

2003 No.

**COMMISSION FOR HEALTH IMPROVEMENT  
(FUNCTIONS) REGULATIONS 2003**

**NATIONAL HEALTH SERVICE, ENGLAND AND WALES**

<i>Made</i> - - - -	2003
<i>Laid before Parliament</i>	2003
<i>Coming into force</i> - -	2003

The Secretary of State for Health, in exercise of the powers conferred on him by sections 17 and 126(4) of the National Health Service Act 1977(1) and sections 20(1)(e), 20(2) and 23 of the Health Act 1999(2) and of all other powers enabling him in that behalf, with the agreement of the National Assembly for Wales in relation to the exercise of the powers under section 20(1)(e) of the Health Act 1999(3), and of all other powers enabling him in that behalf, hereby makes the following Regulations:

**PART I  
GENERAL**

**Citation, commencement, application and interpretation**

1.—(1) These Regulations may be cited as the Commission for Health Improvement (Functions) Regulations 2003 and shall come into force on [ ] 2003.

(2) Subject to paragraph (3), these Regulations apply to England only.

(3) This regulation and regulation 2 apply also to Wales.

(4) In these Regulations—

“the Act” means the Health Act 1999;

“the 1977 Act” means the National Health Service Act 1977;

“the 1997 Act” means the National Health Service (Primary Care) Act 1997(4);

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- (1) 1977 c. 49; section 17 was substituted by section 12 of the Health Act 1999 (c. 8) (“the 1999 Act”); section 126(4) applies in relation to any power to make orders or regulations conferred by the 1999 Act (see section 62(4) of the 1999 Act) and was amended by the National Health Service and Community Care Act 1990 (c. 19) (“the 1990 Act”), section 65(2) and the 1999 Act, Schedule 4, paragraph 37(6).
- (2) 1999 c. 8; see sections 20(7) and 23(6) for the definitions of “prescribed”. The functions of the Secretary of State under sections 20(2) and 23 of the 1999 Act and sections 17 and 126(4) of the National Health Service Act 1977 (“the 1977 Act”) are, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by article 2(a) of, and the entries for the 1977 Act and the 1999 Act in Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999, S.I. 1999/672, as amended by section 66(5) of the 1999 Act. Section 20(2) was amended by section 12(1) and (4) of the National Health Service Reform and Health Care Professions Bill 2002 (c. 17) (“the 2002 Act”) and section 23 was amended by section 13(2) of that Act.
- (3) See the entry for the 1999 Act in Schedule 2 to the National Assembly for Wales (Transfer of Functions) Order 1999, as inserted by section 66(6) of that Act.
- (4) 1997 c. 46.

“the Audit Commission” means the Audit Commission for Local Authorities and the National Health Service in England and Wales<sup>(5)</sup>;

“clinical governance review” means a review conducted by the Commission under section 20(1)(b) of the Act or regulation 2(c) or (d);

“clinical governance arrangements” means—

- (a) in the case of an NHS trust, Primary Care Trust or a service provider, arrangements for monitoring and improving the quality of health care<sup>(6)</sup> for which they have responsibility;
- (a) in the case of a Strategic Health Authority, arrangements for the purpose of monitoring and improving the quality of health care which is provided to individuals in their area;

“the Commission” means the Commission for Health Improvement established by section 19 of the Act;

“financial year” means the period of 12 months ending with 31st March;

“health care profession” means a profession to which section 60(2) of the Act applies;

“health service inquiry” means an inquiry, held or established by the Secretary of State, the National Assembly for Wales or an NHS body, into any matter relating to the management, provision and quality of health care for which NHS bodies or service providers have responsibility.

