



Health and Social Care Act 2008

2008 CHAPTER 14

PART 1

THE CARE QUALITY COMMISSION

CHAPTER 2

REGISTRATION IN RESPECT OF PROVISION OF HEALTH OR SOCIAL CARE

Regulation, code of practice and guidance

20 Regulation of regulated activities

- (1) Regulations may impose in relation to regulated activities any requirements which the Secretary of State thinks fit for the purposes of this Chapter.
- (2) Regulations under this section may in particular make provision with a view to—
 - (a) securing that any service provided in the carrying on of a regulated activity is of appropriate quality, and
 - (b) securing the health, safety and welfare of persons for whom any such service is provided.
- (3) Regulations under this section may in particular—
 - (a) make provision as to the persons who are fit to carry on or manage a regulated activity;
 - (b) make provision as to the manner in which a regulated activity is carried on;
 - (c) make provision as to the persons who are fit to work for the purpose of the carrying on of a regulated activity;
 - (d) make provision as to the management and training of persons who work for the purpose of the carrying on of a regulated activity;
 - (e) make provision as to the fitness of premises;
 - (f) impose requirements as to the keeping of records and accounts;

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- (g) impose requirements as to the provision of information;
 - (h) impose requirements as to the financial position of a person registered as a service provider;
 - (i) impose requirements as to the making available to the public of information as to any charges made for the provision of any services provided in the carrying on of a regulated activity;
 - (j) impose requirements as to the review of the quality of any services provided in the carrying on of a regulated activity, as to the preparation of reports of such reviews, and as to the making available to the public of such reports;
 - (k) make provision as to the handling of complaints and disputes and the application of lessons learnt from them.
- (4) Regulations made under this section by virtue of subsection (3)(b) may in particular include provision as to the control and restraint, in appropriate cases, of persons receiving health or social care or other services in connection with the carrying on of a regulated activity.
- (5) Regulations made under this section may make provision for the prevention and control of health care associated infections and may include such provision as the Secretary of State considers appropriate for the purpose of safeguarding individuals (whether receiving health or social care or otherwise) from the risk, or any increased risk, of being exposed to health care associated infections or of being made susceptible, or more susceptible, to them.
- [^{F1}(5A) Regulations under this section must make provision as to the provision of information in a case where an incident of a specified description affecting a person's safety occurs in the course of the person being provided with a service.]
- (6) In this Chapter “health care associated infection” means any infection to which an individual may be exposed or made susceptible (or more susceptible) in circumstances where—
- (a) health or social care is being, or has been, provided to that or any other individual, and
 - (b) the risk of exposure to the infection, or of susceptibility (or increased susceptibility) to it, is directly or indirectly attributable to the provision of that care.
- (7) But “health care associated infection” does not include an infection to which the individual is deliberately exposed as part of any health care.
- (8) Before making regulations under this section, except regulations which amend other regulations under this section and do not, in the opinion of the Secretary of State, effect any substantial change in the provision made by those regulations, the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (9) Consultation undertaken by the Secretary of State before the commencement of this section is as effective for the purposes of this section as consultation undertaken after that time.

Textual Amendments

- F1** S. 20(5A) inserted (7.7.2014 for specified purposes, 15.7.2014 in so far as not already in force) by [Care Act 2014 \(c. 23\)](#), **ss. 81**, 127(1); [S.I. 2014/1714](#), arts. 2(a), 3(1)

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Modifications etc. (not altering text)

- C1** Pt. 1 excluded (6.4.2010) by [The Health and Social Care Act 2008 \(Commencement No.16, Transitory and Transitional Provisions\) Order 2010 \(S.I. 2010/807\)](#), arts. 1(1)(a), **17(4)(c)(5)(b)**
- C2** Pt. 1 excluded (6.4.2010) by [The Health and Social Care Act 2008 \(Commencement No.16, Transitory and Transitional Provisions\) Order 2010 \(S.I. 2010/807\)](#), arts. 1(1)(a), **14(4)(c)**

Commencement Information

- I1** S. 20 partly in force; S. 20 in force for specified purposes at Royal Assent, see s. 170
- I2** S. 20 in force at 12.1.2009 for specified purposes by [S.I. 2008/3168](#), **art. 2**
- I3** S. 20 in force at 6.4.2010 in so far as not already in force by [S.I. 2010/807](#), art. 2(1), **Sch. 1 para. 5** (with Pt. 3)

