

SCHEDULE 3

Article 9

Transitory, transitional and saving provisions in relation to functions of the CHAI and the CSCI under the 2003 Act

Interpretation etc.

1.—(1) In this Schedule “the relevant financial year” means the financial year ending 31st March 2009.

(2) Notwithstanding their repeal, sections 50, 51, 52, 53, 55, 57, 78, 79 and 80 to 82 of the 2003 Act are saved to the extent specified by, and as modified by, this Schedule.

Annual reviews

2.—(1) Where—

- (a) the CHAI, under section 50 of the 2003 Act (annual reviews); or
- (b) the CSCI, under section 79 of the 2003 Act (annual reviews)(1),

had not, before the appointed day, completed a review for each body specified in those sections in relation to the relevant financial year, the Care Quality Commission shall, in accordance with those sections, complete any such review and award a performance rating to, or, as the case may be, make an assessment of, that body.

(2) Where the CHAI had not, before the appointed day, completed a review of the Health Protection Agency pursuant to section 10 of the Health Protection Agency Act 2004(2) (health care provision: standards) in relation to the relevant financial year, the Care Quality Commission shall, in accordance with that section, complete any such review and award a performance rating to that Agency.

(3) For the purposes of sub-paragraph (2), the references to the standards provisions in section 10 of the Health Protection Agency Act 2004 shall be interpreted as a reference to those provisions as saved and modified by this Order in relation to English NHS bodies.

(4) For the purposes of sub-paragraphs (1) and (2)—

- (a) section 50 of the 2003 Act shall be modified as if for “the CHAI” in each place it appears, there were substituted “the Care Quality Commission”; and
- (b) section 79 shall be modified as if—
 - (i) for “the CSCI” in each place it appears there were substituted “the Care Quality Commission”, and
 - (ii) in subsection (2), for the words “award a performance rating to” there were substituted “assess”.

(5) In completing any review under this paragraph, the Care Quality Commission must take into account any evidence relevant to that review obtained prior to the appointed day by—

- (a) the CHAI in the exercise of its functions under section 50 of the 2003 Act; or
- (b) the CSCI in the exercise of its functions under section 79 of the 2003 Act,

insofar as that information has been made available to the Care Quality Commission.

(6) For the purposes of its duties under this paragraph, the Care Quality Commission may, subject to approval of the Secretary of State, revise criteria published by—

- (a) the CHAI under section 50(3) of the 2003 Act; or

(1) Section 79 was amended by the 2006 Act, sections 157, 184 and Schedule 14, paragraphs 82 and 85 and Schedule 18, Part 5.
(2) 2004 c.17.

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(b) the CSCI under section 79(4) of the 2003 Act and if it does so it must publish the revised criteria.

(7) Pursuant to section 50(4)(b) of the 2003 Act, the Care Quality Commission must, when completing a review pursuant to sub-paragraph (1)(a), take into account any Code of Practice published under section 47A of the 2003 Act (code of practice relating to health care associated infections)⁽³⁾ that applied during the relevant financial year, notwithstanding the repeal of section 47A.

Other reviews and investigations

3.—(1) This paragraph applies where the CHAI or the CSCI—

- (a) began but did not, before the appointed day, complete a review or investigation under the sections specified in sub-paragraph (3); or
- (b) completed a review or investigation under those sections but did not before the appointed day publish a report in relation to it.

(2) The Care Quality Commission may—

- (a) in a case falling within sub-paragraph (1)(a), complete the review or investigation in accordance with the relevant section (as if references to “the CHAI” or the “CSCI” were to “the Care Quality Commission”) and if it does so shall publish a report in relation to the completed review or investigation; or
- (b) in a case falling within sub-paragraph (1)(b), publish the report.

(3) The sections specified for the purpose of sub-paragraph (1) are sections 51 (reviews: England and Wales)⁽⁴⁾, 52 (review and investigations: England)⁽⁵⁾, 55 (reviews of data), 78 (review of studies and research) and 80 (other reviews and investigations)⁽⁶⁾ of the 2003 Act.

(4) Pursuant to section 51(4)(a) and 52(5)(b) of the 2003 Act, the Care Quality Commission must, when completing a review or investigation or publishing a report pursuant to sub-paragraph (1) and those sections, take into account any Code of Practice published under section 47A of the 2003 Act (code of practice relating to health care associated infections) that applied during the relevant financial year, notwithstanding the repeal of section 47A.

