
STATUTORY INSTRUMENTS

2008 No. 3168 (C.143)

NATIONAL HEALTH SERVICE, ENGLAND

**The Health and Social Care Act 2008 (Commencement
No.6, Transitory and Transitional Provisions) Order 2008**

<i>Made</i>	- - - -	<i>11th December 2008</i>
<i>Laid before Parliament</i>		<i>17th December 2008</i>
<i>Coming into force</i>	- -	<i>12th January 2009</i>

The Secretary of State for Health makes the following Order in exercise of the powers conferred by sections 161(3) and (4), 167 and 170(3) and (4) of the Health and Social Care Act 2008⁽¹⁾.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Health and Social Care Act 2008 (Commencement No. 6, Transitory and Transitional Provisions) Order 2008 and shall come into force on 12th January 2009.

(2) In this Order—

“the Act” means the Health and Social Care Act 2008;

“registered person” means a person registered as a service provider under Chapter 2 of Part 1 of the Act;

“the Tribunal” means the tribunal to which an appeal lies under section 32 of the Act.

Appointed day for commencement of provisions relating to the Care Quality Commission

2.—(1) Subject to paragraph (2), 12th January 2009 is the day appointed for the coming into force of the following provisions of the Act—

- (a) section 2(2)(a);
- (b) section 8;
- (c) section 10(3);
- (d) section 11;
- (e) section 12(1) to (5);
- (f) sections 20 to 22;

(1) 2008 c. 14. See section 171(2) of that Act for the definition of “appropriate authority”.

- (g) section 25 insofar as it relates to a code of practice under section 21;
- (h) section 26(1) insofar as it relates to subsection (3);
- (i) section 26(3) and (6);
- (j) section 27;
- (k) section 28(1) to (4)(a);
- (l) section 32;
- (m) section 35;
- (n) section 37;
- (o) section 44;
- (p) sections 60 to 65;
- (q) sections 90 to 94.

(2) No provision in paragraph (1) is commenced by this Order to the extent that such provision relates to the registration of managers.

Transitory provision relating to references to a service provider

3. For the period 12th January to 31st March 2009, the reference in section 11 of the Act (applications for registration as a service provider) to a person seeking to be registered as a service provider shall be interpreted as a reference to a person who intends to be carrying on, on or after 1st April 2009, an activity which the person reasonably expects to be prescribed as a regulated activity under section 8 of the Act from 1st April 2009.

Transitory modification relating to section 22(3) of the Act

4. For the purposes of the first code issued by the Secretary of State under section 21 of the Act (code of practice relating to health care associated infections), section 22(3) shall have effect as if for “at the time when it is issued by the Secretary of State” there were substituted “on 1st April 2009”.

Transitory modification relating to section 32(7) of the Act

5. Until such date as it is repealed, the definition of “the Tribunal” in subsection (7) of section 32 of the Act (appeals to the Tribunal) shall have effect as if there were substituted for it—

““the Tribunal” means the First-tier Tribunal.”.

Transitional provisions relating to grant or refusal of registration for 2009/10

6.—(1) Paragraph (2) applies to any application made under section 11 of the Act (applications for registration as a service provider) in respect of a period commencing on or after 1st April 2009 but before 1st April 2010.

(2) In the case of an application to which this paragraph applies, section 12 of the Act (grant or refusal of registration as a service provider) shall apply as if modified as set out in paragraph (3).

(3) For subsections (2) and (3) substitute—

“(2) If the Commission is satisfied that the requirements of regulations under section 20 are being and will continue to be complied with (so far as applicable) in relation to the carrying on of the regulated activity, it must grant the application either unconditionally or subject to such conditions as it thinks fit.

(3) If the Commission is not so satisfied then it must—

(a) grant the application subject to such conditions as it thinks fit; or

(b) refuse the application.

(3A) The conditions referred to in subsections (2), (3) and (5)(b) may relate to the requirements of any other enactment which appears to the Commission to be relevant.”.

(4) In the case of any application to which paragraph (2) applies which is made on or before 6th February 2009—

(a) registration, if granted, shall take effect from 1st April 2009; and

(b) section 12 of the Act shall apply as if, in addition to the modifications in paragraph (3), for subsection (4) there were substituted—

“(4) Where the application is granted, the Commission must issue a certificate of registration to the applicant on or before 30th April 2009.”.

Transitional provisions relating to registration subject to conditions

7.—(1) Where, pursuant to section 12 of the Act as modified by article 6, the Commission decides to grant an application subject to any condition which has not been agreed in writing between it and the applicant, the Commission must follow the procedure set out in the following paragraphs.

(2) The Commission shall give the applicant notice in writing of its decision under paragraph (1) and of the conditions to which the registration is to be made subject.

(3) A notice under paragraph (2) must—

(a) give the Commission’s reasons for its decision; and

(b) state that within 28 days of service of the notice, the person on whom it was served may make written representations to the Commission concerning any matter which that person wishes to dispute.

