY GRANT

8. [Sections 131 to 133](#) (health in pregnancy grant: England, Wales and Scotland), which amend the Contributions and Benefits Act and the Social Security Administration Act 1992, and section 138 (general and supplementary) apply in relation to Wales. The Health in Pregnancy Grant will be administered by HM Revenue and Customs.

PART 5 – MISCELLANEOUS

Pharmaceutical services

9. [Part 2](#) of Schedule 12 contains amendments to the NHS (Wales) Act 2006 to provide for the movement of the Global Sum to the baseline allocations of the Local Health Boards in Wales, as well as to introduce the allocation of funding of pharmaceutical services by reference to the Local Health Board of the prescriber.
10. By section 141, section 88 of the NHS (Wales) Act 2006 is amended to provide that an instrument of appointment of persons, referred to in the legislation as “determining authorities”, appointed by the Welsh Ministers for the purpose of determining the remuneration of those providing NHS pharmaceutical services pursuant to section 80 of that Act must be set out in regulations.

Weighing and measuring of children: Wales

11. [Section 144](#) amends Schedule 1 to the NHS (Wales) Act 2006 to provide for the weighing and measuring of children in Wales. The new provisions confer regulation-making powers on the Welsh Ministers, which can be exercised independently to England.

Social care

12. [Section 145](#), which provides that where a private or voluntary sector care home provides accommodation together with nursing or personal care to a person under certain arrangements made with a local authority the provider is taken to be exercising a function of a public nature under section 6(3)(b) of the Human Rights Act 1998, applies in relation to Wales.
13. The extension of direct payments to include people who lack capacity (within the meaning of the Mental Capacity Act 2005) covers Wales to the same extent as section 57 of the Health and Social Care Act 2001 (which provides for direct payments in respect of adults) does now. Subsection (8) of section 146 amends section 64 of the 2001 Act to enable the National Assembly for Wales to pass a resolution annulling any statutory instrument containing regulations made by the Welsh Ministers under section 57 of the 2001 Act.
14. [Section 147](#), which abolishes the maintenance liability of relatives, applies in relation to Wales in the same way as it applies in relation to England.
15. [Section 148](#) makes provision about a number of discrete matters in relation to ordinary residence for the purposes of the National Assistance Act 1948 and the Chronically Sick and Disabled Persons Act 1970. It extends the deeming provision in section 24(6) of the 1948 Act to accommodation provided by NHS bodies in places other than NHS hospitals. It also gives the Secretary of State and the Welsh Ministers the power to make and publish arrangements for determining which ordinary residence disputes arising under Part 3 of the 1948 Act shall be determined by the Secretary of State and which shall be determined by the Welsh Ministers; and provides that the same arrangements shall apply to ordinary residence disputes arising under section 2 of the 1970 Act.

National Information Governance Board for Health and Social Care

16. The functions of the National Information Governance Board in relation to Wales will be the same as the existing functions of PIAG under section 252 of the NHS Act 2006, which are limited to being consulted on matters relating to the processing of patient information.

FUNCTIONS OF THE WELSH MINISTERS

17. The Bill confers a number of new or expanded powers on the Welsh Ministers. The table below lists the provisions of the Bill which affect the existing powers of, or confer new powers or duties on, the Welsh Ministers.