“investigation” means an investigation by the Commission pursuant to section 20(1)(c) of the Act (7) or regulation 2(e);

“local review” means a review conducted by the Commission under section 20(1)(d) of the Act that relates to health care for which a particular NHS body or service provider has responsibility (8);

“national service review” means a review under section 20(1)(d) of the Act that relates to a particular type of health care for which NHS bodies or service providers have responsibility;

“Part 2 services” means general medical services, general dental services, general ophthalmic services or pharmaceutical services under Part II of the 1977 Act;

“relevant Primary Care Trust” means, in relation to a service provider—

- (a) where the service provider provides services in the area of only one Primary Care Trust, that Trust, or
- (b) where the service provider provides services in the area of two or more Primary Care Trusts, each of those Trusts;

“relevant Strategic Health Authority” means, in relation to a Primary Care Trust—

- (a) where the area for which the Primary Care Trust is established falls wholly within the area of a Strategic Health Authority, that Strategic Health Authority; or
- (b) where the area for which the Primary Care Trust is established falls within the areas of two or more Strategic Health Authorities, each of those Strategic Health Authorities;

“service provider” means a person, other than an NHS body (9), who—

- (a) provides Part 2 services;
- (b) provides services in accordance with a pilot scheme under the 1997 Act; or
- (c) provides services in accordance with arrangements under section 28 of the Health and Social Care Act 2001 (10);

“quality of data review” means a review under section 20(1)(da) (11) of the Act.

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(5) The Audit Commission was continued in being by section 1 of the Audit Commission Act 1998 (c. 18).

(6) See sections 18(4) and 20(7) of the 1999 Act for the definition of “health care”.

(7) Section 20(1)(c) was amended by Schedule 1, paragraph 49, of the 2002 Act.

(8) Section 20(1)(d) was amended by section 20(1) and (2) of the 2002 Act.

(9) See section 20(7) of the Act for the definition of “NHS body”; the definition was amended by Schedule 1, paragraph 49, to the 2002 Act.

(10) c. 15.

(11) Section 20(1)(da) was inserted by section 12(2)(c) of the 2002 Act.

(5) In these Regulations, references to health care for which a person has responsibility are to be construed in accordance with section 20(5) of the Act.

## PART II

### ADDITIONAL FUNCTIONS OF THE COMMISSION

#### **Additional functions**

2. The following functions are prescribed pursuant to section 20(1)(e)—
- (a) the function of providing advice or information with respect to the arrangements by Strategic Health Authorities, Health Authorities, Special Health Authorities or service providers for the purpose of monitoring and improving the quality of health care for which they have responsibility;
  - (b) the function of providing advice or information with respect to the arrangements by Strategic Health Authorities for the purpose of monitoring and improving the quality of health care which is provided to individuals in their area;
  - (c) the function of conducting reviews of, and making reports on, arrangements by Strategic Health Authorities, Health Authorities or Special Health Authorities to which the duty in section 18 of the Act has been extended, for the purpose of monitoring and improving the quality of health care for which they have responsibility;
  - (d) the function of conducting reviews of, and making reports on, arrangements by Strategic Health Authorities for the purpose of monitoring and improving the quality of health care which is provided to individuals in their area;
  - (e) the function of carrying out investigations into, and making reports on, the management, provision or quality of health care for which Special Health Authorities have responsibility;
  - (f) the function of providing advice with respect to the establishment and conduct of health service inquiries.

## PART III

### ANNUAL WORK PROGRAMME

#### **Annual work programme**

3.—(1) Before the beginning of each financial year the Commission shall prepare a work programme setting out the activities the Commission is to undertake in that year in the exercise of its functions.

- (2) Each work programme shall, in relation to that year, set out—
- (a) any particular matters with respect to which the Commission is to provide advice or information on clinical governance arrangements;
  - (b) proposals as to the NHS bodies in relation to which the Commission is to conduct clinical governance reviews;
  - (c) proposals as to the persons or bodies in relation to which the Commission is to conduct local reviews;
  - (d) any particular matters which the Commission is to consider or take into account when conducting a clinical governance review or a local review;
  - (e) the particular types of health care which are to be the subject of any national service reviews; and
  - (f) any particular matters with respect to which the Commission is to conduct quality of data reviews.
- (3) The work programme shall be subject to approval by the Secretary of State.
- (4) The work programme may be varied—
- (a) with the agreement of the Secretary of State; or

(b) as the Secretary of State may determine.

(5) Subject to the following regulations and to any directions given by the Secretary of State, the Commission shall exercise its functions in any financial year in accordance with the work programme relating to that year.

