

2012 No. 1319 (C. 47)

HEALTH CARE AND ASSOCIATED PROFESSIONS

LICENSING (LIQUOR)

MENTAL HEALTH, ENGLAND AND WALES

NATIONAL HEALTH SERVICE

SOCIAL CARE, ENGLAND

**The Health and Social Care Act 2012 (Commencement No.1
and Transitory Provision) Order 2012**

Made - - - -

17th May 2012

The Secretary of State for Health makes the following Order in exercise of the powers conferred by sections 304(10) and 306 of the Health and Social Care Act 2012(a).

In accordance with section 307 of that Act(b), the Secretary of State has consulted the Scottish Ministers.

Citation and interpretation

1.—(1) This Order may be cited as the Health and Social Care Act 2012 (Commencement No.1 and Transitory Provision) Order 2012.

(2) In this Order “the Act” means the Health and Social Care Act 2012.

Commencement of provisions

2.—(1) Insofar as they are not already in force(c), the following provisions of the Act shall come into force in accordance with this Order.

(2) 1st June 2012 is the day appointed for the coming into force of the following provisions of the Act—

section 8 (Secretary of State’s duty as to reporting on and reviewing treatment of providers);

(a) 2012 c.7.

(b) Consultation with Scottish Ministers is required by section 307(1)(h) and (k) of the Health and Social Care Act 2012 (c.7) (“the Act”) by virtue of the commencement of section 227 of the Act in article 2(3) of this Order, and the commencement of section 230(1) of, and Part 2 of Schedule 15 to, the Act in article 2(4) of this Order.

(c) See section 306(1) of the Act for the provisions which came into force on the day the Act was passed.

section 64(3) to (5) (supplementary provision as to Monitor's general duties), and section 64(1) insofar as it relates to those subsections, only insofar as section 64(1) and (3) to (5) relate to section 8 of the Act;

section 299 (certificate of consent of community patients to treatment).

(3) 1st July 2012 is the day appointed for the coming into force of the following provisions of the Act—

section 39 (discharge of patients);

section 42 (transfers to and from special hospitals);

section 44 (patients' correspondence);

section 59 (repeal of AIDS (Control) Act 1987);

section 61(1) (Monitor);

section 64(3) to (5) (supplementary provision as to Monitor's general duties), and section 64(1) insofar as it relates to those subsections, insofar as they are not already in force;

section 79 (mergers involving NHS foundation trusts);

section 160 (bodies which may apply for foundation trust status);

section 201 (disclosure of reports etc. by the Health Service Commissioner);

section 207(8) and (10) (control of entry on pharmaceutical lists);

section 227 (appointments to regulatory bodies);

section 231 and Part 4 of Schedule 15 (abolition of the Office of the Health Professions Adjudicator);

section 278 and Part 1 of Schedule 20 (abolition of the Alcohol Education and Research Council);

section 283 (standing advisory committees);

section 288(1) and (2)(a) (Monitor: duty to co-operate with Care Quality Commission);

section 289(2), and section 289(1) insofar as it relates to that subsection (Care Quality Commission: duty to co-operate with Monitor);

section 289(3) insofar as it omits the whole of section 70(2) of the Health and Social Care Act 2008(a), and insofar as it substitutes section 70(2)(a) of that Act, and section 289(1) insofar as it relates to section 289(3);

section 289(4)(a) and (6), and section 289(1) insofar as it relates to those subsections;

sections 300 to 302 and Schedules 22 and 23 (transfer schemes), except insofar as they relate to—

- (a) the National Health Service Commissioning Board,
- (b) a clinical commissioning group,
- (c) any person with whom the Secretary of State has made, or has decided to make, an agreement under section 12ZA(1) of the Mental Health Act 1983,
- (d) the National Institute for Health and Care Excellence (established under section 232 of the Act), and
- (e) the Health and Social Care Information Centre (established under section 252 of the Act);

in Schedule 4, paragraphs 112 and 115 (consequential amendments of the National Health Service Act 2006 in relation to transfer schemes), and section 55(1) insofar as it relates to those paragraphs;

in Schedule 6, paragraph 2(1) (modification of requirements as to consultation), and paragraph 1(4) of that Schedule (interpretation) and section 55(3) (amendments related to Part 1 and transitional provision) insofar as they relate to that paragraph;

in Schedule 13 (minor and consequential amendments in relation to Part 3 of the Act)—

(a) 2008 c.14.

