

# Health and Social Care (Safety and Quality) Bill

## EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department of Health with the consent of Jeremy Lefroy, the Member in charge of the Bill, are published separately as Bill 17-EN.

# Health and Social Care (Safety and Quality) Bill

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Schedule – Objectives of regulators of health and social care professions

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**B I L L**

TO

Make provision about the safety of health and social care services in England; to make provision about the integration of information relating to users of health and social care services in England; to make provision about the sharing of information relating to an individual for the purposes of providing that individual with health or social care services in England; to make provision for removing individuals convicted of certain offences from the registers kept by the regulatory bodies for health and social care professions; to make provision about the objectives of the regulatory bodies for health and social care professions and the Professional Standards Authority for Health and Social Care; to make provision about the disposal of cases concerning a person's fitness to practise a health or social care profession; and for connected purposes.

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*Harm-free care*

**1 Harm-free care**

- (1) Section 20 of the Health and Social Care Act 2008 (health and adult social care services: regulation of registered activities) is amended as follows.
- (2) For subsection (1) and the opening words of subsection (2) substitute— 5
  - “(1) The Secretary of State must by regulations impose requirements that the Secretary of State considers necessary to secure that services provided in the carrying on of regulated activities cause no avoidable harm to the persons for whom the services are provided.
  - (2) The Secretary of State may by regulations impose any other requirements in relation to regulated activities that the Secretary of State thinks fit for the purposes of this Chapter, including in particular provision with a view to—”. 10

(3) After subsection (5A) insert –

“(5B) In subsection (1) –

- (a) “cause” means cause or contribute to, whether directly or indirectly; and
- (b) harm is avoidable, in relation to a service, unless the person providing the service cannot reasonably avoid it (whether because it is an inherent part or risk of a regulated activity or for another reason).”

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*Continuity of information*

**2 Consistent identifiers**

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In Part 9 of the Health and Social Care Act 2012 (health and adult social care services: information), after section 251 insert –

**“CHAPTER 1A**

CONTINUITY OF INFORMATION

**251A Consistent identifiers**

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- (1) The Secretary of State must by regulations specify a description of consistent identifier for the purposes of this section.
- (2) “Consistent identifier” means any identifier (such as, for example, a number or code used for identification purposes) that –
  - (a) relates to an individual, and
  - (b) forms part of a set of similar identifiers that is of general application.
- (3) *Subsection (4) applies if –*
  - (a) *a relevant health or adult social care commissioner or provider (“the relevant person”) processes information about an individual, and*
  - (b) *the individual is one to whom a consistent identifier of the description specified under subsection (1) relates.*
- (4) *If this subsection applies the relevant person must include the consistent identifier in the information processed (but this is subject to subsections (5) to (8)).*
- (5) Subsection (4) applies only so far as the relevant person considers that the inclusion is –
  - (a) likely to facilitate the provision to the individual of health services or adult social care in England, and
  - (b) in the individual’s best interests.
- (6) The relevant person need not comply with subsection (4) if the relevant person reasonably considers that one or more of the following criteria apply –
  - (a) the relevant person does not know the consistent identifier and is not reasonably able to learn it;
  - (b) the individual objects, or would be likely to object, to the inclusion of the consistent identifier in the information;

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- (c) the information concerns, or is connected with, the provision of health services or adult social care by an anonymous access provider;
  - (d) for any other reason the relevant person is not reasonably able, or should not be required, to comply with subsection (4). 5
- (7) This section does not permit the relevant person to do anything which, but for this section, would be inconsistent with—
- (a) any provision made by or under the Data Protection Act 1998, or
  - (b) a common law duty of care or confidence. 10
- (8) This section does not require the relevant person to do anything which the relevant person is required to do by or under provision included in a contract by virtue of any provision of the National Health Service Act 2006 (and, accordingly, any such requirement is to be treated as arising under the contract, and not under this section).” 15

### 3 Duty to share information

In Part 9 of the Health and Social Care Act 2012 (health and adult social care services: information), after section 251A (as inserted by section 2 of this Act) insert—

#### “251B Duty to share information 20

- (1) *This section applies in relation to information about an individual that is held by a relevant health or adult social care commissioner or provider (“the relevant person”).*
- (2) *The relevant person must ensure that the information is disclosed to—*
- (a) *persons working for the relevant person, and 25*
  - (b) *any other relevant health or adult social care commissioner or provider with whom the relevant person communicates about the individual, but this is subject to subsections (3) to (6).*
- (3) Subsection (2) applies only so far as the relevant person considers that the disclosure is—
- (a) likely to facilitate the provision to the individual of health services or adult social care in England, and
  - (b) in the individual’s best interests. 30
- (4) The relevant person need not comply with subsection (2) if the relevant person reasonably considers that one or more of the following apply—
- (a) the individual objects, or would be likely to object, to the disclosure of the information;
  - (b) the information concerns, or is connected with, the provision of health services or adult social care by an anonymous access provider; 35
  - (c) for any other reason the relevant person is not reasonably able, or should not be required, to comply with subsection (2). 40
- (5) This section does not permit the relevant person to do anything which, but for this section, would be inconsistent with—
- (a) any provision made by or under the Data Protection Act 1998, or 45