## PART IV

### ADVICE OR INFORMATION ON CLINICAL GOVERNANCE ARRANGEMENTS

#### Persons to whom advice or information to be given

4.—(1) The Commission shall provide advice or information on clinical governance arrangements to—

- (a) the Secretary of State;
- (b) NHS bodies; and
- (c) service providers.

(2) The Commission shall comply with any request by the Secretary of State to provide advice or information on such aspects of clinical governance arrangements as are specified in the request to—

- (a) the Secretary of State;
- (b) such NHS bodies as may be specified by him; or
- (c) such service providers as may be so specified.

(3) The Commission may provide advice or information on clinical governance arrangements to any other person or body requesting such advice or information.

#### Exercise of the function of providing advice or information on clinical governance

5. In exercising its functions under section 20(1)(a) of the Act and regulation 2(a) and (b) the Commission shall take into account—

- (a) any guidance relating to clinical governance arrangements given by the Secretary of State or the National Institute for Clinical Excellence<sup>(12)</sup>;
- (b) any advice or guidance relating to clinical governance arrangements given by any body responsible for the regulation of a health care profession.

## PART V

### REVIEWS

#### Effectiveness and adequacy of arrangements

6. In conducting a clinical governance review the Commission shall assess the effectiveness of the arrangements by the NHS body concerned and consider whether those arrangements are adequate.

#### Review reports

7.—(1) Following the conclusion of a clinical governance review, the Commission shall make a report to the NHS body concerned.

(2) Following the conclusion of a local review, the Commission shall make a report to the persons or bodies that were the subject of the review.

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(12) See S.I.1999/220 as amended by S.I.1999/2219.

(3) At the conclusion of a national service review the Commission shall make a report to the Secretary of State.

(4) The reports referred to in paragraphs (1) to (3) shall set out—

- (a) the findings and conclusions of the Commission; and
- (b) any recommendations made by the Commission.

#### **Special interest reports – clinical governance review**

**8.—**(1) If in the course of a clinical governance review a matter comes to the notice of the Commission which it considers should, in the public interest, be brought to the attention of—

- (a) any of the persons or bodies to which paragraph (2) applies; and
- (b) the public,

the Commission may make the matter the subject of an immediate report in addition to the report to be made at the conclusion of the review.

(2) The persons and bodies referred to in paragraph (1) are—

- (a) the NHS body which is the subject of the review;
- (b) the Secretary of State;
- (c) in a case where a Primary Care Trust is the subject of the review, the relevant Strategic Health Authority.

(3) Copies of any report under paragraph (1) shall be sent to the persons or bodies referred to in paragraph (2) and to any other NHS body or service provider or other person or body exercising statutory functions, to whom the Commission considers the report should be copied.

#### **Special interest reports – local reviews**

**9.—**(1) If in the course of a local review [**DN national service review not included – is this what you want?**] a matter comes to the notice of the Commission which it considers should, in the public interest, be brought to the attention of—

- (a) any of the persons or bodies to which paragraph (2) applies; and
- (b) the public,

the Commission may make the matter the subject of an immediate report in addition to the report to be made at the conclusion of the review.

(2) The persons and bodies referred to in paragraph (1) are—

- (a) a person or body who is the subject of the review;
- (b) the Secretary of State;
- (c) in a case where a Primary Care Trust is the subject of the review, the relevant Strategic Health Authority;
- (d) in a case where a service provider is the subject of the review, the relevant Primary Care Trust or the Strategic Health Authority which is, in relation to that Primary Care Trust, the relevant Strategic Health Authority.

(3) Copies of any report under paragraph (1) shall be sent to –

- (a) the person or body who is the subject of the review and to whose attention the Commission considers that the matter should be drawn;
- (b) where that person or body is a Primary Care Trust, the relevant Strategic Health Authority;
- (c) where that person or body is a service provider, the relevant Primary Care Trust and the Strategic Health Authority which is, in relation to that Primary Care Trust, the relevant Strategic Health Authority;
- (d) the Secretary of State; and
- (e) any other NHS body or service provider or other person or body exercising statutory functions, to

whom the Commission considers the report should be copied.

