Health and Social Care Act 2008

2008 CHAPTER 14

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.

Commencement Information

I1 S. 1(1) in force at 1.10.2008 by S.I. 2008/2497, **art. 2(a)**

I2 S. 1(3) in force at 1.10.2008 for specified purposes by S.I. 2008/2497, **art. 2(b)**

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).

Commencement Information

I3 S. 2(1) in force at 1.10.2008 by S.I. 2008/2497, **art. 2(c)**

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.

Commencement Information

I4 S. 3 in force at 1.10.2008 by S.I. 2008/2497, **art. 2(d)**

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).

Commencement Information

I5 S. 4 in force at 1.10.2008 by S.I. 2008/2497, **art. 2(d)**

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.

Commencement Information

I6 S. 5 in force at 1.10.2008 by S.I. 2008/2497, **art. 2(d)**

6 Transfers of property, rights and liabilities

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

Commencement Information

I7 S. 6 in force at 1.10.2008 by S.I. 2008/2497, **art. 2(d)**

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).

Status: *Point in time view as at 01/10/2008. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Health and Social Care Act 2008, Part 1. (See end of Document for details)*

Commencement Information
I8 S. 7 in force at 1.10.2008 by S.I. 2008/2497, **art. 2(d)**

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.

Commencement Information
I9 S. 8 partly in force; S. 8 in force for specified purposes at Royal Assent, see s. 170

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.

Commencement Information

I10 S. 9 in force at 1.10.2008 by S.I. 2008/2497, **art. 2(e)**

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.

Commencement Information

I11 S. 10 partly in force; S. 10 in force for specified purposes at Royal Assent, see s. 170

VALID FROM 12/01/2009

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.

Status: *Point in time view as at 01/10/2008. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Health and Social Care Act 2008, Part 1. (See end of Document for details)*

VALID FROM 12/01/2009

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.

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.

Commencement Information

I12 S. 13 partly in force; S. 13 in force for specified purposes at Royal Assent, see s. 170

VALID FROM 06/04/2010

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.

VALID FROM 06/04/2010

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.

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,

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(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.

Commencement Information
I13 S. 16 partly in force; S. 16 in force for specified purposes at Royal Assent, see s. 170

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.

Commencement Information
I14 S. 17 partly in force; S. 17 in force for specified purposes at Royal Assent, see s. 170

VALID FROM 01/04/2009

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.

VALID FROM 01/04/2009

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.

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(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).

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.

Commencement Information
I15 S. 20 partly in force; S. 20 in force for specified purposes at Royal Assent, see s. 170

VALID FROM 12/01/2009

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.

Status: *Point in time view as at 01/10/2008. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Health and Social Care Act 2008, Part 1. (See end of Document for details)*

VALID FROM 12/01/2009

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.

VALID FROM 11/12/2009

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.

VALID FROM 11/12/2009

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.

VALID FROM 12/01/2009

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.

Registration procedure

VALID FROM 12/01/2009

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.

VALID FROM 12/01/2009

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.

VALID FROM 12/01/2009

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.

VALID FROM 01/04/2009

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.

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

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Changes to legislation: *There are currently no known outstanding effects for the Health and Social Care Act 2008, Part 1. (See end of Document for details)*

(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.

Commencement Information

I16 S. 30 partly in force; S. 30 in force for specified purposes at Royal Assent, see s. 170

VALID FROM 01/04/2009

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.

VALID FROM 12/01/2009

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 Tribunal.

(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 Tribunal 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 Tribunal 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 Tribunal may confirm the decision or direct that it is to cease to have effect.

(6) On an appeal against a decision or order, the Tribunal 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 Tribunal 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);

"the Tribunal" means the tribunal established by section 9 of the Protection of Children Act 1999 (c. 14).

Offences

VALID FROM 01/04/2009

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.

Status: *Point in time view as at 01/10/2008. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Health and Social Care Act 2008, Part 1. (See end of Document for details)*

VALID FROM 01/04/2009

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.

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.

Commencement Information

I17 S. 35 partly in force; S. 35 in force for specified purposes at Royal Assent, see s. 170

VALID FROM 01/04/2009

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.

VALID FROM 12/01/2009

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.

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Changes to legislation: *There are currently no known outstanding effects for the Health and Social Care Act 2008, Part 1. (See end of Document for details)*

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.

