

**EXPLANATORY MEMORANDUM TO
THE HEALTH AND SOCIAL CARE ACT 2008 (COMMENCEMENT No. 13,
TRANSITORY AND TRANSITIONAL PROVISIONS AND ELECTRONIC
COMMUNICATIONS) ORDER 2009**

2009 No. 3023 C.130

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 The Health and Social Care Act 2008 (Commencement No.13, Transitory and Transitional Provisions) Order 2009 commences a number of provisions in the Health and Social Care Act 2008.

- 2.2 The Order also makes transitional provision. NHS providers, who are currently already required to be registered with the Care Quality Commission (“the Commission”), will be subject to a wider system of regulation and the Order makes provision for the process of transition to this new system. For most NHS providers, the Order puts in place transitional provisions to enable registration on 1st April 2010: for NHS Blood and Transplant, a Special Health Authority, the Order makes transitional provisions to enable registration under the new system on 1st October 2010.

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

- 3.1 None

4. **Legislative Context**

- 4.1 The Commission took over the regulation of health and adult social care in England on 1st April 2009. Under the Health and Social Care Act 2008 (“the Act”) providers of health care are required to register with the Care Quality Commission and comply with regulations in relation to health care associated infections.

- 4.2 From 1st April 2010, NHS providers of “regulated activities” will be required to be registered with the Commission and to comply with the requirements set in regulations.

- 4.3 This Order allows the application process for those NHS providers expected to be required to register in respect of a regulated activity from 1st April 2010 to take place from 11th December 2009. The Department of Health consulted on draft Regulations setting out the activities that will be “regulated activities” and therefore must be registered with the Commission and the content of the registration

requirements that providers must meet earlier this year¹. The draft Health and Social Care Act 2008 (Regulated Activities) Regulations 2009 (“the Regulations”) were laid before Parliament for approval on 29th October 2009 and the Department published its response to the consultation at the same time².

5. Territorial Extent and Application

5.1 This instrument applies to England as the Commission is an England only body.

6. European Convention on Human Rights

The Minister of State for Health Services has made the following statement regarding Human Rights:

In my view, the provisions of the Health and Social Care Act 2008 (Commencement No. 13, Transitory and Transitional Provisions) Order 2009 are compatible with the Convention rights.

7. Policy background

7.1 The Commission took over the regulation of health and adult social care in England on 1st April 2009. It is responsible for the registration, review and inspection of certain health and adult social care services in England. In addition, it has a number of functions under the Mental Health Act 1983.

7.2 On 1st April 2009, the registration system established under the Act 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. The Commission has a range of enforcement powers that it can use to take prompt action if providers are failing to meet the requirements in regulations.

7.3 Subject to parliamentary approval of the necessary legislation, the intention is to extend the registration system that was introduced for NHS providers of health care. The Regulations (laid before Parliament for approval on 29th October 2009) set out the activities, known as “regulated activities” that require registration and the registration requirements that providers must meet. The requirements cover a range of essential safety and quality requirements such as the care and welfare of service users and meeting nutritional needs.

7.4 The Department of Health carried out a consultation on the framework for the registration of health and adult social care providers between March and June 2008. The response to this consultation was published in March 2009 and at the same time launched a consultation on the draft Regulations. These consultations have informed the policy and drafting of the Regulations, which set out the activities that must be registered, the requirements that must be met and provisions in relation to the issuing of penalty notices. On 29th October 2009 the Department of Health laid the Draft

¹ http://www.dh.gov.uk/en/Consultations/Closedconsultations/DH_096991

² http://www.dh.gov.uk/en/Consultations/Responsestoconsultations/DH_107628

Regulations before Parliament for approval and published a response to the consultation on the Regulations³

7.5 This Order requires the Commission to notify existing NHS registrants of the need to make a transitional application. It puts transitional provisions in place to modify the procedures for grant or refusal of registration. It sets out how the Commission will consider the ongoing registration status of a NHS registrant in reaching a decision on registration from 1st April 2010, and it puts in place arrangements that will suspend the offence of carrying out a regulated activity without being registered in certain circumstances. The instrument also puts in place provisions where there are outstanding matters such as cancellation proceedings in relation to the existing registration of an NHS provider.

7.6 The Order also puts in place transitional provisions in relation to NHS Blood and Transplant so that it will continue to be regulated in respect of healthcare associated infections under SI 2009/660 until 30th September 2010: from 1st October 2010, it will be brought into the full registration system.

8. Consultation outcome

8.1 Not applicable

9. Guidance

9.1 The Care Quality Commission has consulted on the guidance it will use to assess compliance with the new registration requirements, which it will publish shortly.

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 is set out in the Regulations and an impact assessment accompanied these Regulations⁴.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

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

³ http://www.dh.gov.uk/en/Consultations/Responsestoconsultations/DH_107628

⁴ <http://www.opsi.gov.uk/si/dsis2009>

12.2 The outcome will be subject to internal review after April 2010.

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.