

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Fifth Delegated Legislation Committee

DRAFT HEALTH AND SOCIAL CARE ACT 2008  
(REGULATED ACTIVITIES) (AMENDMENT)  
REGULATIONS 2022

*Wednesday 26 January 2022*

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**The Committee consisted of the following Members:**

*Chair:* MRS SHERYLL MURRAY

- |   |   |
|---|---|
| † Betts, Mr Clive ( <i>Sheffield South East</i> ) (Lab)   | † Holloway, Adam ( <i>Gravesham</i> ) (Con)       |
| † Caulfield, Maria ( <i>Parliamentary Under-Secretary of State for Health and Social Care</i> ) | Jones, Darren ( <i>Bristol North West</i> ) (Lab) |
| † Davies, Dr James ( <i>Vale of Clwyd</i> ) (Con)   | † Logan, Mark ( <i>Bolton North East</i> ) (Con)  |
| † Double, Steve ( <i>St Austell and Newquay</i> ) (Con)   | † Mayhew, Jerome ( <i>Broadland</i> ) (Con)       |
| Dowd, Peter ( <i>Bootle</i> ) (Lab)   | † Millar, Robin ( <i>Aberconwy</i> ) (Con)        |
| Efford, Clive ( <i>Eltham</i> ) (Lab)   | † Smyth, Karin ( <i>Bristol South</i> ) (Lab)     |
| † Gibson, Peter ( <i>Darlington</i> ) (Con)   | Vaz, Valerie ( <i>Walsall South</i> ) (Lab)       |
| † Greenwood, Lilian ( <i>Nottingham South</i> ) (Lab)   |   |
| † Heald, Sir Oliver ( <i>North East Hertfordshire</i> ) (Con)                                   | Stuart Ramsay, <i>Committee Clerk</i>             |
| † Henderson, Gordon ( <i>Sittingbourne and Sheppey</i> ) (Con)                                  | † <b>attended the Committee</b>                   |

## Fifth Delegated Legislation Committee

Wednesday 26 January 2022

[MRS SHERYLL MURRAY *in the Chair*]

### Draft Health and Social Care Act 2008 (Regulated Activities) (Amendment) Regulations 2022

2.30 pm

**The Chair:** I remind Members to observe social distancing and to sit only in places that are clearly marked. I also remind them that Mr Speaker has stated that masks should be worn in Committee. *Hansard* colleagues will be most grateful if Members sent their speaking notes to [hansardnotes@parliament.uk](mailto:hansardnotes@parliament.uk).

#### The Parliamentary Under-Secretary of State for Health and Social Care (Maria Caulfield): I beg to move,

That the Committee has considered the draft Health and Social Care Act 2008 (Regulated Activities) (Amendment) Regulations 2022.

It is a pleasure to serve under your chairmanship, Mrs Murray.

The Health and Social Care Act 2008 requires all providers of regulated activities in England to register with the Care Quality Commission and to comply with the requirements and fundamental standards set out in regulations made under that Act. Schedule 1 to the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 sets out those regulated activities, and regulation 1(6) of the 2014 regulations provides that those regulations will cease to have effect from 31 March 2022. The draft regulations are therefore a priority, as they are needed to ensure that the 2014 regulations continue to apply, meaning that providers will continue to be required to register with the CQC and comply with fundamental standards.

The draft regulations amend the 2014 regulations, which are due to expire after 31 March this year, by extending the expiry date to 31 March 2025. That is the only amendment that the draft regulations make; they do not change any existing policy. The 2014 regulations set out the activities regulated by the CQC and the fundamental standards with which all CQC registered providers must comply. Those activity standards are not amended by the statutory instrument.

The extension of the 2014 regulations to 31 March 2025 will ensure that the current regulations relating to CQC registered providers, including which activities are regulated by the CQC, will continue to apply. There will be no change to how the CQC carries out its regulatory functions, and the Government see the CQC's role as critical in ensuring that the care received by patients is of a high quality and delivered to standards that promote patient safety.

