



Health and Social Care Act 2008

2008 CHAPTER 14

PART 1

THE CARE QUALITY COMMISSION

CHAPTER 2

REGISTRATION IN RESPECT OF PROVISION OF HEALTH OR SOCIAL CARE

Introductory

8 “Regulated activity”

- (1) In this Part “regulated activity” means an activity of a prescribed kind.
- (2) An activity may be prescribed for the purposes of subsection (1) only if—
 - (a) the activity involves, or is connected with, the provision of health or social care in, or in relation to, England, and
 - (b) the activity does not involve the carrying on of any establishment or agency, within the meaning of the Care Standards Act 2000 (c. 14), for which Her Majesty's Chief Inspector of Education, Children's Services and Skills is the registration authority under that Act.
- (3) For the purposes of subsection (2), activities connected with the provision of health or social care include, in particular—
 - (a) the supply of staff who are to provide such care;
 - (b) the provision of transport or accommodation for those who require such care;
 - (c) the provision of advice in respect of such care.

Status: Point in time view as at 21/07/2008. This version of this chapter contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Health and Social Care Act 2008, Chapter 2. (See end of Document for details)

Commencement Information

II S. 8 partly in force; S. 8 in force for specified purposes at Royal Assent, see s. 170

VALID FROM 01/10/2008

9 “Health or social care”

- (1) This section has effect for the interpretation of this Part.
- (2) “Health care” includes all forms of health care provided for individuals, whether relating to physical or mental health, and also includes procedures that are similar to forms of medical or surgical care but are not provided in connection with a medical condition.
- (3) “Social care” includes all forms of personal care and other practical assistance provided for individuals who by reason of age, illness, disability, pregnancy, childbirth, dependence on alcohol or drugs, or any other similar circumstances, are in need of such care or other assistance.
- (4) “Health or social care” means health care or social care.

Registration of persons carrying on regulated activities

10 Requirement to register as a service provider

- (1) Any person who carries on a regulated activity without being registered under this Chapter in respect of the carrying on of that activity is guilty of an offence.
- (2) The Secretary of State may by regulations make provision for the purposes of this Chapter for determining, in relation to a regulated activity carried on by two or more persons acting in different capacities, which of those persons is to be regarded as the person who carries on the activity.
- (3) In the following provisions of this Part, the registration of a person under this Chapter in respect of the carrying on of a regulated activity by that person is referred to as registration “as a service provider” in respect of that activity.
- (4) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to a fine not exceeding £50,000, or to imprisonment for a term not exceeding 12 months, or to both;
 - (b) on conviction on indictment, to a fine, or to imprisonment for a term not exceeding 12 months, or to both.
- (5) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44), the reference in subsection (4)(a) to 12 months is to be read as a reference to 6 months.

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Changes to legislation: There are currently no known outstanding effects for the Health and Social Care Act 2008, Chapter 2. (See end of Document for details)

Commencement Information

12 S. 10 partly in force; S. 10 in force for specified purposes at Royal Assent, see s. 170

VALID FROM 12/01/2009

11 Applications for registration as a service provider

- (1) A person seeking to be registered under this Chapter as a service provider must make an application to the Commission.
- (2) The application must be made in such form, and contain or be accompanied by such information, as the Commission requires.
- (3) In such cases as the Commission may determine, a person seeking to be registered as a service provider in respect of two or more regulated activities may make a single application in respect of them.

VALID FROM 12/01/2009

12 Grant or refusal of registration as a service provider

- (1) Subsections (2) to (4) apply where an application under section 11 has been made in accordance with the provisions of this Chapter with respect to a regulated activity.
- (2) If the Commission is satisfied that—
 - (a) the requirements of regulations under section 20, and
 - (b) the requirements of any other enactment which appears to the Commission to be relevant,are being and will continue to be complied with (so far as applicable) in relation to the carrying on of the regulated activity, it must grant the application; otherwise it must refuse it.
- (3) The application may be granted either unconditionally or subject to such conditions as the Commission thinks fit.
- (4) On granting the application, the Commission must issue a certificate of registration to the applicant.
- (5) The Commission may at any time—
 - (a) vary or remove any condition for the time being in force in relation to a person's registration as a service provider, or
 - (b) impose any additional condition.
- (6) Subsections (3) and (5) have effect subject to section 13.