#### **Further action following a clinical governance review**

**10.**—(1) Paragraphs (2) to (4) below apply where an NHS body has been the subject of a clinical governance review.

(2) Following the conclusion of the review, the body concerned shall, with the assistance of the Commission, prepare a written statement of the action which it proposes to take in the light of the report made by the Commission.

(3) A statement prepared under paragraph (2) shall be subject to approval by—

(a) in the case of a Strategic Health Authority, a Special Health Authority or an NHS trust, the Secretary of State; and

(b) in the case of a Primary Care Trust, the relevant Strategic Health Authority.

(4) Before deciding whether to approve a statement prepared under paragraph (2), the Secretary of State or, as the case may be, the Strategic Health Authority shall consult the Commission.

#### **Further action following a local review**

**11.**—(1) Paragraphs (2) to (4) below apply where an NHS body [**or service provider**] has been the subject of a local review.

(2) Following the conclusion of the review, the person or body concerned shall, with the assistance of the Commission, prepare a written statement of the action which it proposes to take in the light of the report made by the Commission.

(3) A statement prepared under paragraph (2) shall be subject to approval by—

(a) in the case of a Strategic Health Authority, a Special Health Authority or an NHS trust, the Secretary of State;

(b) in the case of a Primary Care Trust, the relevant Strategic Health Authority; or

(c) in the case of a service provider, the relevant Primary Care Trust and the Strategic Health Authority which is, in relation to that Primary Care Trust, the relevant Strategic Health Authority.

**[DN Do you wish to include service providers? do you wish to include ref to StHA in (c)?]**

(4) Before deciding whether to approve a statement prepared under paragraph (2), the Secretary of State or, as the case may be, the Strategic Health Authority or Primary Care Trust shall consult the Commission.

## **PART VI**

### **INVESTIGATIONS**

#### **Investigations**

**12.**—(1) The Commission shall carry out an investigation when requested to do so by the Secretary of State.

(2) The Commission may carry out an investigation where—

(a) the Commission receives a request to investigate from any person or body; or

(b) it otherwise appears to the Commission to be appropriate to do so.

(3) Where the Commission is carrying out an investigation at the request of the Secretary of State, it shall investigate such matters falling within section 20(1)(c) of the Act or regulation 2(e) as may be specified in the request.

(4) Where the Commission is carrying out an investigation in any other case, it may investigate such matters falling within section 20(1)(c) of the Act or regulation 2(e) as it considers appropriate.

### **Notice of investigation**

13. Where it is reasonably practicable to do so, the Commission shall provide written notification of its intention to conduct an investigation and the proposed date on which that investigation is to commence to—

- (a) any person or body which is to be the subject of an investigation;
- (b) in the case of an investigation under regulation 10(2) concerning a Strategic Health Authority, a Special Health Authority or an NHS trust, the Secretary of State;
- (c) in the case of an investigation concerning a Primary Care Trust, the relevant Strategic Health Authority; and
- (d) in the case of an investigation concerning a service provider, the relevant Primary Care Trust and the relevant Strategic Health Authority which is, in relation to that Primary Care Trust, the relevant Strategic Health Authority.

### **Conducting an investigation of a body which is the subject of a review**

14.—(1) If in the course of conducting a clinical governance review or a local review [**or a national service review**] [**DN do you want to add in these reviews?**], a matter comes to the notice of the Commission which it considers should properly be the subject of an investigation, the Commission may commence an investigation into that matter.

(2) The Commission shall, where it is reasonably practicable to do so, provide written notification of the decision to commence an investigation and of the proposed date on which the investigation is to commence to—

- (a) any person or body who is to be the subject of the investigation;
- (b) where that person or body is a Primary Care Trust, the relevant Strategic Health Authority;
- (c) where that person or body is a service provider, the relevant Primary Care Trust and the relevant Strategic Health Authority which is, in relation to that Primary Care Trust, the relevant Strategic Health Authority;

(3) Where the Commission commences such an investigation, the Commission may suspend or continue the clinical governance review or the local [**or national**] review and, where the review is suspended, resume the review at any time.