Failings

4.—(1) Where the Care Quality Commission has completed a review or investigation or published a report on a review or investigation pursuant to paragraph 2 or 3, section 53(4), (5) and (8) and 81(3) to (6) of the 2003 Act (failings) shall apply notwithstanding their repeal as if for “the CHAI” or “the CSCI” in each place it appears, there were substituted “the Care Quality Commission” and as if the words “(in a case where subsection (2) does not apply)” were omitted from section 81(3).

(2) Sub-paragraph (1) does not apply where the CHAI or the CSCI has already reported to the Secretary of State or the Welsh Ministers (as the case may be) in relation to the matter.

Studies

5.—(1) This paragraph applies where the CHAI or the CSCI—

- (a) began a study under a section specified in paragraph (3) but had not completed it before the appointed day; or

⁽³⁾ Section 47A was inserted by the Health Act 2006, section 14.

⁽⁴⁾ Section 51 was amended by the Health Act 2006, section 15.

⁽⁵⁾ Section 52 was amended by the Health Act 2006, section 15.

⁽⁶⁾ Section 80 was amended by the 2006 Act, sections 157, 184 and Schedules 14, paragraphs 82 and 86 and Schedule 18, part 5.

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- (b) completed such a study before the appointed day but had not prior to the appointed day published recommendations and the results of the study.
- (2) The Care Quality Commission may—
 - (a) in a case falling within sub-paragraph (1)(a), complete the study in accordance with the relevant section (as if references to “the CHAI” or “the CSCI” were to “the Care Quality Commission”) and if it does so shall publish recommendations and the results of the study; or
 - (b) in a case falling within sub-paragraph (1)(b), publish the recommendations and the result of the study.
- (3) The sections specified for the purpose of sub-paragraph (1) are sections 57 (studies as to economy, efficiency etc) and 82 (studies as to economy, efficiency etc) of the 2003 Act.
- (4) Section 82(6) shall apply, notwithstanding its repeal, to any material relevant to any study under that section that falls within sub-paragraph (1) as if for “The CSCI” there were substituted “The Care Quality Commission”.

Explanations and statements of action

6.—(1) Notwithstanding their revocation by this Order, the Commission for Social Care Inspection (Explanation and Co-operation) Regulations 2004(7) (“the CSCI Explanation Regulations”) and the Commission for Healthcare Audit and Inspection (Explanation, Statements of Action and Co-operation) Regulations 2004(8) (“the CHAI Explanation Regulations”) shall be saved to the extent specified by and with the modifications specified in, this paragraph.

(2) The Care Quality Commission, or a person authorised by it, may require any of the persons prescribed in regulation 2(4) of the CSCI Explanation Regulations (power to require an explanation) or regulation 2(4) of the CHAI Explanation Regulations (power to require an explanation) to provide to the Care Quality Commission or the person so authorised (as the case may be) an explanation of—

- (a) any documents, records or items inspected, copied or provided under sections 66 (right of entry) to 68 (power to require documents and information etc) and 88 (right of entry) to 90 (power to require information etc) of the 2003 Act;
- (b) any information provided under those sections; or
- (c) any matters which—
 - (i) were the subject of the exercise of any functions of the CSCI under Chapter 5 of Part 2 of the 2003 Act,
 - (ii) were the subject of the exercise of any functions of the CHAI under Chapter 3 of Part 2 of the 2003 Act, or
 - (iii) are the subject of the exercise of any functions of the Care Quality Commission under paragraphs 2, 3 and 5 of this Schedule,

in circumstances where the Care Quality Commission considers the explanation necessary or expedient for the purposes of its functions under paragraph 2 or 3.

(3) Regulations 2(2) and (3) of the CSCI Explanation Regulations and the CHAI Explanation Regulations shall apply to explanations required by the Care Quality Commission under sub-paragraph (1) as if for “the CHAI” or “the CSCI” in each place they appear there were substituted “the Care Quality Commission”.

(4) Where—

(7) [S.I. 2004/555](#).

(8) [S.I. 2004/557](#).