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Registration of managers

13 Condition requiring registered manager

- (1) The registration under this Chapter of a person (“S”) as a service provider in respect of a regulated activity must in prescribed cases be subject to a registered manager condition.
- (2) In deciding whether to impose a registered manager condition under section 12(3) or (5), in a case where subsection (1) does not require such a condition to be imposed, the Commission must have regard to prescribed matters.
- (3) For the purposes of this Chapter, a registered manager condition is a condition that the activity as carried on by S, or the activity as carried on by S at or from particular premises, must be managed by an individual who is registered under this Chapter as a manager in respect of the activity, or the activity as carried on at or from those premises.

Commencement Information

- I3** S. 13 partly in force; S. 13 in force for specified purposes at Royal Assent, see s. 170

VALID FROM 06/04/2010

14 Applications for registration as a manager

- (1) A person seeking to be registered under this Chapter as a manager in respect of a regulated activity in respect of which a registered manager condition has, or is to have, effect must make an application to the Commission.
- (2) The application must be made in such form, and contain or be accompanied by such information, as the Commission requires.
- (3) In such cases as the Commission may determine, a person seeking to be registered as a manager in respect of two or more regulated activities carried on by a person registered as a service provider may make a single application in respect of them.

VALID FROM 06/04/2010

15 Grant or refusal of registration as a manager

- (1) Subsections (2) to (4) apply where an application under section 14 has been made in accordance with the provisions of this Chapter with respect to a regulated activity in respect of which a person is registered under this Chapter as a service provider and in respect of which a registered manager condition has effect.
- (2) If the Commission is satisfied that—
 - (a) the requirements of regulations under section 20, and
 - (b) the requirements of any other enactment which appears to the Commission to be relevant,

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are being and will continue to be complied with (so far as applicable) in relation to the carrying on of the regulated activity, it must grant the application; otherwise it must refuse it.

- (3) The application may be granted either unconditionally or subject to such conditions as the Commission thinks fit.
- (4) On granting the application, the Commission must issue a certificate of registration to the applicant.
- (5) The Commission may at any time—
 - (a) vary or remove any condition for the time being in force in relation to a person's registration as a manager, or
 - (b) impose any additional condition.

Further provision about registration as a service provider or manager

16 Regulations about registration

Regulations may make provision for the purposes of this Chapter about—

- (a) the keeping by the Commission of registers,
- (b) the making of applications for registration as a service provider or manager,
- (c) the registration of persons as service providers or managers, and
- (d) the notification by registered persons to the Commission of an address for service of documents.

Commencement Information

I4 S. 16 partly in force; S. 16 in force for specified purposes at Royal Assent, see s. 170

VALID FROM 27/07/2008

17 Cancellation of registration

- (1) The Commission may at any time cancel the registration of a person (“R”) under this Chapter as a service provider or manager in respect of a regulated activity—
 - (a) on the ground that R has been convicted of, or admitted, a relevant offence;
 - (b) on the ground that any other person has been convicted of any relevant offence in relation to the regulated activity;
 - (c) on the ground that the regulated activity is being, or has at any time been, carried on otherwise than in accordance with the relevant requirements;
 - (d) on the ground that R has failed to comply with a requirement imposed by or under Chapter 6;
 - (e) on any ground specified by regulations.
- (2) The Commission must cancel the registration of a person under this Chapter as a manager in respect of a regulated activity if—
 - (a) no-one is registered under this Chapter as a service provider in respect of the activity, or

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- (b) the registration of a person under this Chapter as a service provider in respect of the activity ceases to be subject to a registered manager condition.
- (3) For the purposes of this section, the following are relevant offences—
- (a) a Part 1 offence,
 - (b) an offence under the Registered Homes Act 1984 (c. 23) or regulations made under it,
 - (c) an offence under Part 2 of the Care Standards Act 2000 (c. 14) or regulations made under it, and
 - (d) any other offence which appears to the Commission to be relevant.
- (4) In this section “relevant requirements” means—
- (a) any requirements or conditions imposed by or under this Chapter, and
 - (b) the requirements of any other enactment which appears to the Commission to be relevant.