TABLE – PROVISIONS WHICH AFFECT THE EXISTING POWERS OF, OR CONFER NEW POWERS OR DUTIES ON, THE WELSH MINISTERS

<i>Section(s)/ Schedule</i>	<i>Subject of provision</i>	<i>Effect on the powers of the Welsh Ministers</i>
Section 52(3) and (4)	Transfer of functions of MHAC	The functions of MHAC under the Mental Health Act are transferred to the Welsh Ministers. Section 121 of the Mental Health Act, which requires the Welsh Ministers to delegate some of their functions to MHAC, ceases to have effect.
Section 69	Co-operation between the Commission and Welsh Ministers	The Commission and the Welsh Ministers are required to co-operate with each other for the efficient and effective discharge of their corresponding functions. They may share information with each other for these purposes.
Section 114(2)	Constitution etc. of Council for Healthcare Regulatory Excellence	Replaces paragraph 4 of Schedule 7 to the Health Care Professions Act 2002. Power of the Welsh Ministers to appoint one non-executive member of the Council for Healthcare Regulatory Excellence.
Section 116	Powers in relation to the Council for Healthcare Regulatory Excellence	Inserts new section 26A into the Health Care Professions Act 2002. Includes: power to request the Council for advice on any matter connected with a health care profession (Council must comply with request); and, power to require the Council to report on a particular matter in respect of which the Council's functions are exercisable.
Section 119	Responsible officers: new section 45E(2) of the Medical Act 1983	The Secretary of State must consult the Welsh Ministers before making regulations under the new section 45A of the 1983 Act which apply to Wales.
Section 120	Additional responsibilities of responsible officers	Power by regulations to impose additional responsibilities on responsible officers and to make further provision in relation to this. May include a requirement to have regard to any guidance given from time to time by the Welsh Ministers. Welsh Ministers must be consulted by Secretary

<i>Section(s)/ Schedule</i>	<i>Subject of provision</i>	<i>Effect on the powers of the Welsh Ministers</i>
		of State before regulations are made, or guidance issued, in relation to cross-border bodies.
Section 121	Co-operation between prescribed bodies	Power by regulations to make provision in relation to co-operation between prescribed bodies in connection with the sharing and provision of information relating to health care workers. Bodies which may be prescribed are Welsh health care bodies and Welsh social care bodies.
Section 124	Regulation of social care workers	Power by regulations to make provision, in relation to Wales, modifying the regulation of social care workers.
Section 126	Education and training of AMHPs	Power by regulations to make provision modifying the functions of CCW in relation to the education and training of persons who are or wish to become AMHPs.
Section 129	New section 45B of the Public Health Act 1984 (health protection regulations: international travel etc.)	Power to make regulations, in respect of Wales, for preventing danger to public from conveyances arriving at any place or for preventing the spread of infection or contamination by conveyances leaving any place. Power by regulations to give effect to international agreements or arrangements.
Section 129	New section 45C of the Public Health Act 1984 (health protection regulations: domestic)	Power to make regulations to prevent, protect against, control or provide a public health response to the incidence or spread of infection or contamination in Wales (whether from risks originating there or elsewhere).
Section 129	New section 45F of the Public Health Act 1984 (health protection regulations: supplementary)	Makes further provision about health protection regulations made under new sections 45B and 45C of the Public Health Act 1984. Includes details of when such regulations may be used to amend primary or secondary legislation (subsection (3)) and outlines the penalties for offences that can be created using such regulations (subsection (5)).
Section 129	New section 45G(7) of the Public Health Act 1984 (power to order health measures in relation to persons)	Duty to make provision by regulations about the evidence that must be available to a justice of the peace before the justice can be satisfied that there are grounds for making an order under this section.
Section 129	New section 45H(7) of the Public Health Act 1984 (power to order health measures in relation to things)	Power to make provision by regulations about the evidence that must be available to a justice of the peace before the justice can be satisfied that there are grounds for making an order under this section.

Section(s)/ Schedule	Subject of provision	Effect on the powers of the Welsh Ministers
Section 129	New section 45I(7) of the Public Health Act 1984 (power to order health measures in relation to premises)	Power to make provision by regulations about the evidence that must be available to a justice of the peace before the justice can be satisfied that there are grounds for making an order under this section.
Section 129	New section 45L(3) of the Public Health Act 1984 (period for which Part 2A order may be in force)	Power by regulations to prescribe a period shorter than 28 days as the maximum period for which restrictions or requirements relating to detention, isolation or quarantine imposed or extended by or under a Part 2A Order under new section 45G may be in force.
Section 129	New section 45L(4) of the Public Health Act 1984	Power by regulations to specify the maximum period or the maximum period of any extension of the length of time for which any restriction or requirement imposed by or under a Part 2A order (orders under new sections 45G, 45H and 45I of the Public Health Act 1984) other than detention, isolation or quarantine may be in force.
Section 129	New section 45M(3) (procedure for making, varying and revoking Part 2A orders)	Duty to prescribe persons to whom a local authority must give notice of the making of an application for a Part 2A Order.
Section 129	New section 45M(6)(e), (7)(c), (8)(c) and (9) of the Public Health Act 1984	Powers to prescribe any other persons as affected persons for the purposes of making applications to justices of the peace for variation or revocation of Part 2A orders made under sections 45G, 45H(2) and (4), and 45I(2) and (4) of the Public Health Act 1984.
Section 129	New section 45N of the Public Health Act 1984 (power to make further provision by regulations)	Power to make regulations dealing with matters relating to the taking of measures pursuant to Part 2A orders.
Section 129	New section 45R(2) of the Public Health Act 1984 (emergency procedure)	Power to make and bring into effect immediately regulations to which section 45Q(4) applies by virtue of section 45Q(2)(a) or (b) if they contain a declaration by the Welsh Ministers that they are of the opinion that it is necessary by reason of urgency for them to be made without a draft being approved by the National Assembly for Wales under the affirmative resolution procedure. Such regulations will cease to have effect after 28 days if a resolution approving them has not been passed by the National Assembly for

