

2010 No. 2484

NATIONAL HEALTH SERVICE, ENGLAND

PUBLIC HEALTH, ENGLAND

**The Health and Social Care Act 2008 (Primary Dental Services,
Private Ambulance Services and Primary Medical Services)
(Regulated Activities) (Transitory and Transitional Provisions)
Order 2010**

Made - - - - *11th October 2010*

Laid before Parliament *15th October 2010*

Coming into force - - *12th November 2010*

The Secretary of State for Health makes the following Order in exercise of the powers conferred by sections 161(3) and (4) and 167(1) and (3) of the Health and Social Care Act 2008(a).

PART 1

General

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Health and Social Care Act 2008 (Primary Dental Services, Private Ambulance Services and Primary Medical Services) (Regulated Activities) (Transitory and Transitional Provisions) Order 2010 and shall come into force on 12th November 2010.

(2) In this Order—

“2012 relevant applicant” means a person who makes a 2012 transitional application or a 2012 supplementary transitional application under section 11 (applications for registration as a service provider) or section 14 (applications for registration as a manager) of the Act in respect of a 2012 relevant regulated activity which is being carried on before 1st April 2012 and which it is intended will be carried on on and after 1st April 2012;

“2012 relevant regulated activity” means an activity that is prescribed as a regulated activity under the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010(b) but which, by virtue of the application of the provisions of those Regulations, is only so prescribed with effect from 1st April 2012;

(a) 2008 c.14. See section 171(2) of that Act for the definition of “appropriate authority”.

(b) S.I. 2010/781. Regulation 3 provides that the activities specified in Schedule 1 of the Regulations, subject to various exemptions set out in Schedule 2, are “regulated activities” for the purposes of the Act. Regulation 3 also provides for certain provisions and exemptions set out in those Schedules to cease to have effect on certain dates, thus bringing activities previously subject to exemption into regulation on those dates.

“2012 transitional application” means an application for registration as a service provider or manager in respect of a 2012 relevant regulated activity in relation to any period commencing on 1st April 2012 made to the Commission^(a) by a 2012 relevant applicant before 1st April 2012 under section 11 (applications for registration as a service provider) or section 14 (applications for registration as a manager) of the Act as modified by this Order;

“the Act” means the Health and Social Care Act 2008;

“application date” means any date specified by the Commission by which a transitional application or 2012 transitional application must be made;

“NHS primary dental services” means dental services provided as primary dental services in pursuance of Part 5 of the National Health Service Act 2006^(b), except where those services are provided—

- (a) by a Primary Care Trust under section 99(2) (primary dental services) of that Act, or
- (b) by an NHS trust or NHS foundation trust;

“NHS primary medical services” means medical services provided as primary medical services—

- (a) under arrangements made pursuant to the following sections of the National Health Service Act 2006—
 - (i) section 3 (Secretary of State’s duty as to provision of certain services),
 - (ii) section 83(2)(b) (primary medical services), or
 - (iii) section 92 (arrangements by Strategic Health Authorities for the provision of primary medical services); or
- (b) under a contract entered into pursuant to section 84 of that Act (general medical services contracts: introductory);

“relevant applicant” means, except in the phrase “2012 relevant applicant”, a person who makes a transitional application or a supplementary transitional application under section 11 (applications for registration as a service provider) or section 14 (applications for registration as a manager) of the Act in respect of a relevant regulated activity which is being carried on before 1st April 2011 and which it is intended will be carried on on and after 1st April 2011;

“relevant regulated activity” means, except in the phrase “2012 relevant regulated activity”, an activity that is prescribed as a regulated activity under the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 but which, by virtue of the application of the provisions of those Regulations, is only so prescribed with effect from 1st April 2011;

“supplementary transitional application” means an application for registration as a service provider or manager in respect of a relevant regulated activity in relation to any period commencing on 1st April 2011 made to the Commission under section 11 (applications for registration as a service provider) or section 14 (applications for registration as a manager) of the Act as modified by this Order between 1st April 2011 and 30th June 2011 by a relevant applicant who has previously made a transitional application in respect of another relevant regulated activity;

“supplementary 2012 transitional application” means an application for registration as a service provider or manager in respect of a 2012 relevant regulated activity in relation to any period commencing on 1st April 2012 made to the Commission under section 11 (applications for registration as a service provider) or section 14 (applications for registration as a manager) of the Act as modified by this Order made between 1st April 2012 and 30th June 2012 by a 2012 relevant applicant who has previously made a 2012 transitional application in respect of another 2012 relevant regulated activity;

“transitional application” means, except in the phrase “2012 transitional application”, an application for registration as a service provider or manager in respect of a relevant regulated activity in relation to any period commencing on 1st April 2011 made to the Commission by a

(a) See section 97(1) of the Act for the definition of “the Commission”.
(b) 2006 c.41.

relevant applicant before 1st April 2011 under section 11 (applications for registration as a service provider) or section 14 (applications for registration as a manager) of the Act as modified by this Order.

