
STATUTORY INSTRUMENTS

2010 No. 807

The Health and Social Care Act 2008 (Commencement No.16, Transitory and Transitional Provisions) Order 2010

PART 3

Transitional and transitory provisions relating to the Care Quality Commission

Cancellation proceedings under the 2000 Act after a decision to grant a transitional application

17.—(1) This article applies where, after a decision has been made by the Commission to grant a transitional application in respect of a person, paragraph (2) or (3) applies to any registration of that person under Part 2 of the 2000 Act (establishments and agencies).

(2) This paragraph applies to a registration in relation to which a notice of proposal to cancel registration has been served under section 17(4)(a) of the 2000 Act (notice of proposals) and—

- (a) the Commission has not withdrawn that proposal and no notice of decision has been given under section 19 of the 2000 Act (notice of decisions) in respect of that notice of proposal;
- (b) a notice of decision has been given in respect of that notice of proposal, the time for making an appeal under section 21(2) of the 2000 Act (appeals to the Tribunal) has not elapsed and no appeal has been made; or
- (c) an appeal has been made in respect of a notice of decision to cancel registration but that appeal has not been determined or abandoned.

(3) This paragraph applies to a registration in relation to which an application made to a justice of the peace under section 20 of the 2000 Act (urgent procedure for cancellation etc) to cancel registration has been granted and—

- (a) the time for making an appeal under section 21(2) of the 2000 Act has not elapsed and no appeal has been made; or
- (b) an appeal has been made in respect of an order made under section 20 of the 2000 Act but that appeal has not been determined or abandoned.

(4) Where a person who comes within paragraph (2) or (3) is the person who proposes to carry on the regulated activity—

- (a) the decision to grant the transitional application has no effect insofar as it relates to the carrying on or management of a regulated activity at the premises of a registered establishment or agency in respect of which the cancellation proceedings have been brought;
- (b) notwithstanding any amendment or repeal, Part 2 of the 2000 Act (establishments and agencies) and the regulations made under it continue to apply on and after 1st October 2010 until the date specified in paragraph (7) insofar as they relate to the carrying on of that registered establishment or agency and insofar as they relate to any person who is a registered manager in respect of that establishment or agency; and

- (c) the provisions of Part 1 of the Act and the regulations made under it do not apply until the day after the date specified in paragraph (7) insofar as those provisions relate to regulated activities which the person is, or would be but for the cancellation of registration, entitled to carry on or manage at the premises of the registered establishment or agency by virtue of registration under Part 2 of the 2000 Act.
- (5) Where a person who comes within paragraph (2) or (3) is a registered manager—
 - (a) the decision to grant the transitional application has no effect insofar as it relates to that person managing a regulated activity at the premises of an establishment or agency in respect of which the cancellation proceedings have been brought;
 - (b) notwithstanding any amendment or repeal, Part 2 of the 2000 Act (establishments and agencies) and the regulations made under it continue to apply on and after 1st October 2010 until the date specified in paragraph (7) insofar as they relate to the management of that registered establishment or agency; and
 - (c) the provisions of Part 1 of the Act and regulations made under it do not apply until the day after the date specified in paragraph (7) insofar as those provisions relate to regulated activities which the person is, or would be but for the cancellation of registration, entitled to manage at the premises of the registered establishment or agency by virtue of registration under Part 2 of the 2000 Act.
- (6) The Commission must, on or before the date specified in paragraph (7), make a new determination of the transitional application, insofar as the original decision to grant the application has no effect pursuant to paragraph (4)(a) or (5)(a), in accordance with articles 6 to 8—
 - (a) taking into account the cancellation proceedings under the 2000 Act; and
 - (b) in a case where the date in paragraph (7)(c) applies, ensuring that the Tribunal’s direction is reflected.
- (7) The date specified for the purposes of paragraph (4), (5) and (6) is the date on which—
 - (a) in cases where no appeal is made against the notice of decision to adopt a proposal referred to in paragraph (2) or the order referred to in paragraph (3) during the period referred to in section 21(2) of the 2000 Act (appeals to the Tribunal), the date that is the end of a period of 14 days beginning on the date on which the period in section 21(2) of the 2000 Act expires in relation to that notice or order;
 - (b) in cases where such an appeal is made within that period, the date that is the end of a period of 14 days beginning on the date on which that appeal is—
 - (i) abandoned, or
 - (ii) determined and the decision of the Commission or the order of the justice of the peace is confirmed by the Tribunal; or
 - (c) in cases where the Tribunal directs that the notice of decision to adopt a proposal referred to in paragraph (2) or the order referred to in paragraph (3), shall not, or shall cease to, have effect, the date that is the end of a period of 14 days beginning on the day on which the Tribunal makes such a direction.