

2010 No. 496

NATIONAL HEALTH SERVICE, ENGLAND

SOCIAL CARE, ENGLAND

**The Care Quality Commission (Specified Organisations etc)
Order 2010**

<i>Made</i>	- - - -	<i>25th February 2010</i>
<i>Laid before Parliament</i>		<i>4th March 2010</i>
<i>Coming into force</i>	- -	<i>9th April 2010</i>

The Secretary of State makes the following Order in exercise of the powers conferred by sections 161(3) and (4) of, and paragraphs 6(3), (4) and (6) of Schedule 4 to, the Health and Social Care Act 2008(a).

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Care Quality Commission (Specified Organisations etc) Order 2010 and shall come into force on 9th April 2010.

(2) In this Order “the 2008 Act” means the Health and Social Care Act 2008.

Specified Organisations

2.—(1) Subject to paragraph (2), the following persons or bodies are specified as organisations for the purposes of paragraph 6(3) of Schedule 4 to the 2008 Act (inspections by other inspectors of activities within Commission’s remit)—

- (a) an English NHS provider(b); and
- (b) a person, other than an English NHS provider or an English local authority(c), who is registered as a service provider under the 2008 Act but only in relation to a regulated activity (within the meaning of Part 1 of the 2008 Act).

(2) The persons and bodies referred to in paragraph (1) are not specified for the purposes of paragraph 6(3) of Schedule 4 to the 2008 Act in relation to the provision of services in—

- (a) a prison within the meaning of the Prison Act 1952(d);
- (b) a contracted out prison as defined in section 84(4) of the Criminal Justice Act 1991(e);

(a) 2008 c. 14.
(b) English NHS provider is defined in section 97 of the 2008 Act.
(c) English local authority is defined in section 97 of the 2008 Act.
(d) 1952 c. 52, to which there are amendments not relevant to this Order. See section 53(1) for the meaning of “prison”.
(e) 1991 c. 53; section 84 was substituted by section 96 of the Criminal Justice and Public Order Act 1994 (c. 33). By virtue of section 92(1) of the Criminal Justice Act 1991 (c.53) “contracted out prison” includes a contracted out young offender institution.

- (c) a young offender institution as defined in section 43(1)(aa) of the Prison Act 1952(a);
- (d) a remand centre as defined in section 43(1)(a) of the Prison Act 1952(b);
- (e) a removal centre as defined in section 147 of the Immigration and Asylum Act 1999(c); and
- (f) a short-term holding facility as defined in section 147 of the Immigration and Asylum Act 1999(d).

Transitional provision

3. For the period 9th April 2010 to 30th September 2010, article 2(1) shall be read as if the following were substituted for sub-paragraph (b)—

“(b) a person, other than an English NHS provider or an English local authority, registered with the Care Quality Commission under the Care Standards Act 2000(e) as carrying on an independent hospital, independent clinic, independent medical agency, care home, domiciliary care agency, nurses agency (as defined in that Act) or an adult placement scheme (as defined in the Adult Placement Schemes (England) Regulations 2004)(f).”.

Excluded inspections

4. The following cases are those in which a notice may not be given under paragraph 6 of Schedule 4 to the 2008 Act (inspections by other inspectors of activities within Commission’s remit)—

- (a) an inspection carried out by Her Majesty’s Chief Inspector of Education, Children’s Services and Skills under section 49 or 60 of the Childcare Act 2006 (inspections)(g); and
- (b) a review carried out under section 20 of the Children Act 2004 (joint area reviews)(h).

Signed by authority of the Secretary of State for Health

25th February 2010

Mike O’Brien
Minister of State,
Department of Health

(a) Section 43 was substituted by section 11 of the Criminal Justice Act 1982 (c. 48). Section 43(1)(aa) was inserted by paragraph 11 of Schedule 15 to the Criminal Justice Act 1988 (c. 33) and amended by section 18(3) of the Criminal Justice and Public Order Act 1994 and by paragraph 3 of Schedule 26 to the Criminal Justice and Immigration Act 2008 (c. 4).

(b) Section 43(1)(a) is repealed by section 59 of the Criminal Justice and Court Services Act 2000 (c. 43). The repeal is not yet in force.

(c) 1999 c. 33; the definition given to “removal centre” in section 147 was inserted by section 66(1)(b) of the Nationality, Immigration and Asylum Act 2002 (c. 41).

(d) The definition of “short-term holding facility” was amended by section 25 of the Borders, Citizenship and Immigration Act 2009 (c. 11).

(e) 2000 c. 14.

(f) S.I. 2004/2071.

(g) 2006 c. 21; section 49 was amended by paragraph 33 of Schedule 1 to the Education and Skills Act 2008 (c. 25).

(h) 2004 c. 31; section 20 has been amended by the Education and Inspections Act 2006 (c. 40), Schedule 14, paragraph 96(1), (2) and (3) and Schedule 18, Part 5; by the Local Government and Public Involvement in Health Act 2007 (c. 28), Schedule 9, paragraphs 1(1) and 2(x) and Schedule 18, Part 9; by the Health and Social Care Act 2008, Schedule 5, Part 3, paragraph 78; and by S.I. 2008/912, article 3 and Schedule 1, Part 2, paragraph 27(1) and (2)(f).

EXPLANATORY NOTE

(This note is not part of the Order)

Paragraph 6(1) of Schedule 4 to the Health and Social Care Act 2008 (“the 2008 Act”) imposes a duty on the Care Quality Commission to prevent or limit certain proposed inspections of specified organisations where it considers that the inspection would impose an unreasonable burden on the specified organisation, or would do so if carried out in a particular way.

A specified organisation is a person or body specified by order made by the Secretary of State. Article 2 of this Order specifies certain persons and bodies for the purposes of paragraph 6 of Schedule 4 to the 2008 Act.

Some of the bodies specified in article 2 are described by reference to registration as service providers under the 2008 Act. It is not anticipated that this system of registration will be fully in operation until 1st October 2010. Article 3 of this Order sets out transitional provisions for the period from 9th April 2010 to 30th September 2010 which specify the relevant bodies in a way compatible with the system of registration which will continue to apply until 30th September 2010.

Article 4 specifies those cases in which a notice may not be given by the Care Quality Commission under paragraph 6(1) of the 2008 Act.

A short impact assessment of the effect that this instrument will have on the costs and benefits to the Care Quality Commission and the service providers specified is available on the Department of Health website at

www.dh.gov.uk/en/Publicationsandstatistics/Legislation/Regulatoryimpactassessment/DH111389 and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.

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STATUTORY INSTRUMENTS

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£4.00