

HEALTH AND SOCIAL CARE ACT 2008

EXPLANATORY NOTES

BACKGROUND AND SUMMARY

Part 1 – The Care Quality Commission

3. The regulation of health care in England is currently carried out by the Commission for Healthcare Audit and Inspection ('CHAI'), known as the Healthcare Commission. Social care is regulated by the Commission for Social Care Inspection ('CSCI'). CHAI and CSCI were created by the Health and Social Care (Community Health and Standards) Act 2003.
4. The Mental Health Act Commission ('MHAC') is the body currently responsible for monitoring key aspects of the operation of the Mental Health Act 1983 (the 'Mental Health Act') in England and Wales. It has other specific functions as well, notably to appoint registered medical practitioners to give second opinions where this is required by the Mental Health Act, to review decisions to withhold postal packages of patients detained in high security psychiatric hospitals, to visit and interview, in private, patients subject to the Mental Health Act, and to investigate complaints.
5. In the 2005 budget statement, the Chancellor announced plans to reduce the number of public service inspectorates. This included the creation of a single inspectorate for social care and health by merging CHAI and CSCI. The Department of Health had already announced plans to bring together CHAI and MHAC in 2004 following a review of Arm's Length Bodies¹.
6. The *NHS Improvement Plan*², (published by the Department of Health in 2004) and "*Health Reform in England: update and next steps*" (published by the Department in 2005) set out the main strands of health reform, which include diversity in provision of services, increased patient choice, and a stronger patient voice and stronger commissioning. These reforms require changes to be made to the regulatory framework.
7. The Department of Health commissioned a research study in July 2006³ to support the development of the policy on regulation of health and adult social care. It followed wide engagement with interested stakeholders as part of the Wider Regulatory Review. It drew on lessons from other sectors, and from other health and social care systems abroad to describe the regulatory functions needed to ensure the effective operation of these systems. It then proposed options for the future regulatory architecture for health and social care, and assessed the advantages and disadvantages of each option.
8. The Department of Health consultation "*The future regulation of health and adult social care in England*", published in November 2006, built on this initial study and announced the Government's intention to create a new single regulator responsible for regulating health care and adult social care, and monitoring the operation of the Mental Health Act. The consultation ran for three months and the Department consulted widely with a range of stakeholders. In addition to receiving over 100 responses to

¹ *Reconfiguring the Department of Health's Arms Length Bodies*, published July 2004.

² *The NHS Improvement Plan: Putting People at the Heart of Public Services*, The Stationery Office, published June 2004.

³ *Independent Research Study: the Future of Health and Adult Social Care Regulation*, published November 2006.

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

the consultation, workshops were held for NHS Confederation members, including independent sector affiliates. Two social care workshops, one for social care service users and provider organisations, and one for commissioners of adult social care and Local Government representatives were also held. The Department also worked with the existing regulators throughout the process.

9. **Chapter 1** of Part 1 of the Act establishes a new body called the Care Quality Commission ('the Commission'). The Commission will be responsible for the registration, review and inspection of certain health and social care services in England (but not any care services that are regulated by the Chief Inspector of Education, Children's Services and Skills ('CIECSS')). It will replace CHAI and CSCI. The functions currently performed by MHAC will be transferred to the Commission and the Welsh Ministers.
10. **Chapter 2** of Part 1 creates a system of registration for providers and, in some cases, managers of health and adult social care. Regulations will set out the health and social care activities (referred to as 'regulated activities'), which a person will not be able to carry on unless that person is registered to do so. The intention is that all providers, including, for the first time, NHS providers, will be brought within the ambit of registration. The new registration system replaces (in England) the current requirement for certain establishments and agencies providing independent health care or adult social care to be registered under the Care Standards Act 2000. The Commission will need to be satisfied that applicants for registration comply with registration requirements, which will be set out in regulations. Once a provider or manager has been registered, the Commission will be responsible for checking continued compliance with these requirements, and will have a range of sanctions so that it can take appropriate action where providers or managers fail to meet the requirements. The Commission will have a wider range of powers than its predecessor organisations, including the power to issue penalty notices for non-compliance with regulatory requirements and the power to suspend registration.
11. **Chapter 3** of Part 1 requires the Commission to carry out periodic reviews of care provided by or commissioned by Primary Care Trusts ('PCTs') or English local authorities to see how well the bodies reviewed are doing. It also requires the Commission to review health care provided by PCTs, English NHS Trusts and NHS Foundation Trusts. It provides for the Secretary of State to extend the review power to cover care provided by other registered providers by regulations. These reviews will assess performance by reference to indicators of quality that will be set or approved by the Secretary of State. The Commission may also carry out other special reviews and investigations, and must carry out such reviews and investigations if the Secretary of State requests it to do so. Chapter 3 of Part 1 replaces and expands CHAI's and CSCI's review and investigation functions under the Health and Social Care (Community Health and Standards) Act 2003.
12. **Chapter 4** of Part 1 transfers to the Commission and the Welsh Ministers various functions under the Mental Health Act. It also makes some changes to those functions.
13. **Chapter 5** of Part 1 confers further functions on the Commission, including a requirement for the Commission to provide information and advice to the Secretary of State on the provision of NHS care and adult social services and the carrying on of regulated activities. It also enables the Commission to report on the efficiency and economy of local authority and NHS provision and commissioning. The functions in Chapter 5 replace and expand equivalent functions of CHAI and CSCI under the Health and Social Care (Community Health and Standards) Act 2003.
14. **Chapter 6** of Part 1 sets out the powers of entry and inspection which the Commission has for the purposes of carrying out its functions. It also deals with the Commission's interaction with other authorities and makes a number of other provisions relevant to Chapters 1 to 5 of Part 1.