- (a) paragraphs 1 to 7,
- (b) paragraph 9(1) only insofar as it omits section 31(1) of the National Health Service Act 2006(a),
- (c) paragraphs 11 to 13,
- (d) paragraph 8 insofar as it relates to paragraphs 9, 11 and 12, and
- (e) paragraphs 18 and 19,

and section 150(5) insofar as it relates to those paragraphs.

(4) 1st August 2012 is the day appointed for the coming into force of the following provisions of the Act—

sections 209 to 211 (power to regulate social workers etc. in England and orders under section 60 of the Health Act 1999);

section 212(2) and (3) (abolition of the General Social Care Council);

sections 213 to 218 (the Health and Care Professions Council);

section 220 (references in enactments to registered health professionals, etc.);

section 221 (functions of the Secretary of State in relation to social care workers);

section 223(1), (2), (5), (9), (10) and (14) (functions of the Professional Standards Authority for Health and Social Care);

section 230, except insofar as subsection (1) relates to Part 3 of Schedule 15, and Parts 1 and 2 of Schedule 15 (consequential provisions and savings, etc. in relation to Part 7 of the Act).

Transitory modification in respect of the commencement of section 227 of the Act

3. From 1st July 2012 until section 222 of the Act (the Professional Standards Authority for Health and Social Care) comes into force, the references to the Professional Standards Authority for Health and Social Care in section 25C of the National Health Service Reform and Health Care Professions Act 2002(b) are to be read as references to the Council for Healthcare Regulatory Excellence.

Signed by authority of the Secretary of State for Health.

Simon Burns
Minster of State,
Department of Health

17th May 2012

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force provisions of the Health and Social Care Act 2012 (c.7) (“the Act”). It is the first such Order to be made under the Act.

Article 2(2) brings into force on 1st June 2012 section 8 of the Act, which inserts new section 1G of the National Health Service Act 2006 (c.22) (“the 2006 Act”): section 1G imposes a duty on the Secretary of State to lay a report before Parliament, within one year of the passing of the Act, on matters affecting the ability of NHS health care providers to provide health care services for the purposes of the NHS. Article 2(2) also commences section 64(3) to (5) of the Act, which defines certain terms used in section 8. The article also brings into force on that date section 299 of the Act, which amends the provisions in the Mental Health Act 1983 (c.20) about the treatment of patients on supervised community treatment.

Article 2(3) brings into force various provisions of the Act on 1st July 2012—

(a) 2006 c.41.

(b) 2002 c.17. Section 25C was inserted by section 227 of the Act.