[^{F2}20A Functions relating to processing of information by registered persons

- (1) The Commission has the following functions in relation to the processing of relevant information—
- (a) to monitor the practice followed by registered persons in relation to such processing, and
 - (b) to keep the National Health Service Commissioning Board and Monitor informed about the practice being followed by registered persons in relation to such processing.
- (2) The Commission must, in exercising those functions, seek to improve the practice followed by registered persons in relation to the processing of relevant information.
- (3) In this section “relevant information” means—
- (a) patient information,
 - (b) any other information obtained or generated in the course of the provision of the health service continued under section 1 of the National Health Service Act 2006,
 - (c) any other information obtained or generated in the course of the exercise by an English local authority of its adult social services functions, and
 - (d) any other information obtained or generated in the course of the carrying on by an English local authority of adult placement schemes in connection with which arrangements are made for the provision of personal care.
- (4) In subsection (3) “patient information” means—
- (a) information (however recorded) which relates to the physical or mental health or condition of an individual (“P”), to the diagnosis of P’s condition or to P’s care or treatment, and
 - (b) information (however recorded) which is to any extent derived, directly or indirectly, from that information,
- whether or not the identity of the individual in question is ascertainable from the information.
- (5) In this section—
- “adult placement scheme” and “personal care” each have such meaning as they have from time to time in regulations under section 20;
- “processing”, in relation to information, has the same meaning as in the Data Protection Act 1998;

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“registered person” means a person registered under this Chapter as a manager or service provider in respect of a regulated activity.]

Textual Amendments

F2 S. 20A inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 280(3), 306(4)**; [S.I. 2013/160, art. 2\(2\)](#) (with [arts. 7-9](#))

21 Code of practice relating to health care associated infections

- (1) The Secretary of State may issue a code of practice about compliance with any requirements of regulations under section 20 which relate to the prevention or control of health care associated infections.
- (2) The code may—
 - (a) operate by reference to provisions of other documents specified in it (whether published by the Secretary of State or otherwise);
 - (b) provide for any reference in it to such a document to take effect as a reference to that document as revised from time to time;
 - (c) make different provision for different cases or circumstances.
- (3) The Secretary of State must keep the code under review and may from time to time—
 - (a) revise the whole or any part of the code, and
 - (b) issue a revised code.

Commencement Information

I4 S. 21 in force at 12.1.2009 for specified purposes by [S.I. 2008/3168, art. 2](#)

22 Consultation etc. in relation to code of practice under s. 21

- (1) Where the Secretary of State proposes to issue a code of practice under section 21, the Secretary of State must—
 - (a) prepare a draft of the code, and
 - (b) consult such persons as the Secretary of State considers appropriate about the draft.
- (2) Where the Secretary of State proposes to issue under section 21 a revised code which in the opinion of the Secretary of State would result in a substantial change in the code, the Secretary of State must—
 - (a) prepare a draft of the revised code, and
 - (b) consult such persons as the Secretary of State considers appropriate about the change.
- (3) Where, following consultation under subsection (1) or (2), the Secretary of State issues the code or revised code (whether in the form of the draft or with such modifications as the Secretary of State thinks fit), it comes into force at the time when it is issued by the Secretary of State.
- (4) Where—

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- (a) any document by reference to whose provisions the code operates as mentioned in section 21(2)(a) and (b) is a document published by the Secretary of State in connection with the Secretary of State's functions relating to health or social care,
- (b) the Secretary of State proposes to revise the document, and
- (c) in the opinion of the Secretary of State, the revision would result in a substantial change in the code,

the Secretary of State must, before revising the document, consult such persons as the Secretary of State considers appropriate about the change.

(5) Where—

- (a) any document by reference to whose provisions the code operates as mentioned in section 21(2)(a) and (b) is not one to which subsection (4)(a) of this section applies,
- (b) the document is revised, and
- (c) in the opinion of the Secretary of State, the revision results in a substantial change in the code,

the Secretary of State must consult such persons as the Secretary of State considers appropriate about whether the code should be revised in connection with the change.

(6) Consultation undertaken by the Secretary of State before the commencement of this section is as effective for the purposes of this section as consultation undertaken after that time.

