

EXPLANATORY MEMORANDUM TO
THE HEALTH AND CARE ACT 2022 (FURTHER CONSEQUENTIAL
AMENDMENTS) REGULATIONS 2022

2022 No. 1200

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care (DHSC) and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 This instrument makes amendments in consequence of two provisions in the Health and Care Act 2022 ('the 2022 Act'). It removes training on learning disability and autism from the topics on which the Care Quality Commission (CQC) must issue statutory guidance, in consequence of the imposition by the 2022 Act of a duty on the Secretary of State to issue a code on this topic. It also adds conviction for the new offences in Part 5¹ of the 2022 Act (virginity testing and hymenoplasty) to the list of matters which disqualify a person from fostering in Scotland.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument is the same as the provisions being amended. In the case of training on learning disability and autism (the amendment made by regulation 2) this is England and Wales. In the case of virginity testing and hymenoplasty (the amendment made by regulation 3) this is Scotland.

4.2 The territorial application of this instrument is the same as the provisions being amended. In the case of training on learning disability and autism this is England. In the case of virginity testing and hymenoplasty this is Scotland.

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State for Mental Health and Women's Health Strategy, Maria Caulfield MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Health and Care Act 2022 (Further Consequential Amendments) Regulations 2022 are compatible with the Convention rights.”

6. Legislative Context

6.1 This instrument is being made to make amendments to other legislation in consequence of provisions in the 2022 Act. There has already been a set of

¹ <https://www.legislation.gov.uk/ukpga/2022/31/part/5/enacted>

consequential amendment regulations under the 2022 Act so far this year², but with a different name. The title of this instrument therefore indicates that it is not the first instrument in 2022 making consequential amendments under the 2022 Act.

Training on Learning Disability and Autism

- 6.2 Section 181 of the 2022 Act amends the Health and Social Care Act 2008 (“2008 Act”), which relates to the regulation of health and social care activities by the CQC (“regulated activities”). It amends section 20 of the 2008 Act, so that regulations must require providers of health and social care services to ensure their employees who undertake regulated activities receive learning disability and autism training appropriate to their role. Section 23 of the 2008 Act imposes a duty on the CQC to issue statutory guidance about regulated activities which includes the learning disability and autism training requirement. The 2022 Act also introduces a duty for the Secretary of State to publish a Code of Practice which will provide guidance on the training requirement (new section 21A of the 2008 Act). To avoid the risk of duplication or conflict, training on learning disability and autism is therefore removed from the matters on which CQC must issue statutory guidance.

Virginity Testing and Hymenoplasty

- 6.3 Part 5 of the 2022 Act makes the carrying out, offering, and aiding and abetting of virginity testing and hymenoplasty a criminal offence. Section 7 of the Foster Children (Scotland) Act 1984 contains a list of matters which disqualify a person from fostering a child in Scotland. This amendment adds conviction for these new offences to the matters in section 7.

7. Policy background

What is being done and why?

Training on Learning Disability and Autism

- 7.1 Section 181 of the 2022 Act amends section 20 of the 2008 Act so that regulations must require service providers to ensure their employees who undertake regulated activities receive learning disability and autism training appropriate to their role. It also inserts into the 2008 Act a duty for the Secretary of State to publish a Code of Practice, which will provide guidance on the training.
- 7.2 Under section 23(1) of the 2008 Act, the CQC is required to produce statutory guidance in relation to any requirements in regulations made under section 20 of the 2008 Act. This means, at present, the CQC is required to produce statutory guidance on the learning disability and autism training requirement introduced by the 2022 Act. The consequential amendment will carve out the requirement for the CQC to issue statutory guidance on the new training requirements, to avoid duplication and the risk of conflicting guidance.
- 7.3 This follows the precedent set in the 2008 Act whereby the CQC is exempt from issuing statutory guidance on health care associated infections, because the Secretary of State is required to publish a related Code of Practice.

² [The Health and Care Act 2022 \(Consequential and Related Amendments and Transitional Provisions\) Regulations 2022/634- https://www.legislation.gov.uk/uksi/2022/634/contents/made](https://www.legislation.gov.uk/uksi/2022/634/contents/made)

Virginity Testing and Hymenoplasty

- 7.4 The 2022 Act makes the carrying out, offering, and aiding and abetting of virginity testing and hymenoplasty illegal. Conviction for these new offences is a matter which should make a person unsuitable to foster or adopt a child. Amendments to this effect were made in relation to England and Wales in the Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634). A similar amendment is now being made for Scotland, where the disqualifying matters in relation to fostering are set out in primary legislation (the Foster Children (Scotland) Act 1984). Secondary legislation on adoption in Scotland³ includes disqualification as a fosterer under the 1984 Act in the information which must be obtained about, and assessed in relation to, prospective adopters.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 This instrument contains amendments to primary legislation. No consolidation is planned.

10. Consultation outcome

- 10.1 Scottish Government officials were informally consulted on this instrument as it relates to the Foster Children (Scotland) Act 1984.

11. Guidance

- 11.1 There is no specific guidance for this instrument.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument because it concerns technical amendments with no impacts on business foreseen.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The instrument does not include a statutory review clause because it does not make or amend regulatory provisions that relate to business activity (including voluntary and community bodies). There are currently no specific plans to review this instrument.

³ The Adoption Agencies (Scotland) Regulations 2009/154
<https://www.legislation.gov.uk/ssi/2009/154/contents/made>.

15. Contact

- 15.1 Tracy Raby at the Department of Health and Social Care. Telephone: 0207 972 4555 or email: Tracy.Raby@dhsc.org.uk can be contacted with any queries regarding the instrument.
- 15.2 Dave Nuttall, Deputy Director for Neurodiversity, Disability and Learning Disability, and Marian Holliday, Deputy Director for Acute Care Policy at the Department for Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Parliamentary Under Secretary of State for Mental Health and Women's Health Strategy, Maria Caulfield, at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.