PART 2

Provisions relating to activities which are regulated activities with effect from 1st April 2011

Notification of the need to make an application

2.—(1) The Commission must give notice of the need to make an application under section 11 of the Act (applications for registration as a service provider) to persons to whom paragraph (2) applies.

(2) This paragraph applies to any person—

- (a) who is carrying on an activity consisting of the provision of NHS primary dental services which will be a regulated activity with effect from 1st April 2011; and
- (b) whose name is known to the Commission as someone carrying on such an activity.

(3) Notification sent pursuant to paragraph (1) must specify—

- (a) the form in which the application must be made;
- (b) the information it must contain or be accompanied by;
- (c) the application date; and
- (d) that the application under section 11 of the Act must be made to the Commission on or before the application date, in the specified form and contain or be accompanied by the specified information, in order for article 3 to apply.

(4) The application date in any notification sent pursuant to paragraph (1) must be a date at least 28 days after the date on which the notification is sent.

(5) Where—

- (a) the Commission gives notice in accordance with paragraph (1) of the need to make an application for registration in accordance with section 11, and
 - (b) any such registration would be subject to a registered manager condition^(a),
- the Commission may, at the same time as giving notice under paragraph (1), give notice to the person to whom that notification is sent of the fact that an application must be made under section 14 of the Act by a person proposing to manage the regulated activity.

(6) Notification sent pursuant to paragraph (5) must specify—

- (a) the form in which the application must be made;
- (b) the information it must contain or be accompanied by;
- (c) the application date (which need not be the same as the application date given in accordance with paragraph (3)); and
- (d) that an application under section 14 of the Act by a person proposing to manage the regulated activity must be made to the Commission on or before the application date given in the notification, in the specified form and contain or be accompanied by the specified information, in order for article 3 to apply.

(7) The application date in any notification sent pursuant to paragraph (5) must be a date at least 28 days after the date on which the notification is sent.

(a) See section 13(3) of the Act for the definition of “registered manager condition”.

Suspension of the offence of carrying on a regulated activity while unregistered

3.—(1) This article applies where—

- (a) a person—
 - (i) carries on an activity before 1st April 2011, and
 - (ii) intends to carry on that activity on and after 1st April 2011;
- (b) that activity is a relevant regulated activity; and
- (c) an application is made in respect of that activity under—
 - (i) section 11 of the Act (applications for registration as a service provider), or
 - (ii) section 14 of the Act (applications for registration as a manager), where that activity will be subject to a registered manager condition.

(2) Where—

- (a) a person who is notified pursuant to article 2(1) makes an application to which this article applies to the Commission in respect of a relevant regulated activity on or before the application date, and that application is made in such form, and contains or is accompanied by such information, as the Commission specified pursuant to article 2(3); or
- (b) any person, other than a person specified in sub-paragraph (a), makes an application to which this article applies to the Commission under section 11 of the Act in respect of a relevant regulated activity on or before 31st December 2010, and that application is made in such form, and contains or is accompanied by such information, as the Commission may require,

section 10(1) of the Act (offence of carrying on a regulated activity while unregistered) does not apply to the applicant in respect of that activity for the period (if any) calculated in accordance with paragraph (3).

(3) The period referred to in paragraph (2) during which the offence under section 10(1) of the Act does not apply is calculated as follows—

- (a) where the Commission serves notice of decision under section 28(1) of the Act (notice of decisions) in respect of the application under section 11, the period during which the offence under section 10(1) does not apply is the period (if any) beginning on 1st April 2011 and ending on the date of service^(a) by the Commission of that notice of decision;
- (b) where the Commission serves notice of decision under article 5(3), in accordance with the modified procedure set out in that article, in respect of the application under section 11, the period during which the offence under section 10(1) does not apply is the period (if any) beginning on 1st April 2011 and ending on the date of service by the Commission of that notice of decision; and
- (c) where the Commission serves notice of decision under section 28(3) of the Act, in accordance with the modified provisions set out in article 6, which relates to refusal of the application under section 11, the period during which the offence under section 10(1) does not apply is the period (if any) beginning on 1st April 2011 and ending on the date of coming into effect of that notice of decision.