### **Investigation reports**

15.—(1) Following the conclusion of an investigation which has been requested by the Secretary of State the Commission shall make a report to the Secretary of State and send a copy of the report to—

- (a) any person or body which has been the subject of the investigation;
- (b) in the case of an investigation concerning a Primary Care Trust, the relevant Strategic Health Authority; and
- (c) in the case of an investigation concerning a service provider, the relevant Primary Care Trust and the Strategic Health Authority which is, in relation to that Primary Trust, the relevant Strategic Health Authority.

(2) Following the conclusion of an investigation which has been requested by any other person or body the Commission shall make a report to that person or body and send a copy of the report to—

- (a) any person or body which has been the subject of the investigation;
- (b) the Secretary of State;
- (c) in the case of an investigation concerning a Primary Care Trust the relevant Strategic Health Authority; and
- (d) in the case of an investigation concerning a service provider, the relevant Primary Care Trust and the Strategic Health Authority which is, in relation to that Primary Care Trust, the relevant Strategic Health Authority.

(3) Following the conclusion of an investigation in any other case, the Commission shall make a report to the person or body which has been the subject of the investigation and shall send a copy of the report to—

- (a) the Secretary of State;
- (b) in the case of an investigation concerning a Primary Care Trust, the relevant Strategic Health Authority; and
- (c) in the case of an investigation concerning a service provider, the relevant Primary Care Trust and the Strategic Health Authority which is, in relation to that Primary Care Trust, the relevant Strategic Health Authority.

(4) A report made under paragraphs (1) to (3) shall set out—

- (a) the findings and conclusions of the Commission; and
- (b) any recommendations made by the Commission.

### **Special interest reports**

**16.**—(1) If in the course of an investigation a matter comes to the notice of the Commission which it considers should, in the public interest, be brought to the attention of—

- (a) any of the persons or bodies to which paragraph (2) applies; and
- (b) the public,

the Commission may make the matter the subject of an immediate report in addition to the report to be made at the conclusion of the investigation.

(2) The persons and bodies referred to in paragraph (1) are—

- (a) any person or body who is the subject of the investigation;
- (b) the Secretary of State;
- (c) in a case where a Primary Care Trust is the subject of an investigation, the relevant Strategic Health Authority; and
- (d) in a case where a service provider is the subject of an investigation, the relevant Primary Care Trust and the Strategic Health Authority which is, in relation to that Primary Care Trust, the relevant Strategic Health Authority.

(3) Copies of any report under paragraph (1) shall be sent to the persons or bodies referred to in paragraph (2) and to any other NHS body or service provider or other person or body exercising statutory functions, to whom the Commission considers the report should be copied.

### **Further action following an investigation**

**17.**—(1) Following the conclusion of an investigation any NHS body [**or service provider**] [**DN add service provider??**] concerned shall, with the assistance of the Commission, prepare a written statement of the action which it proposes to take in the light of the report made by the Commission.

(2) A statement prepared under paragraph (1) shall be subject to approval by—

- (a) in the case of a Strategic Health Authority, a Special Health Authority or an NHS trust, the Secretary of State;
- (b) in the case of a Primary Care Trust, the relevant Strategic Health Authority; or
- (c) [in a case of a service provider, the relevant Primary Care Trust [and the Strategic Health Authority which is, in relation to that Primary Care Trust, the relevant Strategic Health Authority.

**[DN if you add service providers, do you wish to require approval by PCT + StHA?]**

(3) Before deciding whether to approve a statement prepared under paragraph (1), the Secretary of State or, as the case may be, the Strategic Health Authority [**or Primary Care Trust**] shall consult the Commission.



## PART VII

### RIGHTS OF ENTRY AND OBTAINING INFORMATION

#### **Rights of entry**

**18.**—(1) Subject to the following paragraphs of this regulation, persons authorised in writing by the Commission may at any reasonable time enter and inspect relevant premises **(13)** for the purposes of conducting –

- (a) a clinical governance review;
- (b) any review under section 20(1)(d) of the Act; or
- (c) an investigation.

(2) Each person authorised by the Commission under paragraph (1) shall be furnished with written evidence of his authority and on applying for entry to relevant premises for the purposes specified in paragraph (1) shall, if so requested by the occupier of the premises or a person acting on his behalf, produce that evidence.

