
STATUTORY INSTRUMENTS

2009 No. 462

The Health and Social Care Act 2008 (Commencement No.9, Consequential Amendments and Transitory, Transitional and Saving Provisions) Order 2009

Citation, commencement, extent, application and interpretation

1.—(1) This Order may be cited as the Health and Social Care Act 2008 (Commencement No. 9, Consequential Amendments and Transitory, Transitional and Saving Provisions) Order 2009 and shall come into force—

- (a) for the purposes of article 6 on 27th March 2009,
 - (b) for all other purposes except paragraphs 1 and 2 of Schedule 5 on 1st April 2009; and
 - (c) for the purposes of paragraphs 1 and 2 of Schedule 5 on 6th April 2009.
- (2) Subject to paragraph (4), this Order extends to England and Wales only except that—
- (a) paragraph 24 of Schedule 1, and article 2 insofar as it relates to that paragraph, extends to England and Wales, Scotland and Northern Ireland;
 - (b) paragraph 25 of Schedule 1, and article 2 insofar as it relates to that paragraph, extends to England and Wales and Northern Ireland only;
 - (c) the amendment, repeal and revocation of any enactment commenced by article 2 and paragraphs 35 and 36 of Schedule 1 has the same extent as the enactment amended, repealed or revoked;
 - (d) article 4 insofar as it relates to—
 - (i) the repeal effected by the Act in section 16(2)(a)(v) of the Maintenance Orders Act 1950(1), and
 - (ii) section 147(6) of, and Schedule 13 to the Act, so far as relating to that repeal, extends to England and Wales and Scotland only; and
 - (e) paragraph 10 of Schedule 3, and article 9 insofar as it relates to that paragraph, extends to England and Wales, Scotland and Northern Ireland.
- (3) The following provisions apply in relation to England only—
- (a) articles 6, 7 and 11;
 - (b) paragraphs 14 to 23 of Schedule 3 and article 9 insofar as it relates to those paragraphs; and
 - (c) paragraphs 4(1), 5 and 15 of Schedule 4 and article 10 insofar as it relates to those paragraphs.
- (4) The amendment, revocation or modification of any provision by articles 8, 12 and 15 of, and Schedules 2, 5 and 6 to, this Order has the same extent and application as the provision being amended, revoked or modified.
- (5) In this Order—

- “the 1983 Act” means the Mental Health Act 1983(2);
- “the 2000 Act”, means the Care Standards Act 2000(3);
- “the 2003 Act” means the Health and Social Care (Community Health and Standards) Act 2003(4);
- “the Act” means the Health and Social Care Act 2008;
- “the appointed day” means 1st April 2009;
- “the CHAI” means the Commission for Healthcare Audit and Inspection;
- “the CSCI” means the Commission for Social Care Inspection; and
- “the MHAC” means the Mental Health Act Commission.

Appointed day for provisions relating to the dissolution of the CHAI, the CSCI and the MHAC and the functions of the Care Quality Commission

2.—(1) Subject to paragraph (2), 1st April 2009 is the day appointed for the coming into force of the provisions of Part 1 of the Act and related Schedules listed in Schedule 1.

(2) No provision of Chapter 2 of Part 1 of the Act is commenced to the extent that such provision relates to the registration of managers under that Chapter.

Appointed day for provisions relating to public health protection

3. 1st April 2009 is the day appointed for the coming into force of section 129 of the Act insofar as it relates to England and inserts sections 45A, 45C, 45D, 45E, 45F, 45P, 45Q, 45R, 45S and 45T into the Public Health (Control of Disease) Act 1984(5).

Appointed day for provisions relating to the abolition of maintenance liability of relatives

4. 6th April 2009 is the day appointed for the coming into force of the following provisions of the Act except insofar as they relate to local authorities in Wales—

- (a) section 147 (abolition of maintenance liability of relatives);
- (b) Schedule 13 (transitional provisions relating to section 147); and
- (c) Part 5 of Schedule 15 (repeals and revocations) and section 166 (repeals) insofar as it relates to that Part.

Appointed day for minor and consequential amendments relating to Part 5 of the Act

5. 1st April 2009 is the day appointed for the coming into force of paragraphs 6 and 7 of Schedule 14 to the Act.

Exercise by the Care Quality Commission of powers under section 113A of the 2000 Act

6. For the period beginning on 27th March 2009 and ending on 31st March 2009, the Care Quality Commission may exercise any power under section 113A of the 2000 Act (fees payable under Part 2)(6) that is conferred by that section on the CHAI or the CSCI.

(2) 1983 c.20.

(3) 2000 c.14.

(4) 2003 c.43.

(5) 1984 c.22.

(6) Section 113A was inserted by the Health and Social Care (Community Health and Standards) Act 2003 (c.43), section 105(2) and amended by the Education and Inspections Act 2006 (c.40), Schedule 14, paragraph 53.