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- (a) the Care Quality Commission publishes a report under paragraph 3 in respect of a review or investigation commenced under section 52(2)(c) or (3) of the 2003 Act; or
- (b) a statement of action fell to be published before the appointed day under regulation 3 of the CHAI Explanation Regulations but was not so published,

the English NHS body or cross-border SHA in question shall, in accordance with the following paragraphs, publish a statement as to the action it proposes to take as a result of the review or investigation (“the statement”).

(5) In sub-paragraph (4), “English NHS body” and “cross-border SHA” have the same meaning as in section 148 of the 2003 Act.

(6) Regulation 3(2) to (7) of the CHAI Explanation Regulations shall apply to statements published pursuant to sub-paragraph (4) as if—

- (a) in paragraphs (3) and (6) , after “CHAI’s” there were inserted “or, as the case may be, the Care Quality Commission’s,”; and
- (b) in paragraph (7)(a), for “the CHAI” there were substituted “the Care Quality Commission”.

Provision of advice to the Secretary of State and Welsh Ministers

7. The Care Quality Commission must provide advice pursuant to a request made under section 54(3) (providing advice or information to the Secretary of State and Welsh Ministers) or 77(4) (providing advice or information to the Secretary of State) of the 2003 Act in any case where the request was made to the CHAI before the appointed day but the CHAI had not provided advice in response to that request.

Provision of information to the Comptroller and Auditor General, the Independent Regulator of NHS Foundation Trusts and the Auditor General for Wales

8.—(1) The Care Quality Commission must, on request, provide—

- (a) the Comptroller and Auditor General with any material relevant to a review or investigation under paragraphs 2 or 3 or a study under paragraph 5 insofar as related to the exercise of a function under section 50, 51, 52, 55 or 57 of the 2003 Act;
- (b) the Independent Regulator of NHS Foundation Trusts with—
 - (i) any material which is relevant to a review or investigation under paragraphs 2 or 3 and relates to the provision of health care by or for an NHS foundation trust;
 - (ii) any material which is relevant to a study under paragraph 5 and relates to an NHS foundation trust.
- (c) the Auditor General for Wales with all material which is relevant to a review under paragraph 3 and to one or more Welsh NHS bodies.

Arrangements with the Secretary of State for Defence

9.—(1) Sub-paragraphs (2) and (3) apply to arrangements made between the CHAI and the Secretary of State for Defence under section 124(9) of the 2003 Act (arrangements with Ministers etc.: CHAI).

(2) The Care Quality Commission may perform functions or provide facilities or services in accordance with those arrangements as though that section were not repealed and the Commission

(9) See [S.I.2008/1181](#) which prescribes Defence Medical Services as a health scheme for the purposes of section 124.

for Healthcare Audit and Inspection (Defence Medical Services) Regulations 2008⁽¹⁰⁾ were not revoked.

(3) If the Care Quality Commission complies with those arrangements, the terms and conditions agreed between the CHAI and the Secretary of State for Defence shall apply as if those arrangements were made by the Care Quality Commission instead of the CHAI.

Annual accounts

10.—(1) The Care Quality Commission must prepare the annual accounts of the CHAI and the CSCI in respect of the relevant financial year in such form as it considers appropriate.

(2) The Care Quality Commission must send copies of those annual accounts to the Comptroller and Auditor General.

(3) The Comptroller and Auditor General must examine, certify and report on the annual accounts and must lay copies of the accounts and of his report before Parliament.

Reports relating to the exercise of functions during the relevant financial year

11.—(1) As soon as possible after the appointed day the Care Quality Commission must make a report based on information available to it on each of the following—

- (a) the way in which the CHAI exercised its functions during the relevant financial year;
- (b) the way in which the CSCI exercised its functions during the relevant financial year;
- (c) the provision of health care by and for NHS bodies;
- (d) what the CHAI found in the course of exercising its functions during the relevant financial year in relation to the persons for whom it was the registration authority under the 2000 Act;
- (e) what the CSCI found in the course of exercising its functions during the relevant financial year.

(2) The Care Quality Commission must lay before Parliament a copy of each report made under this paragraph.

(3) The Care Quality Commission must send a copy of each report made under this paragraph to the Secretary of State.