Commencement Information

I5 S. 17 partly in force; S. 17 in force for specified purposes at Royal Assent, see s. 170

VALID FROM 01/04/2009

18 Suspension of registration

- (1) The Commission may at any time suspend a person's registration under this Chapter as a service provider or manager for a specified period.
- (2) Except where the Commission gives notice under section 31, the power conferred by subsection (1) is exercisable only on the ground that—
- (a) the regulated activity is being, or has at any time been, carried on otherwise than in accordance with the relevant requirements, or
 - (b) the person has failed to comply with a requirement imposed by or under Chapter 6.
- (3) The suspension of a person's registration does not affect the continuation of the registration (but see sections 34 and 36 as to offences).
- (4) A period of suspension may be extended under subsection (1) on one or more occasions.
- (5) In this section “relevant requirements” has the same meaning as in section 17.

VALID FROM 01/04/2009

19 Applications by registered persons

- (1) Except in case A or B, a person registered under this Chapter as a service provider or manager (“R”) may apply to the Commission—

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- (a) for the variation or removal of any condition for the time being in force in relation to the registration, other than a registered manager condition required by section 13(1),
 - (b) for the cancellation of the registration, or
 - (c) for the cancellation of, or the variation of the period of, any suspension of the registration.
- (2) Case A is where—
- (a) the Commission has given R notice under section 26(4)(a) of a proposal to cancel the registration, and
 - (b) the Commission has not decided not to take that step.
- (3) Case B is where—
- (a) the Commission has given R notice under section 28(3) of its decision to cancel the registration, and
 - (b) either the time within which an appeal may be brought has not expired or, if an appeal has been brought, it has not yet been determined.
- (4) An application under subsection (1) must be made in such form, and contain or be accompanied by such information, as the Commission requires.
- (5) If the Commission decides to grant an application under subsection (1)(a), it must serve notice in writing of its decision on the applicant (stating, where applicable, the condition as varied) and issue a new certificate of registration.
- (6) If the Commission decides to grant an application under subsection (1)(c), it must serve notice in writing of its decision on the applicant (stating, where applicable, the period as varied).

Regulation, code of practice and guidance

20 Regulation of regulated activities

- (1) Regulations may impose in relation to regulated activities any requirements which the Secretary of State thinks fit for the purposes of this Chapter.
- (2) Regulations under this section may in particular make provision with a view to—
 - (a) securing that any service provided in the carrying on of a regulated activity is of appropriate quality, and
 - (b) securing the health, safety and welfare of persons for whom any such service is provided.
- (3) Regulations under this section may in particular—
 - (a) make provision as to the persons who are fit to carry on or manage a regulated activity;
 - (b) make provision as to the manner in which a regulated activity is carried on;
 - (c) make provision as to the persons who are fit to work for the purpose of the carrying on of a regulated activity;
 - (d) make provision as to the management and training of persons who work for the purpose of the carrying on of a regulated activity;
 - (e) make provision as to the fitness of premises;

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- (f) impose requirements as to the keeping of records and accounts;
 - (g) impose requirements as to the provision of information;
 - (h) impose requirements as to the financial position of a person registered as a service provider;
 - (i) impose requirements as to the making available to the public of information as to any charges made for the provision of any services provided in the carrying on of a regulated activity;
 - (j) impose requirements as to the review of the quality of any services provided in the carrying on of a regulated activity, as to the preparation of reports of such reviews, and as to the making available to the public of such reports;
 - (k) make provision as to the handling of complaints and disputes and the application of lessons learnt from them.
- (4) Regulations made under this section by virtue of subsection (3)(b) may in particular include provision as to the control and restraint, in appropriate cases, of persons receiving health or social care or other services in connection with the carrying on of a regulated activity.
- (5) Regulations made under this section may make provision for the prevention and control of health care associated infections and may include such provision as the Secretary of State considers appropriate for the purpose of safeguarding individuals (whether receiving health or social care or otherwise) from the risk, or any increased risk, of being exposed to health care associated infections or of being made susceptible, or more susceptible, to them.
- (6) In this Chapter “health care associated infection” means any infection to which an individual may be exposed or made susceptible (or more susceptible) in circumstances where—
- (a) health or social care is being, or has been, provided to that or any other individual, and
 - (b) the risk of exposure to the infection, or of susceptibility (or increased susceptibility) to it, is directly or indirectly attributable to the provision of that care.
- (7) But “health care associated infection” does not include an infection to which the individual is deliberately exposed as part of any health care.
- (8) Before making regulations under this section, except regulations which amend other regulations under this section and do not, in the opinion of the Secretary of State, effect any substantial change in the provision made by those regulations, the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (9) Consultation undertaken by the Secretary of State before the commencement of this section is as effective for the purposes of this section as consultation undertaken after that time.

