

# HEALTH AND SOCIAL CARE ACT 2008

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## EXPLANATORY NOTES

### TERRITORIAL EXTENT

#### *Interaction with other authorities*

##### *Section 66: Interaction with other authorities*

247. *Section 66* gives effect to Schedule 4.

##### *Schedule 4: Interaction with other authorities*

248. *Paragraph 1* defines the inspection authorities to which Schedule 4 applies: they are the five existing criminal justice inspectorates; CIECSS; and the Audit Commission. *Paragraph 2* defines inspection functions for the purposes of the Schedule. *Paragraph 3* defines a public authority for those purposes as any person whose functions are functions of a public nature (excluding any person carrying out functions in connection with Parliamentary proceedings).

249. *Paragraph 4* enables the Commission to delegate any of its inspection functions to another public authority. Where the Commission delegates functions, these will be regarded for the purposes of any legislation as carried out by the Commission.

250. *Paragraph 5* requires the Commission to produce both an inspection programme setting out the inspections it intends to carry out, and an inspection framework, which sets out how it intends to carry out its inspection and reporting functions. These must be prepared from time to time, or at times specified by order by the Secretary of State. Before preparing these documents, the Commission must consult the Secretary of State, the inspection authorities (as defined by paragraph 1) and anyone else specified by an order made by the Secretary of State (unless they have waived their right to be consulted). The Commission must then send the people it has consulted a copy of the programme or framework. This will provide advance notice of the Commission's proposals. It will also allow an opportunity for people to raise concerns about duplication with other inspection bodies or about the overall burden of inspection.

251. The requirements under paragraph 5 do not prevent the Commission from carrying out unannounced inspections.

252. *Paragraph 6* allows the Commission to give a notice to another inspection authority (or other people specified in an order by the Secretary of State), which proposes to carry out an inspection of a prescribed organisation, where the Commission believes the inspection would impose an unreasonable burden on the organisation. This notice can require the inspection authority not to carry out the inspection in the proposed way, or at all.

253. The Secretary of State may specify, by order, circumstances in which this power should not apply. The Secretary of State may also give consent for a particular inspection to be undertaken, if he is satisfied that the inspection will not impose an unreasonable burden

or will not do so if carried out in a particular way. Further provisions in relation to this paragraph may be made by order of the Secretary of State.

254. *Paragraphs 7 to 10* cover other aspects of the Commission's relationship with other public authorities. Paragraph 7 requires the Commission to co-operate with the inspection authorities or other public authorities specified by an order of the Secretary of State. Paragraph 8 enables the Commission to act jointly with other public authorities. Paragraph 9 enables the Commission to provide advice or assistance to other public authorities. Paragraph 10 allows the Commission to make arrangements with other inspection authorities to carry out inspections on their behalf. These powers allow the Commission to build links with other related public authorities in order to work to minimise the regulatory burden they jointly impose.

***Section 67: Co-ordination of reviews or assessments***

255. *Section 67* requires the Commission to promote effective coordination of reviews and assessments in relation to the carrying on of regulated activities.

***Section 68: Avoidance of unreasonable burdens in exercise of regulatory powers***

256. *Section 68* allows the Secretary of State to publish guidance about the steps that the Commission and other prescribed regulatory bodies may take to avoid imposing unreasonable burdens on health and social care organisations when carrying out inspections, or collecting information.
257. This guidance may cover co-operation between regulatory bodies, and the sharing of information between them. It might, for example, advise regulatory bodies how to make use of information that has already been collected, rather than making a direct request for this information to the health and social care organisations concerned.
258. The guidance will apply to the Commission and other prescribed regulatory authorities that have functions relating to the provision of health or social care. They will be obliged to take the guidance into account when carrying out inspections or requiring information. The section makes it clear that any guidance does not limit the scope of a regulatory authority's powers, or affect a person's obligation to comply with any requirement.

***Section 69: Co-operation between the Commission and Welsh Ministers***

259. *Section 69* provides that the Commission and the Welsh Ministers must work with one another in order to carry out their corresponding functions efficiently and effectively. *Subsection (3)* enables them to share information for the purpose of fulfilling this obligation.

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

260. *Section 70* provides how the Commission and Monitor should work with one another and clarifies the interface between the Commission and Monitor, whose work relates closely to that of the Commission. It requires the Commission and Monitor to co-operate with one another in carrying out their functions. The Commission must keep Monitor informed about the provision of health care by NHS Foundation Trusts. Monitor must give the Commission any information it has relating to the provision of health care by NHS Foundation Trusts which will assist the Commission in carrying out its functions. The section also sets out specific material (material relevant to reviews, investigations and studies) that the Commission must provide to Monitor, on request.

***Section 71: Provision of information by Auditor General for Wales***

261. **Section 71** requires the Auditor General for Wales to share with the Commission any information that the Commission may reasonably require in relation to a study under section 54 relating to health care or English NHS bodies so that comparisons can be made between English and Welsh NHS bodies. This replaces a similar provision in section 69A of the Health and Social Care (Community Health and Standards) Act 2003, which is being repealed (see paragraph 40 of Schedule 5 to this Act). The Commission is placed under a reciprocal duty by virtue of an amendment to section 64 of the Public Audit (Wales) Act 2004, which currently applies to CHAI (see paragraph 77 of Schedule 5 to this Act). This will require the Commission to provide the Auditor General for Wales with information he may require for comparative studies under sections 145 and 145A of the Government of Wales Act 1998 of care provided by Welsh NHS bodies compared with English NHS bodies.

***Section 72: Provision of material to the Comptroller and Auditor General***

262. **Section 72** requires the Commission to provide material relevant to reviews, investigations or studies that it carries out to the Comptroller and Auditor General on request.

***Sections 73 and 74: Arrangements with Ministers***

263. **Section 73** enables a Minister of the Crown to arrange for the Commission to carry out any of its functions in relation to prescribed health or social care schemes for which the Minister has responsibility. For example, arrangements may be made between the Commission and the Secretary of State for Defence in respect of the provision of health care to the Armed Forces. **Section 74** enables a Northern Ireland Minister to arrange for the Commission to carry out any of its functions which correspond to functions of the Commission and relate to the Northern Ireland health service.