

EXPLANATORY MEMORANDUM TO
THE HEALTH AND SOCIAL CARE ACT 2008 (COMMENCEMENT NO. 13,
TRANSITORY AND TRANSITIONAL PROVISIONS AND ELECTRONIC
COMMUNICATIONS) (AMENDMENT) ORDER 2010

2010 No. 47

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 and Electronic Communications) (Amendment) Order 2010 amends the Health and Social Care Act 2008 (Commencement No.13, Transitory and Transitional Provisions and Electronic Communications) Order 2009 (S.I. 2009/3023 (C.130)) (“the Original Order”) to correct an error in article 1(2) of that Order in the definition of “determination”. The amendment provides for the definition of “determination” to include a notice of decision given under article 7 of the Order.

2.2 The amendment will come into force before any applications are determined under the Original Order.

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

3.1 The instrument will be issued free of charge to all known recipients as it corrects a defect in S.I. 2009/3023 (C.130). The instrument contains the appropriate heading to this effect.

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”) NHS 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 further requirements set out in regulations.

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

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 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.

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.

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 Health and Social Care Act 2008 (Regulated Activities) Regulations 2009 (“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 Original Order made transitional provision for applications from NHS providers to move to the extended registration system. It was the policy intention that the definition of “determination” in relation to such applications should include not only notices given under the Act itself but also those given under article 7 of the Original Order: article 7 makes transitional provision in relation to applications granted subject to conditions. Without the amendment to the definition of “determination” so that it includes a notice of decision made under article 7, that definition is defective as it would mean that key provisions of the Order do not apply to a notice of decision given under article 7.

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. The requirement to register is set out in the Regulations and an impact assessment accompanied these Regulations¹.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The provisions of the Original Order, with this additional amendment, aim to achieve a smooth and effective transition into the full registration system.

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.

¹ <http://www.opsi.gov.uk/si/dsis2009>