Commencement Information

I6 S. 20 partly in force; S. 20 in force for specified purposes at Royal Assent, see s. 170

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VALID FROM 12/01/2009

21 Code of practice relating to health care associated infections

- (1) The Secretary of State may issue a code of practice about compliance with any requirements of regulations under section 20 which relate to the prevention or control of health care associated infections.
- (2) The code may—
 - (a) operate by reference to provisions of other documents specified in it (whether published by the Secretary of State or otherwise);
 - (b) provide for any reference in it to such a document to take effect as a reference to that document as revised from time to time;
 - (c) make different provision for different cases or circumstances.
- (3) The Secretary of State must keep the code under review and may from time to time—
 - (a) revise the whole or any part of the code, and
 - (b) issue a revised code.

VALID FROM 12/01/2009

22 Consultation etc. in relation to code of practice under s. 21

- (1) Where the Secretary of State proposes to issue a code of practice under section 21, the Secretary of State must—
 - (a) prepare a draft of the code, and
 - (b) consult such persons as the Secretary of State considers appropriate about the draft.
- (2) Where the Secretary of State proposes to issue under section 21 a revised code which in the opinion of the Secretary of State would result in a substantial change in the code, the Secretary of State must—
 - (a) prepare a draft of the revised code, and
 - (b) consult such persons as the Secretary of State considers appropriate about the change.
- (3) Where, following consultation under subsection (1) or (2), the Secretary of State issues the code or revised code (whether in the form of the draft or with such modifications as the Secretary of State thinks fit), it comes into force at the time when it is issued by the Secretary of State.
- (4) Where—
 - (a) any document by reference to whose provisions the code operates as mentioned in section 21(2)(a) and (b) is a document published by the Secretary of State in connection with the Secretary of State's functions relating to health or social care,
 - (b) the Secretary of State proposes to revise the document, and
 - (c) in the opinion of the Secretary of State, the revision would result in a substantial change in the code,

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the Secretary of State must, before revising the document, consult such persons as the Secretary of State considers appropriate about the change.

(5) Where—

- (a) any document by reference to whose provisions the code operates as mentioned in section 21(2)(a) and (b) is not one to which subsection (4)(a) of this section applies,
- (b) the document is revised, and
- (c) in the opinion of the Secretary of State, the revision results in a substantial change in the code,

the Secretary of State must consult such persons as the Secretary of State considers appropriate about whether the code should be revised in connection with the change.

(6) Consultation undertaken by the Secretary of State before the commencement of this section is as effective for the purposes of this section as consultation undertaken after that time.

VALID FROM 11/12/2009

23 Guidance as to compliance with requirements

- (1) The Commission must issue guidance about compliance with the requirements of regulations under section 20, other than requirements which relate to the prevention or control of health care associated infections.
- (2) The guidance may, if the Commission thinks fit, also relate to compliance for the purposes of this Chapter with the requirements of any other enactments.
- (3) The guidance may—
 - (a) operate by reference to provisions of other documents specified in it (whether published by the Commission or otherwise);
 - (b) provide for any reference in it to such a document to take effect as a reference to that document as revised from time to time;
 - (c) make different provision for different cases or circumstances.
- (4) The Commission may from time to time revise guidance issued by it under this section and issue the revised guidance.

VALID FROM 11/12/2009

24 Consultation in relation to guidance under s. 23

- (1) Where the Commission proposes to issue guidance under section 23, it must—
 - (a) prepare a draft of the guidance, and
 - (b) consult such persons as the Commission considers appropriate about the draft.