(4) In the case of any application which is made on or before 6th February 2009, the notice referred to in paragraph (2) must be given on or before 31st March 2009.

(5) Within 28 days of receipt of representations pursuant to paragraph (3)(b), the Commission shall give notice in writing—

(a) confirming the original decision; or

(b) varying or removing any of the conditions.

(6) Section 32 of the Act (appeals to the Tribunal) shall apply to the notice referred to in paragraph (5) as it applies to a decision of the Commission under Chapter 2 of Part 1 of the Act, other than a decision to give a warning notice under section 29.

(7) Notwithstanding the right to make representations under paragraph (3) and the right of appeal to the Tribunal under paragraph (6), any condition set out in a notice under paragraph (2) shall, unless otherwise specified by the Commission in the notice, have effect from 1st April 2009 or, if later, the date of grant of registration, until such date as—

(a) the registered person is notified in writing by the Commission of its variation or removal;
or

(b) the Tribunal directs that it is to cease to have effect.

(8) Notwithstanding the right of appeal to the Tribunal under paragraph (6), any varied condition set out in a notice under paragraph (5) shall, unless otherwise specified by the Commission in the notice, have effect from the date of that notice until such date as—

(a) the registered person is notified in writing by the Commission of its variation or removal;
or

(b) the Tribunal directs that it is to cease to have effect.

(9) In deciding whether to specify a date other than 1st April 2009 or, if later, the date of grant of registration, in a notice under paragraph (2) or (5), the Commission shall have regard to the need to strike a balance between the desirability of preserving service continuity and the need to safeguard patients against serious risks to their life, health or well-being.

Transitional provisions relating to refusal of registration

8.—(1) Where, pursuant to section 12 of the Act as modified by article 6, the Commission proposes to refuse an application it must give the applicant a notice of proposal pursuant to section 26(3) of the Act (notice of proposal relating to refusal of registration)—

- (a) in the case of any application to which article 6(2) applies and which is made on or before 6th February 2009, on or before 31st March 2009; and
- (b) in the case of any other application to which article 6(2) applies, when the decision to propose refusal is made.

(2) Any subsequent notice of decision relating to that refusal given under section 28(3) of the Act shall, in addition to the item listed in section 28(4)(a) of the Act, state that the decision takes effect—

- (a) on 1st April 2009 in the case of a decision made on or before 31st March 2009 or immediately in the case of a decision made on or after 1st April 2009;
- (b) at the end of the period of 28 days referred to in section 32(2) of the Act; or
- (c) subject to any decision by the Tribunal, at the end of such further period specified in the notice.

(3) In deciding which of the periods listed in paragraph (2) shall be stated in any particular case, the Commission shall have regard to the need to strike a balance between the desirability of preserving service continuity and the need to safeguard patients against serious risks to their life, health or well-being.

Signed by authority of the Secretary of State for Health.

11th December 2008

Ben Bradshaw
Minister of State,
Department of Health

EXPLANATORY NOTE

(This note is not part of the Order)

Article 2 of this Order brings into force on 12th January 2009 certain provisions of the Health and Social Care Act 2008 (“the Act”) relating to decisions by the Care Quality Commission as to registration under Part 1 of that Act.

The remainder of the Order makes transitory and transitional provision mainly to deal with applications for registration as a service provider under Chapter 2 of Part 1 of the Act which will start between 1st April 2009 and 31st March 2010. Applications for registration with effect from 1st April 2009 will fall to be dealt with between 12th January and 31st March 2009.

Article 3 provides for applications to be made by those who intend to be carrying on, on or after 1st April 2009, an activity which the person reasonably expects to be prescribed as a regulated activity under section 8 of the Act from 1st April 2009.

Article 4 provides that the first code of practice relating to healthcare associated infections issued under section 21 of the Act shall not come into force until 1st April 2009, even if issued before that date.

Article 5 makes a transitory modification to the meaning of “the Tribunal” in section 32 of the Act, pending the expected removal of the definition in secondary legislation relating to the introduction of the First-tier Tribunal.

Article 6 modifies the test to be applied by the Commission to initial applications for registration in order to allow applications to be granted subject to conditions in cases where the Commission is not satisfied that the registration requirements are being and will continue to be met. Such conditions can relate to the requirements of other enactments which appear to the Commission to be relevant as well as to the registration requirements.

Article 6 further provides that applications made on or before 6th February must be dealt with by 31st March 2009 and that the Commission will have until 30th April 2009 to issue certificates of registration.

Article 7 varies the procedure which applies in cases where the Commission intends to grant registration subject to conditions which have not been agreed with the applicant. It provides that such imposed conditions will take effect from 1st April 2009 (or such later date as specified by the Commission). It further provides that, subsequent to being notified of such imposition, the applicant may make representations to the Commission about the conditions and, if conditions are still imposed, may appeal to the Tribunal under section 32 of the Act. Paragraph (9) requires the Commission, in deciding the date from which conditions will take effect, to have regard to the balance between the desirability of preserving service continuity and the need to safeguard patients against serious risks to their life, health or well-being.

