EXPLANATORY MEMORANDUM TO

THE HEALTH AND SOCIAL CARE ACT 2008 (CONSEQUENTIAL AMENDMENTS No. 3) ORDER 2010

2010 No. [XXXX]

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

2.1 The Health and Social Care Act 2008 (Consequential Amendments No 3) Order 2010 makes an amendment to the Water Industry Act 1991 as a consequence of the replacement, in England, of the registration of health and social care providers under Part 2 of the Care Standards Act 2000 with the registration system under Part 1 of the Health and Social Care Act 2008.

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

3.1 The instrument will be issued free of charge to all known recipients as it corrects an omission in SI 2010/813. The instrument contains the appropriate heading to this effect.

4. Legislative Context

4.1 The Health and Social Care Act 2008 ("the Act") establishes the Care Quality Commission ("the Commission"). The Commission took over the regulation of health and adult social care in England on 1st April 2009. The Act give the Commission the function of setting up and maintaining a new registration system for providers of health and adult social care who carry out regulated activities. The registration system will cover private and voluntary health care providers and adult social care providers (who are currently regulated under the Care Standards Act 2000) and also NHS providers.

4.2 The Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 (S.I. 2010/781) came into force on 1st April 2010. These Regulations set out the health and social care activities that are "regulated activities" for the purposes of the Act, the registration requirements that must be met and provisions in relation to fixed penalty notices.

4.3 The Care Quality Commission (Registration) Regulations 2009 (S.I. 2009/3112), Regulations made under the negative procedure, set out further requirements in relation to the registration system and these also came into force on 1st April 2010.

4.4 Providers of regulated activities are being brought into the registration system in a phased manner and the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 (S.I. 2010/781) set out the dates of entry into the registration system for different providers. NHS providers of healthcare regulated activities were brought into the registration system under the Health and Social Care Act 2008 on 1st April 2010. Private and voluntary health care providers and adult social care providers of

regulated activities are to be brought into the new registration system on 1st October 2010. Currently, these providers are regulated under the Care Standards Act 2000.

4.5. With effect from 1st October 2010, therefore, the existing registration system for health and adult social care providers under the Care Standards Act 2000 will be repealed in relation to England and registration under Part 2 of the Care Standards Act will cease to have effect in relation to England for providers of health and adult social care. The registration system under Part 2 of the Care Standards Act 2000 will continue to operate for providers of children's services registered with Ofsted and in relation to Wales.

4.6 The Water Industry Act 1991[1] makes provision, at section 63A and Schedule 4A, which prohibits water undertakers from cutting off the water supply to certain premises in the event of non-payment. The "protected" premises listed in Schedule 4A include an independent hospital, which is defined by reference to that term "within the meaning of the Care Standards Act 2000". This order makes a consequential amendment to the Water Industry Act 1991 to substitute, in respect of England, a definition of "independent hospital" that covers the same kind of premises but which does not rely on a reference to a provision in the Care Standards Act 2000 that is to be repealed in respect of England.

5. Territorial Extent and Application

5.1 This instrument extends to England and Wales.

6. European Convention on Human Rights

The Minister of State for Health has made the following statement regarding Human Rights:

In my view, the provisions of the Health and Social Care Act 2008 (Consequential Amendments No 3) Order 2010 are compatible with the Convention rights.

7. Policy background

7.1 The Act creates a new system of registration for providers of health and adult social care and establishes the Commission as the single regulator responsible for regulating health care and adult social care and for monitoring the operation of the Mental Health Act 1983. On 1st April 2009, the Commission began to carry out its functions and replaced the existing regulatory bodies: the Commission for Healthcare Audit and Inspection (known as the Healthcare Commission), the Commission for Social Care Inspection and the Mental Health Act Commission.

7.2 The policy objective behind the reorganisation was to achieve the integration and alignment of health and adult social care regulation across all types of providers, whether public, private or third sector. This will ensure, for example, that the NHS and private and voluntary healthcare are subject to common regulatory procedures and standards. In addition, for many individuals, care outcomes depend on health and social care services working well together. Having a unified regulatory framework and approach across these sectors is intended to help achieve this.

[1] 1991 c. 56.

7.3 On 1st April 2009, the registration system established under the Health and Social Care Act 2008 was introduced for NHS providers of health care. This required all NHS providers of health care to be registered with the Commission and to comply with requirements relating to health care associated infections.

7.4 The registration system was extended from 1st April 2010 and NHS providers of regulated activities must now register and comply with a broader set of registration requirements. Then on 1st October 2010, the registration system will be extended further and private and voluntary health care and adult social care providers of regulated activities will also be required to register under the Health and Social Care Act 2008 registration system. At this point, the registration system that was established under Part 2 of the Care Standards Act 2000 will be repealed in relation to England.

7.5 This instrument makes a consequential amendment to the Water Industry Act 1991 to replace a reference to a provision in the Care Standards Act 2000 that is being repealed.

8. Consultation outcome

8.1 Not applicable

9. Guidance

9.1 Not applicable

10. Impact

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

10.2 There is no impact on the public sector from this Order.

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 and review

12.1 The Department of Health will liaise with DEFRA which is responsible for the amended legislation to ensure the amendment has no unintended consequences.

13. Contact

Lisa Smedley at the Department of Health Tel: 0113 2545464 or email: Lisa.Smedley@dh.gsi.gov.uk can answer any queries regarding the instrument.