Modifications etc. (not altering text)

C3 S. 22(3) modified (12.1.2009) by [Health and Social Care Act 2008 \(Commencement No.6, Transitory and Transitional Provisions\) Order 2008 \(S.I. 2008/3168\)](#), [art. 4](#)

Commencement Information

I5 S. 22 in force at 12.1.2009 for specified purposes by [S.I. 2008/3168](#), [art. 2](#)

23 Guidance as to compliance with requirements

- (1) The Commission must issue guidance about compliance with the requirements of regulations under section 20, other than requirements which relate to the prevention or control of health care associated infections.
- (2) The guidance may, if the Commission thinks fit, also relate to compliance for the purposes of this Chapter with the requirements of any other enactments.
- (3) The guidance may—
 - (a) operate by reference to provisions of other documents specified in it (whether published by the Commission or otherwise);
 - (b) provide for any reference in it to such a document to take effect as a reference to that document as revised from time to time;
 - (c) make different provision for different cases or circumstances.
- (4) The Commission may from time to time revise guidance issued by it under this section and issue the revised guidance.

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Commencement Information

I6 S. 23 in force at 11.12.2009 by [S.I. 2009/3023](#), **art. 2(b)** (with [arts. 3-17](#)) (as amended (8.2.2010) by [S.I. 2010/47](#), art. 2)

24 Consultation in relation to guidance under s. 23

- (1) Where the Commission proposes to issue guidance under section 23, it must—
 - (a) prepare a draft of the guidance, and
 - (b) consult such persons as the Commission considers appropriate about the draft.
- (2) Where the Commission proposes to issue under section 23 revised guidance which in its opinion would result in a substantial change in the guidance, the Commission must—
 - (a) prepare a draft of the revised guidance, and
 - (b) consult such persons as the Commission considers appropriate about the change.
- (3) Where, following consultation under subsection (1) or (2), the Commission issues the guidance or revised guidance (whether in the form of the draft or with such modifications as the Commission thinks fit), it comes into force at the time when it is issued by the Commission.
- (4) Where—
 - (a) any document by reference to whose provisions the guidance operates as mentioned in section 23(3)(a) and (b) is a document published by the Commission,
 - (b) the Commission proposes to revise the document, and
 - (c) in the opinion of the Commission, the revision would result in a substantial change in the guidance,
 the Commission must, before revising the document, consult such persons as the Commission considers appropriate about the change.
- (5) Where—
 - (a) any document by reference to whose provisions the guidance operates as mentioned in section 23(3)(a) and (b) is not one to which subsection (4)(a) of this section applies,
 - (b) the document is revised, and
 - (c) in the opinion of the Commission, the revision results in a substantial change in the guidance,
 the Commission must consult such persons as the Commission considers appropriate about whether the guidance should be revised in connection with the change.
- (6) Consultation undertaken by the Commission before the commencement of this section is as effective for the purposes of this section as consultation undertaken after that time.

Commencement Information

I7 S. 24 in force at 11.12.2009 by [S.I. 2009/3023](#), **art. 2(b)** (with [arts. 3-17](#)) (as amended (8.2.2010) by [S.I. 2010/47](#), art. 2)

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25 Effect of code under s. 21 and guidance under s. 23

- (1) A code of practice under section 21 and guidance under section 23 are to be taken into account—
 - (a) in the making of any decision by the Commission under this Chapter;
 - (b) in any proceedings for the making of an order under section 30;
 - (c) in any proceedings on an appeal against such a decision or order;
 - (d) in any proceedings for an offence under section 33 or under regulations under section 20.
- (2) A code of practice under section 21 or guidance under section 23 is also admissible in evidence in other criminal or civil proceedings.
- (3) A failure to observe any provision of a code of practice under section 21 or guidance under section 23 does not of itself make a person liable to any criminal or civil proceedings.

Commencement Information

- 18** S. 25 in force at 12.1.2009 for specified purposes by [S.I. 2008/3168, art. 2](#)
- 19** S. 25 in force at 11.12.2009 in so far as not already in force by [S.I. 2009/3023, art. 2\(c\)](#) (with arts. [3-17](#)) (as amended (8.2.2010) by [S.I. 2010/47, art. 2](#))

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