



Chartered
Institute of
Environmental
Health

Care Quality Commission enforcement policy

Response by Chartered Institute of Environmental Health
to the Care Quality Commission consultation paper

15 January 2009

The Chartered Institute of Environmental Health

As a **professional body**, we set standards and accredit courses and qualifications for the education of our professional members and other environmental health practitioners.

As a **knowledge centre**, we provide information, evidence and policy advice to local and national government, environmental and public health practitioners, industry and other stakeholders. We publish books and magazines, run educational events and commission research.

As an **awarding body**, we provide qualifications, events, and trainer and candidate support materials on topics relevant to health, wellbeing and safety to develop workplace skills and best practice in volunteers, employees, business managers and business owners.

As a **campaigning organisation**, we work to push environmental health further up the public agenda and to promote improvements in environmental and public health policy.

We are a **registered charity** with over 10,500 members across England, Wales and Northern Ireland.

Any enquiries about this response should be directed in the first instance to:

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Our initial statement

- 1.0 The Chartered Institute of Environmental Health (CIEH) supports the establishment of the proposed Care Quality Commission (the Commission) as the new integrated health and adult social care regulator, taking over the functions of the Healthcare Commission, the Commission for Social Care Inspection (CSCI) and the Mental Health Act Commission (MHAC).
- 1.1 We therefore welcome this opportunity to provide our comments on the enforcement policy and also to provide our views and suggestions which we trust will be of assistance.
- 1.2 We understand that the proposed approach to the regulatory framework is to be one of evolution and it is intended that the Commission will be able to draw upon the views and experiences of others. The CIEH and its members have considerable experience of the successful implementation of regulatory regimes and the appropriate and effective use of enforcement measures. We would be most willing to provide our assistance.
- 1.3 It is fundamental to securing compliance within any regulatory framework that people are aware of their responsibilities and the legal consequences that they and their employing organisations are subject to should they fail to meet acceptable standards of performance. It is against this background that the case can be made that all workers in health and care services need to have a basic level of training to ensure that they can operate safely and are aware of significant risks and legal liabilities. The CIEH has previously proposed this in the case of all workers involved in preparing and serving food and we would support this for health and care workers for similar reasons.
- 1.4 We believe that the need for enforcement action can be avoided to a large extent by the effective use of the proposed registration procedures. It will be important for the Commission, in reaching decisions as to whether or not to approve registration, to be made aware of relevant information from other agencies concerned with the activities of the proposed provider and the premises in which their activities take place. This information would include the compliance history of the provider in matters such as health and safety and food safety and the suitability of the premises as regards housing legislation and means of escape from fire. For these reasons we have previously recommended that the relevant agencies, including the local authority, should be statutory consultees.

Consultation question 1

Do you agree with our proposed principles and overall approach to enforcement?

- 2.0 We wish to state at the outset our agreement with the intended role, function and framework of the proposed regulatory body. In particular:

We recognise that the differing systems, regulations, standards and approaches in the existing regulatory framework have meant inconsistency in the type of enforcement used and the way it works across the different sectors and organisations. We therefore strongly support the intention of the Commission to

provide a consistent approach to regulation for providers from all sectors across health and adult social care, reflecting the fact that services are increasingly integrated and continually developing.

- 2.1 We also recognise that in moving to a regulatory system which is based on essential safety and quality requirements, rather than desirable best practice standards, it is intended to put a greater regulatory focus on essential outcomes and on addressing the risks. This is entirely in accordance with regulatory principles operating in other areas of public safety.
- 2.2 We support the need for the existing functions and powers of the three current commissions to be supplemented by tougher sanctions and enforcement powers that will enable the new Commission to take direct and independent action against service providers which fail to provide care that meets essential requirements on safety and quality. This is entirely in accordance with the established principles of health and safety requirements.
- 2.3 However, it should also be the case that individuals, as well as the owners and managers of provider organisations, can be held to be liable for failures which compromise public and employee health and safety.
- 2.4 Therefore, where health or safety has been compromised by the actions of a single individual, in breach of management requirements, then the Commission should give consideration to
 - the adequacy, or otherwise, of the effective use of internal disciplinary procedures of the registered provider, and
 - the need to report the matter for consideration of action by other enforcement agencies eg the Health and Safety Executive and the local authority

Consultation question 2

Do you agree with the circumstances and manner in which we intend to use each enforcement power?

