EXPLANATORY MEMORANDUM TO

THE CARE QUALITY COMMISSION (ADDITIONAL FUNCTIONS) (AMENDMENT) REGULATIONS 2019

2019 No. 1050

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Care Quality Commission (Additional Functions) Regulations 2011 ("the 2011 Regulations") place a duty on the Care Quality Commission ("the CQC") to review decisions to withhold post or other items from a patient in a high security hospital or monitor and record a telephone conversation made by a patient in such a hospital.

2.2 This instrument amends the 2011 Regulations to replace references to the High Security Psychiatric Services (Arrangements for Safety and Security) Directions 2013 ("the 2013 Directions"), which have been revoked, with references to the High Security Psychiatric (Arrangements for Safety and Security) Directions 2019 ("the 2019 Directions") which replace them.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 Section 4(1) of the National Health Service Act 2006 ("the 2006 Act") requires the National Health Service Commissioning Board (commonly known by its operational name NHS England) to arrange provision of hospital accommodation and services for persons who are liable to be detained under the Mental Health Act 1983 and who, in the opinion of the Secretary of State, require treatment under conditions of high

security on account of their dangerous, violent or criminal propensities. These services are known as "high security psychiatric services".

6.2 High security psychiatric services can only be provided at a hospital or unit which is used exclusively for that purpose by an NHS Trust or Foundation Trust which is approved by the Secretary of State to provide these services. Currently high security psychiatric services are provided at Ashworth, Broadmoor and Rampton hospitals. Section 4(3) of the 2006 Act empowers the Secretary of State to give directions to the providers of high security psychiatric services about the provision of those services.

6.3 The 2019 Directions apply to all providers of high security psychiatric services and make provision in respect of safety and security arrangements at those hospitals, including provision relating to withholding post or other items from patients and monitoring and recording their telephone conversations. The 2019 Directions revoke the 2013 Directions which made similar provisions.

6.4 The 2011 Regulations give the CQC a duty upon application by a patient to review a decision made pursuant to the 2013 Directions 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; and

c) Monitor and record a telephone conversation made by a patient in such a hospital.

6.5 As the 2013 Directions are revoked and in effect replaced by the 2019 Directions, it is necessary to amend the 2011 Regulations to confer on the CQC the function of reviewing decisions made under the 2019 Directions.

7. Policy background

What is being done and why?

7.1 This instrument simply amends the 2011 Regulations to take into account the revocation and replacement of the 2013 Directions to which they refer. There is no policy change in connection to the duty on the CQC invoked by the 2011 Regulations, to review decisions made pursuant to those Directions.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 The Department of Health and Social Care has no plans to consolidate the legislation at this time.

10. Consultation outcome

10.1 A consultation in respect of this instrument was not considered necessary as the instrument does not change the review functions of the CQC.

10.2 However, a public consultation to seek views on the proposed 2019 Directions ran from 31 May to 23 August 2018. Consultation responses were sought through an online survey and stakeholder engagement events. Comments were received on many aspects of the proposed changes, but, none of which were relevant to the review functions of the CQC.

11. Guidance

11.1 The Department of Health and Social Care does not intend to produce guidance to accompany these Regulations as the current arrangements for the reviews that are conducted by the CQC will remain substantively the same. The CQC produce their own guidance for providers and their inspectors in respect of implementing and inspecting against Regulations.

11.2 Department of Health and Social Care guidance will be published to accompany the 2019 Directions.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because there is no impact on business.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is through the Department of Health and Social Care who will monitor its application through engagement with the CQC and providers of high security psychiatric services to ensure the desired policy and quality outcomes are achieved.

14.2 The Regulations do not include a statutory review clause as the legislation does not regulate business activity or the activity of charities and voluntary bodies.

15. Contact

15.1 Rachael Whitaker at the Department of Health and Social Care - Telephone: 0113 254 5694 or email: Rachael.whittaker@dhsc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Richard Kelly, Deputy Director for Serious Mental Health, Legislation and Offender Health, at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.

15.3 Jackie Doyle-Price at the Department of Health can confirm that this Explanatory Memorandum meets the required standard.