EXPLANATORY MEMORANDUM TO

THE CARE QUALITY COMMISSION (ADDITIONAL FUNCTIONS) AMENDMENT REGULATIONS 2013

2013 No. 1413

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

2.1 The instrument makes consequential amendments to the Care Quality Commission (Additional Functions) Regulations 2011 ("the 2011 Regulations").

2.2 The amendments made by these Regulations to the 2011 Regulations replace references to the High Security Psychiatric Services (Arrangements for Safety and Security at Ashworth, Broadmoor and Rampton Hospitals) Directions 2011 ("the 2011 Directions"), which have been revoked, with references to the High Security Psychiatric Services (Arrangements for Safety and Security) Directions 2013 ("the 2013 Directions") which replace them.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The 2011 Directions are given to the trusts[1] responsible for Ashworth, Broadmoor and Rampton Hospitals, in respect of their duties in relation to safety and security in those hospitals. Each trust must make arrangements in respect of the hospital for which it is responsible:

(a) to ensure that any item which is delivered or brought to the hospital for delivery to a patient is examined in accordance with direction 22 (for example, x-rayed, opened and inspected and withheld if certain conditions are met, such as causing danger to any person);

(b) to ensure the inspection of internal post sent by a patient in a high security hospital to another patient in the same hospital or a member of staff in that hospital is in accordance with direction 27 (e.g. opened and inspected and withheld if certain conditions are met; and

(c) to ensure the monitoring of patients' telephone calls are in accordance with direction 34 (e.g.in accordance with various safeguards such as informing the patient that their telephone is or may be monitored and recorded.)

[1] The trusts are the Mersey Care National Health Service Trust, the West London Mental Health National Health Service Trust and the Nottinghamshire Healthcare National Health Service Trust.

4.2 If a patient is not content with a decision made by a hospital under direction 22, 27 or 34 as described in 4.1 above, that patient must be given notice that the decision may be reviewed by the Care Quality Commission within six months of that decision.

4.3 The 2011 Regulations give the Care Quality Commission a duty upon application by a patient to review a decision, as expressed in paragraph 4.2 above, to:

(a) withhold an item delivered or brought to a high security hospital for a patient;
(b) withhold internal post sent by a patient in a high security hospital to another patient in the same hospital or a member of staff in that hospital; or
(c) monitor and record a telephone conversation made by a patient in such a hospital.

4.4 On an application under direction 22, 27 or 34, as expressed in paragraph 4.1, the Care Quality Commission [respectively] may direct that the item or post shall not be withheld or that the monitoring of a telephone conversation should cease.

4.5 The amendments to the 2011 Regulations are needed consequentially to reflect the revocation of the 2011 Directions and their replacement by the 2013 Directions. They do not affect any change to the substance of the Directions.

5. Territorial Extent and Application

5.1 This instrument applies to England.

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

- What is being done and why

7.1 These Regulations simply amend the 2011 Regulations to take into account the revocation and replacement of the 2011 Directions to which they refer. There is no policy change in connection to the duty on the Care Quality Commission, invoked by the 2011 Regulations, to review decisions made pursuant to those Directions.

- Consolidation

7.2 The Department has no current intention to consolidate the legislation that amends the 2011 Regulations.

8. Consultation outcome

8.1 The requirement to consult in section 20(8) of the Health and Social Care Act 2008 does not apply as the Regulations do not effect any substantial change in the provision made by the 2011 Regulations. The change is consequential upon the revocation and replacement of the Directions to which they refer.

9. Guidance

9.1 No relevant guidance is in place regarding the reviews that are conducted by the Care Quality Commission.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is nil.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 As part of the CQC's statutory monitoring duties under the Mental Health Act 1983, CQC makes specific checks regarding the 2011 Directions twice a year at each high security psychiatric hospital and retains records of decisions it is asked to review. The CQC does not issue specific guidance to providers on their application of the law in specific cases as it is for the provider to seek their own independent advice on their legal duties.

12.2 A summary of CQC's activity in this area is included in the published MHA Annual Report. By way of example, in the version for 2011/12, this appears at p41 of the below document:
http://www.cqc.org.uk/sites/default/files/media/documents/cqc_mentalhealth_2011_12_main_final_web.pdf'

13. Contact

Vicky Spellacy at the Department of Health Tel: 0113 254 5288 or email: Vicky.spellacy@dh.gsi.gov.uk can answer any queries regarding the instrument.