

EXPLANATORY MEMORANDUM TO
THE HEALTH AND SOCIAL CARE ACT 2008 (CONSEQUENTIAL
AMENDMENTS No 2) ORDER 2010

2010 No. [DRAFT]

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Health and Social Care Act 2008 (Consequential Amendments No 2) Order 2010 makes amendments to certain primary legislation as a consequence of the replacement, in England, of the registration of health and social care providers under Part 2 of the Care Standards Act 2000 with the new registration system under Part 1 of the Health and Social Care Act 2008.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The Health and Social Care Act 2008 (“the Act”) establishes the Care Quality Commission (“the Commission”). The Commission took over the regulation of health and adult social care in England on 1st April 2009. The Act give the Commission the function of setting up and maintaining a new registration system for providers of health and adult social care who carry out regulated activities. The new registration system will cover private and voluntary health care providers and adult social care providers (who are currently regulated under the Care Standards Act 2000) and also NHS providers.

4.2 Earlier Regulations, which came into force on 1st April 2009, (*the Health and Social Care Act 2008 (Registration of Regulated Activities) Regulations 2009*¹, (S.I. 2009/660)) prescribed certain regulated activities for NHS bodies, requiring them to comply with a single requirement relating to the prevention, detection, control and treatment of health care associated infections.

4.3 Further regulations were laid in draft before Parliament for approval on 29th October 2009 (The Health and Social Care Act 2008 (Regulated Activities) Regulations 2009)², which put in place an expanded registration system to cover a wider range of regulated activities and impose an increased number of registration requirements. These set out the health and social care activities which are to be “regulated activities” for the purposes of the Act, the registration requirements that

¹ http://www.opsi.gov.uk/si/si2009/pdf/ukxi_20090660_en.pdf

² http://www.opsi.gov.uk/si/si2009/draft/ukdsi_9780111487006_en_1

must be met and provisions in relation to fixed penalty notices. Subject to parliamentary approval, it is intended that these will come into force on 1st April 2010.

4.4 The Care Quality Commission (Registration) Regulations 2009 (S.I. 2009/3112), Regulations made under the negative procedure, set out further requirements in relation to the new regulations system and will also come into force on 1st April 2010.

4.5 The Health and Social Care Act 2008 (Commencement no.13, Transitory and Transitional Provisions and Electronic Communications) Order 2009 (S.I. 2009/3023)³ puts in place transitional provisions in order to move NHS providers of regulated activities to the full registration system under the Act on 1st April 2010.

4.6 It is intended that a further statutory instrument will be made which will make transitional provisions to bring private and voluntary health care providers and adult social care providers of regulated activities into the new registration system on 1st October 2010. Currently, these providers are regulated under the Care Standards Act 2000.

4.7 With effect from 1st October 2010, therefore, the existing registration system for health and adult social care providers under the Care Standards Act 2000 will be repealed in relation to England and registration under Part 2 of the Care Standards Act will cease to have effect in relation to England for providers of health and adult social care. The registration system under Part 2 of the Care Standards Act 2000 will continue to operate for providers of children's services registered with Ofsted and in relation to Wales.

4.8 This order makes the consequential amendments to primary legislation that are needed to replace references to provisions in the Care Standards Act 2000 that will be repealed or amended.

5. Territorial Extent and Application

5.1 This instrument amends a number of Acts, all of which extend to England and, in most cases, to Wales. Some of the Acts being amended also extend, in some respects, to Scotland and Northern Ireland. The amendment of any provisions by this Order has the same extent as the provision being amended.

6. European Convention on Human Rights

The Minister of State for Health, Mike O'Brien has made the following statement regarding Human Rights:

In my view, the provisions of the Health and Social Care Act 2008 (Consequential Amendments No 2) Order 2010 are compatible with the Convention rights.

³ http://www.opsi.gov.uk./si/si2009/ukSI_20093023_en_1

7. Policy background

7.1 The Act creates a new system of registration for providers of health and adult social care and establishes the Commission as the new single regulator responsible for regulating health care and adult social care and for monitoring the operation of the Mental Health Act 1983. On 1st April 2009, the new Commission began to carry out its functions and replaced the existing regulatory bodies: the Commission for Healthcare Audit and Inspection (known as the Healthcare Commission), the Commission for Social Care Inspection and the Mental Health Act Commission.

7.2 The policy objective behind the reorganisation was to achieve the integration and alignment of health and adult social care regulation across all types of providers, whether public, private or third sector. This will ensure, for example, that the NHS and private and voluntary healthcare are subject to common regulatory procedures and standards. In addition, for many individuals, care outcomes depend on health and social care services working well together. Having a unified regulatory framework and approach across these sectors is intended to help achieve this.

7.3 On 1st April 2009, the registration system established under the Health and Social Care Act 2008 was introduced for NHS providers of health care. This requires all NHS providers of health care to be registered with the Commission and to comply with requirements relating to health care associated infections.

7.4 The registration system is being extended. From 1st April 2010, NHS providers of regulated activities will need to register and comply with a broader set of registration requirements. Then on 1st October 2010, the registration system will be extended further and private and voluntary health care and adult social care providers of regulated activities will also be required to register under the new registration system. At this point, the registration system that was established under Part 2 of the Care Standards Act 2000 will be repealed in relation to England.

7.5 This instrument makes a number of consequential amendments to primary legislation to replace references to provisions in the Care Standards Act 2000 that are being repealed.

8. Consultation outcome

8.1 Not applicable

9. Guidance

9.1 Not applicable

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector from this Order.

10.3 An impact assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring and review

12.1 The Department of Health will liaise with Departments responsible for the amended legislation to ensure the amendments have no unintended consequences.

13. Contact

Lisa Smedley at the Department of Health Tel: 0113 2545464 or email:
Lisa.Smedley@dh.gsi.gov.uk can answer any queries regarding the instrument.