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- (2) Where the Commission proposes to issue under section 23 revised guidance which in its opinion would result in a substantial change in the guidance, the Commission must—
 - (a) prepare a draft of the revised guidance, and
 - (b) consult such persons as the Commission considers appropriate about the change.
- (3) Where, following consultation under subsection (1) or (2), the Commission issues the guidance or revised guidance (whether in the form of the draft or with such modifications as the Commission thinks fit), it comes into force at the time when it is issued by the Commission.
- (4) Where—
 - (a) any document by reference to whose provisions the guidance operates as mentioned in section 23(3)(a) and (b) is a document published by the Commission,
 - (b) the Commission proposes to revise the document, and
 - (c) in the opinion of the Commission, the revision would result in a substantial change in the guidance,the Commission must, before revising the document, consult such persons as the Commission considers appropriate about the change.
- (5) Where—
 - (a) any document by reference to whose provisions the guidance operates as mentioned in section 23(3)(a) and (b) is not one to which subsection (4)(a) of this section applies,
 - (b) the document is revised, and
 - (c) in the opinion of the Commission, the revision results in a substantial change in the guidance,the Commission must consult such persons as the Commission considers appropriate about whether the guidance should be revised in connection with the change.
- (6) Consultation undertaken by the Commission before the commencement of this section is as effective for the purposes of this section as consultation undertaken after that time.

VALID FROM 12/01/2009

25 Effect of code under s. 21 and guidance under s. 23

- (1) A code of practice under section 21 and guidance under section 23 are to be taken into account—
 - (a) in the making of any decision by the Commission under this Chapter;
 - (b) in any proceedings for the making of an order under section 30;
 - (c) in any proceedings on an appeal against such a decision or order;
 - (d) in any proceedings for an offence under section 33 or under regulations under section 20.

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- (2) A code of practice under section 21 or guidance under section 23 is also admissible in evidence in other criminal or civil proceedings.
- (3) A failure to observe any provision of a code of practice under section 21 or guidance under section 23 does not of itself make a person liable to any criminal or civil proceedings.

Registration procedure

VALID FROM 12/01/2009

26 Notice of proposals

- (1) Subsections (2) and (3) apply where a person applies for registration as a service provider or manager in respect of a regulated activity.
- (2) If the Commission proposes to grant the application subject to any condition which has not been agreed in writing between it and the applicant, other than a registered manager condition required by section 13(1), it must give the applicant notice in writing of its proposal and of the conditions subject to which it proposes to grant the application.
- (3) The Commission must give the applicant notice in writing of a proposal to refuse the application.
- (4) Except where it makes an application under section 30 or gives notice under section 31, the Commission must give any person registered as a service provider or manager in respect of a regulated activity notice in writing of a proposal—
 - (a) to cancel the registration (otherwise than by virtue of section 17(2) or in accordance with an application under section 19(1)(b)),
 - (b) to suspend the registration or extend a period of suspension,
 - (c) to vary or remove (otherwise than in accordance with an application under section 19(1)(a)) any condition for the time being in force in relation to the registration, or
 - (d) to impose in relation to the registration any additional condition.
- (5) The Commission must give the applicant notice in writing of a proposal to refuse an application under section 19(1)(a), (b) or (c).
- (6) A notice under this section must give the Commission's reasons for its proposal.

VALID FROM 12/01/2009

27 Right to make representations

- (1) A notice under section 26 must state that within 28 days of service of the notice any person on whom it was served may make written representations to the Commission concerning any matter which that person wishes to dispute.

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- (2) Where a notice has been served under section 26, the Commission must not determine any matter to which the notice relates until either—
 - (a) any person on whom the notice was served has made written representations to it concerning the matter,
 - (b) any such person has notified the Commission in writing that the person does not intend to make such representations, or
 - (c) the period during which any such person could have made representations has elapsed.