(3) A person authorised by the Commission under paragraph (1) shall not demand admission to relevant premises as of right unless the person or body which owns or controls the premises has been given reasonable notice of the intended entry.

(4) No person authorised by the Commission under paragraph (1) may enter any premises or part of premises used as residential accommodation for persons employed by any person or body, without first having obtained the consent of the officers residing in such accommodation.

(5) Subject to regulation 20, a person authorised by the Commission under paragraph (1) to enter relevant premises under this regulation may inspect and take copies of any documents which—

- (a) appear to him to be necessary for the purposes of the review or investigation in question; and
- (b) are held on the premises by—
  - (i) the person or body which owns or controls the premises;
  - (ii) a chairman, member, director or employee of that person or body;
  - (iii) any other person acting on behalf of that person or body; or
  - (iv) a member of a committee or sub-committee of any body concerned.

(6) In paragraphs (2) to (5) of this regulation and in regulation 17, “review” means a clinical governance review or a review under section 20(1)(d) of the Act.

#### **Obtaining information and explanations**

**19.**—(1) Subject to regulation 20, in conducting a review or investigation the Commission or a person authorised by the Commission under regulation 16(1) may require a person to which paragraph (5) applies to produce any documents or information which appear to the Commission, or to the person authorised, to be necessary for the purposes of the review or investigation in question.

(2) Subject to regulation 20, in conducting a review or investigation the Commission or a person authorised by the Commission may, if it or he thinks it necessary, require a person to which paragraph (5) applies to give the Commission or, as the case may be, the person authorised an explanation of—

- (a) any matters which are the subject of the review or investigation; or
- (b) any documents or information inspected, copied or produced under paragraph (1) or regulation 17(5).

(3) The Commission may, if it considers it necessary require a person required to—

- (a) produce documents or information under paragraph (1); or
- (b) give an explanation under paragraph (2),

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**(13)** See section 23(6) of the Act (inserted by section 13(2) of the 2002 Act) for the definition of “relevant premises”.

to attend before the Commission or a person authorised by the Commission under regulation 17(1) in person to produce the documents or information or give the explanation.

(4) The Commission or a person authorised under regulation 17(1) may not require a person to attend in person in accordance with paragraph (3) unless reasonable notice of the intended date of attendance has been given to that person.

(5) The person referred to in paragraphs (1) and (2) are—

- (a) an NHS body;
- (b) a chairman, member, director or employee of an NHS body, or any other person acting on behalf of such a body;
- (c) a member of a committee or sub-committee of an NHS body;
- (d) a service provider;
- (e) an employee of a service provider, or any other person acting on behalf of such a provider;
- (f) a person who provides or assists in the provision of, or is a member of an employee of a person or body who provides or assists in the provision of, services under the 1977 Act, or in connection with a pilot scheme under the 1997 Act, in accordance with a contract made with an NHS body, a service provider or a person to which sub-paragraph (g) applies;
- (g) a local authority which provides, or a person employed by local authority to provide, services under the 1977 Act, or in connection with a pilot scheme under the 1997 Act, in accordance with arrangements made by virtue of section 31(1) of the Act.

#### **Information held by means of a computer or in any other electronic form**

**20.**—(1) In this regulation and in regulations 17 and 18, any reference to documents includes a reference to information held by means of a computer or in any other electronic form.

(2) Where the Commission or a person authorised under regulation 17(1) is exercising—

- (a) the right under regulation 17(5) to inspect and take copies of documents; or
- (b) the right under regulation 18(1) to require any person to produce documents,

and such documents consist of information held by means of a computer or in any other electronic form, the Commission or the person authorised may require any person having charge of, or otherwise concerned with the operation of, the computer or other electronic device holding that information to make that information available, or produce that information, in a visible and legible form.

#### **Restrictions on disclosure of information to the Commission**

**21.**—(1) The Commission or a person authorised under regulation 17(1) shall not inspect or take copies of documents under regulation 17(5) to the extent that—

- (a) those documents consist of confidential information<sup>(14)</sup> which relates to and identifies a living individual, unless one or more of the conditions specified in paragraph (3) applies; or
- (b) the inspection or copying of those documents involves the disclosure of information if that disclosure is prohibited by or under any enactment, unless paragraph (4) applies.