Suspension of the offence of carrying on a regulated activity while unregistered

7.—(1) Paragraph (2) applies where—

- (a) a person has applied for registration as a service provider pursuant to section 11 of the Act;
- (b) the application is one to which article 6(2) of the Health and Social Care Act 2008 (Commencement No.6, Transitory and Transitional Provisions) Order 2008(7) applies; and
- (c) the Care Quality Commission proposes to refuse the application and serves a notice of proposal pursuant to section 26(3) of the Act (notice of proposal relating to refusal of registration).

(2) Section 10(1) of the Act (offence of carrying on a regulated activity while unregistered) shall not apply to the applicant for the period between service of that notice of proposal and service by the Care Quality Commission under section 28 of the Act (notice of decisions) of a notice of decision in respect of the proposal to refuse registration.

Functions of the CHAI and the CSCI under the 2000 Act

8. Schedule 2 which makes transitory provision in relation to functions of the CHAI and the CSCI under the 2000 Act shall have effect.

Functions of the CHAI and the CSCI under the 2003 Act

9. Schedule 3 which makes transitory, transitional and saving provisions in relation to functions of the CHAI and the CSCI under the 2003 Act shall have effect.

Functions under the 1983 Act

10. Schedule 4 which makes transitional provision in relation to functions under the 1983 Act shall have effect.

Provision for continuity in the exercise of functions

11.—(1) Subject to Schedules 2 to 4 and paragraph (4), anything done before 1st April 2009 under—

- (a) the 1983 Act by or in relation to the MHAC; or
- (b) the 2000 Act or the 2003 Act by or in relation to the CHAI or the CSCI,

shall be treated on and after that date as if done by or in relation to the Care Quality Commission.

(2) The reference in paragraph (1) to anything done by or in relation to either the CHAI, the CSCI or the MHAC includes without limitation any applications made or any authorisations, directions or notices given, to, by or in relation to the CHAI, the CSCI or the MHAC.

(3) Subject to paragraph (4)—

- (a) any instrument made by the CHAI, the CSCI or the MHAC that is in force immediately before the relevant date continues in force in relation to the Care Quality Commission as if it had been made by the Care Quality Commission; and
- (b) so far as is necessary and appropriate, a reference in an agreement or other instrument to the CHAI, the CSCI or the MHAC shall be treated on and after 1st April 2009 as a reference to the Care Quality Commission.

(4) This article does not apply to any property, rights or liabilities that are the subject of a transfer scheme made under Schedule 2 to the Act.

Minor and consequential amendments

12. The enactments listed in Schedule 5 are amended as there specified.

Transitory provisions relating to the Health Protection Agency

13. For the period 1st April 2009 to 31st March 2010⁽⁸⁾, the Health Protection Agency Act 2004⁽⁹⁾ (Health care provision: standards) is modified so that for section 10 there is substituted—

“10.—(1) Insofar as any health care is provided by or for the Agency in England, the Agency is to be treated for the purposes of sections 46, 48, 53, 57, 58, 60 to 65, and 72 of the Health and Social Care Act 2008 as a Primary Care Trust.

(2) For the purposes of subsection (1), “health care” must be construed in accordance with section 9 of that Act.

(3) Insofar as any health care is provided by or for the Agency in Wales, the Agency is to be treated for the purposes of the standards provisions as a Welsh NHS body.

(4) For the purposes of subsection (3), “health care” must be construed in accordance with section 45 of the Health and Social Care (Community Health and Standards) Act 2003 (c.43).

(5) The standards provisions are Chapters 2 and 4 of Part 2 of that Act.

(6) The references in section 71 of that Act (reporting to the Secretary of State and regulator) to special measures are, in relation to the Agency, references to anything that may be done by the appropriate authority in pursuance of section 4 above.

(7) This section does not extend to Scotland and Northern Ireland.”.

Transitory modification relating to section 156 of the Act

14. Until the coming into force of section 1 of the Companies Act 2006⁽¹⁰⁾, section 156(2) of the Act has effect as if for the definition of “company” there were substituted the following definition—

““company” means a company as defined by section 735 of the Companies Act 1985⁽¹¹⁾.”.

Revocations

15. The instruments listed in Schedule 6 are revoked to the extent there specified.

⁽⁸⁾ The modification of the Health Protection Agency Act 2004 is transitory because further changes to the way in which their standards are regulated are expected from April 2010. Permanent amendments will be made to the legislation at that stage.

⁽⁹⁾ 2004 c.17.

⁽¹⁰⁾ 2006 c.46. Section 1 is to come into force on 1st October 2009 - see S.I. 2008/2860.

⁽¹¹⁾ 1985 c.6. There are no relevant amendments.

Signed by authority of the Secretary of State for Health

25th February 2009

Ben Bradshaw
Minister of State,
Department of Health