- 3.0 We support the intention that decisions on enforcement measures will be informed by the results of site visits and inspections, information on the provider's performance held by third parties, including their compliance with other relevant legislation (for example on health and safety, fire regulations or equality) and evidence of good governance and management systems.
- 3.1 We have previously recommended that we believe that this is sufficiently important to be made a statutory requirement for the Commission to obtain and take account of information from key agencies, including the Health & Safety Executive and the local authority environmental health services.
- 3.2 Whether or not a statutory requirement is adopted, protocols need to be established for the exchange of information with commissioners of services and other enforcement agencies, including Health & Safety Executive and the local authority environmental health services.

- 3.3 In dealing with enforcement measures and particularly in urgent and emergency situations, experience of environmental health officers demonstrates the importance of being able to identify the 'person in control'.
- 3.4 We support the intention of the Commission to require the appointment of a registered manager in relation to the provider's application to deliver any regulated activity and that it will be the provider's responsibility to ensure that the manager applies for and obtains registration.
- 3.5 However, whether or not there is a registered manager, there is still a need to be able to identify the 'person in control' of the premises or regulated activity at any particular time, including when the registered manager is unavailable. There should therefore be a requirement on the provider or the registered manager to identify 'the person in control' who will have responsibility when the registered manager is not present or where there is no requirement for a registered manager.

Consultation question 3

Does the way in which we propose to work with other organizations ensure a coordinated approach to enforcement?

- 4.0 There are legal requirements, in addition to those enforced by the Commission, which need to be taken into account both in addition to and alongside those of the Commission.
- 4.1 These include the requirements relating to the maintenance of housing standards (see Appendix for the understanding of the CIEH of the application of the Housing Act 2004), the hygienic operation of a food business, the general public health requirements in relation to preventing the transmission of disease (eg legionella) and prevention of infestation by vermin and damage by pests.
- 4.2 Protocols need to be established to ensure proper liaison between the respective enforcement agencies so that a comprehensive and co-ordinated approach is adopted and implemented both in setting and maintaining standards and taking any required enforcement measures.
- 4.3 It is intended that the Commission will take a proportionate approach to assessing compliance with the registration requirements, wherever possible using existing data sources, self-assessment methods and feedback from people using the services. However, it should be accepted that for some services, routine on-site inspections will always be necessary to assure compliance, and their frequency and extent will need to be set by the Commission. In this regard, we believe that there is a need to consider the contributions that could be made by local authority officers to assuring compliance and informing the decision-making of the Commission on the need for its on-site inspections.

- 4.4 For example, where unsafe or unhealthy housing conditions, verminous conditions, serious pest infestations or food hygiene concerns are discovered then these alone might be sufficient to trigger on-site inspections by the Commission. There may also be activities where the basic health and safety and hygiene inspections routinely carried out by local authority and other regulatory officers would be sufficient for the purposes of the Commission if combined with its other sources of information on compliance with its standards.
- 4.5 There is also the possibility of employing joint inspections which can draw upon the knowledge and skills of other regulatory officers, such as environmental health officers, and provide a comprehensive assessment of compliance with standards across the board.
- 4.6 The CIEH has previously expressed its concern for inclusion within the registration criteria of
- non-urgent patient transport services, many of which are contracted out or operate on voluntary arrangements, and
 - procedures commonly described as 'cosmetic', including the use of lasers and sub-cutaneous injections and which are also promoted as health procedures eg Botox injections for the prevention of sweating.
- 4.7 The risk areas for consideration include staff, premises and practices and the key and overall concern in relation to these activities is whether they pose the inherent risk of spreading disease. We have therefore recommended that there is a detailed examination of these and similar procedures to determine which can be brought within the registration system.
- 4.8 If these activities are to come within the registration arrangements then we believe that there would be a role for the local authority to act as enforcement agency on behalf of the Commission through their environmental health services, on an agency basis, or by service level agreement.

