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STATUTORY INSTRUMENTS

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**2010 No. 807**

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

**PART 1**

**General**

**Citation, commencement and interpretation**

**1.**—(1) This Order may be cited as the Health and Social Care Act 2008 (Commencement No. 16, Transitory and Transitional Provisions) Order 2010 and shall come into force—

- (a) for all purposes except article 23 and Schedule 2, on 6th April 2010;
- (b) for the purposes of article 23 and Schedule 2, on 1st October 2010.

(2) In this Order—

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

“the 2000 Act” means the Care Standards Act 2000(1);

“application date” means a date specified by the Commission(2) by which a transitional application must be made;

“CSA registrant” means a person—

- (a) whose name is included in a register kept by the Commission for the purposes of Part 2 of the 2000 Act(3) (establishments and agencies) on 6th April 2010 by virtue of carrying on an establishment or agency; and
- (b) who is carrying on an activity which will be a regulated activity on 1st October 2010, and “CSA registration” is to be construed accordingly;

“determination” means a decision to give, in relation to the carrying on or management of a regulated activity by any person—

- (a) a notice of proposal under section 26(3) of the Act (notice of proposals) to refuse a transitional application; or
- (b) a notice of decision under section 28 of the Act (notice of decisions) or article 7 in respect of a transitional application;

“registered establishment or agency” means an establishment or agency which a person—

- (a) is registered to carry on under Part 2 of the 2000 Act; or
- (b) was registered to so carry on immediately before—

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(1) 2000 c.14. Relevant modifications have been made by Schedule 2 to the Health and Social Care Act 2008 (Commencement No.9, Consequential Amendments and Transitory, Transitional and Saving Provisions) Order 2009 (S.I. 2009/462 (C.31)) (“the No. 9 Order”).

(2) See section 97(1) of the Act for the definition of “the Commission”.

(3) Section 11 of the Care Standards Act 2000 (c.14) has been modified by paragraph 4(3) of Schedule 2 to the No.9 Order.

- (i) registration under that Part was cancelled, or
- (ii) 1st October 2010;

“registered manager” means a person—

- (a) whose name is included in a register kept by the Commission for the purposes of Part 2 of the 2000 Act by virtue of managing a registered establishment or agency; or
- (b) whose name was so included immediately before—
  - (i) registration under that Part was cancelled, or
  - (ii) 1st October 2010;

“regulated activity” means an activity that is prescribed as being a regulated activity from 1st October 2010 by regulation 3 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010<sup>(4)</sup>;

“Registration Regulations” means the Care Quality Commission (Registration) Regulations 2009<sup>(5)</sup>;

“transitional application” means an application for registration as a service provider or manager in respect of a period commencing on or after 1st October 2010 made to the Commission under section 11 of the Act (applications for registration as a service provider), as modified by this Order, by—

- (a) a CSA registrant, or on behalf of a registered manager, in relation to whom article 16(1) or 18(1) does not apply, before 1st October 2010; or
  - (b) a person, or on behalf of a registered manager, in relation to whom article 16(1) or 18(1) applies.
- (3) Any reference in this Order to a transitional application being—
- (a) determined, granted or refused means determined, granted or refused in relation to the carrying on or management of a regulated activity; or
  - (b) made on a particular date means the date on which that application is received by the Commission.

## PART 2

### Commencement

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

2.—(1) 6th April 2010 is the day appointed for the coming into force of the provisions of the Act listed in Part 1 of Schedule 1.

(2) 1st October 2010 is the day appointed for the coming into force of the provisions of the Act listed in Part 2 of that Schedule.

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(4) S.I. 2010/781.  
(5) S.I. 2009/3112.

## PART 3

### Transitional and transitory provisions relating to the Care Quality Commission

#### **Notification to CSA registrants of the need to make a transitional application**

**3.—(1)** The Commission must give notice of the need to make a transitional application to each CSA registrant, unless that registrant’s only CSA registration is one to which paragraph (2) applies.

(2) This paragraph applies to a CSA registration in respect of which at the time the notification would otherwise be given—

- (a) an application has been made for cancellation under section 15(1)(b) of the 2000 Act (applications by registered persons); or
- (b) the CSA registrant comes within article 14(2).

(3) Notification sent pursuant to paragraph (1) must specify—

- (a) the form in which the application must be made;
- (b) what information it must contain or be accompanied by;
- (c) the application date; and
- (d) that the transitional application must be made to the Commission on or before the application date, in the specified form and contain or be accompanied by the specified information, in order for article 9(2) to apply.

(4) The application date must be a date that is not less than 28 days after the date on which the notification under paragraph (1) is sent.