- (a) sections 39 and 44, which make amendments to sections 23, 24 and 134 of the Mental Health Act 1983, and section 42 which omits section 123 of that Act: these provisions relate to the discharge of patients, transfers to and from special hospitals and patients' correspondence;
- (b) section 59, which repeals the AIDS (Control) Act 1987 (c.33);
- (c) section 61(1), which changes the name of the Independent Regulator of NHS Foundation Trusts to Monitor;
- (d) section 64(1) (in part) and (3) to (5), insofar as not already in force, which contain definitions for the purposes of Part 3 of the Act;
- (e) section 79, which makes provision about mergers involving NHS foundation trusts;
- (f) section 160, which amends sections 34 to 36 of the 2006 Act in order to remove the ability for organisations other than NHS trusts to apply for foundation trust status using section 34 of the 2006 Act;
- (g) section 201, which amends section 14 of the Health Service Commissioners Act 1993 (c.46) to enable the Health Service Commissioner for England, more commonly known as the Health Service Ombudsman, to share complaints investigation reports and statements of reasons for declining to investigate a complaint with such persons as the Commissioner thinks appropriate;
- (h) section 207(8) and (10), which amends sections 129(6)(g) and 130 of the 2006 Act, provisions that relate to the control of entry on pharmaceutical lists;
- (i) section 227, which inserts new section 25C in to the National Health Service Reform and Health Care Professions Act 2002 (c.17) to make provision in relation to Privy Council appointments to health and care professions regulatory bodies;
- (j) section 231 and Part 4 of Schedule 15, which provide for the abolition of the Office of the Health Professions Adjudicator;
- (k) section 278 and Part 1 of Schedule 20, which provide for the abolition of the Alcohol Education and Research Council;
- (l) section 283, which provides for the omission of section 250 of, and repeal of Schedule 19 to, the 2006 Act: section 250 provides for the establishment of standing advisory committees: the Joint Committee on Vaccination and Immunisation is the only remaining standing advisory committee and it will continue in existence by virtue of section 283(3);
- (m) section 288 (in part), which imposes a duty of co-operation on Monitor in relation to the provision of information to the Care Quality Commission;
- (n) section 289 (in part), which amends section 70 of the Health and Social Care Act 2008 (c.14) to makes changes to the duty of co-operation between the Care Quality Commission and Monitor;
- (o) sections 300 to 302 (in part), paragraphs 112 and 115 of Schedule 4, and Schedules 22 and 23 (in part), which together make provision in relation to the establishment of transfer schemes by the Secretary of State to transfer staff or property, rights and liabilities from one body to another, in connection with the establishment, modification or abolition of a body by the Act;
- (p) Schedule 6, paragraph 2 and section 55(3) (in part): this provides that consultation carried out with a Special Health Authority, prior to the establishment of the National Health Service Commissioning Board, about the making of regulations under section 3B of the 2006 Act is to be treated as consultation with the Board itself; and
- (q) Schedule 13 (in part) and section 150(5) (in part), which together make consequential amendments to primary legislation necessary to give effect to the change of the name of the Independent Regulator of NHS Foundation Trusts to Monitor.

Article 2(4) brings into force various provisions of the Act on 1st August 2012—

- (a) sections 209 to 211, which together amend the existing power in section 60 of the Health Act 1999 (c.8) for Her Majesty by Order in Council to regulate, and modify the regulation of, social workers, and social care workers, in England;
- (b) section 212(2) and (3), which amends section 54 of the Care Standards Act 2000 (c.14) to remove functions of the General Social Care Council (“GSCC”): the functions of the GSCC are being transferred to the Health and Care Professions Council and section 212(1) which abolishes the GSCC will be commenced at a later date in 2012 to allow it to wind up its affairs;
- (c) sections 213 to 218, which make provision in respect of the Health and Care Professions Council, section 220 which amends various enactments to exclude social workers and social care workers in England from the definition of “registered health care professional” and section 221 which amends section 67 of the Care Standards Act 2000 to change certain functions of the Secretary of State in relation to social care workers;
- (d) section 223 (in part), which makes amendments to functions in the National Health Service Reform and Health Care Professions Act 2002 (c.17): the amended functions will be carried out by the Professional Standards Authority for Health and Social Care (although until the commencement of section 222 of the Act, that body will continue to be known by its existing name, the Council for Healthcare Regulatory Excellence); and
- (e) section 230 and Parts 1 and 2 of Schedule 15, which together make consequential provisions and savings etc. in relation to Part 7 of the Act (regulation of health and social care workers).

Article 3 makes a transitory modification of section 25C of the National Health Service Reform and Health Care Professions Act 2002 (which is inserted by the commencement of section 227 of the Act) to provide that until section 222 of the Act comes into force any reference to the Professional Standards Authority for Health and Social Care is to be read as a reference to that body by its existing name (the Council for Health Care Regulatory Excellence). Section 222(1)(b) changes the body’s name.

A full impact assessment has not been produced for this instrument as the Order itself has no impact on the private sector or civil society organisations. A full Impact Assessment has been produced in relation to the provisions of the Act, including the provisions that are commenced by this Order, and a copy is available at http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsLegislation/DH_123583.

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STATUTORY INSTRUMENTS

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