

CARE ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Care standards

Quality of Services

Section 81 – Duty of candour

483. **Section 81** amends section 20 of the 2008 Act (regulation of regulated activities), by inserting a new subsection (5A). This new subsection provides that regulations made by the Secretary of State under section 20 must include a duty of candour on providers of health care and adult social care services registered with the CQC.
484. This duty will mean that such providers will be required to ensure that patients and service users are told when something unexpected or unintended occurs in the course of their care or treatment, helping to ensure that honesty and transparency are the norm in every organisation overseen by the CQC. The details of the duty, including when it will apply and what information is to be given to patients or service users, will be included in the regulations.

Section 82 – Warning notice

485. This section makes amendments to the powers of the Care Quality Commission (CQC) to issue warning notices to NHS trusts and NHS foundation trusts.
486. Warning notices under section 29 of the 2008 Act will no longer be able to be issued to NHS Trusts and NHS foundation trusts (*subsection (1)*). Instead, where it appears to the CQC that the quality of health care services provided by a trust requires significant improvement, the CQC will be able to highlight these areas in a new form of warning notice. This notice will be given under a new section 29A of the 2008 Act (*subsection (3)*).
487. The new warning notice will state the reasons for the CQC's view that significant improvement is needed and require that improvements in the quality of services are delivered within a specified time. If the notice deals with multiple failings, the CQC will be able to specify a different time period for improvement in relation to each failing. The CQC will not prescribe the action that is to be taken to address significant failures in the quality of health care services.
488. At the end of the time period specified in the notice (or, where the notice specifies more than one time period, the latest of the specified periods) the CQC must review whether the requirements specified in the notice have been met. Where the CQC is not satisfied that the requirements have been complied with it must review what, if any, further action to take in respect of the trust. In the case of an NHS foundation trust, the CQC's review must include use of its power to require Monitor to put the trust into special administration under section 65D(2) of the National Health Service Act 2006.

Section 83 – Imposition of licence conditions on NHS foundation trusts

489. This section amends section 111 of the Health and Social Care Act 2012 (imposition of licence conditions on NHS foundation trusts) (the 2012 Act) to extend Monitor's powers to be able to impose additional licence conditions on foundation trusts. Monitor will be able to impose additional licence conditions on a foundation trust when the CQC has issued a warning notice to that trust requiring it to make a significant improvement to the quality of the health care provided by it (*subsection (2)*). At present Monitor can only make use of these powers if there is a failure in governance of a foundation trust.
490. Where there was a breach of any such additional licence conditions by the NHS foundation trust concerned, Monitor's powers to suspend or remove directors or governors under section 111(5) of the 2012 Act would also apply (*subsection (3)*). In the event of health care services provided by the trust requiring significant improvement, Monitor will, as a result, be able to take timely action to make changes to leadership or governance with the intention of securing improvements to those services.

Section 84 – Trust special administration: appointment of administrator

491. This section amends section 65D of the National Health Service Act 2006 (NHS foundation trusts: appointment of trust special administrator). The amendment will enable Monitor to make an order to authorise the appointment of a trust special administrator where it, or the CQC, is satisfied that there is a serious failure by an NHS foundation trust to provide health care services of sufficient quality and it is appropriate to make the order (*subsections (2) and (3)*). At present Monitor is only able to authorise the appointment of a trust special administrator in cases of insolvency.
492. Monitor may make an order when it is so satisfied, but must make the order when required to do so by the CQC.
493. Before requiring Monitor to make an order for the appointment of an administrator, the CQC will need to consult first the Secretary of State and Monitor, and then the foundation trust, the NHS Commissioning Board (known as NHS England) and any other person, for example a clinical commissioning group, to which the foundation trust provides services (*subsection (4)*).

Section 85 – Trust special administration: objective, consultation and reports

494. This section amends provisions in Chapter 5A of Part 2 of the National Health Service Act 2006 (in relation to trust special administrators for NHS foundation trusts) to bring within coverage the quality and safety of health care services. To achieve this, the objective of trust special administration, as laid down in section 65DA, has been broadened to include an additional requirement for the services, whose continuous provision is to be secured through special administration, to be of sufficient safety and quality (*subsection (1)*). The objective will apply to any foundation trust in special administration regardless of whether the order was made to resolve a financial failure or a serious failure to provide services of sufficient quality.
495. In particular, *subsection (2)* provides for the CQC to be added to the list in section 65F of persons that must be consulted before the trust special administrator provides a draft report to Monitor recommending the action to be taken by Monitor in relation to the trust. Also, the administrator may not provide a draft report to Monitor, under section 65F or 65G, unless the administrator has first obtained a statement from the CQC that the part of the objective relating to the quality of services has been met (*subsections (3) and (5)*). The intention is to ensure that the CQC is satisfied that the services which are to be continued to be provided by the foundation trust are of sufficient safety and quality.
496. Additionally, when considering the final report from the trust special administrator under section 65KB (or the re-submitted report under section 65KD), the Secretary of

These notes refer to the Care Act 2014 (c.23) which received Royal Assent on 14 May 2014

State must also be satisfied that the CQC has discharged its functions for the purposes of Chapter 5A (*subsection (8)*). If, on considering a re-submitted final report, the Secretary of State is not satisfied that the CQC has discharged its functions, the Secretary of State is able to use his powers under section 82 of the 2008 Act (failure by the CQC in discharge of functions) to intervene, which includes power to direct the CQC as to the carrying out of its functions (*subsection (14)*). *Subsection (15)* ensures that these provisions apply correctly once all NHS trusts have been abolished.