#### **Modification of the Act in relation to the making of a transitional application**

**4.—(1)** Sections 11(3) and 14(1) and (3) of the Act (applications for registration as a service provider or manager) do not apply to a transitional application.

(2) Section 12(2) of the Act (grant or refusal of registration as a service provider) is modified as if “insofar as it relates to the carrying on of the regulated activity” were inserted after “the application”.

(3) Section 14(2) of the Act (applications for registration as a manager) is modified as if for “The application” there were substituted “An application, insofar as it includes an application for a person to be a registered manager.”.

(4) Section 15(1) of the Act (grant or refusal of registration as a manager) is modified as if for “under section 14” to the end there were substituted “includes an application for a person to be a registered manager in relation to a regulated activity”.

#### **Activities to be covered by a transitional application**

**5.—(1)** Subject to paragraph (3), a CSA registrant who wishes to carry on one or more regulated activities on or after 1st October 2010 must make a single transitional application covering both the carrying on, and the management of, all activities—

(a) that—

- (i) the CSA registrant making that application is entitled to carry on, or
- (ii) a registered manager is entitled to manage,

at the premises of a registered establishment or agency by virtue of registration under Part 2 of the 2000 Act on the date on which the transitional application is sent to the Commission;

(b) that are regulated activities; and

- (c) that the CSA registrant intends to carry on at the premises of that registered establishment or agency on or after 1st October 2010.
- (2) Subject to paragraph (3), the single transitional application must also cover both the carrying on, and the management of, all activities that—
  - (a) do not require registration of the establishment or agency at which they are carried on under section 11 of the 2000 Act;
  - (b) the applicant carries on at a registered establishment or agency on the date on which the transitional application is sent to the Commission;
  - (c) the applicant intends to carry on at the premises of that establishment or agency on or after 1st October 2010; and
  - (d) are regulated activities.
- (3) A transitional application must not include an application for registration to—
  - (a) carry on or manage a regulated activity where, and insofar as, that activity is to be carried on at the premises of a registered establishment or agency in respect of which a CSA registrant comes within article 14(2) on the date on which that application is sent to the Commission;
  - (b) manage a regulated activity if the registered manager comes within article 14(2) on the date on which that application is sent to the Commission where, and insofar as, that activity is to be managed at the premises of a registered establishment or agency in respect of which the registered manager comes within article 14(2) on the date on which that application is sent to the Commission; or
  - (c) manage a regulated activity unless that activity will be subject to a registered manager condition pursuant to regulation 5 of the Registration Regulations (registered manager condition).
- (4) Where a transitional application is made pursuant to notification by the Commission under article 16(4) or 18(3), this article shall apply to such an applicant as if they were a CSA registrant but subject to paragraph (1) being modified as if at the end of sub-paragraph (a) there were inserted “or would have been so entitled immediately before 1st October 2010 had the registration not been cancelled”.
- (5) A transitional application may include an application in respect of one or more persons to be registered as a manager only where each such person has, in that application, given their written consent to that application being made on their behalf.

### **Transitional provisions relating to the grant or refusal of registration**

- 6.—(1) Sections 12 and 15 of the Act (grant or refusal of registration as a service provider or manager) apply to a transitional application as if modified as set out in paragraph (2).
- (2) For subsections (2) and (3) of sections 12 and 15 of the Act 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.”

- (3) Paragraph (4) applies to a transitional application which is made—
  - (a) on or before the application date; and
  - (b) in such form, and containing or accompanied by such information, as the Commission specified pursuant to article 3(3).
- (4) Where this paragraph applies—
  - (a) if registration is to be granted unconditionally, or subject only to conditions agreed between the Commission and the applicant or the person to be registered as a manager, the Commission must use its best endeavours to give notice of that decision to that applicant or manager before 1st October 2010; and
  - (b) registration, if granted, takes effect from 1st October 2010 or the date upon which the application is granted, whichever is the later.
- (5) Where registration is granted as a result of a transitional application—
  - (a) section 12 of the Act applies as if, in addition to the modifications in paragraph (2), for subsection (4) there were substituted—

“(4) Where the application is granted, the Commission must issue a certificate of registration to the applicant before 1st January 2011.”; and
  - (b) section 15 of the Act applies as if, in addition to the modifications in paragraph (2), for subsection (4) there were substituted—

“(4) Where the application is granted, the Commission must issue a certificate of registration to the registered manager before 1st January 2011.”.