<i>Section(s)/ Schedule</i>	<i>Subject of provision</i>	<i>Effect on the powers of the Welsh Ministers</i>
		Wales (or earlier in the event of a decision by the Assembly rejecting them).
Section 144	Weighing and measuring of children in Wales: new paragraph 7A in Schedule 1 to the NHS (Wales) Act 2006	Power for the Welsh Ministers to make arrangements with any local education authority, the proprietor of any school which is not maintained by a local education authority, or any person registered under Part 10A of the Children Act 1989, for the weighing and measuring of junior pupils in attendance at school or of children looked after by that person.
Section 144	Weighing and measuring of children in Wales: new paragraph 7B in Schedule 1 to the NHS (Wales) Act 2006	Power to make regulations to provide for the disclosure of information for the purposes of weighing and measuring, for weighing and measuring to be carried out in a prescribed manner, for disclosure of resulting information to parents, and for regulating further processing of such resulting information. Regulations may also require persons exercising functions in relation to weighing and measuring to have regard to any guidance given by the Welsh Ministers.
Section 146	Direct payments in lieu of provision of social care: new subsection (1A) in section 57 of the Health and Social Care Act 2001	Power by regulations to provide for requiring or authorising direct payments to be made to a designated person (a “suitable person”) on behalf of another person, who lacks the capacity to consent to the making of direct payments. Regulations may set out the conditions that must be satisfied by local authorities in determining who is a suitable person and specify the matters that the local authority must have regard to when taking any decision about who will administer the direct payment. Regulations may provide that where a person has fluctuating capacity, arrangements for managing their direct payments do not have to be continually revisited.
Section 148	Ordinary residence for certain purposes of National Assistance Act 1948 etc	Section 32 of the National Assistance Act 1948 is amended to provide that any question as to a person’s ordinary residence for the purposes of Part 3 of that Act is to be determined by the Secretary of State or the Welsh Ministers, who must make arrangements between them for determining which cases each of them is to deal with. These new provisions for determining such questions are also applied to any such questions which arise under section 2 of the

Section(s)/ Schedule	Subject of provision	Effect on the powers of the Welsh Ministers
		Chronically Sick and Disabled Persons Act 1970.
Section 167(2)	Power to make transitional and consequential provision etc	Power by order for the Welsh Ministers to make such transitional or transitory provisions or savings as they consider appropriate in connection with the coming into force of any provision of the Act in relation to which they are responsible for commencement.
Section 170(3)	Commencement	Power of the Welsh Ministers by order to determine the date on which the provisions of the Act referred to in section 171(4) are to come into force.
Section 172(3) and (4)	Consultation in relation to commencement	The Secretary of State must consult the Welsh Ministers before making a commencement order in relation to the provisions of the Act referred to in subsections (3) and (4). The Welsh Ministers must consult the Secretary of State before making a commencement order relating to section 148 in relation to Wales.
Schedule 3, paragraph 8	New section 120 of the Mental Health Act: general protection of relevant patients	General duty to keep under review and investigate the exercise of powers and the discharge of duties in relation to detention of patients, their reception into guardianship, and community patients. Duty to arrange for visits and interviews of patients and to investigate complaints. Power to remunerate persons carrying out reviews or investigations.
Schedule 3, paragraph 9	New section 120A(1) and (4) of the Mental Health Act: investigation reports	Power to publish a report of a review or investigation carried out under section 120(1) of the Mental Health Act. Power by regulations to set out the procedure to be followed in respect of the making of representations to the Welsh Ministers before the publication of such a report.
Schedule 3, paragraph 9	New section 120B(1) and (3) of the Mental Health Act: action statements	Power to direct a person mentioned in subsection (2) to publish a statement of the action that person proposes to take as a result of a review or investigation under section 120(1) of the Mental Health Act. Power by regulations to make provision about the content and publication of such statements.
Schedule 3, paragraph 9	New section 120C(2) of the Mental Health Act: provision of information	Power of the Welsh Ministers to make reasonable requests for information from persons specified in subsection (1) (who must provide such information), for or