(4) Where—

- (a) a person has been notified pursuant to article 2(1) of the need to make an application under section 11 of the Act and has also been notified pursuant to article 2(5) of the need for an application to be made under section 14 of the Act and
 - (i) that person makes an application which comes within paragraph (2)(a), and
 - (ii) on or before the application date specified in accordance with article 2(6) an application to which this article applies is made under section 14 by a person who is proposing to manage the regulated activity; or

(a) See sections 93 and 94 of the Act for provisions in relation to the service of documents.

- (b) any person, other than a person in sub-paragraph (a), makes an application which comes within paragraph (2)(b) and on or before 31st December 2010 an application to which this article applies is made under section 14 by a person who is proposing to manage the regulated activity,

and in either case the Commission decides to grant registration in respect of the carrying on of the regulated activity subject to a registered manager condition, section 33 of the Act (offence of failure to comply with conditions) does not apply to the person who made the application under section 11 of the Act coming within sub-paragraph (a)(i) or (b) in respect of a failure to comply with a registered manager condition in relation to that registration for the period (if any) calculated in accordance with paragraph (5).

(5) The period referred to in paragraph (4) during which the offence under section 33 of the Act does not apply is calculated as follows—

- (a) where the Commission serves notice of decision under section 28(1) of the Act (notice of decisions) in respect of the application under section 14, the period during which the offence under section 33 does not apply is the period (if any) beginning on 1st April 2011 and ending on the date of service by the Commission of that notice of decision;
- (b) where the Commission serves notice of decision under article 5(3), in accordance with the modified procedure set out in that article, in respect of the application under section 14, the period during which the offence under section 33 does not apply is the period (if any) beginning on 1st April 2011 and ending on the date of service by the Commission of that notice of decision; and
- (c) where the Commission serves notice of decision under section 28(3) of the Act, in accordance with the modified provisions set out in article 6, which relates to refusal of the application under section 14, the period during which the offence under section 33 does not apply is the period (if any) beginning on 1st April 2011 and ending on the date of coming into effect of that notice of decision.

(6) Where—

- (a) a person—
 - (i) makes an application which comes within paragraph (2)(a) and that person was not notified pursuant to article 2(5) of the need to make an application under section 14 of the Act, or
 - (ii) makes an application which comes within paragraph (2)(b);
- (b) no application is received by the Commission under section 14 of the Act by a person who is proposing to manage the regulated activity by—
 - (i) in the case of an application which comes within sub-paragraph (a)(i), the application date, and
 - (ii) in the case of an application which comes within sub-paragraph (a)(ii), 31st December 2010;
- (c) the Commission decides to grant registration in respect of the carrying on of a relevant regulated activity; and
- (d) that registration is subject to a registered manager condition,

the Commission must include in its notification of decision to grant registration a further application date, which must be a date at least 28 days after the date upon which notification of its decision to grant registration is sent.

(7) Where—

- (a) a person is notified of the Commission's decision to grant registration subject to a registered manager condition;
- (b) that notification includes a further application date pursuant to paragraph (6), and
- (c) an application to which this article applies is made to the Commission under section 14 of the Act on or before the further application date by a person who is proposing to manage the relevant regulated activity,

section 33 of the Act (offence of failure to comply with conditions) does not apply to the person who made the application under section 11 of the Act coming within paragraph (6)(a)(i) or (ii) in respect of a failure to comply with a registered manager condition in relation to that registration for the period (if any) calculated in accordance with paragraph (8).

(8) The period referred to in paragraph (7) during which the offence under section 33 of the Act does not apply is calculated as follows—

- (a) where the Commission serves notice of decision under section 28(1) of the Act (notice of decisions) in respect of the application under section 14, the period during which the offence under section 33 does not apply is the period (if any) beginning on 1st April 2011 and ending on the date of service by the Commission of that notice of decision;
- (b) where the Commission serves notice of decision under article 5(3), in accordance with the modified procedure set out in that article, in respect of the application under section 14, the period during which the offence under section 33 does not apply is the period (if any) beginning on 1st April 2011 and ending on the date of service by the Commission of that notice of decision; and
- (c) where the Commission serves notice of decision under section 28(3) of the Act, in accordance with the modified provisions set out in article 6, which relates to refusal of the application under section 14, the period during which the offence under section 33 does not apply is the period (if any) beginning on 1st April 2011 and ending on the date of coming into effect of that notice of decision.

Transitional provisions relating to the grant or refusal of registration

4.—(1) Sections 12 and 15 of the Act (grant or refusal of registration as a service provider or manager) apply to any transitional application as if modified as set out in paragraph (2).

(2) For subsections (2) and (3) of sections 12 and 15 of the Act substitute—

“(2) If the Commission is satisfied that the requirements of regulations under section 20 are being and will continue to be complied with (so far as applicable) in relation to the carrying on of the regulated activity, it must grant the application either unconditionally or subject to such conditions as it thinks fit.