- (b) a common law duty of care or confidence.
- (6) This section does not require the relevant person to do anything which the relevant person is required to do under a common law duty of care (and, accordingly, any such requirement is to be treated as arising under that common law duty and not under this section)."

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#### 4 Interpretation

In Part 9 of the Health and Social Care Act 2012 (health and adult social care services: information), after section 251B (as inserted by section 3 of this Act) insert—

##### **“251C Continuity of information: interpretation** 10

- (1) This section applies for the purposes of sections 251A and 251B and this section.
- (2) “Relevant health or adult social care commissioner or provider” means—
  - (a) any public body so far as it exercises functions in connection with the provision of health services, or of adult social care in England, and
  - (b) any person (other than a public body) so far as the person provides such services or care—
    - (i) pursuant to arrangements made with a public body exercising functions in connection with the provision of the services or care, and
    - (ii) otherwise than as a member or officer of a body or an employee of a person,
 but this is subject to subsection (3). 25
- (3) The Secretary of State may by regulations provide for a person to be excluded from the definition of “relevant health or adult social care commissioner or provider”, whether generally or in particular cases.
- (4) Regulations under subsection (3) may, in particular, provide for a person to be excluded in relation to the exercise of particular functions or the exercise of functions in relation to particular descriptions of person, premises or institution. 30
- (5) A reference to an inclusion or a disclosure being likely to facilitate the provision to an individual of health services or adult social care in England is to its being likely to facilitate that provision directly (rather than by means of a clinical trial, a study, an audit, or any other indirect means). 35
- (6) “Anonymous access provider” means a relevant health or adult social care commissioner or provider (whether “the relevant person” under section 251A(3)(a) or 251B(1) or another person) whose services or care are, or may be, received by individuals anonymously due to the nature of the services or care. 40
- (7) Other terms have the same meaning as in section 250 (and “processes” and “processed” are to be read in accordance with the meaning of “processing” in that section). 45

*Objectives***5 Objectives in relation to the regulation of health and social care professions**

- (1) In section 25 of the National Health Service Reform and Health Care Professions Act 2002 (Professional Standards Authority for Health and Social Care), for subsection (2A) substitute – 5
- “(2A) The over-arching objective of the Authority in exercising its functions under subsection (2)(b) to (d) is the protection of the public.
- (2B) The pursuit by the Authority of its over-arching objective involves the pursuit of the following objectives –
- (a) to protect, promote and maintain the health, safety and well-being of the public; 10
  - (b) to promote and maintain public confidence in the professions regulated by the regulatory bodies;
  - (c) to promote and maintain proper professional standards and conduct for members of those professions; 15
  - (d) to promote and maintain proper standards in relation to the carrying on of retail pharmacy businesses at registered pharmacies (as defined in article 3(1) of the Pharmacy Order 2010 (S.I. 2010/231)); and
  - (e) to promote and maintain proper standards and conduct for business registrants (as defined in section 36(1) of the Opticians Act 1989).” 20
- (2) The Schedule makes provision with respect to the objectives of regulatory bodies in relation to which the Professional Standards Authority for Health and Social Care exercises functions. 25

*General***6 Extent, commencement and short title**

- (1) Sections 1 to 4 extend to England and Wales only.
- (2) Paragraph 7 of the Schedule extends to England, Wales and Scotland only.
- (3) The rest of this Act extends to the whole of the United Kingdom. 30
- (4) The provisions of this Act other than this section come into force on a day appointed in regulations made by statutory instrument by the Secretary of State.
- (5) Regulations under subsection (4) may – 35
- (a) appoint different days for different areas or purposes;
  - (b) make transitory, transitional or consequential provision.
- (6) This Act may be cited as the Health and Social Care (Safety and Quality) Act 2015.

