



# Health and Social Care Act 2008

## 2008 CHAPTER 14

### PART 1

#### THE CARE QUALITY COMMISSION

### CHAPTER 6

#### MISCELLANEOUS AND GENERAL

#### *Enforcement*

#### **86 Penalty notices**

- (1) Where the Commission is satisfied that a person has committed a fixed penalty offence, the Commission may give the person a penalty notice in respect of the offence.
- (2) A fixed penalty offence is any Part 1 offence that is prescribed for the purposes of this section.
- (3) A penalty notice is a notice offering the person the opportunity of discharging any liability to conviction for the offence to which the notice relates by payment of a penalty in accordance with the notice.
- (4) Where a person is given a penalty notice, proceedings for the offence to which the notice relates may not be instituted before the end of such period as may be prescribed.
- (5) Where a person is given a penalty notice, the person cannot be convicted of the offence to which the notice relates if the person pays a penalty in accordance with the notice.
- (6) Penalties under this section are payable to the Commission.
- (7) Penalties received by the Commission under this section must be paid to the Secretary of State.

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*Status: This is the original version (as it was originally enacted).*

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## **87 Penalty notices: supplementary provision**

- (1) Regulations may make—
- (a) provision as to the form and content of penalty notices,
  - (b) provision as to the monetary amount of the penalty and the time by which it is to be paid,
  - (c) provision determining the methods by which penalties may be paid,
  - (d) provision as to the records to be kept in relation to penalty notices,
  - (e) provision for or in connection with the withdrawal, in prescribed circumstances, of a penalty notice, including—
    - (i) repayment of any amount paid by way of penalty under a penalty notice which is withdrawn, and
    - (ii) prohibition of the institution or continuation of proceedings for the offence to which the withdrawn notice relates,
  - (f) provision for a certificate—
    - (i) purporting to be signed by or on behalf of a prescribed person, and
    - (ii) stating that payment of any amount paid by way of penalty was or, as the case may be, was not received on or before a date specified in the certificate,
 to be received in evidence of the matters so stated,
  - (g) provision as to the action to be taken if a penalty is not paid in accordance with a penalty notice, and
  - (h) such other provision in relation to penalties or penalty notices as the Secretary of State thinks necessary or expedient.
- (2) Regulations under subsection (1)(b)—
- (a) may make provision for penalties of different amounts to be payable in different cases, including provision for the penalty payable under a penalty notice to differ according to the time by which it is paid, but
  - (b) must secure that the amount of any penalty payable in respect of any offence does not exceed one half of the maximum amount of the fine to which a person committing the offence would be liable on summary conviction.
- (3) In this section—
- “penalty” means a penalty under a penalty notice;
  - “penalty notice” has the meaning given by section 86(3).

## **88 Guidance by the Commission in relation to enforcement action**

- (1) The Commission must issue guidance about how it will exercise its functions under any of the following provisions of this Part—
- (a) section 12(5) (variation, removal or imposition of condition in relation to registration as a service provider),
  - (b) section 15(5) (variation, removal or imposition of condition in relation to registration as a manager),
  - (c) sections 17 and 18 (cancellation or suspension of registration),
  - (d) section 29 (warning notice),
  - (e) section 86 (penalty notices), and
  - (f) section 89 (publication of information).

- (2) The guidance may also include guidance, in relation to any Part 1 offence, as to the circumstances in which the Commission is likely to take criminal proceedings for the offence.
- (3) The Commission may from time to time revise guidance published by it under this section and issue the revised guidance.
- (4) Before issuing any guidance or revised guidance under this section, the Commission must consult—
  - (a) such persons as may be prescribed, and
  - (b) such other persons as the Commission considers appropriate.

## **89 Publication of information relating to enforcement action etc.**

- (1) Regulations may authorise or require the publication by the Commission of prescribed information relating to—
  - (a) the cancellation or suspension of a person’s registration under Chapter 2;
  - (b) the conviction of any person in respect of a Part 1 offence and the penalty imposed;
  - (c) the variation or removal under section 12(5)(a) or 15(5)(a) of any condition for the time being in force in relation to a person’s registration;
  - (d) the imposition under section 12(5)(b) or 15(5)(b) of any additional condition;
  - (e) a warning notice under section 29;
  - (f) the payment by any person of a penalty in accordance with a penalty notice issued under section 86, and the offence to which the notice relates.
- (2) Any regulations made by virtue of subsection (1)(e) must require the Commission, before publishing information relating to a warning notice under section 29, to provide the person to whom the notice was given with an opportunity to make representations to the Commission relating to the matters dealt with in the notice.
- (3) The regulations may prescribe the time when, and manner in which, any information is to be published.

## **90 Proceedings for offences**

- (1) Proceedings in respect of a Part 1 offence may not, without the written consent of the Attorney General, be taken by any person other than—
  - (a) the Commission, or
  - (b) in relation to any functions of the Commission which the Secretary of State is for the time being discharging by virtue of section 82, the Secretary of State.
- (2) Proceedings for a Part 1 offence may be brought within a period of 12 months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the prosecutor’s knowledge; but no such proceedings are to be brought by virtue of this subsection more than 3 years after the commission of the offence.

## **91 Offences by bodies corporate**

- (1) This section applies where a Part 1 offence is committed by a body corporate.

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- (2) If the offence is proved to have been committed by, or with the consent or connivance of, or to be attributable to any neglect on the part of—
- (a) any director, manager or secretary of the body corporate, or
  - (b) any person who was purporting to act in any such capacity,
- that director, manager, secretary or person purporting to act as such (as well as the body corporate) is guilty of the offence and liable to be proceeded against and punished accordingly.
- (3) The reference in subsection (2) to a director, manager or secretary of a body corporate includes a reference—
- (a) to any other similar officer of the body, and
  - (b) where the body is an English NHS body or English local authority, to any officer or member of the NHS body or local authority.

## **92 Unincorporated associations**

- (1) Proceedings for a Part 1 offence alleged to have been committed by an unincorporated association are to be brought in the name of the association (and not in that of any of the members).
- (2) Rules of court relating to the service of documents have effect as if the unincorporated association were a body corporate.
- (3) In proceedings for a Part 1 offence brought against an unincorporated association, section 33 of the Criminal Justice Act 1925 (c. 86) and Schedule 3 to the Magistrates' Courts Act 1980 (c. 43) apply as they apply in relation to a body corporate.
- (4) A fine imposed on an unincorporated association on its conviction for a Part 1 offence is to be paid out of the funds of the association.
- (5) If a Part 1 offence committed by an unincorporated association is proved—
- (a) to have been committed with the consent or connivance of an officer of the association or a member of its governing body, or
  - (b) to be attributable to any neglect on the part of such an officer or member,
- the officer or member (as well as the association) is guilty of the offence and liable to be proceeded against and punished accordingly.