
EXPLANATORY NOTE

(This note is not part of the Order)

Article 2 of, and Schedule 1 to, this Order bring into force on 6th April 2010 and 1st October 2010 certain provisions of the Health and Social Care Act 2008 (“the Act”) which relate to the functions of the Care Quality Commission (“the Commission”), and which also amend the Care Standards Act 2000 (“the 2000 Act”) in relation to England and Wales.

Articles 3 to 22 make transitory and transitional provision to deal with applications to the Commission to register in relation to carrying on or managing regulated activities under Chapter 2 of Part 1 of the Act, such registration to start on or after 1st October 2010. Regulated activities are defined by section 8 of the Act as being “an activity of a prescribed kind” and these activities are prescribed in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 (S.I. 2010/781). The Order makes provision for applications (“transitional applications”) from persons who are currently registered under the 2000 Act in respect of the carrying on of an establishment or agency (“CSA registrant”): it also makes provision for such applications to include an application on behalf of a person who is currently registered under the 2000 Act in respect of managing such an establishment or agency (“registered manager”). Transitional applications for registration with effect from 1st October 2010 will mainly fall to be dealt with between 6th April 2010 and 30th September 2010. Provision is also made for applications made under the 2000 Act not determined before 6th April 2010.

Article 3 provides for the Commission to notify each CSA registrant under the 2000 Act of the need to make a transitional application and sets out certain matters that must be included in that notification.

Article 4 modifies sections 11, 14 and 15 of the Act in relation to transitional applications to enable a single transitional application to be made by a person proposing to carry on a regulated activity and on behalf of a manager in relation to any such activity.

Article 5 sets out the activities to be covered by a single transitional application made by or on behalf of those proposing to provide or manage regulated activities on or after 1st October 2010. Paragraph (5) provides that a transitional application may only include an application on behalf of a person proposing to manage a regulated activity where that person has given their written consent to that application being made on their behalf.

Article 6 modifies the test to be applied by the Commission to applications for registration in order to allow applications to be granted subject to conditions in cases where the Commission is not satisfied that the registration requirements are being and will continue to be met. Such conditions can relate to the requirements of other enactments which appear to the Commission to be relevant as well as to the registration requirements. If the Commission grants registration, it will have until 1st January 2011 to issue a certificate of registration.

Article 7 varies the procedure which applies in cases where the Commission intends to grant registration subject to conditions which have not been agreed with the applicant or registered manager. It provides that such imposed conditions will take effect from 1st October 2010 or such later date as specified by the Commission. It further provides that, subsequent to being notified of such conditions, the applicant or registered manager may make representations to the Commission about the conditions and, if conditions are still imposed, may appeal to the Tribunal under section 32 of the Act. Paragraph (10) requires the Commission, in deciding the date from which the conditions will take effect, to have regard to the balance between the desirability of preserving service continuity and the exposure of any person to the risk of harm.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Article 8 makes provision for cases where the Commission proposes to refuse an application. It requires the Commission to serve notice of proposal to refuse on the applicant or registered manager. Where, after having considered any representations, the Commission decides to refuse the application, it provides for the refusal to take effect on 1st October 2010 in the case of a decision made on or before 30th September 2010 or at such later date as the Commission specifies in the notice of refusal. Paragraph (3) requires the Commission, in deciding the date from which the refusal will take effect, to have regard to the balance between the desirability of preserving service continuity and the need to safeguard patients against serious risks to their life, health or well-being.

Article 9 makes transitional provision to allow the carrying on of a regulated activity to continue without registration for a limited period of time in certain circumstances.

Articles 10 to 12 deal with the effect on transitional applications and determinations of outstanding matters relating to conditions of registration in respect of a person's registration under the 2000 Act. They make provision as to how such matters should be taken into account in determining a transitional application or, where relevant, in determining whether to take action in relation to the new registration if the matter arises once a transitional application has been determined.

Article 13 provides for the modification of sections 12 and 15 of the Act to allow the Commission to exercise powers to vary, remove or impose additional conditions, even if the period of registration has not commenced.