Section(s)/ Schedule	Subject of provision	Effect on the powers of the Welsh Ministers
		in connection with the exercise of their functions under section 120 of the Mental Health Act.
Schedule 3, paragraph 9	New section 120D(1) and (4) of the Mental Health Act: annual reports	The Welsh Ministers are to publish an annual report on their activities in the exercise of their functions under the Mental Health Act. A copy must be laid before the National Assembly for Wales.
Schedule 3, paragraph 12	New section 134A(1), (3) and (6) of the Mental Health Act: review of decisions to withhold correspondence	The Welsh Ministers must review a decision to withhold a postal packet, or any contents of it, on receipt of an application to do so. Power to direct that the postal packet or its contents are not to be withheld. Power by regulations to make provision in connection with the making of such applications to them.
Schedule 5, paragraph 13	New section 14A of the Care Standards Act 2000: suspension of registration	Power to suspend, for a specified period, the registration of a person in respect of an establishment or agency, for which the Welsh Ministers are the registration authority, which is being, or has been, carried on otherwise than in accordance with the registration requirements.
Schedule 5, paragraph 14(a) and (c)	Amendment of section 15 of the Care Standards Act 2000: applications by registered persons	Requirement to consider an application for the cancellation or variation of any suspension of registration and to serve a notice in writing on the applicant of the Welsh Ministers' decision.
Schedule 5, paragraph 19	New sections 20A and 20B of the Care Standards Act 2000: urgent procedure for cancellation and for suspension or variation: Wales	Power to apply to a justice of the peace for an urgent cancellation of the registration of a person in respect of an establishment or agency (this replicates provision currently made by section 20 of the 2000 Act). Power, by notice in writing, in a case of urgency: to vary or remove a condition in relation to the registration of a person in respect of an establishment or agency; to impose an additional condition; or, to suspend such a registration or extend the period of suspension.
Schedule 5, paragraph 24	Amendment of section 29 of the Care Standards Act 2000: proceedings for offences	Extension of the time limit on the Welsh Ministers bringing criminal proceedings, in relation to offences under Part 2 of the Care Standards Act or regulations made under it, from six to twelve months.
Schedule 5, paragraph 25	New sections 30ZA and 30ZB of the Care Standards Act 2000: penalty notices	Power to give a penalty notice to a person where the Welsh Ministers are satisfied that the person has committed a fixed penalty offence.

