

CARE ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Care standards

Care Quality Commission

Section 86 – Restriction on applications for variation or removal of conditions

497. This section makes an amendment to section 19 of the 2008 Act. The amendment will have the effect of prohibiting providers registered with the CQC from making an application to vary or remove a condition on their registration if the CQC has already served a notice of proposal or a notice of decision to change the conditions of registration in the same way.
498. This addresses an inconsistency in the way that the CQC is able to use its enforcement powers in respect of facilities that do not meet the essential levels of safety and quality set out in the regulations under section 20 of the 2008 Act.
499. Where the CQC has commenced enforcement action to close down a single location of a provider that operates from several sites, the provider may be able to avoid this enforcement action by making an application under section 19 to vary the conditions of its registration to remove the location.
500. This is not possible in cases where the registered provider only carries on a regulated activity from a single location. In these instances, the CQC would cancel the provider's registration. Under section 19(2) and (3) of the 2008 Act the provider is prohibited from making an application to cancel its registration where the CQC has commenced proceedings to cancel the registration.

Section 87 – Rights of appeal

501. This section creates a right of appeal for individuals against whom the CQC requires action to be taken. This is in anticipation of a new registration requirement for providers of health or adult social care services, to be set in secondary legislation, that their directors (or persons of equivalent position) must be fit and proper persons. Where CQC decides to impose a condition on a registered provider requiring removal of an individual director who was not considered to be a fit and proper person to fulfil their role, this section gives the individual a right of appeal against CQC's decision.

Section 88 – Unitary board

502. *Section 88* amends provisions relating to the membership of the CQC. Under paragraph 3 of Schedule 1 to the 2008 Act all members of the CQC must be appointed by the Secretary of State. *Subsection (1)* amends paragraph 3 of Schedule 1 so that the Secretary of State only appoints the Chair and other non-executive members whilst the CQC appoints its own executive members (including the Chief Executive) without the involvement of the Secretary of State. *Subsection (2)* defines “non-executive members”

and “executive members” and provides that the number of non-executive members must exceed the number of executive members.

503. *Subsections (3) to (8)* make further amendments to Schedule 1 to the 2008 Act to clarify where necessary which provisions apply to non-executive members only, executive members only, or both. For example, *subsections (4) and (5)* make amendments to the Secretary of State’s regulation-making powers in paragraph 3 of Schedule 1 to the 2008 Act so that any regulations relating to the appointment, suspension and termination relate only to non-executive members, whilst the power to make regulations to limit the number of members may apply to both executive and non-executive members. This is intended to ensure that the CQC’s Board remains at an appropriate size as set in regulations and to ensure that the non-executive members appointed have the requisite skills and knowledge.
504. *Subsections (7) and (8)* make amendments to paragraph 5 of Schedule 1 to the 2008 Act to clarify that since executive members are employees and the CQC appoints its employees on such terms and conditions as it considers appropriate, it will accordingly also determine the terms and conditions of its appointment of executive members.