(3) If the Commission is not so satisfied then it must—

- (a) grant the application subject to such conditions as it thinks fit; or
- (b) refuse the application.

(3A) The conditions referred to in subsections (2), (3) and (5)(b) may relate to the requirements of any other enactment which appears to the Commission to be relevant.”.

(3) Paragraph (4) applies to a transitional application which is made—

- (a) where the Commission has given notification under article 2—
 - (i) on or before the application date, and
 - (ii) in such form, and containing or accompanied by such information, as the Commission specified pursuant to that article; or
- (b) in any other case—
 - (i) on or before 31st December 2010, and
 - (ii) in such form, and containing or accompanied by such information, as the Commission may require.

(4) Where this paragraph applies—

- (a) if registration is to be granted unconditionally, or subject only to conditions agreed between the Commission and the applicant or the person to be registered as a manager, the Commission must use its best endeavours to give notice of that decision to that applicant or manager before 1st April 2011; and
- (b) registration, if granted, takes effect from 1st April 2011 or the date upon which the application is granted, whichever is the later.

- (5) Where registration is granted as a result of a transitional application—
 - (a) section 12 of the Act applies as if, in addition to the modifications in paragraph (2), for subsection (4) there were substituted—
 - “(4) Where the application is granted, the Commission must issue a certificate of registration to the applicant before 30th June 2011.”; and
 - (b) section 15 of the Act applies as if, in addition to the modifications in paragraph (2), for subsection (4) there were substituted—
 - “(4) Where the application is granted, the Commission must issue a certificate of registration to the registered manager before 30th June 2011.”.

Transitional provisions relating to registration subject to conditions

5.—(1) Paragraph (2) applies where, pursuant to section 12 or 15 of the Act (grant or refusal of registration as a service provider or manager) as modified by article 4, the Commission decides to grant a transitional application subject to any condition, other than a registered manager condition required by section 13(1) of the Act, which has not been agreed in writing between it and—

- (a) the applicant, where the condition is to be imposed on the applicant; or
- (b) the person to be registered as a manager, where the condition is to be imposed on that person.

(2) Where this paragraph applies—

- (a) sections 26(2) (notice of proposals) and 28(3), (4), (6) and (7) (notice of decisions) of the Act do not apply; and
- (b) the Commission must follow the procedure set out in the following paragraphs.

(3) The Commission must give the applicant or person to be registered as a manager notice in writing of its decision under paragraph (1) and of the conditions to which the registration is to be made subject.

(4) A notice under paragraph (3) must—

- (a) give the Commission’s reasons for its decision; and
- (b) state that within 28 days of service of the notice, the person on whom it was served may make written representations to the Commission concerning any matter which that person wishes to dispute.

(5) In the case of any application which is made—

- (a) where the Commission has given notification under article 2—
 - (i) on or before the application date, and
 - (ii) in such form, and containing or accompanied by such information, as the Commission specified pursuant to article 2; or
- (b) in any other case—
 - (i) on or before 31st December 2010, and
 - (ii) in such form, and containing or accompanied by such information, as the Commission may require,

the Commission must use its best endeavours to give the notice referred to in paragraph (3) before 1st April 2011.

(6) Within 3 months of receipt of representations from an applicant or a person to be registered as a manager pursuant to paragraph (4)(b), the Commission must give notice in writing—

- (a) confirming the original decision; or
- (b) varying or removing any of the conditions.

(7) Section 32 of the Act (appeals to the Tribunal) applies to the notice referred to in paragraph (6) as it applies to a decision of the Commission under Chapter 2 of Part 1 of the Act.

(8) Notwithstanding the right to make representations under paragraph (4) and the right of appeal to the Tribunal under paragraph (7), any condition set out in a notice under paragraph (3) has effect, unless otherwise specified by the Commission in the notice, from 1st April 2011 or, if later, the date of grant of registration, until such date as—

- (a) the registered person is notified in writing by the Commission of its variation or removal; or
- (b) the Tribunal directs that it is to cease to have effect.

(9) Any removal of a condition set out in a notice under paragraph (6) has effect from the date of the notice.

(10) Notwithstanding the right of appeal to the Tribunal under paragraph (7), any varied condition set out in a notice under paragraph (6) has effect, unless otherwise specified by the Commission in the notice, from 1st April 2011 or, if later, the date of the notice, until such date as—

- (a) the registered person is notified in writing by the Commission of its variation or removal; or
- (b) the Tribunal directs that it is to cease to have effect.