I highlight the fact that if we do not extend the expiry date in the 2014 regulations, they will automatically expire. There would therefore be no regulated activities for the CQC to regulate, and providers that are currently required to register with the commission would no longer be required to do so. Providers that are currently required to register with the CQC would also no longer be required to comply with the fundamental standards

set out in the 2014 regulations. Not extending would risk patient safety and compromise the CQC's ability to monitor providers against the fundamental standards.

In short, the draft regulations will amend the 2014 regulations by extending their expiry date by a further three years to 31 March 2025. This will mean that health and care providers in England that carry out any of the regulated activities set out in the 2014 regulations will continue to be required to register with the CQC and to be bound by the obligations and standards set out in those regulations.

The draft regulations will ensure that the CQC can continue to carry out its valuable role as the regulator of health and social care providers in England, and that services provided by CQC registered providers continue to be required to be carried out safely and to a high-quality standard. I commend the draft regulations to the Committee.

2.34 pm

**Karin Smyth (Bristol South) (Lab):** It is a pleasure, as always, to serve under your chairmanship, Mrs Murray. I will take a few moments to outline some grave concerns that we have about the legislation. I also have questions for the Minister, which I hope she will answer in her response to the debate.

There is an important reason why the extension is being made. I remind colleagues that the CQC's work in regulating activities is vital. It is responsible for the registration, inspection and monitoring of health and adult social care providers, including independent providers, under the Health and Social Care Act 2008. All providers of health and adult social care that carry out regulated activities are required to register with the CQC and demonstrate that they meet those fundamental standards, for the safety of our constituents. The scope of regulated activities includes the treatment of disease, disorder or injury; surgical procedures; maternity and midwifery services; personal care; nursing care; and assessment or medical treatment for persons detained under the Mental Health Act 1983.

The CQC inspects and monitors the services that it registers. Although the pandemic brought about the suspension of routine inspections, the CQC still monitors providers using information such as people's feedback, and it will continue to inspect where it sees evidence of risk of harm, deliberate abuse, systematic neglect or a significant breakdown in leadership.

Clearly, if these regulations were allowed to fall in a matter of weeks, the safety of our health and care services would be in a very serious situation, as indeed would be the safety of our constituents. Although the Government could not bring forward the review any earlier than a last-ditch attempt to change the law, the CQC managed, despite the pandemic, to produce "The state of health care and adult social care in England 2020/21". It is an excellent report that I commend to the Minister, if she has not yet had a chance to read it. It starts by saying that, despite the challenges of the year before:

"The system has not collapsed."

Well, for that we are all truly grateful. We are very grateful for the work of those people who made sure the system did not collapse.

However, as every Member here today or reading the report of this debate will know, the system very nearly did collapse. In fact, many of our constituents are falling foul of handed-back packages of care, and local authorities across the country are struggling to maintain those very important services for individuals and prevent the most vulnerable in our society from losing their packages of care.

I will not detain the Committee for long, but we understand the problems with recruitment, pay conditions, the 100,000 vacancies in social care, and the 110,000 vacancies in the health service. I also will not detain the Committee for too long by talking about the number of people we know are dying at home unsupported.

**The Chair:** Order. I remind the hon. Lady that her comments must remain within the scope of the legislation that we are discussing.

**Karin Smyth:** Thank you, Mrs Murray. I am just outlining the role of the CQC; if these regulations do not pass today, then all this care will not be provided by regulated services, but I will move on.

**The Chair:** Thank you.

**Karin Smyth:** I will just finish the point about our concerns about coroners' assessments of the conditions in which people are dying early, perhaps because they could not access care. The CQC's report, which it did manage to do, outlined ongoing concerns.

