



Care Act 2014

2014 CHAPTER 23

PART 1

CARE AND SUPPORT

Market oversight

53 Specifying criteria for application of market oversight regime

- (1) Regulations must specify criteria for determining whether (subject to regulations under subsection (4)) section 55 (financial sustainability assessment) applies to a registered care provider who is registered in respect of the carrying on of a regulated activity relating to the provision of social care for adults.
- (2) In specifying the criteria, the Secretary of State must have regard to the following in particular—
 - (a) the amount of social care provided by a registered care provider,
 - (b) the geographical concentration of a registered care provider's business,
 - (c) the extent to which a registered care provider specialises in the provision of particular types of care.
- (3) The Secretary of State must—
 - (a) at such times as the Secretary of State considers appropriate, review the criteria for the time being specified in the regulations, and
 - (b) publish information about how the matters mentioned in subsection (2), and any other matters to which the Secretary of State has regard in specifying the criteria, are to be measured.
- (4) Regulations may provide that section 55 does not apply, or applies only to the extent specified, to a specified registered care provider or to a registered care provider of a specified description, regardless of whether that provider or a provider of that description would satisfy the criteria.

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- (5) Regulations may provide that section 55 applies, or applies to the extent specified, to a specified registered care provider or to a registered care provider of a specified description, regardless of whether that provider or a provider of that description would satisfy the criteria.
- (6) The circumstances in which regulations may be made under subsection (4) include those in which the Secretary of State is satisfied that certain registered care providers are already subject to a regulatory regime comparable to that provided for by sections 55 and 56; and regulations made in such circumstances may, for example, make provision requiring specified persons to co-operate or to share information of a specified description.
- (7) “Social care” has the same meaning as in Part 1 of the Health and Social Care Act 2008.

54 Determining whether criteria apply to care provider

- (1) The Care Quality Commission must determine, in the case of each registered care provider, whether the provider satisfies one or more of the criteria specified in regulations under section 53.
- (2) If the Commission determines that the provider satisfies one or more of the criteria, section 55 applies to that provider unless, or except in so far as, regulations under section 53(4) provide that it does not apply.
- (3) Where section 55 applies to a registered care provider (whether as a result of subsection (2) or as a result of regulations under section 53(5)), the Commission must inform the provider accordingly.

55 Assessment of financial sustainability of care provider

- (1) Where this section applies to a registered care provider, the Care Quality Commission must assess the financial sustainability of the provider’s business of carrying on the regulated activity in respect of which it is registered.
- (2) Where the Commission, in light of an assessment under subsection (1), considers that there is a significant risk to the financial sustainability of the provider’s business, it may—
 - (a) require the provider to develop a plan for how to mitigate or eliminate the risk;
 - (b) arrange for, or require the provider to arrange for, a person with appropriate professional expertise to carry out an independent review of the business.
- (3) Where the Commission imposes a requirement on a care provider under subsection (2)
 - (a), it may also require the provider—
 - (a) to co-operate with it in developing the plan, and
 - (b) to obtain its approval of the finalised plan.
- (4) Where the Commission arranges for a review under subsection (2)(b), it may recover from the provider such costs as the Commission incurs in connection with the arrangements (other than its administrative costs in making the arrangements).
- (5) Regulations may make provision for enabling the Commission to obtain from such persons as it considers appropriate information which the Commission believes will

assist it to assess the financial sustainability of a registered care provider to which this section applies.

- (6) Regulations may make provision about the making of the assessment required by subsection (1).
- (7) The Commission may consult such persons as it considers appropriate on the method for assessing the financial sustainability of a registered care provider's business; and, having done so, it must publish guidance on the method it expects to apply in making the assessment.

56 Informing local authorities where failure of care provider likely

- (1) This section applies where the Care Quality Commission is satisfied that a registered care provider to which section 55 applies is likely to become unable to carry on the regulated activity in respect of which it is registered because of business failure as mentioned in section 48.
- (2) The Commission must inform the local authorities which it thinks will be required to carry out the duty under section 48(2) if the provider becomes unable to carry on the regulated activity in question.
- (3) Where the Commission considers it necessary to do so for the purpose of assisting a local authority to carry out the duty under section 48(2), it may request the provider, or such other person involved in the provider's business as the Commission considers appropriate, to provide it with specified information.
- (4) Where (as a result of subsection (3) or otherwise) the Commission has information about the provider's business that it considers may assist a local authority in carrying out the duty under section 48(2), the Commission must give the information to the local authority.
- (5) Regulations may make provision as to the circumstances in which the Commission is entitled to be satisfied for the purposes of subsection (1) that a registered care provider is likely to become unable to carry on a regulated activity.
- (6) The Commission may consult such persons as it considers appropriate on the methods to apply in assessing likelihood for the purposes of subsection (1); and, having carried out that consultation, it must publish guidance on the methods it expects to apply in making the assessment.

57 Sections 54 to 56: supplementary

- (1) For the purposes of Part 1 of the Health and Social Care Act 2008, the duties imposed on the Care Quality Commission under sections 54(1) and 55(1) are to be treated as regulatory functions of the Commission.
- (2) For the purposes of that Part of that Act, the doing by the Commission of anything for the purpose of assisting a local authority to carry out the duty under section 48(2) is to be treated as one of the Commission's regulatory functions.
- (3) For the purposes of sections 17 and 18 of that Act (cancellation or suspension of registration under Part 1 of that Act), a requirement imposed on a registered care provider under or by virtue of any of sections 54 to 56 (or by virtue of subsection (1)

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or (2)) is to be treated as a requirement imposed by or under Chapter 6 of Part 1 of that Act.

- (4) The Commission must, in exercising any of its functions under sections 54 to 56, have regard to the need to minimise the burdens it imposes on others.