#### **Transitional provisions relating to registration subject to conditions**

7.—(1) Paragraph (2) applies where, pursuant to section 12 or 15 of the Act (grant or refusal of registration as a service provider or manager) as modified by article 6, the Commission decides to grant a transitional application subject to any condition, other than a registered manager condition required by section 13(1) of the Act, which has not been agreed in writing between it and—

- (a) the applicant, where the condition is to be imposed on the applicant; or
  - (b) the person to be registered as a manager, where the condition is to be imposed on that person.
- (2) Where this paragraph applies—
- (a) section 26(2) (notice of proposals) and 28(4)(b) (notice of decisions) of the Act do not apply; and
  - (b) the Commission must follow the procedure set out in the following paragraphs.
- (3) The Commission must give the applicant or person to be registered as a manager notice in writing of its decision under paragraph (1) and of the conditions to which the registration is to be made subject.
- (4) A notice under paragraph (3) 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.
- (5) In the case of any application which is made on or before the application date by a CSA registrant the Commission must use its best endeavours to give the notice referred to in paragraph (3) before 1st October 2010.

(6) Within 3 months of receipt of representations from an applicant or a person to be registered as a manager pursuant to paragraph (4)(b), the Commission must give notice in writing—

- (a) confirming the original decision; or
- (b) varying or removing any of the conditions.

(7) Section 32 of the Act (appeals to the Tribunal) applies to the notice referred to in paragraph (6) as it applies to a decision of the Commission under Chapter 2 of Part 1 of the Act.

(8) Notwithstanding the right to make representations under paragraph (4) and the right of appeal to the Tribunal under paragraph (7), any condition set out in a notice under paragraph (3) has effect, unless otherwise specified by the Commission in the notice, from 1st October 2010 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.

(9) Any removal of a condition set out in a notice under paragraph (6) has effect from the date of the notice.

(10) Notwithstanding the right of appeal to the Tribunal under paragraph (7), any varied condition set out in a notice under paragraph (6) has effect, unless otherwise specified by the Commission in the notice, from the date of the 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.

(11) In deciding whether to specify a date from which a condition has effect other than—

- (a) 1st October 2010 or, if later, the date of grant of registration, in a notice under paragraph (3); or
- (b) the date of the notice, in a notice under paragraph (6) varying any of the conditions,

the Commission must have regard to the need to strike a balance between the desirability of preserving service continuity and the exposure of any person to the risk of harm.

### **Transitional provisions relating to refusal of registration**

8.—(1) Where, pursuant to section 12 or 15 of the Act (grant or refusal of registration as a service provider or manager) as modified by article 6, the Commission proposes to refuse a transitional application, and it must therefore give a notice of proposal pursuant to section 26(3) of the Act (notice of proposal relating to refusal of registration), it must use its best endeavours to give such a notice to the applicant or person to be registered as a manager (as the case may be)—

- (a) in the case of such an application made by a CSA registrant on or before the application date, before 1st October 2010; and
- (b) in the case of any other such application, as soon as reasonably practicable after 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 (notice of decisions) must, in addition to the item listed in section 28(4)(a) of the Act, state that the decision takes effect—

- (a) on 1st October 2010 in the case of a decision made before that date or immediately in the case of a decision made on or after that date;
- (b) at the end of the period of 28 days referred to in section 32(2) of the Act (appeals to the Tribunal); or

(c) subject to any decision of the Tribunal, at the end of such further period specified in the notice.

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

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

9.—(1) Paragraph (2) applies where a person who is notified pursuant to article 3(1) makes a transitional application on or before the application date in accordance with article 5, and that application is made in such form, and contains or is accompanied by such information, as the Commission specified pursuant to article 3(3).

(2) Section 10(1) of the Act (offence of carrying on a regulated activity while unregistered) does not apply to a person mentioned in paragraph (1), in respect of a regulated activity for which that person has sought registration in the transitional application, for the period (if any) beginning on 1st October 2010 and ending on the date of service by the Commission under section 28(1) of the Act (notice of decisions) or article 7(3) of a notice of decision in respect of the transitional application.

(3) Paragraph (4) applies where—

- (a) a person, other than a person specified in paragraph (1), has made a transitional application in respect of a regulated activity; and
- (b) the Commission proposes to refuse that application and serves a notice of proposal pursuant to section 26(3) of the Act (notice of proposal relating to refusal of registration).

(4) Section 10(1) of the Act does not apply to the person in respect of the regulated activity for the period beginning on the date of service of the notice of proposal and ending on the date of service by the Commission under section 28 of the Act of a notice of decision in respect of the proposal to refuse registration or, if later, the date that the decision takes effect.

(5) Paragraph (6) applies where—

- (a) a person who is notified pursuant to article 3(1) makes a transitional application on or before the application date in accordance with article 5, and that application is made in such form, and contains or is accompanied by such information, as the Commission specified pursuant to article 3(3);
- (b) the Commission decides to grant registration in respect of the carrying on of a regulated activity;
- (c) that registration is subject to a registered manager condition pursuant to regulation 5 of the Registration Regulations (registered manager condition); and
- (d) the transitional application included an application pursuant to article 5 of this Order, on behalf of a person proposing to manage that regulated activity.

