



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](#))

F1 ...

Textual Amendments

- F1** S. 45 and preceding crossheading omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 17 para. 12\(2\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)

^{F1}**45** **Standards set by Secretary of State**

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Status: Point in time view as at 01/10/2014.

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)

f²Healthwatch England and Local Healthwatch organisations

Textual Amendments

- F2** 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.
- (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.

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- (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.
- (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.]

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[^{F3}45D Granting licence to use trade mark

- (1) The Commission may grant a Local Healthwatch organisation a licence authorising the use, in relation to the carrying-on of activities under arrangements made under section 221(1) of the Local Government and Public Involvement in Health Act 2007, of a registered trade mark of which the Commission is the proprietor.
- (2) A licence under this section may not provide for the grant of a sub-licence by the licensee other than a sub-licence authorising the use of the mark by a Local Healthwatch contractor in relation to the carrying-on of activities under Local Healthwatch arrangements.
- (3) In this section—
 - “Local Healthwatch arrangements” has the meaning given by section 222 of the Local Government and Public Involvement in Health Act 2007,
 - “Local Healthwatch contractor” has the meaning given by section 223 of that Act, and
 - “registered trade mark” and “use” have the same meaning as in the Trade Marks Act 1994.]

Textual Amendments

- F3** S. 45D inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), ss. **182(11)**, 306(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Reviews and investigations

[^{F4}46 Reviews and performance assessments

- (1) The Commission must, in respect of such regulated activities and such registered service providers as may be prescribed—
 - (a) conduct reviews of the carrying on of the regulated activities by the service providers,
 - (b) assess the performance of the service providers following each such review, and
 - (c) publish a report of its assessment.
- (2) Regulations under subsection (1) may prescribe—
 - (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) The assessment of the performance of a registered service provider is to be by reference to whatever indicators of quality the Commission devises.
- (4) The Commission must prepare a statement—
 - (a) setting out the frequency with which reviews under this section are to be conducted and the period to which they are to relate, and
 - (b) describing the method that it proposes to use in assessing and evaluating the performance of a registered service provider under this section.
- (5) The Commission may—

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- (a) use different indicators for different cases,
 - (b) make different provision about frequency and period of reviews for different cases, and
 - (c) describe different methods for different cases.
- (6) The Commission must publish—
- (a) any indicators it devises for the purpose of subsection (3), and
 - (b) the statement it prepares for the purpose of subsection (4).
- (7) Before doing so, the Commission—
- (a) must consult the Secretary of State and such other persons, or other persons of such a description, as may be prescribed, and
 - (b) may also consult any other persons it considers appropriate.
- (8) The Commission may from time to time revise—
- (a) any indicators it devises for the purpose of subsection (3), and
 - (b) the statement it prepares for the purpose of subsection (4);
- and, if it does so, it must publish the indicators and statement as revised.
- (9) Subsection (7) applies to revised indicators and a revised statement, so far as the Commission considers the revisions in question to be significant.
- (10) In this section “registered service provider” means a person registered under Chapter 2 as a service provider.
- (11) Consultation undertaken before the commencement of this section is as effective for the purposes of subsection (7) as consultation undertaken after that commencement.]

Textual Amendments

F4 S. 46 substituted (7.7.2014 for specified purposes, 1.10.2014 in so far as not already in force) by [Care Act 2014 \(c. 23\)](#), **ss. 91(2)**, 127(1); S.I. 2014/1714, **arts. 2(b)**, 4

^{F5}47 **Frequency and period of review**

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Textual Amendments

F5 S. 47 repealed (1.10.2014) by [Care Act 2014 \(c. 23\)](#), **ss. 91(3)**, 127(1); S.I. 2014/1714, **art. 4**

48 **Special reviews and investigations**

(1) The Commission may ^{F6}...conduct any special review or investigation, and must do so if the Secretary of State so requests [^{F7}; but the Commission may not conduct a review or investigation under subsection (2)(ba) or (bb) without the approval of the Secretary of State.].