Article 8 deals with cases where the Commission decides to refuse an application. It requires the Commission to serve notice of proposal to refuse on the applicant and provides for the refusal to take effect on 1st April 2009 in the case of a decision made on or before 31st March 2009 or at such later date as the Commission specifies in the notice of refusal. Paragraph (3) requires the Commission, in deciding the date from which the refusal will take effect, to have regard to the balance between the desirability of preserving service continuity and the need to safeguard patients against serious risks to their life, health or well-being.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

The following provisions of the Health and Social Care Act 2008 have been brought into force by commencement orders made before the date of this Order.

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
section 1(1)	1.10.2008	2008/2497 (C.106)
section 1(3) (partially)	1.10.2008	2008/2497 (C.106)
section 2(1)	1.10.2008	2008/2497 (C.106)
sections 3 to 7	1.10.2008	2008/2497 (C.106)
section 9	1.10.2008	2008/2497 (C.106)
section 46(4) to (8)	1.10.2008	2008/2497 (C.106)
section 47	1.10.2008	2008/2497 (C.106)
section 66 (partially)	1.10.2008	2008/2497 (C.106)
sections 76 to 83	1.10.2008	2008/2497 (C.106)
section 85	1.10.2008	2008/2497 (C.106)
section 88	1.10.2008	2008/2497 (C.106)
section 95 (partially)	1.10.2008	2008/2497 (C.106)
section 97	1.10.2008	2008/2497 (C.106)
section 111 (partially)	1.10.2008	2008/2497 (C.106)
section 112 (partially)	3.11.2008	2008/2717 (C.120)
section 123(3) to (6)	1.10.2008	2008/2497 (C.106)
section 127 (partially)	25.8.2008	2008/2214 (C.100)
sections 131 to 138	1.1.2009	2008/3137 (C.136)
section 142	1.10.2008	2008/2497 (C.106)
section 143	1.10.2008	2008/2497 (C.106)
section 145 (partially)	1.12.2008	2008/2994 (C.129)
sections 149 to 154	1.4.2009	2008/2994 (C.129)
section 155	1.12.2008	2008/2994 (C.129)
section 156	1.12.2008 and 1.4.2009	2008/2994 (C.129)
section 157	1.10.2008 and 1.1.2009	2008/2497 (C.106)
section 158	1.1.2009	2008/2497 (C.106)
section 160 (partially)	1.10.2008 and 1.1.2009	2008/2497 (C.106)
section 166 (partially)	1.1.2009	2008/2497 (C.106)
in Schedule 1—		
paragraphs 1 to 5	1.10.2008	2008/2497 (C.106)

paragraph 6(3)	1.10.2008	2008/2497 (C.106)
paragraph 6(4) (partially)	1.10.2008	2008/2497 (C.106)
paragraph 6(6) to (8)	1.10.2008	2008/2497 (C.106)
paragraph 7 (partially)	1.10.2008	2008/2497 (C.106)
paragraphs 8 to 12	1.10.2008	2008/2497 (C.106)
Schedule 2	1.10.2008	2008/2497 (C.106)
in Schedule 4—		
paragraph 1	1.10.2008	2008/2497 (C.106)
paragraph 3	1.10.2008	2008/2497 (C.106)
paragraph 5 (partially)	1.10.2008	2008/2497 (C.106)
paragraphs 7 and 8	1.10.2008	2008/2497 (C.106)
in Schedule 5—		
paragraph 54(b)	1.10.2008	2008/2497 (C.106)
paragraph 56(b)	1.10.2008	2008/2497 (C.106)
paragraph 57(1) (partially)	1.10.2008	2008/2497 (C.106)
paragraph 57(2)(b)	1.10.2008	2008/2497 (C.106)
paragraph 58(b)	1.10.2008	2008/2497 (C.106)
paragraph 59(1) (partially)	1.10.2008	2008/2497 (C.106)
paragraph 59(2)(b)	1.10.2008	2008/2497 (C.106)
paragraph 73(b)	1.10.2008	2008/2497 (C.106)
paragraph 80(b)	1.10.2008	2008/2497 (C.106)
paragraph 94	1.10.2008	2008/2497 (C.106)
in Schedule 8—		
paragraph 3 (partially)	1.10.2008	2008/2497 (C.106)
paragraph 5(4)	1.10.2008	2008/2497 (C.106)
paragraph 8(a)	1.10.2008	2008/2497 (C.106)
in Schedule 10—		
paragraph 20	25.8.2008	2008/2214 (C.100)
paragraph 21 (partially)	25.8.2008	2008/2214 (C.100)
in Schedule 14—		
paragraphs 2 to 4	1.10.2008	2008/2497 (C.106)
paragraph 5	1.1.2009	2008/2497 (C.106)
in Schedule 15—		
Part 6	1.1.2009	2008/2497 (C.106)

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