(6) Section 33 of the Act (offence of failure to comply with conditions) does not apply to the person who made the application coming within paragraph (5)(a) in respect of a failure to comply with a registered manager condition in relation to that registration for the period (if any) beginning on 1st October 2010 and ending on the date of service by the Commission under section 28(1) of the Act (notice of decisions) of a notice of decision in respect of that application insofar as made on behalf of a person to be registered as a manager.

**Transitional applications where there is an outstanding matter relating to an application to vary or remove a condition**

**10.**—(1) Where this article applies, notwithstanding the amendment of sections 1 to 5 of the 2000 Act on 1st October 2010, sections 15, 17 to 19 and 21 of that Act continue to apply to an application under section 15(1)(a) of that Act (applications by registered persons) until the date specified in paragraph (7).

(2) This article applies where a condition is in force before 1st October 2010 in relation to a CSA registrant or registered manager, an application has been made under section 15(1)(a) of the 2000 Act in relation to that condition and—

- (a) on a date on which the Commission makes a determination in relation to that registrant or manager, paragraph (3)(a), (b), (c) or (d) applies to that application; or
- (b) at any time after a decision has been made by the Commission to grant a transitional application, a notice referred to in paragraph (5)(a), (b) or (c) is given.

(3) This paragraph applies where—

- (a) no notice of decision has been given under section 15(4) of the 2000 Act nor a notice of proposal given under section 17(5) of that Act (notice of proposals);
- (b) a notice of proposal has been given under section 17(5) of the 2000 Act, the Commission has not withdrawn that notice of proposal and no notice of decision has been given under section 19 of that Act (notice of decisions);
- (c) a notice of decision has been given in respect of the application under section 19 of the 2000 Act, the time for making an appeal under section 21(2) of that Act (appeals to the Tribunal) has not elapsed and no appeal has been made; or
- (d) an appeal has been made under section 21 of the 2000 Act but that appeal has not been determined or abandoned.

(4) Where, at the time a determination falls to be made by the Commission—

- (a) paragraph (3)(a) applies, the Commission must consider the application under section 15(1)(a) of the 2000 Act in making that determination;
- (b) paragraph (3)(b) applies, the Commission must consider the notice of proposal and any representations received within the time period specified in section 18(1) of the 2000 Act in making that determination;
- (c) paragraph (3)(c) applies, the Commission must consider the notice of decision in making that determination; or
- (d) paragraph (3)(d) applies, the Commission must consider the notice of decision and the grounds of appeal in making that determination.

(5) Where, after a decision has been made by the Commission to grant a transitional application, the Commission gives—

- (a) a notice of decision under section 15(4) of the 2000 Act;
- (b) a notice of proposal under section 17(5) of the 2000 Act; or
- (c) a notice of decision under section 19(3) of the 2000 Act,

the Commission must consider whether it should exercise its powers under section 12(5) or 15(5) of the Act (conditions of registration) in relation to the person's registration under the Act.

(6) Where the Tribunal makes, in respect of an application to which this article applies, a decision pursuant to section 21 of the 2000 Act, the Commission must, if notice of that decision is sent to it—

- (a) before it makes a determination to which that decision is relevant, reflect that decision in that determination; or



- (b) after it makes a decision to grant a transitional application, consider whether it needs to exercise its powers under section 12(5) or 15(5) of the Act in order to reflect that decision.
- (7) The date specified for the purposes of paragraph (1) is the date on which—
  - (a) the applicant withdraws the application under section 15(1)(a) of the 2000 Act;
  - (b) the applicant gives notice that there is no intention to appeal under section 19(6) of that Act;
  - (c) the period referred to in section 21(2) of that Act (appeals to the Tribunal) expires, if no appeal is made during that time period; or
  - (d) an appeal made under section 21 of that Act is abandoned or determined.

**Transitional applications where there is an outstanding matter relating to a notice of proposal to vary, remove or impose conditions**

**11.**—(1) Where this article applies, notwithstanding the amendment of sections 1 to 5 of the 2000 Act on 1st October 2010, sections 17 to 19 and 21 of the 2000 Act continue to apply to a notice of proposal under section 17(4)(b) or (c) of that Act (notice of proposals) until the date specified in paragraph (7).