Commencement Information
I18 S. 38 partly in force; S. 38 in force for specified purposes at Royal Assent, see s. 170

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.

Commencement Information
I19 S. 39 partly in force; S. 39 in force for specified purposes at Royal Assent, see s. 170

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.

Commencement Information
I20 S. 40 partly in force; S. 40 in force for specified purposes at Royal Assent, see s. 170

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.

Commencement Information
I21 S. 41 partly in force; S. 41 in force for specified purposes at Royal Assent, see s. 170

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

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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.

Commencement Information

I22 S. 42 partly in force; S. 42 in force for specified purposes at Royal Assent, see s. 170

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.

Commencement Information

I23 S. 43 partly in force; S. 43 in force for specified purposes at Royal Assent, see s. 170

VALID FROM 12/01/2009

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).

CHAPTER 3

QUALITY OF HEALTH AND SOCIAL CARE

Health care standards

VALID FROM 01/04/2010

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.

Status: *Point in time view as at 01/10/2008. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Health and Social Care Act 2008, Part 1. (See end of Document for details)*

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.

Commencement Information

I24 S. 46(4)-(8) in force at 1.10.2008 by S.I. 2008/2497, **art. 2(f)**

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.

Commencement Information

I25 S. 47 in force at 1.10.2008 by S.I. 2008/2497, **art. 2(g)**

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.

Status: *Point in time view as at 01/10/2008. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Health and Social Care Act 2008, Part 1. (See end of Document for details)*

Commencement Information

I26 S. 48 partly in force; S. 48 in force for specified purposes at Royal Assent, see s. 170

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.

Commencement Information

I27 S. 49 partly in force; S. 49 in force for specified purposes at Royal Assent, see s. 170

VALID FROM 01/04/2009

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.

VALID FROM 01/04/2009

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).

Status: *Point in time view as at 01/10/2008. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Health and Social Care Act 2008, Part 1. (See end of Document for details)*

VALID FROM 01/04/2009

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.

Status: *Point in time view as at 01/10/2008. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Health and Social Care Act 2008, Part 1. (See end of Document for details)*

CHAPTER 5

FURTHER FUNCTIONS

VALID FROM 01/04/2009

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.

VALID FROM 01/04/2009

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

Status: *Point in time view as at 01/10/2008. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Health and Social Care Act 2008, Part 1. (See end of Document for details)*

(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.

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.

Commencement Information

I28 S. 55 partly in force; S. 55 in force for specified purposes at Royal Assent, see s. 170

VALID FROM 01/04/2009

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.

VALID FROM 01/04/2009

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.

VALID FROM 01/04/2009

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;

Status: *Point in time view as at 01/10/2008. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Health and Social Care Act 2008, Part 1. (See end of Document for details)*

(c) the carrying on of regulated activities.

(2) Subsection (1) is subject to sections 76 and 79(2).

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.

Commencement Information

I29 S. 59 partly in force; S. 59 in force for specified purposes at Royal Assent, see s. 170

CHAPTER 6

MISCELLANEOUS AND GENERAL

Inspections

VALID FROM 12/01/2009

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—
  (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.

Commencement Information
I30 S. 61 partly in force; S. 61 in force for specified purposes at Royal Assent, see s. 170

Powers of entry etc.

VALID FROM 12/01/2009

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—

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Changes to legislation: *There are currently no known outstanding effects for the Health and Social Care Act 2008, Part 1. (See end of Document for details)*

(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.

VALID FROM 12/01/2009

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
(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

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(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,

(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.

Commencement Information

I31 S. 65 partly in force; S. 65 in force for specified purposes at Royal Assent, see s. 170

Interaction with other authorities

66 Interaction with other authorities

Schedule 4 (interaction with other authorities) has effect.

Commencement Information

I32 S. 66 in force at 1.10.2008 for specified purposes by S.I. 2008/2497, **art. 2(h)**

Status: *Point in time view as at 01/10/2008. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Health and Social Care Act 2008, Part 1. (See end of Document for details)*

VALID FROM 01/04/2009

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.

(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

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Changes to legislation: *There are currently no known outstanding effects for the Health and Social Care Act 2008, Part 1. (See end of Document for details)*

other items, a power to require the making of reports and a power to require explanations.

Commencement Information

I33 S. 68 partly in force; S. 68 in force for specified purposes at Royal Assent, see s. 170

VALID FROM 01/04/2009

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).