(2) A person shall not be required to produce documents or information under regulation 18(1) or give an explanation under regulation 18(2) to the extent that the production of those documents or that information or the giving of that explanation discloses information—

- (a) which is confidential and which relates to and identifies a living individual, unless one or more of the conditions specified in paragraph (3) applies; or
- (b) the disclosure of which is prohibited by or under any enactment, unless paragraph (4) applies.

(3) The conditions referred to in paragraphs (1)(a) and (2)(a) are—

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**(14)** See section 23(6) of the 1999 Act for the definition of “confidential information”.

- (a) the information is disclosed in a form in which the identity of the individual cannot be ascertained;
- (b) the individual consents to the information being disclosed;
- (c) the individual cannot be traced despite the taking of all reasonable steps;
- (d) in a case where the Commission is exercising its functions under section 20(1)(c), (d) or (db) of the Act (15) or regulation 2(e)—
  - (i) it is not practicable to disclose the information in a form in which the identity of the individual cannot be ascertained;
  - (ii) the Commission considers that there is a serious risk to the health or safety of patients arising out of the matters which are the subject of the investigation; and
  - (iii) having regard to that risk and the urgency of the exercise of those functions, the Commission considers that the information should be disclosed without the consent of the individual.
- (4) This paragraph applies where—
  - (a) the prohibition on the disclosure of information operates by reason of the fact that the information is capable of identifying an individual; and
  - (b) the information in question is in a form in which the identity of the individual cannot be ascertained.
- (5) In a case where the disclosure of information is prohibited by—
  - (a) paragraph (1); or
  - (b) paragraph (2)

and the prohibition operates by reason of the fact that the information is capable of identifying an individual, the Commission or a person authorised by the Commission under regulation 17(1) may require the person holding the information to put the information in a form in which the identity of the individual concerned cannot be ascertained, in order that the information may be disclosed.

## PART VIII

### MISCELLANEOUS

#### **Assisting the Audit Commission**

**22.** The Commission may not assist the Audit Commission under section 21(2) of the Act without the consent of the Secretary of State.

#### **Exercising functions in relation to health service inquiries**

**23.—(1)** The Commission shall not exercise its functions under regulation 2(f) in relation to a particular inquiry or proposed inquiry without the consent of the Secretary of State.

(2) In exercising its functions under regulation 2(f) the Commission shall take into account any advice or guidance relating to health service inquiries given to NHS bodies by the Secretary of State.

#### **Revocation**

**22.** The Commission for Health Improvement (Functions) Regulations 2000 (16) are revoked.

Signed by Authority of the Secretary of State

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(15) Section 20(1)(db) was inserted by section 13(1) of the 2002 Act.  
 (16) S.I. 2000/662 as amended by S.I. 2000/797 and 2002/2469.

Date

Minister of State,  
Department of Health

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision in relation to the functions of the Commission for Health Improvement established under section 19 of the Health Act 1999 ("the Commission").

Regulation 2 sets out the functions of the Commission to be exercised in addition to those specified in sections 20(1)(a) to (db), 21 and 22 of the Health Act 1999.

Regulations 3 to 22 make provision in relation to the exercise of the Commission's functions in England. In particular, they make provision –

- (a) for an annual work programme (regulation 3);
- (b) the provision of advice or information with respect to arrangements for the purpose of monitoring and improving health care for which NHS bodies or providers of family health services have responsibility ("clinical governance arrangements") (regulations 4 and 5);
- (c) for the conduct of reviews of such arrangements and of reviews of the management, provision or quality of, or access to or availability of health care for which NHS bodies or such providers have responsibility, and for reports relating to those reviews (regulations 6 to 10);
- (d) for the conduct of investigations into the management, provision or quality of health care for which NHS bodies have responsibility and for reports relating to those investigations (regulations 11 to 16);
- (e) for the Commission and persons authorised by the Commission to be able to enter relevant premises and to obtain documents, information and explanations (regulations 17 to 20);
- (f) concerning the provision of assistance to the Audit Commission and inquiries relating to the health service (regulations 21 and 22).

These Regulations revoke the Commission for Health Improvement (Functions) Regulations 2000.