

EXPLANATORY MEMORANDUM TO
THE HEALTH AND SOCIAL CARE ACT 2008 (COMMENCEMENT NO. 9,
CONSEQUENTIAL AMENDMENTS AND TRANSITORY, TRANSITIONAL
AND SAVING PROVISIONS) ORDER 2009

2009 No. 462 C. 31

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 (Commencement No.9, Consequential Amendments and Transitory, Transitional and Saving Provisions) Order 2009 commences a number of provisions in the Health and Social Care Act 2008 to enable the Care Quality Commission (“the Commission”) to take over the regulation of health and adult social care from 1st April 2009.
 - 2.2 It also commences some provisions in Part 3 of the Act which relate to public health protection with effect from 1 April 2009. This is necessary to enable the Health Protection (Vaccination) Regulations 2009 to be brought into force from that date, because those regulations have been made under powers in that Part of the Act.
 - 2.3 It also commences provisions of the Act relating to the removal of local authorities' powers to seek liable relatives payments under the National Assistance Act 1948 and the ending of the liable relatives rule in particular cases. It makes consequential changes to secondary legislation.
 - 2.4 It puts in place transitional, transitory and savings provisions for 1st April 2009 to allow the Commission to carry out the functions of the Commission for Healthcare Audit and Inspection (CHAI, also known as the Healthcare Commission) and Commission for Social Care Inspection (CSCI) under the Care Standards Act 2000 and the Health and Social Care Act (Community Health and Standards) Act 2003. It also puts in place transitional provisions to enable the Commission to carry out the functions of the Mental Health Act Commission (MHAC) under the Mental Health Act 1983. Additionally the Order contains minor and consequential amendments to other legislation, which are mostly consequential to the dissolution of CHAI, CSCI and MHAC and the taking on of functions by the new Commission under 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 Commission was established under section 1 of the Health and Social Care Act 2008 on 1st October 2008. From 1st April 2009, the Commission will be responsible for the regulation of health and adult social care and CHAI, CSCI and MHAC will be dissolved. It will be responsible for the registration, review and inspection of certain health and adult social care services in England. The functions currently performed by MHAC in relation to the Mental Health Act 1983 will also transfer to the Commission and to Welsh Ministers.
- 4.2 This Order therefore commences a number of sections of the Health and Social Care Act 2008 to enable the Commission to take on its functions and dissolves the existing Commissions. It puts transitional provisions in place to allow the new Commission to carry on a number of functions of the existing Commissions under the Care Standards Act 2000, the Health and Social Care (Community Health and Standards) Act 2003 and the Mental Health Act 1983 and makes a number of transitional provisions to enable the new Commission to complete and publish any reports that its predecessor bodies have not been able to complete. The Order also makes amendments to secondary legislation, and a modification to primary legislation, consequential to the dissolution of CHAI, CSCI and MHAC and the transfer of functions to the new Commission.

Repeal of liable relatives rule

- 4.3 This Order also commences provisions of the Act which remove local authorities' powers to seek liable relatives payments under the National Assistance Act 1948, end the liable relatives rule in particular cases and make various repeals consequential on the abolition of maintenance liability of relatives. It makes consequential changes to secondary legislation.

5. Territorial Extent and Application

- 5.1 The majority of the provisions extend to England and Wales only, with some applying in relation to England only (as set out in article 1(3)). Provisions extending to Scotland and Northern Ireland are set out in article 1(2) of the Order.

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 In the 2005 budget statement, the Chancellor announced plans to reduce the number of public service inspectorates. This included the merger of CHAI and CSCI. The Department of Health had already announced plans to bring together CHAI and MHAC.
- 7.2 In November 2006 the Department of Health published a consultation “The Future Regulation of Health and Adult Social Care in England” which announced the Government’s intention to create a single regulator responsible for regulating health care and adult social care, and monitoring the operation of the Mental Health Act 1983. There were over 100 responses to this consultation and the consultation and associated response can be found at:
- http://www.dh.gov.uk/en/Consultations/Closedconsultations/DH_063286
- 7.3 The Care Quality Commission, which was established under section 1 of the Health and Social Care Act 2008 on 1st October 2008, will take over responsibility for the regulation of health and social care from 1st April 2009. It will be responsible for the registration, review and inspection of certain health and adult social care services in England and for the functions currently performed in England by MHAC (MHAC’s current functions in relation to Wales will transfer to Welsh Ministers). The Care Quality Commission will bring together and integrate the regulation of health and adult social care across all types of providers whether public, private or third sector.
- 7.4 Schedule 1 commences a number of sections of the Health and Social Care Act 2008, which dissolve the existing commissions and give the new Commission its functions under the Health and Social Care Act 2008.
- 7.5 The Care Quality Commission will regulate private and voluntary healthcare and adult social care providers under the Care Standards Act 2000 from April 2009 until these provisions are repealed. Schedule 2 therefore puts a number of transitional and transitory provisions in place to allow the new Commission to carry out the functions of CHAI and CSCI under this Act. From 2010, it is intended that the new system of registration under the Health and Social Care Act 2008 will be extended and cover prescribed private and voluntary health and adult social care providers.
- 7.6 Schedule 3 make transitional, transitory and savings provisions to enable a smooth transition from CSCI and CHAI to the Care Quality Commission. It makes a number of provisions which enable the Care Quality Commission to complete and publish any reviews and studies that CSCI and CHAI have not completed by 31st March 2009.

- 7.7 Schedule 4 makes transitional provisions in relation to functions of MHAC under the Mental Health Act 1983 to ensure a smooth transition of functions from MHAC to the Care Quality Commission. It makes provision for CQC to wind up the affairs of MHAC, including completion and publication of MHAC's final biennial report.
- 7.8 Schedule 5 makes minor and consequential amendments to secondary legislation, mainly to remove references to CHAI, CSCI and MHAC and adds in include a reference to the CQC where these amendments have not already been made under SI 2008/2250.

Repeal of liable relatives rule

- 7.9 Under sections 42 and 43 of the National Assistance Act 1948 where a person goes into residential care and receives assistance from a local authority with meeting the cost of their care the local authority has discretionary powers to ask the person's "liable relatives" (i.e. a spouse or a parent) to make payments towards the costs incurred by the state. Since the introduction of the Child Support Agency in April 1993 the rule has effectively only applied to married or divorced couples and the Government announced its intention to repeal them which it did in the Act. This Order gives effect to that commitment.

8. Consultation outcome

- 8.1 Not applicable.

9. Guidance

- 9.1 The Department of Health will retain a sponsorship role providing support and guidance to the Care Quality Commission in carrying out its functions under this Order. The Commission itself will produce any necessary guidance to set out how it will carry out functions under this Order.

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 businesses

- 11.1 The legislation does not apply to small businesses.

12. Monitoring and review

- 12.1 The provisions of this instrument aim to achieve integration and a smooth transition from the regulation of health and adult social care providers by three separate bodies to regulation by one body.
- 12.2 The Department of Health will retain a sponsorship role in respect of the new Commission and will monitor and review the carrying out of its functions.

13. Contact

Joanna Shaw at the Department of Health, Tel: 0113 2546204 or email: joanna.shaw@dh.gsi.gov.uk, can answer any queries regarding the instrument.