- (2) This article applies where—
  - (a) a notice of proposal has been given under section 17(4)(b) or (c) of the 2000 Act to—
    - (i) vary or remove a condition of registration, or
    - (ii) impose any additional condition in relation to registration; and
  - (b) either—
    - (i) paragraph (3)(a), (b) or (c) applies in respect of that notice of proposal on a date on which the Commission makes a determination to which that notice of proposal is relevant, or
    - (ii) a notice referred to in paragraph (5)(a) or (b) is given at any time after a decision has been made by the Commission to grant a transitional application.
- (3) This paragraph applies where—
  - (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);
  - (b) a notice of decision has been given under section 19 of the 2000 Act, the time for making an appeal under section 21(2) of that Act (appeals to the Tribunal) has not elapsed and no appeal has been made; or
  - (c) an appeal has been made in respect of the notice of decision but that appeal has not been determined or abandoned.
- (4) Where, at the time a determination falls to be made by the Commission—
  - (a) paragraph (3)(a) applies, the Commission must consider the notice of proposal and any representations received within the time period specified in section 18(1) of the 2000 Act (right to make representations) in making that determination;
  - (b) paragraph (3)(b) applies, the Commission must consider the notice of decision in making that determination; or
  - (c) paragraph (3)(c) applies, the Commission must consider the notice of decision and the grounds of appeal in making that determination.
- (5) Where, after a decision has been made by the Commission to grant a person’s transitional application, the Commission gives a notice of decision under section 19 of the 2000 Act to—
  - (a) vary or remove a condition; or

- (b) impose any additional condition,

in relation to that person's registration under the 2000 Act, the Commission must consider whether it should exercise its powers under section 12(5) or 15(5) of the Act (conditions of registration) to vary or remove conditions or impose any additional conditions in relation to the person's registration under the Act.

(6) Where the Tribunal makes a decision pursuant to section 21 of the 2000 Act (appeals to the Tribunal) in respect of a notice of decision under section 19 of the 2000 Act to vary or remove a condition of registration, or impose any additional condition in relation to registration, the Commission must, if notice of that decision is sent to it—

- (a) before it makes a determination to which that decision is relevant, reflect that decision in that determination; or
  - (b) after it has made a decision to grant a transitional application, consider whether it needs to exercise its powers under section 12(5) or 15(5) of the Act in order to reflect that decision.
- (7) The date specified for the purposes of paragraph (1) is the date on which—
- (a) the Commission decides not to adopt the proposal of which notice was given under section 17(4)(b) or (c) of the 2000 Act;
  - (b) the period referred to in section 21(2) of the 2000 Act expires, if the Commission decides to adopt the proposal and no appeal is made during that time period; or
  - (c) an appeal made under section 21 of the 2000 Act is abandoned or determined.

**Transitional applications where there has been an application for the urgent variation, removal or imposition of conditions**

**12.**—(1) Where this article applies, notwithstanding the amendment of sections 1 to 5 of the 2000 Act on 1st October 2010, sections 20 (urgent procedure for cancellation etc) and 21 (appeals to the Tribunal) of the 2000 Act continue to apply until the date specified in paragraph (7).

- (2) This article applies where—
- (a) an order has been made under section 20 of the 2000 Act to—
    - (i) vary or remove a condition, or
    - (ii) impose an additional condition; and
  - (b) either—
    - (i) paragraph (3)(a) or (b) applies in respect of that order on a date on which the Commission makes a determination to which that order is relevant, or
    - (ii) an order referred to in paragraph (5)(a) or (b) is made at any time after a decision has been made by the Commission to grant a transitional application.
- (3) This paragraph applies where—
- (a) the time for making an appeal under section 21 of the 2000 Act has not elapsed and no appeal has been made; or
  - (b) an appeal has been made under section 21 of that Act but that appeal has not been determined or abandoned.
- (4) Where, at the time a determination falls to be made by the Commission—
- (a) paragraph (3)(a) applies, the Commission must consider that order in making that determination; or
  - (b) paragraph (3)(b) applies, the Commission must consider the order and the grounds of appeal in making that determination.

(5) Where, after a decision has been made by the Commission to grant a person's transitional application, an order is made under section 20 of the 2000 Act to—

- (a) vary or remove a condition; or
- (b) impose an additional condition,

in relation to that person's registration under the 2000 Act, the Commission must consider whether it should exercise its powers under section 12(5) or 15(5) of the Act (conditions of registration) to vary or remove conditions or impose any additional conditions in relation to the person's new registration under the Act.

(6) Where the Tribunal makes, in respect of an order to which this article applies, a decision pursuant to section 21 of the 2000 Act (appeals to the Tribunal), the Commission must, if notice of that decision is sent to it—

- (a) before it makes a determination to which that decision is relevant, reflect that decision in that determination; or
  - (b) after it has made a decision to grant a transitional application, consider whether it needs to exercise its powers under section 12(5) or 15(5) of the Act in order to reflect that decision.
- (7) The date specified for the purposes of paragraph (1) is the date on which—
- (a) the period referred to in section 21(2) of the 2000 Act expires, if no appeal is made during that time period;
  - (b) an appeal made under section 21 of the 2000 Act is abandoned; or
  - (c) an appeal made under section 21 of the 2000 Act is determined.

