

**EXPLANATORY MEMORANDUM TO**  
**THE HEALTH AND SOCIAL CARE ACT 2008 (COMMENCEMENT NO.6,**  
**TRANSITORY AND TRANSITIONAL PROVISIONS) ORDER 2008**

**2008 No. 3168 (C. 143)**

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 (Commencement No.6, Transitory and Transitional Provisions) Order 2008 commences a number of provisions in the Health and Social Care Act 2008 to enable the process of registration of NHS providers with the Care Quality Commission (“the Commission”) to start to be undertaken from January 2009. It also puts transitional provisions in place to modify the procedures for grant and refusal of registration for the first stage of operation of the system, which is intended, subject to parliamentary approval, to be limited to NHS bodies providing health care.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None.
4. **Legislative Context**
  - 4.1 The Commission was established on 1<sup>st</sup> October 2008, under the Health and Social Care Act 2008. The Commission will take over the regulation of health and adult social care in England from 1<sup>st</sup> April 2009.
  - 4.2 This Order allows the application process for those expected to be required to register from 1st April 2009 to take place between 12th January and 1st April 2009. Consultation on Draft Regulations, setting out who should be required to register from 1st April 2009 and the content of the registration requirements, closed on 20th October. The Draft Regulations are expected to be laid before Parliament for approval early in the New Year.
  - 4.3 The early part of the application process will be undertaken on the basis of the Draft Regulations as laid before Parliament. No decision as to grant or refusal of registration will be taken by the Commission until those Regulations have been approved and made.
5. **Territorial Extent and Application**
  - 5.1 This instrument extends to England and Wales but has effect only in relation to England, as the Commission is an England only body.

## **6. European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

- 7.1 The Commission was established on 1<sup>st</sup> October 2008, under the Health and Social Care Act 2008. From 1st April 2009, the Commission will replace the Commission for Healthcare Audit and Inspection (known as the Healthcare Commission), the Commission for Social Care Inspection and the Mental Health Act Commission. It will be responsible for the registration, review and inspection of certain health and adult social care services in England. In addition, the functions currently performed by the Mental Health Act Commission will transfer to the Commission.
- 7.2 Subject to parliamentary approval of the necessary legislation, the intention is that for 2009/10, the registration system in the Health and Social Care Act 2008 will be introduced for NHS providers of health care, including NHS ambulance services, and will focus on Health Care Associated Infections (“HCAI”). At present, the “Health Act 2006: Code of Practice for the Prevention and Control of Health Care Associated Infections” (“the Hygiene Code”) sets out how healthcare providers should protect patients, staff and visitors from HCAI. The Hygiene Code applies to NHS Trusts, NHS Foundation Trusts, Primary Care Trusts, Ambulance Trusts, Mental Health Trusts and NHS Blood and Transplant.
- 7.3 The Department of Health launched a consultation on 11<sup>th</sup> August 2008, entitled “Changes to arrangements for regulating NHS bodies in relation to healthcare associated infections for 2009/10: a consultation for the NHS”, which consulted on the Draft Regulations to be laid in the New Year. The consultation closed on 20<sup>th</sup> October 2008 and the response will be published alongside the Regulations next year.
- 7.4 From 1<sup>st</sup> April 2009, the intention, subject to parliamentary approval of the necessary legislation, is that those NHS bodies currently subject to the Hygiene Code will be required to register with the Commission and to meet requirements set out in Regulations in relation to HCAI. The Regulations will be underpinned by a revised HCAI Code of Practice about compliance with the Regulations to be published by the Secretary of State. Through the registration system, the Commission will continue the Healthcare Commission’s current role of monitoring compliance on HCAI by the NHS. The Commission will be able to use additional enforcement powers set out in the Health and Social Care Act 2008, so that it can take prompt action where patients are at risk.
- 7.5 This instrument commences a number of provisions in the Health and Social Care Act 2008 to enable the process of registration of NHS providers to be started on 12th January on the basis of the Draft Regulations laid before

Parliament. This is necessary to enable decisions on registration to be taken before 1st April 2009. It also puts transitional provisions in place to modify the procedures for grant and refusal of registration for the first stage of operation of the system.

**8. Consultation outcome**

8.1 Not applicable.

**9. Guidance**

9.1 The Commission published “Guidance for Trusts 2009/10: Registering with the Care Quality Commission in relation to healthcare associated infection” in October 2008. A copy of this Guidance is attached to this memorandum and can be found at:

[http://www.carequalitycommission.org.uk/policies\\_reports/hcai\\_registration\\_system.aspx](http://www.carequalitycommission.org.uk/policies_reports/hcai_registration_system.aspx)

9.2 The Secretary of State will publish a Code of Practice on HCAI prior to April 2009. This will set out the criteria for compliance with HCAI Regulations.

**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. The requirement to register will be set out in Regulations and an Impact Assessment will accompany them.

10.3 An Impact Assessment has not been prepared for this instrument.

**11. Regulating small businesses**

11.1 The legislation does not apply to small businesses.

**12. Monitoring and review**

12.1 The provisions of this instrument aim to achieve a smooth and effective transition of NHS bodies into the registration system.

12.2 The outcome will be subject to internal review after April 2009 and lessons learned will be carried forward into the full registration system in 2010.

**13. Contact**

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