

**EXPLANATORY MEMORANDUM TO  
THE CARE QUALITY COMMISSION (ADDITIONAL FUNCTIONS)  
REGULATIONS 2009**

**2009 No. 410**

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.
  
2. **Purpose of the Instrument**

These regulations reflect changes made to the Mental Health Act 1983 (“the 1983 Act”) as a result of the Health and Social Care Act 2008 (“the 2008 Act”). Under the 2008 Act the Mental Health Act Commission (“MHAC”) is to be abolished and its functions passed to the new Care Quality Commission. These regulations relate specifically to the functions previously exercised by the MHAC in relation to reviewing decisions to withhold items brought to high secure hospitals, internal post in high secure hospitals and decisions to record or monitor telephone calls in high secure hospitals.
  
3. **Matters of Special Interest to the Joint Committee on Statutory Instruments**

None.
  
4. **Legislative Context**

4.1 The 2008 Act abolishes the Commission for Healthcare Audit and Inspection (“CHAI”, also known as “the Healthcare Commission”), the Commission for Social Care Inspection (“CSCI”) and MHAC and creates the Care Quality Commission. This new Commission was established under section 1 of the 2008 Act on 1<sup>st</sup> October 2008. From 1<sup>st</sup> April 2009 it will be responsible for the regulation of health and adult social care. The functions currently performed by MHAC in relation to the 1983 Act will transfer to the Care Quality Commission from that date.

4.2 These regulations are made under powers conferred by sections 59(1)(a) and 161(3) of the 2008 Act. They transfer certain functions currently exercised by MHAC to the Care Quality Commission. Because MHAC is a special health authority these functions were conferred upon it in directions (the Safety, and Security in Ashworth, Broadmoor and Rampton Hospitals Directions 2000). The Secretary of State does not have equivalent powers to direct the new Commission but can confer these functions upon it in regulations.

**5. Territorial Extent and Application**

These regulations extend to England and Wales but have application only in England which is where all the high secure hospitals are located.

**6. European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

**7. Policy Background**

7.1 Ashworth, Broadmoor and Rampton are collectively known as the high secure psychiatric hospitals. The Secretary of State is required by section 4 of the National Health Service Act 2006 to provide hospital accommodation for people who are liable to be detained under the 1983 Act and who require treatment under conditions of high security on account of their “dangerous, violent or criminal propensities”.

7.2 The Safety and Security in Ashworth, Broadmoor and Rampton Hospitals Directions 2000 cover minimum physical and operational standards of safety and security. They do not focus on the therapeutic aspects of the work of these hospitals. They contribute to the provision of a safe environment for patients and staff and enhance the therapeutic activities of the hospitals.

7.3 The directions included provisions for some of the measures specified to be reviewed by MHAC. These are: decisions to withhold an item brought to a high secure hospital for a patient; decisions to withhold internal post in high secure hospitals; and decisions to record and monitor telephone calls in high secure hospitals. When the new Care Quality Commission takes over the functions previously fulfilled by MHAC on 1<sup>st</sup> April 2009 it will be important for these decisions to continue to be reviewed. These regulations will enable the new Care Quality Commission to take over these important safeguarding functions.

**8. Consultation Outcome**

Not applicable.

**9. Guidance**

Not applicable.

**10. Impact**

No separate assessment has been prepared for this instrument as it merely transfers existing functions from one body to another and is therefore not thought to have any impact.

**11. Regulating Small Business**

11.1 The legislation does not apply to small business.

**12. Monitoring and Review**

The Department of Health will retain a sponsorship role in respect of the new Commission and will monitor and review the carrying out of its functions.

**13. Contact**

Helen Causley at the Department of Health (tel. 020 7972 4757 or e-mail: [helen.causley@dh.gsi.gov.uk](mailto:helen.causley@dh.gsi.gov.uk)) can answer any queries about the instrument.