### **Transitory modification of sections 12(5) and 15(5) of the Act**

**13.** Where a decision has been made by the Commission to grant a transitional application—

- (a) the Commission may exercise its powers under section 12(5) or 15(5) of the Act (conditions of registration) in respect of the registration, notwithstanding that the period of that registration has not commenced; and
- (b) when it does so exercise those powers, those sections are modified as if “for the time being in force” is omitted.

### **Effect on transitional application of cancellation proceedings under the 2000 Act before the determination**

**14.—(1)** This article applies to a transitional application made by a person, or on behalf of a registered manager, who, at the time that the transitional application falls to be determined by the Commission, comes within paragraph (2) or (3).

(2) A person comes within this paragraph where a notice of proposal to cancel registration has been served on them under section 17(4)(a) of the 2000 Act (notice of proposals) and—

- (a) the Commission has not withdrawn the proposal and no notice of decision has been given under section 19 of the 2000 Act (notice of decisions) in respect of that 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) A person comes within this paragraph where 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 Commission is not required to determine the transitional application 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 Commission is not required to determine the transitional application, 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) Where a person to whom Part 2 of the 2000 Act continues to apply by virtue of paragraph (4) (b)—

- (a) carries on an activity at a registered establishment or agency before 1st October 2010;
- (b) is not required to be registered under section 11 of the 2000 Act because of the carrying on of that activity at that establishment or agency; and
- (c) that activity is a regulated activity,

section 10(1) of the Act (offence of carrying on a regulated activity while unregistered) does not apply to the carrying on of that activity from 1st October 2010 at the premises of that establishment or agency until the date specified in paragraph (7).

(7) The date specified for the purposes of paragraphs (4) and (5) is—

- (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, the date on which that period expires in relation to that notice or order;
- (b) in cases where such an appeal is made within that period, 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;
- (c) in cases where a new determination of a transitional application is made pursuant to article 16(3) the date on which the Commission makes that determination; or
- (d) in cases where notification of the need to make a transitional application is sent to a person pursuant to article 16(4)—
  - (i) the date specified by the Commission in that notice as the one by which such an application must be made, or
  - (ii) if a transitional application is made by that person on or before that date, the date on which the Commission determines that application.

**Continuation of the 2000 Act where no transitional application is made by persons subject to cancellation proceedings**

15. Where a person comes within article 14(2) or (3) on 6th April 2010 and a transitional application has not been made by or on behalf of that person—
- (a) where the person is, or would be but for the cancellation of registration, entitled to carry on the registered establishment or agency by virtue of registration under Part 2 of the 2000 Act, article 14(4)(b) and (c) apply; and
  - (b) where the person is, or would be but for the cancellation of registration, entitled to manage the registered establishment or agency by virtue of registration under Part 2 of the 2000 Act, article 14(5)(b) and (c) apply.

**Transitional applications following cancellation proceedings under the 2000 Act**

- 16.—(1) This article applies where—
- (a) the Commission is not required to—
    - (i) notify a person of the need to make a transitional application by virtue of article 3(2)(b), or
    - (ii) determine a transitional application pursuant to article 14(4) or (5); or
  - (b) a transitional application did not include an application in respect of a person managing a regulated activity because that person came within article 14(2) or (3) on the date on which that transitional application was sent to the Commission,
- and paragraph (2) applies.
- (2) This paragraph applies where—
- (a) the Commission subsequently decides not to adopt a proposal to cancel the person’s registration under the 2000 Act; or
  - (b) the Tribunal directs that a decision of the Commission or an order made by a justice of the peace to cancel that person’s registration under the 2000 Act shall cease to have effect.
- (3) Where a transitional application has been made by, or on behalf of, a person referred to in paragraph (1), the Commission must, as soon as reasonably practicable after the decision or

direction referred to in paragraph (2) has been made or given, make a determination of the transitional application, insofar as that application has not been determined pursuant to article 14(4) or (5), in accordance with articles 6 to 8.

(4) Where no transitional application has yet been made by, or on behalf of, a person referred to in paragraph (1), the Commission must, as soon as reasonably practicable after the decision or direction referred to in paragraph (2) has been made or given, send notification of the need to make a transitional application to each person who—

- (a) is the subject of the decision referred to in paragraph (2)(a); or
- (b) has been the subject of a direction of the Tribunal referred to in paragraph (2)(b).

(5) Notification sent pursuant to paragraph (4) must specify—

- (a) the form in which the application must be made;
- (b) what information it must contain or be accompanied by; and
- (c) the application date.

