

EXPLANATORY MEMORANDUM TO

THE HEALTH AND SOCIAL CARE ACT 2008 (COMMENCEMENT NO. 16, TRANSITORY AND TRANSITIONAL PROVISIONS) ORDER 2010

2010 No. 807 (C.53)

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.16, Transitory and Transitional Provisions) Order 2010 commences a number of provisions in the Health and Social Care Act 2008.

2.2 The Order also makes transitional provisions. Independent and voluntary providers of health care and providers of adult social care that are currently already required to be registered with the Care Quality Commission (“the Commission”) under the Care Standards Act 2000, will be required to register under the Health and Social Care Act 2008 from 1st October 2010. This order makes provision for the process of transition to this new system.

2.3 The Order requires the Commission to notify providers that are currently registered under the Care Standards Act 2000 (“CSA Registrant”) of the need to make a transitional application, and provides that the Commission can specify a date by which transitional applications must be received to protect a provider from prosecution for providing regulated activities whilst not registered if the application is not determined by 1st October 2010. It puts transitional provisions in place to modify the procedures for grant or refusal of registration. It puts in place arrangements that will suspend the offence of carrying out a regulated activity without being registered in certain circumstances and it sets out how the Commission will consider the ongoing registration status of a CSA registrant under the Care Standards Act 2000 in reaching a decision on registration from 1st October 2010 under the Act: in particular, the instrument puts in place provisions where there are outstanding matters such as cancellation proceedings in relation to the existing registration of a CSA registrant under the Care Standards Act 2000.

2.4 The Order sets a date of 1st July 2010 and 1st August 2010 beyond which the Commission will no longer accept applications for registration as a service provider and manager respectively under the Care Standards Act 2000. It puts in place transitional arrangements for the registration of providers of activities that are required to register for the first time from 1st October 2010.

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

3.1 It was not possible to make and lay this Order until the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010, “the Regulations” (S.I. 2010/781) had been approved and made because the Order cross-refers to the Regulations. Following a critical report from the Joint Committee on Statutory Instruments, these Regulations were withdrawn and an amended set laid, delaying the Parliamentary process for the Regulations significantly. As the Care Quality Commission will need

to process around 22,000 applications for registration under the new registration system it is important that it is given sufficient time to undertake the task. The Commission has planned to start the transitional application process on 6th April 2010 to ensure a smooth, managed transition from one system to the other: it is the case that every day during the transition period of 6th April to 30th September 2010 is needed to enable the Commission to administer the process and any further delay in putting in place the provisions to enable them to undertake this process will have a significant impact on the Commission, and also on those service providers who have to make transitional applications. This Order therefore needs to come into force on 6th April 2010 in order to allow that process to commence on time. As the Regulations were only approved and made on 15th March, we have therefore had to breach the 21-day rule.

4. Legislative Context

4.1 The Commission took over the regulation of health and adult social care in England on 1st April 2009. NHS providers have been registered by the Commission under the Health and Social Care Act 2008 (“the Act”) since 1st April 2009. Private and voluntary health care and adult social care providers are currently registered with the Care Quality Commission under the Care Standards Act 2000 and are required to comply with Regulations made under that Act.

4.2 From 1st October 2010, provisions in the Act that repeal the relevant aspects of the Care Standards Act 2000 will be commenced. Independent and voluntary providers of health care and providers of adult social care that provide “regulated activities” will instead be required to be registered with the Commission under the Act and to comply with the requirements set out in regulations made under the Act.

4.3 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 last year¹: the Department published its response to this consultation on 29th October 2009.² The Regulations were approved by both Houses of Parliament in March 2010.

5. Territorial Extent and Application

5.1 This instrument mainly applies to England as the Commission is an England only body. However, some of the provisions commenced in the Health and Social Care Act 2008 by article 2 amend provisions in the Care Standards Act 2000 that apply in Wales and so limited parts of the instrument apply to England and Wales.

6. European Convention on Human Rights

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

7. Policy background

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

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

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 The Regulations set out the activities, known as “regulated activities” that require registration, together with 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 the Department launched a consultation on the 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 2010 the Department of Health published a response to the consultation on the Regulations.³

8. Consultation outcome

8.1 Not applicable

9. Guidance

9.1 The Care Quality Commission has published the guidance it will use to assess compliance with the new registration requirements.⁴

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 The requirement to register is set out in the Regulations and an impact assessment accompanied these Regulations⁵.

11. Regulating small business

11.1 There is no impact on small business.

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

⁴ http://www.cqc.org.uk/publications.cfm?fde_id=13512

⁵ <http://www.opsi.gov.uk./si/dsis2009>

12. Monitoring & review

12.1 The provisions of this instrument 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.