<i>Section(s)/ Schedule</i>	<i>Subject of provision</i>	<i>Effect on the powers of the Welsh Ministers</i>
		Power by regulations to specify what are fixed penalty offences and to make supplementary provision in relation to penalty notices.
Schedule 5, paragraph 42	Amendment of section 96(2)(a) of the Health and Social Care (Community Health and Standards) Act 2003: additional functions of Welsh Ministers	The Welsh Ministers to have such additional functions in relation to the provision of Welsh local authority social services as correspond to the functions of the Commission under Part 1 of the Health and Social Care Act 2008.
Schedule 5, paragraph 48	New section 143 of the Health and Social Care (Community Health and Standards) Act 2003: use by Welsh Ministers of information	Power of Welsh Ministers to use information obtained in the course of exercising specified functions for the purposes of any other of such functions extended to include the following functions: those exercisable as regulatory authority under the Mental Health Act; and, certain specified functions under the Mental Capacity Act 2005.
Schedule 11, paragraph 16	New section 60A of the Public Health Act 1984: electronic communications	Power of the Welsh Ministers by regulations to make provision for specified documents to be given or served by an electronic communication.
Schedule 11, paragraph 26	New section 71 of the Public Health Act 1984: default powers	Powers of the Welsh Ministers to make orders declaring a relevant health protection authority to be in default, for failure to discharge its functions, and make other provision.
Schedule 12, paragraph 10(6)	New paragraph 3A of Schedule 8 to the NHS (Wales) Act 2006 (further provision about expenditure of Local Health Boards)	Power to designate any element of remuneration paid by Local Health Boards to persons providing pharmaceutical services which is not remuneration referable to the cost of drugs. If an element is designated, requirement for each financial year to apportion among all Local Health Boards the total of remuneration referable to that element which is paid by each Local Health Board in that year.
Schedule 12, paragraph 10(8)	New paragraph 4(4) of Schedule 8 to the NHS (Wales) Act 2006	Power to treat remuneration (not treated as referable to drugs) paid by Local Health Boards to persons providing pharmaceutical services, so far as met by an NHS trust, as remuneration falling within paragraph 3A(1) of Schedule 8.

GLOSSARY OF TERMS AND ABBREVIATIONS

Terms used in the Notes

Audit Commission: the Audit Commission for Local Authorities and the National Health Service in England.

Baseline allocations: a recurrent amount of funding that represents the cash-limited allocation that PCTs/Local Health Boards receive to enable them to commission healthcare for their population.

The Commission: the Care Quality Commission, established by section 1 of the Act.

Contributions and Benefits Act: the [Social Security Contributions and Benefits Act 1992 \(c. 4\)](#).

The Convention: the European Convention on Human Rights.

The Councils: the GSCC and the CCW.

Global Sum: the sum that pays fees and allowances for the provision of NHS pharmaceutical services.

Health Care Professions Act 2002: the [National Health Service Reform and Health Care Professions Act 2002 \(c. 17\)](#).

Liable relatives rule: set out in sections 42 and 43 of the National Assistance Act 1948 and in various other provisions mentioned in section 147(1). The liable relatives rule provides that spouses are liable to maintain each other and parents are liable to maintain their children.

Mental Health Act: the [Mental Health Act 1983 \(c. 20\)](#).

Monitor: the Independent Regulator of NHS Foundation Trusts.

National Information Governance Board: National Information Governance Board for Health and Social Care established by the new section 250A inserted in the NHS Act 2006 by section 157 of this Act.

Northern Ireland Contributions and Benefits Act: the [Social Security Contributions and Benefits \(Northern Ireland\) Act 1992 \(c. 7\)](#).

Public Health Act 1984: the [Public Health \(Control of Disease\) Act 1984 \(c. 22\)](#).

Social enterprise: businesses with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or in the community.

Abbreviations used in the Notes

AMHPs	Approved mental health professionals
CCW	Care Council for Wales
CHAI	Commission for Healthcare Audit and Inspection (known as the Healthcare Commission)
CIECSS	Chief Inspector of Education, Children’s Services and Skills
CRHP	Council for the Regulation of Health Care Professionals
CSCI	Commission for Social Care Inspection
DHSSPSNI	Department of Health, Social Services and Public Safety in Northern Ireland
GMC	General Medical Council
GOC	General Optical Council
GSCC	General Social Care Council

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HCAIs	Health care associated infections
IHR	International Health Regulations (2005)
LPA	Lasting power of attorney
MHAC	Mental Health Act Commission
NBSB	National Biological Standards Board
NCMP	National Child Measurement Programme
NHS Act 2006	the National Health Service Act 2006 (c. 41)
NHS (Wales) Act 2006	the National Health Service (Wales) Act 2006 (c. 42)
NMC	Nursing & Midwifery Council
OHPA	Office of the Health Professions Adjudicator
PCTs	Primary Care Trusts
PIAG	Patient Information Advisory Group
PSNI	Pharmaceutical Society of Northern Ireland
RPSGB	Royal Pharmaceutical Society of Great Britain
SEIF	Social Enterprise Investment Fund
WHO	World Health Organization