

# HEALTH AND SOCIAL CARE ACT 2008

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## EXPLANATORY NOTES

### TERRITORIAL EXTENT

#### *Regulation, code of practice and guidance*

#### *Sections 20 to 25: Requirements in relation to regulated activities*

144. Sections 20 to 25 provide for regulations to be made setting out the detailed requirements to be met by providers and managers of regulated activities. They also provide for a code of practice and guidance to be issued about how compliance with those requirements will be assessed by the Commission.
145. Subsection (1) of section 20 gives the Secretary of State a general power to make regulations imposing any requirements he sees fit in relation to regulated activities. He is obliged to consult on these regulations or any significant change to them (subsection (8)).
146. The regulations made may, in particular, include provision intended to safeguard the health, safety and welfare of people who receive regulated health and adult social care, and to ensure that those services are of the necessary quality (subsection (2)).
147. Subsection (3) sets out specific issues which any regulations made under section 20 may deal with. It provides for regulations to be made which set out who are fit people to register as service providers or managers, including requirements relating to the financial solvency of service providers. It also provides for regulations to be made which set out who may be considered to be fit to deliver regulated activities. For example, there may be requirements regarding their management and training.
148. Regulations may also make provision about the way in which a regulated activity is carried on. They may cover issues such as the use of appropriate premises and practical issues around record keeping or accounting. They may cover arrangements for dealing with and learning from complaints and disputes. For example, such regulations could require a service provider to maintain arrangements for ensuring that lessons learnt from justified complaints are properly applied. They may also require registered providers to review the quality of services they offer, prepare a report of the review, and make it available to the public; and require providers to make information available about charges made for those services.
149. The regulations may also cover other issues, such as requirements regarding the appropriate use of control and restraint, or the provision of information.
150. Subsection (5) allows regulations to include requirements for preventing and controlling health care associated infections ('HCAIs') such as MRSA and *Clostridium difficile*. These will cover the steps that service providers and managers must take to safeguard people using or providing health and social care services from such infections.
151. Under section 21 the Secretary of State may also issue a code of practice about compliance with the requirements relating to the prevention and control of HCAIs. This code will replace the code that NHS bodies currently follow (issued under sections 47A

*These notes refer to the Health and Social Care Act 2008  
(c.14) which received Royal Assent on 21 July 2008*

to 47C of the Health and Social Care (Community Health and Standards) Act 2003, as amended by the NHS Act 2006). The new code will apply to all regulated activities, rather than only those carried out by NHS bodies. Section 22 sets out the consultation process that the Secretary of State must follow when preparing to issue the code of practice, or revisions to it.

152. [Section 23](#) requires the Commission to issue guidance on how service providers and managers should demonstrate compliance with all other requirements set out in the regulations made under section 20. The guidance can also relate to requirements in other legislation that the Commission believes to be relevant. For instance, it is intended that it will cover requirements imposed on relevant providers by the Mental Health Act for which the Commission will take on responsibility. Section 24 sets out the consultation process that the Commission must follow when it proposes to issue or revise guidance on compliance with requirements.
153. Under section 25, the code of practice on infection control, and the Commission's guidance on compliance with other registration requirements, have to be taken into account by the Commission when it takes decisions such as:
  - whether or not a person is fit to be registered;
  - whether they are complying with the conditions of their registration;
  - whether they are complying with the requirements in regulations under section 20;
  - whether it should suspend or cancel someone's registration;
  - whether to prosecute someone.
154. The code of practice and the Commission's guidance must also be taken into account in decisions such as the urgent cancellation of a person's registration under section 30, or in appeal proceedings.
155. Although a failure to comply with either the code of practice or the Commission's own guidance does not in itself constitute an offence, they may both be used as evidence in criminal or civil proceedings as examples of what is expected behaviour in the areas they cover.