^{F8}(1A)

(2) A special review or investigation is a review (other than [^{F9} a review under section 46]) of or an investigation into—

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- (a) the provision of NHS care,
 - (b) the provision of adult social services,
 - [^{F10}(ba) the exercise of the functions of the National Health Service Commissioning Board or a clinical commissioning group in arranging for the provision of NHS care under the National Health Service Act 2006 [^{F11} or section 117 of the Mental Health Act 1983 (after-care)],]
 - [^{F12}(bb) the exercise of the functions of English local authorities in arranging for 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.
- [^{F13}(3A) A review or investigation under subsection (2)(b), in so far as it involves a review or investigation into the arrangements made for the provision of the adult social services in question, is to be treated as a review under subsection (2)(bb) (and the requirement for approval under subsection (1) is accordingly to apply).]
- (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.
- [^{F14}(7)
- (8) In this section “English Health Authority” means—
- [^{F15}(a)
 - (b) a Special Health Authority performing functions only or mainly in respect of England.

Textual Amendments

- F6** Words in s. 48(1) omitted (1.10.2014) by virtue of [Care Act 2014 \(c. 23\)](#), **ss. 91(4)(a)**, 127(1); S.I. 2014/1714, [art. 4](#)
- F7** Words in s. 48(1) inserted (1.10.2014) by [Care Act 2014 \(c. 23\)](#), **ss. 91(4)(b)**, 127(1); S.I. 2014/1714, [art. 4](#)
- F8** S. 48(1A) omitted (1.10.2014) by virtue of [Care Act 2014 \(c. 23\)](#), **ss. 91(5)**, 127(1); S.I. 2014/1714, [art. 4](#)
- F9** Words in s. 48(2) substituted (1.10.2014) by [Care Act 2014 \(c. 23\)](#), **ss. 91(6)**, 127(1); S.I. 2014/1714, [art. 4](#)
- F10** S. 48(2)(ba) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), **Sch. 5 para. 158(a)**; S.I. 2013/160, [art. 2\(2\)](#) (with arts. 7-9)

Status: Point in time view as at 01/10/2014.

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)

- F11** Words in s. 48(2)(ba) inserted (27.3.2012 for specified purposes, 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), ss. 40(6), 306(4), [Sch. 5 para. 158\(a\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F12** S. 48(2)(bb) inserted (1.10.2014) by [Care Act 2014 \(c. 23\)](#), ss. 91(7), 127(1); S.I. 2014/1714, art. 4
- F13** S. 48(3A) inserted (1.10.2014) by [Care Act 2014 \(c. 23\)](#), ss. 91(8), 127(1); S.I. 2014/1714, art. 4
- F14** S. 48(7) omitted (1.10.2014) by virtue of [Care Act 2014 \(c. 23\)](#), ss. 90(2), 127(1); S.I. 2014/2473, art. 3(e)
- F15** S. 48(8)(a) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 5 para. 158\(b\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Commencement Information

- I1** S. 48 partly in force; S. 48 in force for specified purposes at Royal Assent, see s. 170
- I2** 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](#)

F16⁴⁹ Power to extend periodic review function

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Textual Amendments

- F16** S. 49 repealed (1.10.2014) by [Care Act 2014 \(c. 23\)](#), ss. 91(3), 127(1); S.I. 2014/1714, art. 4

50 Failings by English local authorities

- (1) This section applies where the Commission conducts a review under section 46^{F17} ..., 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.

Status: Point in time view as at 01/10/2014.

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Textual Amendments

F17 Words in s. 50(1) omitted (1.10.2014) by virtue of [Care Act 2014 \(c. 23\)](#), **ss. 91(9)(a)**, 127(1); [S.I. 2014/1714](#), [art. 4](#)

Commencement Information

I3 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 ^{F18}..., 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).

Textual Amendments

F18 Words in s. 51(1) omitted (1.10.2014) by virtue of [Care Act 2014 \(c. 23\)](#), **ss. 91(9)(b)**, 127(1); [S.I. 2014/1714](#), [art. 4](#)

Commencement Information

I4 S. 51 in force at 1.4.2009 for specified purposes by [S.I. 2009/462](#), [art. 2\(1\)](#), **Sch. 1 para. 19**

I5 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 01/10/2014.

Changes to legislation:

There are currently no known outstanding effects for the Health and Social Care Act 2008, Chapter 3.