(11) In deciding whether to specify a date from which a condition has effect other than—

- (a) 1st April 2011 or, if later, the date of grant of registration, in a notice under paragraph (3); or
- (b) 1st April 2011 or, if later, the date of the notice, in a notice under paragraph (6) varying any of the conditions,

the Commission must have regard to the need to strike a balance between the desirability of preserving service continuity and the exposure of any person to the risk of harm.

Transitional provisions relating to refusal of registration

6.—(1) Where, pursuant to section 12 or 15 of the Act (grant or refusal of registration as a service provider or manager) as modified by article 4, the Commission proposes to refuse a transitional application, and it must therefore give a notice of proposal pursuant to section 26(3) of the Act (notice of proposal relating to refusal of registration), it must use its best endeavours to give such a notice to the applicant or person to be registered as a manager (as the case may be)—

- (a) in the case of a transitional application where—
 - (i) the Commission had given notification under article 2, and
 - (ii) the application was made in such form, and containing or accompanied by such information as the Commission specified pursuant to article 2, on or before the application date,
before 1st April 2011;
- (b) in the case of a transitional application where—
 - (i) the Commission had not given notification under article 2, and
 - (ii) the application was made in such form, and containing or accompanied by such information, as the Commission may require, on or before 31st December 2010,
before 1st April 2011; and
- (c) in the case of any other transitional application, as soon as reasonably practicable after the decision to propose refusal is made.

(2) Any subsequent notice of decision relating to that refusal given under section 28(3) of the Act (notice of decisions) must, in addition to the matter referred to in section 28(4)(a) of the Act, state that the decision takes effect—

- (a) on 1st April 2011 in the case of a decision made before that date or immediately in the case of a decision made on or after that date;

- (b) at the end of the period of 28 days referred to in section 32(2) of the Act (appeals to the Tribunal); or
- (c) subject to any decision by the Tribunal, at the end of such further period specified in the notice.

(3) In deciding which of the periods listed in paragraph (2) to state in any particular case, the Commission must have regard to the need to strike a balance between the desirability of preserving service continuity and the need to safeguard persons against serious risks to their life, health or well-being.

Transitory modifications of, and transitional provisions relating to the exercise of powers in, sections 12(5) and 15(5) of the Act

7.—(1) Where a decision has been made by the Commission to grant a transitional application—

- (a) the Commission may subsequently exercise its powers under section 12(5) or 15(5) of the Act (conditions of registration) in respect of the registration prior to 1st April 2011, notwithstanding that the period of that registration has not commenced; and
- (b) when it does so exercise those powers, those sections are modified as if “for the time being in force” were omitted.

(2) Where the Commission decides to exercise its powers under section 12(5) or 15(5) of the Act as provided for in paragraph (1)—

- (a) sections 26(4)(c) and (d) (notice of proposals) and 28(3), (4), (6) and (7) (notice of decisions) do not apply; and
- (b) the Commission must follow the procedure set out in the following paragraphs.

(3) The Commission must give the applicant or person to be registered as manager notice in writing of its decision under paragraph (2) and of any conditions being varied, removed or imposed.

(4) The Commission must follow the procedure set out in paragraphs (4) and (6) to (11) of article 5 as though the references in those paragraphs to a decision under paragraph (1) of article 5 were references to the Commission’s decision under paragraph (2) of this article.

Transitional provisions relating to cancellation of registration

8.—(1) Where a decision has been made by the Commission to grant a transitional application, the Commission may, prior to 1st April 2011, subsequently exercise its powers under section 17(1) of the Act (cancellation of registration) and must comply with any duty arising under section 17(2) of the Act in respect of that registration, notwithstanding that the period of that registration has not commenced.

(2) Where—

- (a) the Commission decides to exercise its powers under section 17(1) of the Act to cancel a registration as provided for in paragraph (1); and
- (b) it must therefore give a notice of proposal pursuant to section 26(4)(a) of the Act (notice of proposal relating to cancellation of registration),

it must use its best endeavours to give such a notice to the applicant or person to be registered as a manager (as the case may be) as soon as reasonably practicable after the decision to propose cancellation is made and in any event before 1st April 2011.

(3) Any subsequent notice of decision relating to that cancellation given under section 28(3) of the Act (notice of decisions) must, in addition to explaining the right of appeal as required by section 28(4)(a) of the Act, state that the decision takes effect—

- (a) on 1st April 2011;
- (b) at the end of the period of 28 days referred to in section 32(2) of the Act (appeals to the Tribunal); or

- (c) subject to any decision by the Tribunal, at the end of such further period specified in the notice

and accordingly section 28(6) and (7) of the Act does not apply.

(4) In deciding which of the periods listed in paragraph (3) to state in any particular case, the Commission must have regard to the need to strike a balance between the desirability of preserving service continuity and the need to safeguard persons against serious risks to their life, health or well-being.

