

**EXPLANATORY MEMORANDUM TO
THE CARE QUALITY COMMISSION (REGISTRATION) AMENDMENT
REGULATIONS 2010**

2010 No. 49

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 Care Quality Commission (Registration) Amendment Regulations 2010 correct an omission in the Care Quality Commission (Registration) Regulations 2009 (which have been signed and laid and which will come into force on 1st April 2010). They provide that the offence created by regulation 25 of those Regulations is a fixed penalty offence and set the monetary amount of the penalty that applies when the offence is committed by a person registered as a service provider and the penalty that applies when the offence is committed by a person registered as a manager.

2.2 Part 6 of the draft Health and Social Care Act 2008 (Regulated Activities) Regulations 2009 contains a number of provisions in connection with the issuing of fixed penalty notices by the Care Quality Commission (“the Commission”) in lieu of prosecution for an offence. These provisions include the time by which a penalty notice is to be paid, the methods by which a notice may be paid and the elements that such a notice must include. These provisions will also apply to penalty notices issued under these Regulations.

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. 2009/3112.

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 Commission and comply with requirements set out in regulations in relation to health care associated infections.

4.2 From 1st April 2010, NHS providers of regulated activities (as defined in the Regulations referred to in paragraph 2.2) will be required to be registered with the Commission and to comply with the requirements set out in regulations, and thereafter (from 1st October 2010) all providers of health and social care (where they carry on a prescribed regulated activity) will be required to comply with those requirements.

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. In addition, it has a number of functions under the Mental Health Act 1983.

7.2 The Care Quality Commission (Registration) Regulations 2009 (S.I. 2009/3112) which come into force on 1st April 2010 set a number of registration requirements that registered providers must comply with. Failing to comply with these requirements will be a criminal offence. It had always been our policy intention that the Commission would have the power to issue a penalty notice in lieu of prosecution for these offences. These regulations correct the omission of this provision. They also set the amount of any such penalty notice.

8. Consultation outcome

8.1 The Department consulted on the offences and proposed penalty notice values in its consultation on the draft Regulations¹. Respondents generally thought that the overall proposals in the consultation created a practical framework for the registration of health and social care providers of regulated activities.

9. Guidance

9.1 The Care Quality Commission has published its final draft guidance about compliance with the Regulations in accordance with section 23 of the Act².

10. Impact

10.1 The impact on business, charities or voluntary bodies is detailed in the Impact Assessment that accompanied the draft Health and Social Care Act 2008 (Regulated Activities) Regulations 2009³.

10.2 The impact on the public sector is detailed in the Impact Assessment that accompanied the draft Health and Social Care Act 2008 (Regulated Activities) Regulations 2009.

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

² http://www.cqc.org.uk/publications.cfm?fde_id=13512

³ <http://www.opsi.gov.uk./si/dsis2009>

10.3 The impact assessment can be found at
<http://www.dh.gov.uk/en/Consultations/Responsestoconsultations/DH107628>

11. Regulating small business

11.1 The legislation applies to small business.

12. Monitoring & review

12.1 The Department will keep the registration system and Regulations associated with it under review with a view to keeping it up-to-date and relevant.

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.