## SCHEDULE

Section 5

### OBJECTIVES OF REGULATORS OF HEALTH AND SOCIAL CARE PROFESSIONS

#### *General Dental Council*

- 1 (1) The Dentists Act 1984 is amended as follows.
- (2) In section 1 (constitution and general duties of the General Dental Council) –
  - (a) after subsection (1) insert –
    - “(1ZA) The over-arching objective of the Council in exercising their functions under this Act is the protection of the public.
    - (1ZB) The pursuit by the Council of their over-arching objective involves the pursuit of the following objectives –
      - (a) to protect, promote and maintain the health, safety and well-being of the public;
      - (b) to promote and maintain public confidence in the professions regulated under this Act; and
      - (c) to promote and maintain proper professional standards and conduct for members of those professions.”;
    - (b) omit subsection (2)(b) (and the word “and” immediately preceding it).
- (3) In section 27A (powers of the Investigating Committee in respect of registered dentists), after subsection (3) insert –
  - “(3A) In deciding whether to issue a warning or advice under subsection (2) or give a direction under subsection (3), the Investigating Committee (or any panel by which the function is exercisable as mentioned in section 2(6A)) must have regard to the over-arching objective.”
- (4) In section 33 (the dental profession: supplementary provision relating to fitness to practise cases), after subsection (5) insert –
  - “(5A) In exercising a function under section 27B, 27C or 28, a Practice Committee (or any panel by which the function is exercisable as mentioned in section 2(6A)) must have regard to the over-arching objective.”
- (5) In section 36O (powers of the Investigating Committee in respect of registered dental care professionals), after subsection (3) insert –
  - “(3A) In deciding whether to issue a warning or advice under subsection (2) or give a direction under subsection (3), the Investigating Committee (or any panel by which the function is exercisable as mentioned in section 2(6A)) must have regard to the over-arching objective.”



- (6) In section 36W (professions complementary to dentistry: supplementary provision relating to fitness to practise cases), after subsection (5) insert –
- “(5A) In exercising a function under section 36P, 36Q or 36R, a Practice Committee (or any panel by which the function is exercisable as mentioned in section 2(6A)) must have regard to the over-arching objective.” 5
- (7) In section 53 (interpretation), after subsection (3) insert –
- “(3A) References in this Act to the over-arching objective are to the over-arching objective of the Council under section 1(1ZA) (read with section 1(1ZB)).” 10

### *General Optical Council*

- 2 (1) The Opticians Act 1989 is amended as follows.
- (2) In section 1 (constitution and functions of the General Optical Council), for subsection (2A) substitute –
- “(2A) The over-arching objective of the Council in exercising their functions is the protection of the public. 15
- (2B) The pursuit by the Council of their over-arching objective involves the pursuit of the following objectives –
- (a) to protect, promote and maintain the health, safety and well-being of the public; 20
  - (b) to promote and maintain public confidence in the professions regulated under this Act;
  - (c) to promote and maintain proper professional standards and conduct for members of those professions; and
  - (d) to promote and maintain proper standards and conduct for business registrants.” 25
- (3) In section 5A (Registration Appeals Committee), at the end insert –
- “(5) In exercising a function under section 13K, the Registration Appeals Committee must have regard to the over-arching objective.”
- (4) In section 5C (Fitness to Practise Committee), at the end insert – 30
- “(5) In exercising a function under section 13F or 13H, the Fitness to Practise Committee must have regard to the over-arching objective.”
- (5) In section 13D (allegations), after subsection (7) insert –
- “(7A) In deciding whether to give a warning under subsection (7), the Investigation Committee must have regard to the over-arching objective.” 35
- (6) In section 36 (interpretation), at the end insert –
- “(3) References in this Act to the over-arching objective are to the over-arching objective of the Council under section 1(2A) (read with section 1(2B)).” 40

*General Osteopathic Council*

- 3 (1) The Osteopaths Act 1993 is amended as follows.
- (2) In section 1 (the General Osteopathic Council and its committees), after subsection (3) insert –
- “(3A) The over-arching objective of the General Council in exercising its functions is the protection of the public. 5
- (3B) The pursuit by the General Council of its over-arching objective involves the pursuit of the following objectives –
- (a) to protect, promote and maintain the health, safety and well-being of the public; 10
- (b) to promote and maintain public confidence in the profession of osteopathy; and
- (c) to promote and maintain proper professional standards and conduct for members of that profession.”
- (3) In the Schedule, in Part 2 (statutory committees of the General Osteopathic Council) – 15
- (a) after paragraph 34A insert –
- “34B In exercising a function under section 8 or 22, the Professional Conduct Committee (or any panel by which the function is exercisable as mentioned in paragraph 34A) must have regard to the over-arching objective of the General Council under section 1(3A) (read with section 1(3B)).”; 20
- (b) after paragraph 38A insert –
- “38B In exercising a function under section 23, the Health Committee (or any panel by which the function is exercisable as mentioned in paragraph 38A) must have regard to the over-arching objective of the General Council under section 1(3A) (read with section 1(3B)).” 25

*General Chiropractic Council* 30

- 4 (1) The Chiropractors Act 1994 is amended as follows.
- (2) In section 1 (the General Chiropractic Council and its committees), after subsection (4) insert –
- “(4A) The over-arching objective of the General Council in exercising its functions is the protection of the public. 35
- (4B) The pursuit by the General Council of its over-arching objective involves the pursuit of the following objectives –
- (a) to protect, promote and maintain the health, safety and well-being of the public;
- (b) to promote and maintain public confidence in the profession of chiropractic; and 40
- (c) to promote and maintain proper professional standards and conduct for members of that profession.”