Transitory modification of, and transitional provisions relating to the exercise of powers under, section 19 of the Act

9.—(1) Where a decision has been made by the Commission to grant a transitional application—

- (a) the Commission may subsequently consider an application made under section 19(1)(a) or (b) of the Act (applications by registered persons) by the person who made the transitional application, notwithstanding that the period of their registration as service provider or registered manager has not yet commenced; and
- (b) when it does consider such an application, section 19(1)(a) is modified as if “for the time being in force” were omitted.

(2) Where the Commission, having considered an application under section 19(1)(a) or (b) of the Act as provided for in paragraph (1), decides to refuse such application—

- (a) sections 26(5) (notice of proposal) and 28(3) and (4) (notice of decisions) do not apply; and
- (b) the Commission must follow the procedure set out in the following paragraphs.

(3) The Commission must give the person who has made the application under section 19(1)(a) or (b) as provided for in paragraph (1) notice in writing of its decision under paragraph (2).

(4) The Commission must follow the procedure set out in paragraphs (4) and (6) to (11) of article 5 as though references in those paragraphs to a decision under paragraph (1) of article 5 were references to the Commission’s decision under paragraph (2) of this article.

Transitional provisions relating to supplementary transitional applications

10.—(1) This article applies where a person makes a supplementary transitional application.

(2) Article 4(1) and (2) applies to an application to which this article applies as if for “transitional application” there were substituted “supplementary transitional application”.

(3) Article 5(1) to (4) and (6) to (11) applies to an application to which this article applies as if—

- (i) in article 5(1)—
 - (aa) for “as modified by article 4” there were substituted “as modified by article 4(1) and (2) as applied to a supplementary transitional application” and
 - (bb) for “transitional application” there were substituted “supplementary transitional application”;
- (ii) in article 5(8), for “from 1st April 2011 or, if later, the date of the grant of registration” there were substituted “from the date of the grant of the registration”;
- (iii) in article 5(10), for “from 1st April 2011 or, if later, the date of the notice” there were substituted “from the date of the notice”; and
- (iv) in article 5(11), the words “1st April 2011, or, if later,”, in both places they occur, were omitted.

(4) Where, pursuant to section 12 or 15 of the Act (grant or refusal of registration as a service provider or manager), as modified by article 4(1) and (2) as amended by paragraph (2), the Commission proposes to refuse a supplementary transitional application, and it must therefore give a notice of proposal pursuant to section 26(3) of the Act (notice of proposal relating to refusal

of registration), it must use its best endeavours to give such notice to the applicant or person to be registered as a manager (as the case may be) as soon as reasonably practicable after the decision to propose refusal is made.

(5) Any subsequent notice of decision relating to that refusal given under section 28(3) of the Act (notice of decisions) must, in addition to explaining the right of appeal as required by section 28(4)(a) of the Act, state that the decision takes effect—

- (a) immediately;
- (b) at the end of the period of 28 days referred to in section 32(2) of the Act (appeals to the Tribunal); or
- (c) subject to any decision by the Tribunal, at the end of such further period specified in the notice.

(6) In deciding which of the periods listed in paragraph (5) to state in any particular case, the Commission must have regard to the need to strike a balance between the desirability of preserving service continuity and the need to safeguard persons against serious risks to their life, health or well-being.

PART 3

Provisions relating to activities which are regulated activities with effect from 1st
April 2012

Notification of the need to make an application

11.—(1) The Commission must give notice of the need to make an application under section 11 of the Act (applications for registration as a service provider) to persons to whom paragraph (2) applies.

(2) This paragraph applies to any person—

- (a) who is carrying on an activity consisting of the provision of NHS primary medical services which will be a regulated activity with effect from 1st April 2012; and
- (b) whose name is known to the Commission as someone carrying on such an activity

(3) Notification sent pursuant to paragraph (1) must specify—

- (a) the form in which the application must be made;
- (b) the information it must contain or be accompanied by;
- (c) the application date; and
- (d) that the application under section 11 of the Act (applications for registration as a service provider) must be made to the Commission on or before the application date, in the specified form and contain or be accompanied by the specified information, in order for article 12 to apply.

(4) The application date in any notification sent pursuant to paragraph (1) must be a date at least 28 days after the date on which the notification is sent.

(5) Where—

- (a) the Commission gives notice in accordance with paragraph (1) of the need to make an application for registration in accordance with section 11; and
 - (b) any such registration would be subject to a registered manager condition,
- the Commission may, at the same time as giving notice under paragraph (1), give notice to the person to whom that notification is sent of the fact that an application must be made under section 14 of the Act (applications for registration as a manager) by a person proposing to manage the regulated activity.