(4) The Care Quality Commission must send a copy of each report made under sub-paragraph (1) (a), (c) and (d) to Welsh Ministers.

Co-operation with the Auditor General for Wales

12. The Care Quality Commission must co-operate with the Auditor General for Wales where it seems to it appropriate to do so for the efficient and effective discharge of its functions under this Order.

Availability of reports

13.—(1) The Care Quality Commission must make copies of any report published by it under this Schedule available for inspection at its offices by any person at any reasonable time.

(2) Any person who requests a copy of such a report is entitled to have one on payment of such reasonable fee (if any) as the Care Quality Commission considers appropriate.

⁽¹⁰⁾ S.I. 2008/1181 which is revoked by article 15 of, and Schedule 6 to, this Order.

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(3) The Care Quality Commission may charge a person such reasonable fee as it considers appropriate where it provides him, at his request, with any other information relevant to the discharge of the Care Quality Commission's functions under this Order.

Modification of provisions of the 2003 Act

14. Pending the coming into force of their repeal by Part 1 of Schedule 15 to the Act, sections 66 to 69A and 88 to 91 of the 2003 Act shall have effect subject to the modifications set out in paragraphs 15 to 23.

15. Section 66(1) of the 2003 Act (right of entry) is modified as follows—

- (a) for “the CHAI” in each place in which they occur, substitute “the Care Quality Commission”; and
- (b) for “this Chapter” substitute “Schedule 3 to the Health and Social Care Act 2008 (Commencement No.9, Consequential Amendments and Transitory, Transitional and Saving Provisions) Order 2009”.

16. Section 67(1) of the 2003 Act (right of entry: supplementary) is modified such that, for “this Chapter” substitute “Schedule 3 to the Health and Social Care Act 2008 (Commencement No.9, Consequential Amendments and Transitory, Transitional and Saving Provisions) Order 2009”.

17. Section 68(1) of the 2003 Act (power to require documents and information etc.) is modified as follows—

- (a) for “the CHAI” in each place in which they occur, substitute “the Care Quality Commission”; and
- (b) for “this Chapter” substitute “Schedule 3 to the Health and Social Care Act 2008 (Commencement No.9, Consequential Amendments and Transitory, Transitional and Saving Provisions) Order 2009”.

18. Section 69(3) of the 2003 Act (failure to comply with requirements under section 69) shall apply in relation to failures to comply with requirements imposed by virtue of paragraph 6 as it applies in relation to requirements imposed by virtue of section 69.

19. Section 69A(11) of the 2003 Act (provision of information by Auditor General for Wales) is modified as follows—

- (a) for “the CHAI” substitute “the Care Quality Commission”; and
- (b) for “under sections 51, 52 and 57” substitute “in a case to which paragraph 3 or 5 of Schedule 3 to the Health and Social Care Act 2008 (Commencement No.9, Consequential Amendments and Transitory, Transitional and Saving Provisions) Order 2009 applies”.

20. Section 88 of the 2003 Act (right of entry) is modified as follows—

- (a) for “the CSCI” in each place in which those words occur, substitute “the Care Quality Commission”; and
- (b) for “this Chapter” substitute “Schedule 3 to the Health and Social Care Act 2008 (Commencement No.9, Consequential Amendments and Transitory, Transitional and Saving Provisions) Order 2009”.

21. Section 89 of the 2003 Act (right of entry: supplementary) is modified such that, for the words “this Chapter” substitute “Schedule 3 to the Health and Social Care Act 2008 (Commencement No.9, Consequential Amendments and Transitory, Transitional and Saving Provisions) Order 2009”.

22. Section 90 of the 2003 Act (power to require information, etc.) is modified as follows—

(11) Section 69A was inserted by the Public Audit (Wales) Act 2004 (c.23), section 66.

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- (a) for “the CSCI” in each place in which those words occur, substitute “the Care Quality Commission”; and
- (b) for “this Chapter” substitute “Schedule 3 to the Health and Social Care Act 2008 (Commencement No.9, Consequential Amendments and Transitory, Transitional and Saving Provisions) Order 2009”.

23. Section 91(3) of the 2003 Act (failure to comply with requirements under section 91) shall apply in relation to failures to comply with requirements imposed by virtue of paragraph 6 as it applies in relation to requirements imposed by virtue of section 91.