VALID FROM 01/04/2009

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.

VALID FROM 01/04/2009

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).

VALID FROM 01/04/2009

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.

Commencement Information

I34 S. 73 partly in force; s. 73 in force for specified purposes at Royal Assent, see s. 170

Status: *Point in time view as at 01/10/2008. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Health and Social Care Act 2008, Part 1. (See end of Document for details)*

VALID FROM 01/04/2009

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.

(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).

VALID FROM 01/04/2009

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;
- (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.

Commencement Information

I35 S. 76 in force at 1.10.2008 by S.I. 2008/2497, **art. 2(i)**

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).

(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.

Commencement Information

I36 S. 77 in force at 1.10.2008 by S.I. 2008/2497, **art. 2(i)**

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.

Commencement Information

I37 S. 78 in force at 1.10.2008 by S.I. 2008/2497, **art. 2(i)**

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.

(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.

Commencement Information
I38 S. 79 in force at 1.10.2008 by S.I. 2008/2497, **art. 2(i)**

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

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Changes to legislation: *There are currently no known outstanding effects for the Health and Social Care Act 2008, Part 1. (See end of Document for details)*

(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.

Commencement Information
I39 S. 80 in force at 1.10.2008 by S.I. 2008/2497, **art. 2(i)**

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.

(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.

Commencement Information

I40 S. 81 partly in force; S. 81 in force for specified purposes at Royal Assent, see s. 170

I41 S. 81 in force at 1.10.2008 in so far as not already in force by S.I. 2008/2497, **art. 2(i)**

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.

Commencement Information

I42 S. 82 in force at 1.10.2008 by S.I. 2008/2497, **art. 2(i)**

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

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Changes to legislation: *There are currently no known outstanding effects for the Health and Social Care Act 2008, Part 1. (See end of Document for details)*

(b) send a copy of each such report to the Secretary of State.

(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.

Commencement Information

I43 S. 83 in force at 1.10.2008 by S.I. 2008/2497, **art. 2(i)**

VALID FROM 01/04/2009

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.

(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.

Commencement Information

I44 S. 85 partly in force; S. 85 in force for specified purposes at Royal Assent, see s. 170

I45 S. 85 in force at 1.10.2008 in so far as not already in force by S.I. 2008/2497, **art. 2(j)**

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.

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Changes to legislation: *There are currently no known outstanding effects for the Health and Social Care Act 2008, Part 1. (See end of Document for details)*

(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.

Commencement Information

I46 S. 86 partly in force; S. 86 in force for specified purposes at Royal Assent, see s. 170

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—

(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).

Commencement Information

I47 S. 87 partly in force; S. 87 in force for specified purposes at Royal Assent, see s. 170

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.

Commencement Information

I48 S. 88 partly in force; S. 88 in force for specified purposes at Royal Assent, see s. 170

I49 S. 88 in force at 1.10.2008 in so far as not already in force by S.I. 2008/2497, **art. 2(k)**

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.

Status: *Point in time view as at 01/10/2008. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Health and Social Care Act 2008, Part 1. (See end of Document for details)*

(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.

Commencement Information

I50 S. 89 partly in force; S. 89 in force for specified purposes at Royal Assent, see s. 170

VALID FROM 12/01/2009

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.

VALID FROM 12/01/2009

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
   (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.

Status: *Point in time view as at 01/10/2008. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Health and Social Care Act 2008, Part 1. (See end of Document for details)*

VALID FROM 12/01/2009

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.

VALID FROM 12/01/2009

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—

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(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).

(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.

Status: *Point in time view as at 01/10/2008. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the Health and Social Care Act 2008, Part 1. (See end of Document for details)*

Commencement Information

I51 S. 95 in force at 1.10.2008 for specified purposes by S.I. 2008/2497, **art. 2(l)**

VALID FROM 01/04/2009

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.

(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

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Changes to legislation: *There are currently no known outstanding effects for the Health and Social Care Act 2008, Part 1. (See end of Document for details)*

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,
(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.

(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.

Commencement Information

I52 S. 97 partly in force; s. 97 in force for specified purposes at Royal Assent, see s. 170

I53 S. 97 in force at 1.10.2008 in so far as not already in force by S.I. 2008/2497, **art. 2(m)**

Status:
Point in time view as at 01/10/2008. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation:
There are currently no known outstanding effects for the Health and Social Care Act 2008, Part 1.