
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

Effect on transitional application of cancellation proceedings under the 2000 Act before the determination

14.—(1) This article applies to a transitional application made by a person, or on behalf of a registered manager, who, at the time that the transitional application falls to be determined by the Commission, comes within paragraph (2) or (3).

(2) A person comes within this paragraph where a notice of proposal to cancel registration has been served on them under section 17(4)(a) of the 2000 Act (notice of proposals) and—

- (a) the Commission has not withdrawn the proposal and no notice of decision has been given under section 19 of the 2000 Act (notice of decisions) in respect of that proposal;
- (b) a notice of decision has been given in respect of that notice of proposal, the time for making an appeal under section 21(2) of the 2000 Act (appeals to the Tribunal) has not elapsed and no appeal has been made; or
- (c) an appeal has been made in respect of a notice of decision to cancel registration but that appeal has not been determined or abandoned.

(3) A person comes within this paragraph where an application made to a justice of the peace under section 20 of the 2000 Act (urgent procedure for cancellation etc) to cancel registration has been granted and—

- (a) the time for making an appeal under section 21(2) of the 2000 Act has not elapsed, and no appeal has been made; or
- (b) an appeal has been made in respect of an order made under section 20 of the 2000 Act but that appeal has not been determined or abandoned.

(4) Where a person who comes within paragraph (2) or (3) is the person who proposes to carry on the regulated activity—

- (a) the Commission is not required to determine the transitional application insofar as it relates to the carrying on or management of a regulated activity at the premises of a registered establishment or agency in respect of which the cancellation proceedings have been brought;
- (b) notwithstanding any amendment or repeal, Part 2 of the 2000 Act (establishments and agencies) and the regulations made under it continue to apply on and after 1st October 2010 until the date specified in paragraph (7) insofar as they relate to the carrying on of that registered establishment or agency and insofar as they relate to any person who is a registered manager in respect of that establishment or agency; and

- (c) the provisions of Part 1 of the Act and the regulations made under it do not apply until the day after the date specified in paragraph (7) insofar as those provisions relate to regulated activities which the person is, or would be but for the cancellation of registration, entitled to carry on or manage at the premises of the registered establishment or agency by virtue of registration under Part 2 of the 2000 Act.
- (5) Where a person who comes within paragraph (2) or (3) is a registered manager—
 - (a) the Commission is not required to determine the transitional application, insofar as it relates to that person managing a regulated activity at the premises of an establishment or agency in respect of which the cancellation proceedings have been brought;
 - (b) notwithstanding any amendment or repeal, Part 2 of the 2000 Act (establishments and agencies) and the regulations made under it continue to apply on and after 1st October 2010 until the date specified in paragraph (7) insofar as they relate to the management of that registered establishment or agency; and
 - (c) the provisions of Part 1 of the Act and regulations made under it do not apply until the day after the date specified in paragraph (7) insofar as those provisions relate to regulated activities which the person is, or would be but for the cancellation of registration, entitled to manage at the premises of the registered establishment or agency by virtue of registration under Part 2 of the 2000 Act.
- (6) Where a person to whom Part 2 of the 2000 Act continues to apply by virtue of paragraph (4) (b)—
 - (a) carries on an activity at a registered establishment or agency before 1st October 2010;
 - (b) is not required to be registered under section 11 of the 2000 Act because of the carrying on of that activity at that establishment or agency; and
 - (c) that activity is a regulated activity,
 section 10(1) of the Act (offence of carrying on a regulated activity while unregistered) does not apply to the carrying on of that activity from 1st October 2010 at the premises of that establishment or agency until the date specified in paragraph (7).
- (7) The date specified for the purposes of paragraphs (4) and (5) is—
 - (a) in cases where no appeal is made against the notice of decision to adopt a proposal referred to in paragraph (2) or the order referred to in paragraph (3) during the period referred to in section 21(2) of the 2000 Act, the date on which that period expires in relation to that notice or order;
 - (b) in cases where such an appeal is made within that period, the date on which that appeal is—
 - (i) abandoned, or
 - (ii) determined and the decision of the Commission or the order of the justice of the peace is confirmed by the Tribunal;
 - (c) in cases where a new determination of a transitional application is made pursuant to article 16(3) the date on which the Commission makes that determination; or
 - (d) in cases where notification of the need to make a transitional application is sent to a person pursuant to article 16(4)—
 - (i) the date specified by the Commission in that notice as the one by which such an application must be made, or
 - (ii) if a transitional application is made by that person on or before that date, the date on which the Commission determines that application.