To be clear, we will support the Government today, but with grave concerns, because the CQC has itself said that it has ongoing concerns about patient safety. In relation to high-risk mental health services, it is concerned that people are at risk where there are warning signs of closed cultures. Improvements in maternity care are far too slow, with staff not having the right skills or knowledge, or poor working relationships. Other concerns include lack of engagement with women in maternity services and limited action being taken to improve equitable access. Its final area of concern is about the really important issue of deprivation of liberty safeguards during 2020-21. Those are really grave concerns about the most vulnerable people in our society. This is important to all our constituents across the country.

I am really concerned that the Government's proposals to simply extend the 2014 regulations by three years indicates a disregard for the importance of timely reviews. The CQC and providers need clarity, which is why we will support the Government today. This is not a technical a piece of legislation. We are being asked to extend the regulations without any indication of what the review that the Government have undertaken might be saying, and I am disappointed that the Minister did not say more about that in her opening remarks, so I trust that she will do so when she concludes. If not, perhaps she could write to us—I will write to her formally if she is unable to say more today.

We are being asked simply to extend these regulations, which should have been completed by April 2020. Although the pandemic might have had an impact on the review, I would have expected the review to be ready for the printer in March. Certainly, when I conducted reviews of such a serious nature when I worked in the health

and care system, I would be expected to have my draft well and truly ready for publication before the final deadline in April. Perhaps the Minister can say why that was not done before.

The Minister did not mention that the consultation received only 32 responses from health and care provider organisations. They are busy and have other things to do. Of those responses, 19 were in favour of the Department's proposal, and 13 were against. It was noted that the 2014 regulations should not be extended without also making amendments to reflect the changes in the health and care sector since 2014, which are considerable.

When we are reflecting on those changes since 2014, we should bear in mind, for example, the fitness to hold a licence by some providers, particularly in adult health and social care. It is well documented that we are deeply concerned about some of those providers—they are essentially owned and run by hedge funds located in countries far from here, and are not perhaps paying their due level of taxation. If they did, it might provide the social care sector with a bit more stability.

We have had many years of senior Government Ministers talking about patient safety. Hon. Members recently spent six weeks on the Health and Care Bill Committee trying to improve the oversight of the CQC of whole systems and adult social care. None of this is joined up. If we are pushing this down the road for another three years, how does that align with the current legislative programme, legislation in the other place and anticipated legislation in the adult health and social care sector that is due at any moment? We need to line up some of these things, so that we parliamentarians can provide due process and scrutiny. Ultimately—the Minister knows it well—this is about patient safety.

The Government were unprepared going into the pandemic and I am concerned that this legislation is also tardy, and reflects the fact that they are not taking the timeliness of reviews seriously. Perhaps they are distracted by other matters. The Government have had two years to consider the matter. Why are systems not in place to ensure that such legislation is not left to the last minute? I hope the Minister can address my concern about why these measures were not ready in April 2020. It is not the first example. I do not want to detain the Committee, and I might go out of scope, but there are many examples of tardiness in timeliness and appointments and bringing forward regulations; that really does affect people. Members of Parliament across the House are really getting quite fed up of it.

**Sir Oliver Heald** (North East Hertfordshire) (Con): Surely the hon. Lady would recognise that we have been through a pandemic that has caused great uncertainty for the social care sector. Is it not more prudent while we are still in the pandemic to extend the regulations rather than changing the whole system overnight?

**Karin Smyth:** The measures were due to come in in April 2020. As I said, if I was writing the review, I would have had it ready at the printer's in March 2020 as the pandemic started. I do not really understand—I am very happy for the Minister to clarify—why, if it was ready for April 2020, which I suspect it perhaps was not, that it has taken this length of time, and why we need another three years. There are clear concerns in the sector as to why we need three years.

[Karin Smyth]

We support these measures today—that is the responsible thing to do, because we cannot have the sector unregulated, but we impress upon the Government the requirement that full regulations and good governance are important. We do not expect matters to be left in such a state.

Can the Minister explain why the review was not completed in April 2020? What stage was it at? How much of it was completed by then? What steps is the Department now taking to make sure that this review is completed in a timely manner? Can she provide information on the conversations the Government have had with the CQC regarding further areas of activity that need to be brought within the scope of the Act? We hear rumours, but we would like some certainty.