Appendix

Application of Housing Act 2004 to Care Homes

Part 1 of the Act (Housing Health and Safety Rating System) **does** apply to care homes. Although Part 1 (HHSRS) does apply it could not be enforced in respect of homes controlled or managed by the Local Housing Authority as the Local Housing Authority cannot enforce against itself. However, local protocols would normally be put in place to ensure any recommendations under HHSRS made by the LHA were complied with voluntarily. Civil remedies would apply and LHA recommendations under HHSRS could be used as evidence.

Part 2 of the Act (HMO licensing) does not apply to care homes if they are exempted from the HMO definition by Schedule 14 of the Act (see Schedule 14 below). Schedule 14 does exempt care homes controlled or managed by Local Housing Authorities or Health Service bodies. Private sector care homes are only exempt if specified as such in regulations made by the appropriate national authority. I am unaware of any such regulations to date so it would appear they are not exempt at present.

Rationale

Housing Act 2004

Part 1 Housing Health and Safety Rating System (HHSRS)

s1. New system for assessing housing conditions and enforcing housing standards

(1) This Part provides—

- (a) for a new system of assessing the condition of **residential premises**, and
- (b) for that system to be used in the enforcement of housing standards in relation to such premises.

(4) In this Part “**residential premises**” means—

- (a) **a dwelling**;
- (b) **an HMO**;
- (c) unoccupied HMO accommodation;
- (d) any common parts of a building containing one or more flats.

5) In this Part—

“**dwelling**” means a building or part of a building occupied or intended to be occupied as a separate dwelling;

“**HMO**” means a house in multiple occupation as defined by sections 254 to 259, as they have effect for the purposes of this Part (that is, **without** the exclusions contained in Schedule 14);

Part 2 Licensing of Houses in Multiple Occupation (HMOs)

s55 Licensing of HMOs to which this Part applies

(1) This Part provides for HMOs to be licensed by local housing authorities where—

- (a) they are HMOs to which this Part applies (see subsection (2)), and
- (b) they are required to be licensed under this Part (see section 61(1)).

(2) This Part applies to the following HMOs in the case of each local housing authority—

- (a) any HMO in the authority’s district which falls within any prescribed description of HMO

Sch14 Buildings which are **not** HMOs for the purposes of Part 2 of this Act (licensing) (Part 1 – HHSRS – will still apply)

- 1 (1) The following paragraphs list buildings which are not houses in multiple occupation for any purposes of this Act other than those of Part 1.
(2) In this Schedule “building” includes a part of a building.
Buildings controlled or managed by public sector bodies etc.

- 2 (1) A building where the person managing or having control of it is—
 - (a) a local housing authority,
 - (b) a body which is registered as a social landlord under Part 1 of the Housing Act [1996 \(c. 52\)](#),
 - (c) a police authority established under section 3 of the Police Act [1996 \(c. 16\)](#),
 - (d) the Metropolitan Police Authority established under section 5B of that Act,
 - (e) a fire and rescue authority, or
 - (f) a health service body within the meaning of section 4 of the National Health Service and Community Care Act 1990.(2) In sub-paragraph (1)(e) “fire and rescue authority” means a fire and rescue authority under the Fire and Rescue Services Act 2004.
Buildings regulated otherwise than under this Act.

- 3 Any building whose occupation is regulated otherwise than by or under this Act and which is of a description specified for the purposes of this paragraph in regulations made by the appropriate national authority.
The Health and Social Care Act 2008 applies to these premises but I am unaware of regulations specifying care homes for the purposes of exemption. If such regulations are in place care homes will be exempt from licensing.