STATUTORY INSTRUMENTS

2010 No. 807

The Health and Social Care Act 2008 (Commencement No.16, Transitory and Transitional Provisions) Order 2010

PART 3

Transitional and transitory provisions relating to the Care Quality Commission

Transitional applications where there is an outstanding matter relating to a notice of proposal to vary, remove or impose conditions

11.—(1) Where this article applies, notwithstanding the amendment of sections 1 to 5 of the 2000 Act on 1st October 2010, sections 17 to 19 and 21 of the 2000 Act continue to apply to a notice of proposal under section 17(4)(b) or (c) of that Act (notice of proposals) until the date specified in paragraph (7).

(2) This article applies where—

(a) a notice of proposal has been given under section 17(4)(b) or (c) of the 2000 Act to—

(i) vary or remove a condition of registration, or

(ii) impose any additional condition in relation to registration; and

(b) either—

(i) paragraph (3)(a), (b) or (c) applies in respect of that notice of proposal on a date on which the Commission makes a determination to which that notice of proposal is relevant, or

(ii) a notice referred to in paragraph (5)(a) or (b) is given at any time after a decision has been made by the Commission to grant a transitional application.

(3) This paragraph applies where—

(a) the Commission has not withdrawn that proposal and no notice of decision has been given under section 19 of the 2000 Act (notice of decisions);

(b) a notice of decision has been given under section 19 of the 2000 Act, the time for making an appeal under section 21(2) of that Act (appeals to the Tribunal) has not elapsed and no appeal has been made; or

(c) an appeal has been made in respect of the notice of decision but that appeal has not been determined or abandoned.

(4) Where, at the time a determination falls to be made by the Commission—

(a) paragraph (3)(a) applies, the Commission must consider the notice of proposal and any representations received within the time period specified in section 18(1) of the 2000 Act (right to make representations) in making that determination;

(b) paragraph (3)(b) applies, the Commission must consider the notice of decision in making that determination; or

    (c) paragraph (3)(c) applies, the Commission must consider the notice of decision and the grounds of appeal in making that determination.

  (5) Where, after a decision has been made by the Commission to grant a person's transitional application, the Commission gives a notice of decision under section 19 of the 2000 Act to—

    (a) vary or remove a condition; or

    (b) impose any additional condition,

in relation to that person's registration under the 2000 Act, the Commission must consider whether it should exercise its powers under section 12(5) or 15(5) of the Act (conditions of registration) to vary or remove conditions or impose any additional conditions in relation to the person's registration under the Act.

  (6) Where the Tribunal makes a decision pursuant to section 21 of the 2000 Act (appeals to the Tribunal) in respect of a notice of decision under section 19 of the 2000 Act to vary or remove a condition of registration, or impose any additional condition in relation to registration, the Commission must, if notice of that decision is sent to it—

    (a) before it makes a determination to which that decision is relevant, reflect that decision in that determination; or

    (b) after it has made a decision to grant a transitional application, consider whether it needs to exercise its powers under section 12(5) or 15(5) of the Act in order to reflect that decision.

  (7) The date specified for the purposes of paragraph (1) is the date on which—

    (a) the Commission decides not to adopt the proposal of which notice was given under section 17(4)(b) or (c) of the 2000 Act;

    (b) the period referred to in section 21(2) of the 2000 Act expires, if the Commission decides to adopt the proposal and no appeal is made during that time period; or

    (c) an appeal made under section 21 of the 2000 Act is abandoned or determined.