Article 14 provides that the Commission does not have to determine a transitional application from a person if cancellation proceedings are in progress as regards that person's existing registration under the 2000 Act, at the time that that transitional application falls to be determined: the application does not have to be determined insofar as it relates to activities to be carried on or managed at the premises of an establishment or agency that is the subject of those cancellation proceedings, or insofar as it relates to a manager who is the subject of such cancellation proceedings. It provides for the relevant provisions of the 2000 Act to continue to apply until the conclusion of the cancellation proceedings or, in cases where the cancellation proceedings are discontinued by the Commission or overturned on appeal to the Tribunal, until the subsequent determination of a transitional application: article 15 makes equivalent provision for persons who were subject to cancellation proceedings on 6th April 2010 (and therefore were not notified of the need to make a transitional application).

Article 16 provides for persons who were subject to cancellation proceedings on 6th April 2010 (and therefore were not notified of the need to make a transitional application) to be notified of the need to make a transitional application if the Commission does not proceed with the cancellation proceedings or if the Tribunal directs, on appeal, that the cancellation of registration is to cease to have effect. It also provides for a determination to be made of the relevant parts of a transitional application in respect of any person against whom cancellation proceedings are commenced following the making of a transitional application, if the Commission does not proceed with the cancellation proceedings or if the Tribunal directs, on appeal, that the cancellation of registration is to cease to have effect.

Article 17 provides for the situation where cancellation proceedings are commenced against a person once a transitional application has already been determined. It provides for the determination in relation to that transitional application to have no effect and for the relevant provisions of the 2000 Act to continue to apply until the conclusion of the cancellation proceedings or, in cases where the cancellation proceedings are discontinued by the Commission or overturned on appeal to the Tribunal, until a new determination of the transitional application.

Article 18 makes provision for applications that are made to the Commission under Part 2 of the 2000 Act before 1st July 2010 (in respect of the carrying on of an establishment or agency) or before 1st August 2010 (in respect of the management of an establishment or agency). Where a person is granted registration under Part 2 of the 2000 Act on or after 6th April 2010, provision is made for the Commission to notify the person who carries on the establishment or agency of the need to make a transitional application.

Article 19 makes provision for applications that are made to the Commission under the 2000 Act on or after 1st July 2010 (in respect of the carrying on of an establishment or agency) or on or after 1st August 2010 (in respect of the management of an establishment or agency). The Commission is required to notify in writing a person who has made such an application of the need to make a new application under section 11 or 15 of the Act (as the Commission will not determine any applications under the 2000 Act made on or after those dates) and return any fee paid in respect of the application. Where the Commission subsequently receives an application under the Act, it is required to determine it as soon as reasonably practicable.

Article 20 makes transitional provision about applications for registration under the Act in respect of the carrying on of activities which are regulated activities, the carrying on of which did not require registration under the 2000 Act: it makes provision for articles 6 to 8 to apply to such applications. It also allows the carrying on of such a regulated activity to continue without registration for a limited period of time in certain circumstances and also suspends the offence of failure to comply with a condition of registration requiring a registered manager in respect of such an activity in certain circumstances.

Article 21 makes transitional provision where a person who was registered to carry on an establishment or agency under Part 2 of the 2000 Act has died and a personal representative is carrying on that establishment or agency.

Article 22 provides for the provisions in the Act relating to service of documents, including provision for electronic communications, to apply to notices required to be given under this Order.

Article 23 of, and Schedule 2 to, this Order provide for the revocation of secondary legislation on 1st October 2010 in the light of the amendments of the 2000 Act by the Act.

An impact assessment of the effect that the new system of regulation of health and social care will have on the costs and benefits to service providers, together with an Equality Screening Assessment, is available on the Department of Health website at <http://www.dh.gov.uk/en/Publicationsandstatistics/Legislation/index.htm> and is annexed to the Explanatory Memorandum of S.I. 2010/781, which is available on the OPSI website. No additional impact assessment has been produced in respect of this instrument as no additional impact on the private or voluntary sectors is foreseen.