(3) In Schedule 1, in Part 2 (statutory committees of the General Chiropractic Council) –

(a) after paragraph 34A insert –

“34B In exercising a function under section 8 or 22, the Professional Conduct Committee (or any panel by which the function is exercisable as mentioned in paragraph 34A) must have regard to the over-arching objective of the General Council under section 1(4A) (read with section 1(4B)).”; 5

(b) after paragraph 38A insert – 10

“38B In exercising a function under section 23, the Health Committee (or any panel by which the function is exercisable as mentioned in paragraph 38A) must have regard to the over-arching objective of the General Council under section 1(4A) (read with section 1(4B)).” 15

*Nursing and Midwifery Council*

5 (1) The Nursing and Midwifery Order 2001 (S.I. 2002/253) is amended as follows.

(2) In article 3 (Nursing and Midwifery Council and its committees), for paragraph (4) substitute – 20

“(4) The over-arching objective of the Council in exercising its functions is the protection of the public.

(4A) The pursuit by the Council of its over-arching objective involves the pursuit of the following objectives –

(a) to protect, promote and maintain the health, safety and well-being of the public; 25

(b) to promote and maintain public confidence in the professions regulated under this Order; and

(c) to promote and maintain proper professional standards and conduct for members of those professions.” 30

(3) In article 26 (the Investigating Committee), after paragraph (6) insert –

“(6A) In deciding whether to act under paragraph (6)(a) or (b)(i), the Investigating Committee (or any panel by which a function under that paragraph is exercisable as mentioned in paragraph 17(1A) of Schedule 1) must have regard to the over-arching objective of the Council under article 3(4) (read with article 3(4A)).” 35

(4) In Schedule 1, in Part 2 (statutory committees of Nursing and Midwifery Council), after paragraph 18(10) insert –

“(10A) In exercising a function under article 27, 29, 30 or 33, the Conduct and Competence Committee (or any panel by which the function is exercisable as mentioned in paragraph 17(1A) of this Schedule) must have regard to the over-arching objective. 40

(10B) In exercising a function under any of articles 28 to 30 and 33, the Health Committee (or any panel by which the function is exercisable as mentioned in paragraph 17(1A) of this Schedule) must have regard to the over-arching objective. 45



- (1) substitute –
- “(1) The over-arching objective of the Council in exercising its functions is the protection of the public.
- (1A) The pursuit by the Council of its over-arching objective involves the pursuit of the following objectives – 5
- (a) to protect, promote and maintain the health, safety and well-being of the public;
  - (b) to promote and maintain public confidence in the professions regulated under this Order;
  - (c) to promote and maintain proper professional standards and conduct for members of those professions; and 10
  - (d) to promote and maintain proper standards in relation to the carrying on of retail pharmacy businesses at registered pharmacies.”
- (3) In article 53 (consideration by the Investigating Committee), after paragraph (2) insert – 15
- “(2A) In deciding whether to give a warning or advice under paragraph (2), the Investigating Committee must have regard to the over-arching objective of the Council under article 6(1) (read with article 6(1A)).” 20
- (4) In Schedule 1 (constitution of the General Pharmaceutical Council), at the end of paragraph 5 insert –
- “(8) In exercising a function under article 54 or 57, the Fitness to Practise Committee must have regard to the over-arching objective of the Council under article 6(1) (read with article 6(1A)).” 25

# Health and Social Care (Safety and Quality) Bill

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## B I L L

To make provision about the safety of health and social care services in England; to make provision about the integration of information relating to users of health and social care services in England; to make provision about the sharing of information relating to an individual for the purposes of providing that individual with health or social care services in England; to make provision for removing individuals convicted of certain offences from the registers kept by the regulatory bodies for health and social care professions; to make provision about the objectives of the regulatory bodies for health and social care professions and the Professional Standards Authority for Health and Social Care; to make provision about the disposal of cases concerning a person's fitness to practise a health or social care profession; and for connected purposes.

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*Ordered, by The House of Commons,  
to be Printed, 2 July 2014.*

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PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS  
LONDON – THE STATIONERY OFFICE LIMITED  
Printed in the United Kingdom by  
The Stationery Office Limited  
£x.xx

Bill 17

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