EXPLANATORY MEMORANDUM TO

THE CARE QUALITY COMMISSION (ADDITIONAL FUNCTIONS) REGULATIONS 2011

2011 No. 1551

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 These Regulations enable the Care Quality Commission to review decisions to withhold post or other items for patients in high secure hospitals, and to review decisions to record and monitor patients' telephone calls in high secure hospitals. The Care Quality Commission will review decisions in these areas where a relevant application is made.

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

3.1 The Joint Committee on Statutory Instruments, in its Twelfth Report of Session 2008-09, drew the attention of both Houses to the Care Quality Commission (Additional Functions) Regulations 2009 [SI 2009/410] on the ground that in one respect they failed to comply with proper drafting practice. The failure consisted of the inclusion of a definition of "High Secure Hospital", a term which, although it appeared in the headings to certain regulations, did not appear in any substantive provision.

3.2 The Department of Health acknowledged that the definition ought not to have been included and indicated an intention to include a rectifying amendment if the Regulations came to be amended for some other purpose. The Care Quality Commission (Additional Functions) Regulations 2009 are revoked, rather than amended, by this instrument.

4. Legislative Context

4.1 The High Security Psychiatric Services (Arrangements for Safety and Security at Ashworth, Broadmoor and Rampton Hospitals) Directions 2011 ["the 2011 Directions"] were given on 14 June 2011 in exercise of the powers conferred by section 8(1) of the National Health Service Act 2006 and will come into force on 1 August 2011. The 2011 Directions, which apply to the Trusts responsible for those hospitals, make provision in respect of safety and security arrangements at those hospitals, including provision relating to withholding items of mail from patients and recording and monitoring their telephone calls. The 2011 Directions revoke earlier Directions made in 2000 ("the 2000 Directions") which made similar provisions.

4.2 The Care Quality Commission (Additional Functions) Regulations 2009 [SI 2009/410] (which are revoked by these Regulations) conferred on the

Commission the function of reviewing decisions made by the Trusts under the 2000 Directions in respect of withholding mail or recording and monitoring telephone calls. As the 2000 Directions are revoked and in effect replaced by the 2011 Directions, it is necessary to revoke the Regulations that confer on the Commission the function of reviewing decisions made under those 2000 Directions and to make similar provision conferring on the Commission the function of reviewing decisions made under the 2011 Directions.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

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

7. Policy background

7.1 Ashworth, Broadmoor and Rampton hospitals are the three high secure psychiatric hospitals in England. High secure services provide mental health services in conditions of security for patients who are judged to be a grave and immediate danger to the public if they were in the community.

7.2 The 2011 Directions cover minimum physical and operational standards of safety and security. They do not focus on the therapeutic aspects of the work of these hospitals. They contribute to the provision of a safe environment for patients and staff and enhance the therapeutic activities of the hospitals.

7.3 The directions include provision for specified measures to be reviewed by the Care Quality Commission. These are: decisions to withhold an item brought to a high secure hospital for a patient; decisions to withhold internal post in high secure hospitals; and decisions to record and monitor telephone calls in high secure hospitals.

8. Consultation outcome

8.1 A consultation took place on the 2011 directions. The results of the consultation will be available on the Department of Health website. (http://www.dh.gov.uk/en/Healthcare/Mentalhealth/Secureservices/index.htm) The Directions were broadly supported. There was no significant comment on the review function of the Care Quality Commission.

9. Guidance

9.1 A guidance document will be issued to accompany the 2011 Directions (http://www.dh.gov.uk/en/Healthcare/Mentalhealth/Secureservices/index.htm) but no guidance is considered necessary for this instrument.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument as the functions being carried out by the Care Quality Commission have not changed and no impact on the private or voluntary sector is foreseen.

11. Regulating small business

11.1 The instrument does not apply to small business.

12. Monitoring & review

12.1 The Care Quality Commission will monitor any referrals to them to review any relevant decisions made under these regulations. The ongoing requirement for these regulations will be considered by the Department of Health when the 2011 directions are next reviewed.

13. Contact

Helen Causley at the Department of Health Tel: 020 79724757 or email: helen.causley@dh.gsi.gov.uk can answer any queries regarding the instrument.