(6) Notification sent pursuant to paragraph (5) must specify—

- (a) the form in which the application must be made;

- (b) the information it must contain or be accompanied by;
- (c) the application date (which need not be the same as the application date given in accordance with paragraph (3)); and
- (d) that an application under section 14 of the Act by a person proposing to manage the regulated activity must be made to the Commission on or before the application date given in the notification, in the specified form and contain or be accompanied by the specified information, in order for article 12 to apply.

(7) The application date in any notification sent pursuant to paragraph (5) must be a date at least 28 days after the date on which the notification is sent.

Suspension of the offence of carrying on a regulated activity while unregistered

12.—(1) This article applies where—

- (a) a person—
 - (i) carries on an activity before 1st April 2012, and
 - (ii) intends to carry on that activity on and after 1st April 2012;
- (b) that activity is a 2012 relevant regulated activity; and
- (c) an application is made in respect of that activity under—
 - (i) section 11 of the Act (applications for registration as a service provider), or
 - (ii) section 14 of the Act (applications for registration as a manager), where that activity will be subject to a registered manager condition.

(2) Article 3 applies to an application to which this article applies as if—

- (a) for all references to “1st April 2011” there were substituted “1st April 2012”;
- (b) for all references to “relevant regulated activity” there were substituted “2012 relevant regulated activity”;
- (c) for “31st December 2010” there were substituted “31st December 2011”;
- (d) all references to article 2 and individual paragraphs of that article were interpreted as references to article 11 and its corresponding individual paragraphs;
- (e) all references to “this article” and individual paragraphs of article 3 were interpreted as references to article 3 and those paragraphs as applied by this article; and
- (f) all references to article 5 and individual paragraphs of that article were interpreted as references to that article and those paragraphs as applied by the provisions of article 14.

Transitional provisions relating to the grant or refusal of registration

13.—(1) This article applies where any person makes a 2012 transitional application.

(2) Article 4 applies to an application to which this article applies as if—

- (a) for all references to “transitional application” there were substituted “2012 transitional application”;
- (b) all references to individual paragraphs of article 4 were interpreted as references to those paragraphs as applied by this article;
- (c) all references to article 2 were interpreted as references to article 11;
- (d) for “31st December 2010” there were substituted “31st December 2011”;
- (e) for all references to “1st April 2011” there were substituted “1st April 2012”; and
- (f) for all references to “30th June 2011” there were substituted “30th June 2012”.

Transitional provisions relating to registration subject to conditions

14.—(1) This article applies where any person makes a 2012 transitional application.

- (2) Article 5 applies to an application to which this article applies as if—
- (a) all references to individual paragraphs of article 5 were interpreted as references to those paragraphs as applied by this article;
 - (b) the reference to article 4 were interpreted as a reference to article 4 as applied by the provisions of article 13;
 - (c) for the reference to “transitional application” there were substituted “2012 transitional application”;
 - (d) all references to article 2 were interpreted as references to article 11;
 - (e) for “31st December 2010” there were substituted “31st December 2011”; and
 - (f) for all references to “1st April 2011” there were substituted “1st April 2012”.

Transitional provisions relating to refusal of registration

- 15.—**(1) This article applies where any person makes a 2012 transitional application.
- (2) Article 6 applies to an application to which this article applies as if—
- (a) the reference to article 4 were interpreted as a reference to article 4 as applied by the provisions of article 13;
 - (b) for the reference to “transitional application” there were substituted “2012 transitional application”;
 - (c) all references to article 2 were interpreted as references to article 11;
 - (d) for all references to “1st April 2011” there were substituted “1st April 2012”;
 - (e) for “31st December 2010” there were substituted “31st December 2011”; and
 - (f) any reference to an individual paragraph of article 6 were interpreted as a reference to that paragraph as applied by this article.

Transitory modifications of, and transitional provisions relating to the exercise of powers in, sections 12(5) and 15(5) of the Act

- 16.—**(1) This article applies where any person makes a 2012 transitional application.
- (2) Article 7 applies to an application to which this article applies as if—
- (a) for the reference to “transitional application” there were substituted “2012 transitional application”;
 - (b) for the reference to “1st April 2011” there were substituted “1st April 2012”;
 - (c) all references to “this article” and individual paragraphs of article 7 were interpreted as references to article 7 and those paragraphs as applied by this article; and
 - (d) all references to article 5 and individual paragraphs of that article were interpreted as references to that article and those paragraphs as applied by the provisions of article 14.

