

**EXPLANATORY MEMORANDUM TO**  
**THE HEALTH AND SOCIAL CARE ACT 2008 (MISCELLANEOUS**  
**CONSEQUENTIAL AMENDMENTS) ORDER 2010**

**2010 No. 1881**

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 (Miscellaneous Consequential Amendments ) Order 2010 makes amendments to certain secondary legislation as a consequence of the replacement, in England, of the registration of health and social care providers under Part 2 of the Care Standards Act 2000 with the registration system under Part 1 of the Health and Social Care Act 2008.

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

3.1 None

**4. Legislative Context**

4.1 The Health and Social Care Act 2008 (“the Act”) establishes the Care Quality Commission (“the Commission”). The Commission took over the regulation of health and adult social care in England on 1<sup>st</sup> April 2009. The Act give the Commission the function of setting up and maintaining a new registration system for providers of health and adult social care who carry out regulated activities. The registration system will cover private and voluntary health care providers and adult social care providers (who are currently regulated under the Care Standards Act 2000) and also NHS providers.

4.2 The Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 (S.I. 2010/781) came into force on 1st April 2010. These Regulations set out the health and social care activities that are “regulated activities” for the purposes of the Act, the registration requirements that must be met and provisions in relation to fixed penalty notices.

4.3 The Care Quality Commission (Registration) Regulations 2009 (S.I. 2009/3112), Regulations made under the negative procedure, set out further requirements in relation to the registration system and these also came into force on 1<sup>st</sup> April 2010.

4.4 Providers of regulated activities are being brought into the registration system in a phased manner and the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 (S.I. 2010/781) set out the dates upon which different activities become “regulated activities” for the purpose of the Act thus, in effect, setting out the

dates of entry into the registration system for different providers. NHS providers of healthcare regulated activities were brought into the registration system under the Health and Social Care Act 2008 on 1<sup>st</sup> April 2010. Private and voluntary health care providers and adult social care providers of regulated activities are to be brought into the new registration system on 1<sup>st</sup> October 2010. Currently, these providers are regulated under the Care Standards Act 2000.

4.5 The Health and Social Care Act 2008 (Commencement No 16, Transitory and Transitional Provisions) Order 2010 [SI 2010/ 807] brings into force, with effect from 1 October 2010, various provisions of the Health and Social Care Act 2008 relating to the new regulatory system, including the revocation, in respect of England, of certain provisions of the Care Standards Act 2000, and of the Health and Social Care (Community Health and Standards) Act 2003, that related to the previous regulatory system.

4.6 With effect from 1<sup>st</sup> October 2010, therefore, the existing registration system for health and adult social care providers under the Care Standards Act 2000 will be repealed in relation to England and registration under Part 2 of the Care Standards Act will cease to have effect in relation to England for providers of health and adult social care. The registration system under Part 2 of the Care Standards Act 2000 will continue to operate for providers of children's services registered with Ofsted and in relation to Wales.

4.7 This order makes the consequential amendments to secondary legislation that are needed to replace references to provisions in the Care Standards Act 2000 and the Health and Social Care (Community Health and Standards) Act 2003 that will be repealed in relation to England.

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

5.1 This instrument amends a number of statutory instruments, all of which extend to England. Some of the statutory instruments being amended also extend, in some respects, to Scotland, Wales and Northern Ireland. The amendments being made relate only to the provisions in respect of England. Existing provisions in respect of Scotland, Wales and Northern Ireland in the instruments being amended remain as they are currently.

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

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

## **7. Policy background**

- *What is being done and why*

7.1 The Act creates a new system of registration for providers of health and adult social care in England and establishes the Commission as the single regulator responsible for regulating health care and adult social care and for monitoring the

operation of the Mental Health Act 1983. On 1<sup>st</sup> April 2009, the Commission began to carry out its functions and replaced the existing regulatory bodies: the Commission for Healthcare Audit and Inspection (known as the Healthcare Commission), the Commission for Social Care Inspection and the Mental Health Act Commission.

- ***Consolidation***

7.2 The policy objective behind the reorganisation was to achieve the integration and alignment of health and adult social care regulation across all types of providers, whether public, private or third sector. This will ensure, for example, that the NHS and private and voluntary healthcare are subject to common regulatory procedures and standards. In addition, for many individuals, care outcomes depend on health and social care services working well together. Having a unified regulatory framework and approach across these sectors is intended to help achieve this.

7.3 On 1<sup>st</sup> April 2009, the registration system established under the Health and Social Care Act 2008 was introduced for NHS providers of health care. This required all NHS providers of health care to be registered with the Commission and to comply with requirements relating to health care associated infections.

7.4 The registration system was extended from 1<sup>st</sup> April 2010 and NHS providers of regulated activities in England must now register and comply with a broader set of registration requirements. Then on 1<sup>st</sup> October 2010, the registration system will be extended further and private and voluntary health care and adult social care providers of regulated activities in England will also be required to register under the Health and Social Care Act 2008 registration system. At this point, the registration system that was established under Part 2 of the Care Standards Act 2000 will be repealed in relation to England.

7.5 This instrument makes consequential amendments to secondary legislation to replace references to provisions in the Care Standards Act 2000 and the Health and Social Care (Community Health and Standards) Act 2003 that are being repealed. It substitutes references that are compatible with the new regulatory regime but which retain as far as possible the status quo.

## **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.

10.3 An impact assessment has not been prepared for this instrument.

**11. Regulating small business**

11.1 The legislation applies to small business.

11.2 The legislation makes amendments to existing secondary legislation on repeal of certain provisions in the Care Standards Act 2000 and the Health and Social Care (Community Health and Standards) Act 2003. The consequential amendments are intended to retain the status quo in relation to secondary legislation that is already in force.

**12. Monitoring and review**

12.1 The Department of Health will liaise with Departments responsible for the amended legislation to ensure the amendment has no unintended consequences.

**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.