EXPLANATORY MEMORANDUM TO

THE CARE QUALITY COMMISSION (MEMBERSHIP) (AMENDMENT) REGULATIONS 2011

2011 No. 2547

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

This instrument amends the Care Quality Commission (Membership) Regulations 2008 ("the 2008 Regulations") which make provision concerning membership of the Care Quality Commission ("the CQC"). The amendments provide for an increase in the number of members, extend the grounds for disqualification for membership and make certain consequential amendments.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The Regulations are being made in anticipation of new functions to be conferred on the CQC in provisions in the Health and Social Care Bill, currently before Parliament, and to update the grounds for disqualification for membership of the CQC. The CQC was established by section 1 of the Health and Social Care Act 2008 ("the 2008 Act") and has responsibility for the registration, review and inspection of certain health and social care services in England. The 2008 Regulations make provision concerning membership of the CQC.

4.2 Chapter 1 of Part 5 of the Health and Social Care Bill, which is currently before Parliament, makes amendments to the 2008 Act to confer new functions on the CQC[1] and requires the CQC to arrange for these to be exercised by a new statutory committee of the CQC to be known as the Healthwatch England committee. Healthwatch England would be a national body representing the views of users of health and social care services, other members of the public and Local Healthwatch organisations (which would be established as a result of the Bill) to the Secretary of State, the proposed National Health Service Commissioning Board (also to be established by the Bill), Monitor, English local authorities and the CQC itself.

4.3 Provision in relation to membership of the Healthwatch England committee would be set out in regulations under powers provided by the Bill.

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1 See in particular new section 45A inserted into the 2008 Act by Part 5, Chapter 1 of the Health and Social Care Bill.

4.4 In addition to provision on membership of CQC, the 2008 Regulations make provision disqualifying certain persons for membership. The Schedule to the 2008 Regulations sets out the grounds for disqualification. One of those grounds is that a person's registration to carry out health and social care activities has been cancelled by the CQC under section 17 of the 2008 Act (except where the Tribunal has reversed the decision under section 32 of that Act or the registered person has voluntarily applied for cancellation). In addition to cancellation under section 17 there is provision for immediate cancellation by a justice of the peace under 30 of the 2008 Act (known as the "urgent procedure"). The instrument adds cancellation under the urgent procedure to the grounds for disqualification for membership of the CQC.

4.5 The 2008 Regulations also disqualify for membership of the CQC a person in whose case a decision of like effect to that of cancellation under section 17 of the 2008 Act has been made under legislation in Scotland or Northern Ireland which corresponds to Part 1 of the 2008 Act. The instrument additionally disqualifies from membership of the CQC a person in whose case a decision of like effect to that of cancellation under the urgent procedure under section 30 of the 2008 Act has been made under legislation in Scotland or Northern Ireland which corresponds to Part 1 of the 2008 Act.

4.6 On 1 April 2011 a body known as Social Care and Social Work Improvement Scotland (SCSWIS) was established under section 44 of the Public Services Reform (Scotland) Act 2010 to regulate the provision of health and social care in Scotland. Schedule 11 to that Act enables Scottish Ministers to remove a member of SCSWIS on certain grounds. The instrument adds removal from membership of SCSWIS to the grounds for disqualification for membership of the CQC.

4.7 The draft Public Services Reform (Scotland) Act 2010 (Consequential Modifications of Enactments) Order 2011 was laid before Parliament for approval of both Houses on 14 July 2011. Amongst other things paragraph 60 of Schedule 2 to the Order amends the 2008 Regulations consequent on the establishment of Health Improvement Scotland (HIS) so that a person is disqualified from membership of the CQC if their tenure of office as a member of HIS has been terminated on certain grounds.

4.8 The instrument also makes two consequential amendments to the 2008 Regulations. The first of these ensures that a provision in the 2008 Regulations for disqualification for membership of CQC to cease in certain circumstances applies where a person has been disqualified on the new ground of removal from office as a member of SCSWIS.

4.9 The second consequential amendment replaces a reference to "Tribunal" in paragraph 23(a) of the Schedule to the 2008 Regulations with "First-tier Tribunal". The "Tribunal" is a reference to the tribunal mentioned in section 32 of the 2008 Act which has since been amended by the Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 to substitute a reference to the "First-tier Tribunal" for "Tribunal".

5. Territorial Extent and Application

5.1 This instrument applies in relation to England.

6. European Convention on Human Rights

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

The increase in the number of members of the CQC would enable additional members to be appointed to the CQC to assist the CQC to prepare to take on its new functions proposed by the Health and Social Care Bill. The reason for providing for a range of members as opposed to a fixed number is to allow for flexibility to reflect the emerging needs of the CQC as its role expands, without the need for repeated amendments.

7.1 In relation to SCSWIS, this body performs a similar role in Scotland to that performed by the CQC in England and it is considered appropriate that, if a person is removed from membership of SCSWIS, they should also be disqualified from being appointed as a member of the CQC.

7.2 Adding cancellation under the urgent procedure under section 30 of the 2008 Act to the grounds for disqualification for membership of the CQC brings the position in line with that for cancellation under the non-urgent procedure under section 17 of the 2008 Act, which, as mentioned in paragraph 4.4 above, is already an existing ground for disqualification under the 2008 Regulations.

7.3 Disqualifying a person in whose case a decision which is the equivalent of urgent cancellation of registration has been made under corresponding legislation in Scotland or Northern Ireland ensures parity between the treatment of those persons and persons in whose case a decision of urgent cancellation has been made under Part 1 of the 2008 Act. This is also in line with the position on non-urgent cancellations.

- ***Consolidation***

7.4 None

8. Consultation outcome

8.1 No consultation was considered necessary as these are minor and technical changes which do not have a wider impact on the public, patients, services users or businesses.

9. Guidance

9.1 None.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 This instrument will not be specifically monitored. However, the operation of the CQC and the effectiveness of its board are kept under review by the Department of Health.

13. Contact

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