The consultation received 32 responses from health and care provider organisations. As I said, 19 were in favour and 13 were against. Does the Minister consider that to be a sufficient level of review and engagement? What steps will she be taking to ensure further stakeholder engagement?

2.45 pm

**Mr Clive Betts** (Sheffield South East) (Lab): It is a pleasure to serve under your chairmanship, Mrs Murray. I shall not detain the Committee long; I just want to put on the record that the Levelling Up, Housing and Communities Committee is currently conducting an inquiry into social care and its funding. I will not go into the details of that as I would be straying from my remit this afternoon.

I want to draw attention to two or three issues that are directly relevant and came up, on which we will be reporting as a Committee in due course. We talked to care users and carers the other day and heard some heart-rending stories: “Please when you reform and review, will you do it with us and not to us?”

**The Chair:** Order. I am sure you meant the Minister and not me.

**Mr Betts:** I did mean the Minister; I am sure you would do it only too well, Mrs Murray, without having to be directed in that way. I was explaining what the carers and the people receiving care were saying. I hope the Minister reflects on that message in future.

There are two direct issues to do with Care Quality Commission inspections that came out from our conversations as well; the Minister may at some point wish to think about discussing these with the CQC. One is: “Why does it always announce inspections before they happen? They change the arrangements in our home before the inspectors come, so what’s the point of the inspection? If you’re really going to find out what is happening, go in and inspect without giving the warning.” That is a matter directly to do with the regulations—how they are implemented in future.

The other issue is something that the local government and social care ombudsman said to us at a different hearing. He is really concerned that so many care homes do not clearly demonstrate to the residents, and their friends and relatives who visit, that if things are wrong they can access not merely a complaints procedure

themselves but that procedure can lead on to a report to the ombudsman. We are all too well aware of that, but residents often are not.

The CQC could draw attention to that in their inspections and relationship with the sector. The ombudsman is asking for specific parliamentary powers, but this could be done through encouragement from the CQC when it is inspecting, saying, “Have you got your complaints procedure up there? Is there a clear indication to people that they can go to the ombudsman if they are not satisfied?” That is something positive that inspectors could do as part of the regime and regulations that we are discussing today.

2.47 pm

**Maria Caulfield:** It is a pleasure to respond. I am pleased to hear that the Opposition parties will support the statutory instrument this afternoon because it is crucial that the Care Quality Commission, which does an amazing job in maintaining patient safety, is able to continue to do so.

I see that Captain Hindsight has sent a lieutenant here this afternoon. The hon. Member for Bristol South would have had a reform package ready on the table and at the printer’s.

**Karin Smyth:** Will the Minister give way?

**Maria Caulfield:** I will continue, if I may. As my right hon. and learned Friend the Member for North East Hertfordshire pointed out, we have been through two years of a pandemic. Health care and social care staff and teams have worked so hard up and down the country but so has the CQC. It does do unannounced inspections; it has not been doing some of them during the pandemic as that puts extra pressure on an already overstretched group of professionals who are trying to keep their services going. There has been compromise with inspections between the sector and the CQC, but the commission very much does do unannounced inspections, which are an important part of the process.

There will be a time to reform and consider the regulations more fully. I have met the CQC. This morning I met the chief inspector for primary care and we were looking particularly at areas where there needs to be some change and reform. But it is important to do that properly. As the hon. Member for Sheffield South East said, it is important to involve all stakeholders in that process and not just rush through a process for the sake of it. The very specific scope of this statutory instrument is to extend regulations by three years so that the CQC is able to carry out its inspections and do its fantastic work to protect patients and support staff when they raise concerns. It does the inspections and makes recommendations to improve care.

I hope that Opposition Committee members will support us and that they will work with us on our reforms on social care or around the CQC to make sure that there are the best outcomes possible for patients across the board.

*Question put and agreed to.*

2.50 pm

*Committee rose.*



