

**Explanatory Memorandum to the Health and Social Care Act 2008
(Commencement No.4, Transitional and Savings Provisions) (Wales)
Order 2010**

This Explanatory Memorandum has been prepared by the Department for Public Health and Health Professions and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 24.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Health and Social Care Act 2008 (Commencement No.4, Transitional and Savings Provisions) (Wales) Order 2010.

Edwina Hart MBE AM

Minister for Health and Social Services
8 June 2010

1. Description

The Health and Social Care Act 2008 (Commencement No.4, Transitional and Savings Provisions) (Wales) Order 2010 commences provisions in the Health and Social Care Act 2008 that update the legislative framework for public health protection and includes new regulation-making powers. It also puts in place transitional and savings provisions to enable a smooth transition to the new measures.

2. Matters of special interest to the Constitutional Affairs Committee

None

3. Legislative background

The Health and Social Care Act 2008 ("the 2008 Act") substantially updates the Public Health (Control of Disease) Act 1984 ("the 1984 Act"), which, along with regulations made under it, provides a legislative framework for health protection in England and Wales. This is achieved chiefly by repealing the existing Part 2 of the 1984 Act and inserting a new Part 2A, which requires much of the detailed provisions to be delivered through regulations.

This Order commences the provisions of Part 2A, a mixture of substantive provisions and regulation-making powers, on 26 July 2010. This coincides with the coming into force date of the three sets of health protection regulations to be made under the powers in Part 2A. Those regulations are the Health Protection (Part 2A Orders) (Wales) Regulations 2010, the Health Protection (Local Authority Powers) (Wales) Regulations 2010 and the Health Protection (Notification) (Wales) Regulations 2010, which are the subject of separate Explanatory Memoranda. This Order also commences the repeal of Part 2 of the 1984 Act (with specified exceptions as detailed in Schedule 1).

Schedule 1 to the Order also makes transitional and savings provisions which enable public health action taken under Part 2 to be completed after the repeal of that Part.

Powers

The Health and Social Care Act 2008 (Commencement No.4, Transitional and Savings Provisions) (Wales) Order 2010 will be made in exercise of the powers conferred by sections 161(3) and (4), 167(2) and 170(3) of the Health and Social Care Act 2008.

This Order is subject to the negative procedure as required by section 163(1)(b) of the Health and Social Care Act 2008.

4. Purpose & intended effect of the legislation

The health protection provisions in the 1984 Act (and regulations made under it) were substantially out of date prior to their amendment by the 2008 Act. They applied only to specific infectious diseases (and not new and emerging

infections or contamination) and the requirements for notification were inadequate. The powers of Justices of the Peace (JPs) to make orders were inflexible and limited, and many of the local authority powers failed to meet the needs of the modern world. In addition, there were insufficient safeguards for people who might be affected by the use of the powers.

The amendments to the 1984 Act introduced in 2008 comprehensively modernised the legal framework for health protection. These include revised and expanded powers to make health protection regulations, relating to both international and in-country arrangements. The new Part 2A revises the powers of JPs and local authorities to apply health protection measures. It takes an “all hazards” approach whereby an appropriate response can be made to an infection or contamination of any kind that could result in significant harm to human health. Local authorities must in most cases apply to a JP for an order to impose restrictions or requirements, thereby better protecting individual rights. JPs’ order-making powers can be used in a range of situations and can be applied to people, things or premises. The powers are therefore more flexible, allowing orders to be better targeted to the problem at hand.

Part 2A requires regulations to be made relating to some aspects of JP orders, and also provides powers to make regulations concerning duties on registered medical practitioners and others to notify cases of infection or contamination; various other matters relating to JP orders; and the functions of local authorities relevant to their health protection role. The Health Protection (Part 2A Orders) (Wales) Regulations 2010, the Health Protection (Local Authority Powers) (Wales) Regulations 2010 and the Health Protection (Notification) (Wales) Regulations 2010 have therefore been developed and it is now appropriate to bring into force the provisions in the Act which update the public health protection framework so that these regulations can also come into force. Further regulations relating to health protection at Wales’ international borders are planned to be brought forward in due course.

The transitional provisions in Schedule 1 aim to enable a smooth transition to the updated health protection framework. They ensure that health protection duties or powers initiated under the current regime before 5 July 2010 can be fully met or exercised as appropriate from that date.

5. Consultation

Not applicable. However, the Health Protection (Part 2A Orders) (Wales) Regulations 2010, the Health Protection (Local Authority Powers) (Wales) Regulations 2010 and the Health Protection (Notification) (Wales) Regulations 2010 which will be made under Part 2A of the 1984 Act were developed in consultation with relevant stakeholders and a formal consultation took place between 4 November 2009 and 13 January 2010. 16 responses to the consultation were received. A detailed analysis of the consultation responses is available on the Welsh Assembly Government website at: <http://wales.gov.uk/consultations/healthsocialcare/regulations/?lang=en&status=closed>

Guidance

Guidance on the updated public health protection legislation, including the transitional provisions set out in Schedule 1 of this Order, is under development and will be made available to stakeholders and published on the Welsh Assembly Government's website shortly.

6. Regulatory Impact Assessment

A Regulatory Impact Assessment has not been prepared for this instrument as the Transitional and Savings Provisions in the Order will have a negligible impact on the public sector, business and voluntary bodies. The Order has no impact on the statutory duties (sections 77-79 GOWA 2006) or statutory partners (sections 72-75 GOWA 2006).

7. Post implementation review

The transitional and savings provisions aim to achieve a smooth transition from the current regime to the updated health protection framework. The updated health protection legislation will be reviewed against its objectives in April 2015, in line with the timing for the review of relevant provisions of the Health and Social Care Act 2008.