

2011 No. 2948

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)
(Amendment) Order 2011**

Made - - - - - *7th December 2011*

Laid before Parliament *13th December 2011*

Coming into force - - - *16th January 2012*

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).

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) (Amendment) Order 2011 and shall come into force on 16th January 2012.

(2) In this Order—

“the 2010 Order” means 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(b).

Amendment of article 1 of the 2010 Order

2.—(1) Article 1(2) (citation, commencement and interpretation) of the 2010 Order is amended as follows.

(2) In the definition of “2012 relevant applicant”, for “a 2012 supplementary transitional application” substitute “a supplementary 2012 transitional application”.

(3) In the definition of “2012 relevant regulated activity”, after the words “so prescribed” insert “in relation to a person as a regulated activity”.

(4) After the definition of “2012 transitional application”, insert—

(a) 2008 c.14.
(b) S.I. 2010/2484.

““2013 relevant applicant” means a person who makes a 2013 transitional application or a supplementary 2013 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 2013 relevant regulated activity which is being carried on before 1st April 2013 and which it is intended will be carried on and after 1st April 2013;

“2013 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(a) but which, by virtue of the application of the provisions of those Regulations, is only so prescribed in relation to a person as a regulated activity with effect from 1st April 2013;

“2013 transitional application” means an application for registration as a service provider or manager in respect of a 2013 relevant regulated activity in relation to any period commencing on 1st April 2013 made to the Commission by a 2013 relevant applicant before 1st April 2013 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;”.

(5) In the definition of “application date”, for the words “or 2012 transitional application” substitute “, 2012 transitional application or 2013 transitional application”.

(6) In the definition of “relevant applicant”, after the words ““2012 relevant applicant”” insert “or “2013 relevant applicant””.

(7) In the definition of “relevant regulated activity”, after the words ““2012 relevant regulated activity”” insert “or “2013 relevant regulated activity””.

(8) After the definition of “supplementary 2012 transitional application”, insert—

““supplementary 2013 transitional application” means an application for registration as a service provider or manager in respect of a 2013 relevant regulated activity in relation to any period commencing on 1st April 2013 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 2013 and 30th June 2013 by a 2013 relevant applicant who has previously made a 2013 transitional application in respect of another 2013 relevant regulated activity;”.

(9) In the definition of “transitional application”, after the words “2012 transitional application” insert “or “2013 transitional application””.

Amendment of article 11 of the 2010 Order

3. In article 11(2)(a) (notification of the need to make an application) of the 2010 Order, after “a regulated activity” insert “in relation to that person”.

Insertion of new Part 4 into the 2010 Order and amendment of the title of Part 3 of the 2010 Order

4.—(1) After Part 3 (provisions relating to activities which are regulated activities with effect from 1st April 2012) of the 2010 Order, insert—

(a) S.I. 2010/781 as amended by S.I. 2011/2711. Regulation 3 of S.I. 2010/781 provides that the activities specified in Schedule 1 to those Regulations, subject to various exemptions set out in Schedule 2, are “regulated activities” for the purposes of the Health and Social Care Act 2008. 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.

“PART 4

Provisions relating to activities which are regulated activities in relation to a person for the first time with effect from 1st April 2013

Notification of the need to make an application

20.—(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 in relation to that person with effect from 1st April 2013; 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 21 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 21 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

21.—(1) This article applies where—

- (a) a person—
 - (i) carries on an activity before 1st April 2013, and
 - (ii) intends to carry on that activity on and after 1st April 2013;

- (b) that activity is a 2013 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 2013”;
 - (b) for all references to “relevant regulated activity” there were substituted “2013 relevant regulated activity”;
 - (c) for all references to “31st December 2010” there were substituted “31st December 2012”;
 - (d) all references to article 2 and individual paragraphs of that article were interpreted as references to article 20 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 23.

Transitional provisions relating to the grant or refusal of registration

- 22.**—(1) This article applies where any person makes a 2013 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 “2013 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 20;
 - (d) for “31st December 2010” there were substituted “31st December 2012”;
 - (e) for all references to “1st April 2011” there were substituted “1st April 2013”; and
 - (f) for all references to “30th June 2011” there were substituted “30th June 2013”.

Transitional provisions relating to registration subject to conditions

- 23.**—(1) This article applies where any person makes a 2013 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 22;
 - (c) for the reference to “transitional application” there were substituted “2013 transitional application”;
 - (d) all references to article 2 were interpreted as references to article 20;
 - (e) for “31st December 2010” there were substituted “31st December 2012”; and
 - (f) for all references to “1st April 2011” there were substituted “1st April 2013”.

Transitional provisions relating to refusal of registration

- 24.**—(1) This article applies where any person makes a 2013 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 22;
 - (b) for all references to “transitional application” there were substituted “2013 transitional application”;
 - (c) all references to article 2 were interpreted as references to article 20;
 - (d) for all references to “1st April 2011” there were substituted “1st April 2013”;
 - (e) for “31st December 2010” there were substituted “31st December 2012”; 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

- 25.**—(1) This article applies where any person makes a 2013 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 “2013 transitional application”;
 - (b) for the reference to “1st April 2011” there were substituted “1st April 2013”;
 - (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 23.

Transitional provisions relating to cancellation of registration

- 26.**—(1) This article applies where any person makes a 2013 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 “2013 transitional application”;
 - (b) for all references to “1st April 2011” there were substituted “1st April 2013”; 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

- 27.**—(1) This article applies where any person makes a 2013 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 “2013 transitional application”;
 - (b) all references to this article and to individual paragraphs of article 9 were interpreted as references to article 9 and 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 23.

Transitional provisions relating to supplementary 2013 transitional applications

28.—(1) This article applies where any person makes a supplementary 2013 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 2013 transitional application”.

(2) In relation to the title to Part 3 (provisions relating to activities which are regulated activities with effect from 1st April 2012) of the 2010 Order, after “are regulated activities” insert “in relation to a person”.

Signed by authority of the Secretary of State for Health.

7th December 2011

Simon Burns
Minister of State,
Department of Health

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends 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 (S.I. 2010/2484) (“the 2010 Order”).

The 2010 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. 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 (S.I. 2010/781) (“the Regulated Activities Regulations”).

The Regulated Activities Regulations were amended by the Health and Social Care Act 2008 (Regulated Activities) (Amendment) Regulations 2011 (S.I. 2011/2711). Those amendment Regulations changed the date that the carrying on of primary medical services becomes a regulated activity from 1st April 2012 to 1st April 2013 for non-out of hours providers of primary medical services.

A new Part 4 is inserted into the 2010 Order by article 4(1) of this Order which makes transitory and transitional provisions 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 2013. Part 4 of the 2010 Order makes provision similar to that made in Parts 2 and 3 of the 2010 Order which relate to activities which are regulated activities with effect from 1st April 2011 and 1st April 2012 respectively.

Articles 2, 3 and 4(2) make ancillary provision in connection with the insertion of a new Part 4 into the 2010 Order.

An impact assessment of the effect of this instrument has not been prepared but an impact assessment has been prepared for the Health and Social Care Act 2008 (Regulated Activities) (Amendment) Regulations 2011 and is published on the Department of Health’s website at

<http://www.dh.gov.uk/en/Publicationsandstatistics/Legislation/index.htm> and is published with the Explanatory Memorandum alongside that instrument on www.legislation.gov.uk.

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