Transitional provisions relating to cancellation of registration

- 17.—**(1) This article applies where any person makes a 2012 transitional application.
- (2) Article 8 applies to an application to which this article applies as if—
- (a) for the reference to “transitional application” there were substituted “2012 transitional application”;
 - (b) for all references to “1st April 2011” there were substituted “1st April 2012”; and
 - (c) all references to individual paragraphs of article 8 were interpreted as references to those paragraphs as applied by this article.

Transitory modification of, and transitional provisions relating to the exercise of powers under, section 19 of the Act

- 18.—(1) This article applies where any person makes a 2012 transitional application.
- (2) Article 9 applies to an application to which this article applies as if—
- (a) for all references to “transitional application” there were substituted “2012 transitional application”;
 - (b) all references to individual paragraphs of article 9 were interpreted as references to those paragraphs as applied by this article; and
 - (c) all references to article 5 and individual paragraphs of that article were interpreted as references to that article and those paragraphs as applied by the provisions of article 14.

Transitional provisions relating to supplementary 2012 transitional applications

- 19.—(1) This article applies where any person makes a supplementary 2012 transitional application.
- (2) Article 10 applies to an application to which this article applies as if for all references to “supplementary transitional application” there were substituted “supplementary 2012 transitional application”.

Signed by authority of the Secretary of State for Health.

Simon Burns
Minister of State,
Department of Health

11th October 2010

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision in connection with the coming into force of certain provisions of the Health and Social Care Act 2008 (“the 2008 Act”) in respect of certain service providers, when the services which they provide become “regulated activities” for the purposes of the 2008 Act.

Articles 2 to 10 make transitory and transitional provisions to deal with applications to the Care Quality Commission (“the Commission”) to register in relation to carrying on or managing regulated activities, such registration to commence on or after 1st April 2011. Regulated activities are defined by section 8 of the 2008 Act as being “an activity of a prescribed kind” and those activities are prescribed in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 (SI 2010/781). The provision of primary dental services and the provision of private ambulance services will be regulated activities with effect from 1st April 2011. The provision of primary medical services will be regulated with effect from 1st April 2012.

Article 2 provides for the Commission to notify providers of NHS primary dental services of whom they are aware of the need to make a transitional application and, where appropriate, of the need for a transitional application in respect of a registered manager to be made. The article sets out certain matters that must be included in that notification.

Article 3 makes transitional provision to allow the carrying on of a regulated activity to continue without registration for a limited period of time under certain circumstances without an offence being committed.

Article 4 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 requirements imposed by regulations under section 20 of the 2008 Act 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 30th June 2011 to issue a certificate of registration.

Article 5 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 April 2011 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 (11) 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.

Article 6 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 on or before 1st April 2011 in certain cases and as soon as reasonably practicable in certain other cases. Where, after having considered any representations, the Commission decides to refuse the application, it provides for the refusal to take effect on 1st April 2011 in the case of a decision made on or before 31st March 2011 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 7 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. It also provides that the procedure to be followed in respect of notification, representation and appeal in respect of such varied, removed or additional conditions is to mirror the procedure set out in article 5.

Article 8 provides for the Commission to exercise powers and duties under section 17 of the Act to cancel registration in certain circumstances, even if the period of registration has not already commenced. It requires the Commission to serve notice of proposal to cancel on the applicant or registered manager as soon as reasonably practicable after the decision to cancel is made and in any event before 1st April 2011. Where, after having considered any representations, the Commission decides to cancel the registration, it provides for the cancellation to take effect on 1st April 2011 or at such later date as the Commission specifies in the notice of cancellation. Paragraph (4) requires the Commission, in deciding the date from which the cancellation 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 provides for the modification of section 19 of the Act to allow the Commission to exercise powers to consider applications by registered persons to vary or remove conditions or to cancel registration, even if the period of registration has not yet commenced. It also provides that the procedure to be followed in respect of notification, representation and appeal in such cases is to mirror the procedure set out in article 5.

Article 10 makes provision for cases of supplementary applications during the period between 1st April 2011 and 30th June 2011 by applicants who have previously made an application, prior to 1st April 2011, in respect of a different regulated activity. It provides for the application of the provisions in articles 4 and 5, with certain modifications, to such cases. It also requires the Commission to serve notice of proposal to refuse such an application on the applicant or registered manager as soon as reasonably practicable. Where, after having considered any representations, the Commission decides to refuse the application, it provides for the refusal to take effect immediately or at such later date as the Commission specifies in the notice of refusal. Paragraph (6) 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.

Articles 11 to 19 make provisions similar to those in articles 2 to 10 but in respect of applications to register in relation to carrying on or managing of regulated activities where such registration is to commence on or after 1st April 2012.

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ISBN 978-0-11-150263-1

£5.75

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