

**EXPLANATORY MEMORANDUM TO**  
**THE CARE QUALITY COMMISSION (REGISTRATION AND MEMBERSHIP)**  
**(AMENDMENT) REGULATIONS 2012**

**2012 No. 1186**

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 instrument makes two amendments to the Care Quality Commission (Registration) Regulations 2009 (S.I. 2009/3112) (“the Registration Regulations”), and two amendments to the Care Quality Commission (Membership) Regulations 2008 (S.I. 2008/2252) (“the Membership Regulations”).
  - 2.2 The amendments to the Registration Regulations replace references to the National Patient Safety Agency (“the NPSA”) in the Registration Regulations with references to the NHS Commissioning Board Authority (“the Board Authority”), to reflect that from 1<sup>st</sup> June 2012 the Board Authority is to be responsible for functions currently carried out by the NPSA in relation to the National Reporting and Learning System, pursuant to which deaths or serious incidents may be reported by a health service body to the NPSA in lieu of reporting these to the Care Quality Commission (“the Commission”).
  - 2.3 The amendments to the Membership Regulations are to make provision for the Commission to be able to have a unitary board.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None.
4. **Legislative Context**
  - 4.1 The amendments to the Registration Regulations are needed consequently in connection with the transfer of the NPSA’s functions in relation to reporting and learning from patient safety incidents, including responsibility for the National Reporting and Learning System, to the Board Authority, from 1<sup>st</sup> June 2012. The Board Authority, a Special Health Authority, is to be directed by the Secretary of State under sections 7 and 8 of the National Health Service Act 2006 (c. 41) to take on the functions. Relevant provisions of directions to the NPSA, also a Special Health Authority, are to be varied for this purpose. This transfer of functions is in preparation for the abolition of the NPSA provided for in section 281 of the Health and Social Care Act 2012 (c. 7).

- 4.2 The Department was not able to make provision for these changes in the Care Quality Commission (Registration) and (Additional Functions) and Health and Social Care Act 2008 (Regulated Activities) (Amendment) Regulations 2012 (S.I. 2012/921) that were laid before Parliament on 27th March 2012, as consideration was still ongoing in relation to the detailed timings and arrangements for NPSA function transitions.
- 4.3 Following the Department of Health's Performance and Capability Review into the Commission, the Department of Health has decided that the Commission should be given a unitary board (comprised of both executive and non-executive members). The Regulations also therefore omit a disqualification criterion that prevents the appointment of employees to the Board, and raise the maximum number of members who sit on the Board to provide for the appointment of additional members so that the Commission may have access to expertise to enable it better to fulfil its functions.

## **5. Territorial Extent and Application**

- 5.1 This instrument applies to England.

## **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**

- **What is being done and why**

- 7.1 All providers of regulated activities are required to register with the Commission. Registration requirements which establish essential levels of safety and quality in the provision of health and adult social care in England are set out in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010, (S.I. 2010/781), while further registration requirements are set out in the Registration Regulations. Providers of regulated activities are required to meet these registration requirements in order to become and remain registered with the Commission. Where a provider does not meet the registration requirements the Commission has a range of enforcement powers that it can use in order to protect patients and service users from the risk of harm.
- 7.2 Under regulations 16 and 18 of the Registration Regulations, a registered health service provider of regulated activities is required to notify deaths of service users or serious incidents to the Commission, except where such a provider has reported the death or incident to the NPSA. Notifications to the NPSA are processed through the National Reporting and Learning System and notifications made in the circumstances described in regulations 16 or 18 of the Registration Regulations

are passed on to the Commission by the NPSA. The responsibility for the National Reporting and Learning System will transfer from the NPSA to the Board Authority from 1<sup>st</sup> June 2012.

- 7.3 The amendments made by the Regulations to the Registration Regulations reflect the changing ownership and responsibility for the National Reporting and Learning System, updating the exemption and allowing it to continue. Notifications to the National Reporting and Learning System where relevant will continue to be passed to the Commission once ownership of the National Reporting and Learning System transfers to the Board Authority.
- 7.4 The Department of Health's Performance and Capability Review recommended that the Department should create a unitary board for the Commission. The review concluded that having senior executives sitting on the board would enable a tighter accountability relationship between non-executives and senior executives.
- 7.5 To implement this recommendation, the alteration to the Membership Regulations is therefore being made to provide for the Secretary of State to be able to appoint executive members to the Commission's Board. In addition, the upper limit on the number of members of the Commission's Board is being extended from ten to twelve to accommodate the recruitment of executives to the Board and allow the Secretary of State flexibility in recruiting members to the Board.

- **Consolidation**

- 7.6 The Department has no current intention to consolidate the legislation that amends the Registration Regulations or the legislation that amends the Membership Regulations.

## **8. Consultation outcome**

- 8.1 The requirement to consult in section 20(8) of the Health and Social Care Act 2008 does not apply as the Regulations do not effect any substantial change in the provision made by the Registration Regulations. The transfer of responsibility for the National Reporting and Learning System from the NPSA to the Board Authority will not directly affect the reporting system used by health service providers of regulated activities.
- 8.2 There is no requirement to consult on the amendments to the Membership Regulations. The changes to the Commission's Board are minor and technical and do not have a wider impact on the public, patients, services users or businesses. The Department has undertaken close engagement with the Commission in making these changes.

## **9. Guidance**

9.1 The Commission has issued guidance for providers of health and adult social care on how they may comply with the Registration Regulations<sup>1</sup>.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is minimal.

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 & review**

12.1 The Department intends to keep the registration system under review with a view to keeping it up to date and effective. By virtue of the Care Quality Commission (Registration) and (Additional Functions) and Health and Social Care Act 2008 (Regulated Activities) (Amendment) Regulations 2012 (S.I. 2012/921), the Registration Regulations place a duty on the Department to carry out a review of the registration system and the Registration Regulations before 1<sup>st</sup> October 2017.

## **13. Contact**

Vicky Spellacy at the Department of Health (Tel: 0113 254 5288 or email: [Vicky.spellacy@dh.gsi.gov.uk](mailto:Vicky.spellacy@dh.gsi.gov.uk)) can answer any queries regarding the instrument.

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<sup>1</sup><http://www.cqc.org.uk/guidanceforprofessionals/introductiontoregistration/howthenewregistrationsystemworks/complyingwithnewregulations.cfm>