(6) The application date specified must be a date that is not less than 28 days after the date on which the notification under paragraph (5) is sent.

(7) In making a determination pursuant to this article, the Commission must—

- (a) take into account the cancellation proceedings under the 2000 Act; and
- (b) in a case where paragraph (2)(b) applies, ensure that the direction of the Tribunal is reflected.

### **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.

### **Applications made to the Commission under section 12 of the 2000 Act before 1st July 2010 or 1st August 2010**

18.—(1) This article applies where—

- (a) an application is made for registration under section 12 of the 2000 Act (applications for registration) before 6th April 2010 and is not finally determined by that date; or
- (b) an application is made to the Commission for registration under section 12 of that Act on or after 6th April 2010 but before—
  - (i) 1st July 2010 in respect of the carrying on of an establishment or agency, or
  - (ii) 1st August 2010 in respect of the management of an establishment or agency.

(2) In this article, “finally determined” in relation to an application means that it has been granted—

- (a) unconditionally by the Commission;
- (b) subject only to conditions agreed between the Commission and the applicant in writing; or
- (c) subject to conditions that have not been agreed between the Commission and the applicant in writing and—
  - (i) the period referred to in section 21(2) of the 2000 Act (appeals to the Tribunal) has expired and no appeal has been made, or
  - (ii) any appeal made under section 21 of that Act has been determined or abandoned.

(3) As soon as reasonably practicable after an application that comes within paragraph (1) is finally determined, the Commission must send notification of the need to make a transitional application to the person who carries on the registered establishment or agency.

(4) Notification sent pursuant to paragraph (3) must specify—

- (a) the form in which the application must be made;
- (b) what information it must contain or be accompanied by;
- (c) the application date; and
- (d) that the transitional application must be made to the Commission on or before the application date, in the specified form and contain or be accompanied by the specified information, in order for paragraph (6) to continue to apply.

(5) The application date must be a date that is not less than 28 days after the date on which the notification under paragraph (3) is sent.

(6) Section 10(1) of the Act (offence of carrying on a regulated activity while unregistered) does not apply to a person notified pursuant to paragraph (3), to the extent specified in paragraph (7), for the period (if any) beginning on 1st October 2010 and—

- (a) where the condition in paragraph (8) is not met, ending on the application date; or
- (b) where the condition in paragraph (8) is met, ending on the date of service by the Commission under section 28(1) of the Act (notice of decisions) or article 7(3) of a notice of decision in respect of the transitional application.

(7) Section 10(1) of the Act does not apply in respect of the regulated activities for which that person—

- (a) is entitled to seek registration in a transitional application during the period specified in paragraph (6); and
- (b) has sought registration in the transitional application during the time period specified in paragraph (6)(b).



(8) The condition referred to in paragraph (6)(b) is that a transitional application has been made to the Commission, in the form specified by the Commission and containing or accompanied by such information as the Commission specified, on or before the application date.

### **Applications made to the Commission under section 12 of the 2000 Act on or after 1st July 2010 or 1st August 2010**

**19.**—(1) This article applies where an application is made to the Commission under section 12 of the 2000 Act (applications for registration) before 1st October 2010 but on or after—

- (a) 1st July 2010 in respect of the carrying on of an establishment or agency; or
- (b) 1st August 2010 in respect of the management of an establishment or agency.

(2) The Commission must as soon as reasonably practicable after receipt of an application to which this article applies notify in writing a person who has made such an application—

- (a) that the application will not be determined under the 2000 Act; and
- (b) of the need to make a new application under section 11 or 14 (applications for registration as a service provider or manager) of the Act (as the case may be).

(3) Where notification is sent under paragraph (2), the Commission must return any fee paid in respect of the application under the 2000 Act.

(4) Notification sent pursuant to paragraph (2) must specify—

- (a) the form in which the application under section 11 or 14 of the Act must be made; and
- (b) what information it must contain or be accompanied by.

(5) The Commission must determine as soon as reasonably practicable an application made under section 11 or 14 of the Act by a person who had made an application to which this article applies.

### **Applications in respect of activities not regulated under the 2000 Act**

**20.**—(1) Subject to paragraph (2), this article applies where—

- (a) a person—
  - (i) carries on an activity before 1st October 2010,
  - (ii) is not required to be registered under section 11 of the 2000 Act (requirement to register) because of the carrying on of that activity, and
  - (iii) intends to carry on that activity on and after 1st October 2010;
- (b) that activity is prescribed as a regulated activity under the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010(6); and
- (c) an application is made in respect of that activity under—
  - (i) section 11 of the Act (applications for registration as a service provider), or
  - (ii) section 14 of the Act (applications for registration as a manager), where that activity will be subject to a registered manager condition pursuant to regulation 5 of the Registration Regulations (registered manager condition).

