



Health and Social Care Act 2008

2008 CHAPTER 14

PART 1

THE CARE QUALITY COMMISSION

CHAPTER 3

QUALITY OF HEALTH AND SOCIAL CARE

Modifications etc. (not altering text)

C1 Pt. 1 Ch. 3 modified by 2004 c. 17, s. 10(1) (as substituted (1.10.2010) by [The Health and Social Care Act 2008 \(Consequential Amendments No.2\) Order 2010 \(S.I. 2010/813\)](#), [arts. 1\(1\), 15](#))

Health care standards

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.

Status: Point in time view as at 01/10/2012.

Changes to legislation: There are currently no known outstanding effects for the Health and Social Care Act 2008, Chapter 3. (See end of Document for details)

- (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.

Commencement Information

II S. 45 in force at 1.4.2010 by [S.I. 2010/708](#), [art. 13\(a\)](#)

^{F1}Healthwatch England and Local Healthwatch organisations

Textual Amendments

F1 Ss. 45A-45C and cross-heading inserted (27.3.2012 for specified purposes, 1.10.2012 for specified purposes, 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), [ss. 181\(4\)](#), [306\(1\)\(d\)](#), [\(4\)](#); [S.I. 2012/1831](#), [art. 2\(2\)](#) (with [art. 7](#)); [S.I. 2013/160](#), [art. 2\(2\)](#) (with [arts. 7-9](#))

45A Functions to be exercised by Healthwatch England

- (1) The Commission has the functions set out in subsections (2) to (5), but must arrange for the Healthwatch England committee to exercise the functions on its behalf.
- (2) The function in this subsection is to provide Local Healthwatch organisations with general advice and assistance in relation to—
 - (a) the making of arrangements under section 221(1) of the Local Government and Public Involvement in Health Act 2007 (local care services);
 - (b) the making of arrangements in pursuance of arrangements made under section 221(1) of that Act (see section 222(2B) of that Act);
 - (c) the carrying-on of activities specified in section 221(2) of that Act.
- (3) The function in this subsection is a power to make recommendations of a general nature to English local authorities about the making of arrangements under section 221(1) of that Act.
- (4) The function in this subsection is a power, where the Healthwatch England committee is of the opinion that the activities specified in section 221(2) of that Act are not being carried on properly in an English local authority's area, to give the authority concerned written notice of its opinion.
- (5) The function in this subsection is to provide the persons mentioned in subsection (6) with information and advice on—
 - (a) the views of people who use health or social care services and of other members of the public on their needs for and experiences of health and social care services, and
 - (b) the views of Local Healthwatch organisations and of other persons on the standard of provision of health and social care services and on whether or how the standard could or should be improved.

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- (6) The persons referred to in subsection (5) are—
 - (a) the Secretary of State;
 - (b) the National Health Service Commissioning Board;
 - (c) Monitor;
 - (d) English local authorities.
- (7) A person provided with advice under subsection (5) must inform the Healthwatch England committee in writing of its response or proposed response to the advice.
- (8) The Healthwatch England committee may provide the Commission with information and advice on the matters mentioned in subsection (5)(a) and (b); and the Commission must inform the committee in writing of its response or proposed response to the advice.
- (9) The Commission must publish details of arrangements it makes under subsection (1) (including details of payments of remuneration or other amounts); and inclusion of the details in a report under section 83 is not to be regarded as a discharge of the duty imposed by this subsection.
- (10) In performing functions under this section, the Healthwatch England committee must have regard to such aspects of government policy as the Secretary of State may direct.

45B Conflicts of interest

- (1) In making arrangements under section 45A(1), the Commission must have regard to any conflicts guidance issued by the Secretary of State.
- (2) In exercising functions on behalf of the Commission, the Healthwatch England committee must have regard to any conflicts guidance issued by the Secretary of State.
- (3) In this section, “conflicts guidance” means guidance about managing conflicts between—
 - (a) the exercise of functions by the Commission, and
 - (b) the exercise of functions by the Healthwatch England committee on the Commission's behalf.

45C Reports

- (1) As soon as possible after the end of each financial year, the Healthwatch England committee—
 - (a) must make a report to the Commission (whether or not in writing) on the matters mentioned in section 45A(5)(a) and (b), and
 - (b) must publish a report on the way in which it has exercised during the year the functions exercisable by it.
- (2) The committee must—
 - (a) lay before Parliament a copy of each report made under subsection (1)(b), and
 - (b) send a copy of each such report to the Secretary of State and to every Local Healthwatch organisation.
- (3) The committee may publish other reports at such times, and on such matters relating to health or social care, as it thinks appropriate.

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- (4) Where a recommendation is made to the committee under section 221(2)(h) of the Local Government and Public Involvement in Health Act 2007 (reports under subsection (3)), the committee must have regard to the recommendation.
- (5) Before publishing a report under subsection (1)(b) or (3), the committee must, so far as practicable, exclude any matter which relates to the private affairs of an individual the publication of which, in the committee's opinion, would or might seriously and prejudicially affect that individual's interests.
- (6) In this section, “financial year” means—
 - (a) the period beginning with the date on which the committee is appointed and ending with the following 31 March, and
 - (b) each successive period of 12 months ending with 31 March.]

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

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- (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

- I2** S. 46(1)-(3) (9) in force at 1.4.2009 by [S.I. 2009/462](#), [art. 2\(1\)](#), [Sch. 1 para. 16](#)
- I3** 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—
- 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
 - 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

- I4** 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—
- the provision of NHS care,
 - the provision of adult social services, or
 - the exercise of functions by English Health Authorities.
- (3) Such a review or investigation may relate—
- 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;
 - to the overall exercise of functions or to the exercise of functions of a particular description;
 - 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.

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- (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.

Commencement Information

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

16 S. 48 in force at 1.4.2009 in so far as not already in force by [S.I. 2009/462](#), [art. 2\(1\)](#), [Sch. 1 para. 17](#)

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.

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- (5) In this section “registered service provider” means a person registered under Chapter 2 as a service provider.

Commencement Information

- I7** S. 49 partly in force; S. 49 in force for specified purposes at Royal Assent, see s. 170
- I8** S. 49 in force at 11.12.2009 in so far as not already in force by [S.I. 2009/3023](#), [art. 2\(e\)](#) (with [arts. 3-17](#)) (as amended (8.2.2010) by [S.I. 2010/47](#), art. 2)

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.

Commencement Information

- I9** S. 50 in force at 1.4.2009 by [S.I. 2009/462](#), [art. 2\(1\)](#), [Sch. 1 para. 18](#)

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

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- (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).

Commencement Information

I10 S. 51 in force at 1.4.2009 for specified purposes by [S.I. 2009/462](#), art. 2(1), [Sch. 1 para. 19](#)

I11 S. 51 in force at 11.12.2009 in so far as not already in force by [S.I. 2009/3023](#), art. 2(f) (with arts. 3-17) (as amended (8.2.2010) by [S.I. 2010/47](#), art. 2)

Status:

Point in time view as at 01/10/2012.

Changes to legislation:

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