(2) This article does not apply where the carrying on or management of a regulated activity is the subject of a transitional application in accordance with article 5(2).

(3) Articles 6(1), (2) and (5), 7(1) to (4) and (6) to (11) and 8 apply to an application to which this article applies as if for “a transitional application” there were substituted “an application to which article 20 applies”.

(4) If a person makes an application to the Commission under section 11 of the Act before 1st August 2010, and that application is one to which this article applies, section 10(1) of the Act (offence of carrying on a regulated activity while unregistered) does not apply to the applicant in respect of that activity for the period (if any) beginning on 1st October 2010 and ending on the date of service by the Commission under section 28(1) of the Act (notice of decisions) of a notice of decision in respect of the application.

(5) Where—

- (a) paragraph (4) applies;
- (b) the Commission decides to grant registration;
- (c) that registration is subject to a registered manager condition pursuant to regulation 5 of the Registration Regulations (registered manager condition); and
- (d) an application is made to the Commission under section 14 of the Act (applications for registration as a manager) before 1st August 2010 by a person who is proposing to manage the regulated activity,

section 33 of the Act (offence of failure to comply with conditions) does not apply to the person who made the application coming within paragraph (4) in respect of a failure to comply with a registered manager condition in relation to that registration for the period (if any) beginning on 1st October 2010 and ending on the date of service by the Commission under section 28(1) of the Act (notice of decisions) of a notice of decision in respect of the application under section 14 of the Act.

### **Transitional provision relating to death of a service provider**

**21.**—(1) Paragraph (2) applies where—

- (a) a person registered under Part 2 of the 2000 Act (establishments and agencies) in respect of the carrying on of an establishment or agency (“registered provider”) has died before 1st October 2010 or the determination date (as the case may be);
- (b) the Commission has been notified in writing of that death; and
- (c) immediately before 1st October 2010 or the determination date, a personal representative is carrying on the establishment or agency without being registered in respect of it in accordance with—
  - (i) regulation 32(3) of the Private and Voluntary Health Care (England) Regulations 2001 (death of registered person)(7),
  - (ii) regulation 42(3) of the Care Homes Regulations 2001 (death of registered person) (8),
  - (iii) regulation 25(3) of the Nurses Agencies Regulations 2002 (death of registered person) (9),
  - (iv) regulation 27(3) of the Domiciliary Care Agencies Regulations 2002 (death of registered person)(10), or
  - (v) regulation 37(3) of the Adult Placement Schemes (England) Regulations 2004(11).

(2) Where this paragraph applies—

- (a) the personal representative is entitled to carry on a regulated activity, without being registered in respect of it, insofar as the registered provider, immediately before his death,

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(7) S.I. 2001/3968. There are amending instruments but none are relevant.

(8) S.I. 2001/3965. There are amending instruments but none are relevant.

(9) S.I. 2002/3212. There are amending instruments but none are relevant.

(10) S.I. 2002/3214. There are amending instruments but none are relevant.

(11) S.I. 2004/2071. There are amending instruments but none are relevant.

was entitled to carry on that activity at a registered establishment or agency by virtue of registration under Part 2 of the 2000 Act; and

(b) the personal representative is so entitled for the period specified in paragraph (3).

(3) The period of time referred to in paragraph (2) is—

(a) subject to paragraph (4), where before 1st October 2010, or the determination date, the personal representative has carried on the establishment or agency for less than 28 days and no extension to that period has been granted by the Commission under the regulations specified in paragraph (1)(c), the remainder of the 28 day period starting from the date on which they took over the carrying on of the establishment or agency; or

(b) where, before 1st October 2010 or the determination date, the personal representative has been granted an extension under the regulations specified in paragraph (1)(c) the period ending on the date on which that extension expires.

(4) The Commission may extend the period specified in paragraph (3) by such further period, not exceeding one year, as the Commission determines, and must notify any such determination to the personal representative in writing.

(5) The personal representative of the deceased registered provider must ensure a person is appointed to take full-time day to day charge of the carrying on of the regulated activity during any period in which, in accordance with this article, they are carrying on the regulated activity without being registered in respect of it.

(6) In this article, “determination date” means the date in article 14(7) or 17(7), or the date on which a transitional application is determined pursuant to article 16 (as the case may be).

### **Service of notices**

22. Sections 93 (service of documents) and 94 (electronic communications) of the Act apply to a notice given under this Order as they do to a notice given under Part 1 of the Act.

## **PART 4**

### **Revocations**

#### **Revocations**

23. The instruments listed in Schedule 2 are revoked to the extent there specified.

Signed by authority of the Secretary of State for Health.

15th March 2010

*Mike O'Brien*  
Minister of State,  
Department of Health