VALID FROM 12/01/2009

28 Notice of decisions

- (1) If the Commission decides to grant an application for registration as a service provider or manager in respect of a regulated activity—
 - (a) unconditionally, or
 - (b) subject only to conditions each of which is either required by section 13(1) or agreed in writing between the Commission and the applicant,it must give the applicant notice in writing of the decision.
- (2) A notice under subsection (1) must state the conditions subject to which registration is granted.
- (3) If the Commission decides to adopt a proposal of which it was required to give notice under section 26, it must give notice in writing of its decision to any person to whom it was required by section 26 to give notice of the proposal.
- (4) A notice under subsection (3) must—
 - (a) explain the right of appeal conferred by section 32,
 - (b) in the case of a decision to adopt a proposal under section 26(2), state the conditions subject to which the application is granted,
 - (c) in the case of a decision to adopt a proposal under section 26(4)(b), state the period (or extended period) of suspension, and
 - (d) in the case of a decision to adopt a proposal under section 26(4)(c) or (d), state the condition as varied, the condition which is removed or (as the case may be) the additional condition imposed.
- (5) Where a person (“M”) is registered as a manager in respect of a regulated activity, the Commission must—
 - (a) give M a copy of any notice given under subsection (3) to the person (“S”) registered as a service provider in respect of the regulated activity, and
 - (b) give S a copy of any such notice given under that subsection to M.
- (6) Subject to subsection (7), a decision of the Commission to adopt a proposal under section 26(2) or (4) takes effect—
 - (a) at the end of the period of 28 days referred to in section 32(2), or
 - (b) if an appeal is brought, on the determination or abandonment of the appeal.

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- (7) Where the applicant notifies the Commission in writing before the end of the period mentioned in subsection (6)(a) that the applicant does not intend to appeal, the decision is to take effect when the Commission receives the applicant's notification.

VALID FROM 01/04/2009

29 Warning notice

- (1) If it appears to the Commission that a person who is registered under this Chapter as a service provider or manager in respect of a regulated activity has failed to comply with the relevant requirements, the Commission may give the registered person a warning notice.
- (2) A warning notice is a notice in writing—
- (a) specifying the conduct which appears to the Commission to constitute a failure to comply with the relevant requirements,
 - (b) specifying the requirement concerned, and
 - (c) where it appears to the Commission that the failure is continuing—
 - (i) requiring the registered person to comply with the requirement concerned within a specified time, and
 - (ii) stating that, if the registered person fails to do so within that time, the Commission may take action to secure compliance with the relevant requirements.
- (3) Subsections (4) and (5) apply where—
- (a) a warning notice has been given to any person, and
 - (b) where any failure to comply with a requirement is specified under subsection (2)(c), the requirement has been complied with within the specified time.
- (4) The failure to which the notice relates, so far as occurring before the relevant time, is not to constitute a ground for the cancellation or suspension of registration, the variation of the conditions of registration, the removal of a condition or the imposition of any additional condition.
- (5) No proceedings may be brought against any person registered in respect of the regulated activity for a Part 1 offence that arises out of the failure to which the notice relates, so far as occurring before the relevant time.
- (6) In subsections (4) and (5) “the relevant time” means—
- (a) where a time is specified under subsection (2)(c)(i), the time so specified, and
 - (b) in any other case, the date on which the notice was given.
- (7) In this section “relevant requirements” means—
- (a) any requirements or conditions imposed by or under this Chapter or Chapter 6, and
 - (b) the requirements of any other enactment which appears to the Commission to be relevant.

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30 Urgent procedure for cancellation

- (1) If—
 - (a) the Commission applies to a justice of the peace for an order cancelling the registration of a person as a service provider or manager in respect of a regulated activity, and
 - (b) it appears to the justice that, unless the order is made, there will be a serious risk to a person's life, health or well-being,the justice may make the order, and the cancellation has effect from the time when the order is made.
- (2) An application under subsection (1) may, if the justice thinks fit, be made without notice having been given to the registered person.
- (3) As soon as practicable after the making of an application under this section, the Commission must give notice of the application—
 - (a) to such Primary Care Trust or English local authority as may be determined in accordance with regulations,
 - (b) where the person registered as a service provider is a Primary Care Trust or National Health Service trust, to such Strategic Health Authority as may be so determined,
 - (c) where the person registered as a service provider is an NHS foundation trust, to the Independent Regulator of NHS Foundation Trusts, and
 - (d) to such other persons as the Commission considers appropriate.
- (4) An order under subsection (1) must be in writing.
- (5) Where such an order is made, the Commission must, as soon as practicable after the making of the order, serve on the person registered as a service provider or manager in respect of the regulated activity—
 - (a) a copy of the order, and
 - (b) notice of the right of appeal conferred by section 32.

Commencement Information

I7 S. 30 partly in force; S. 30 in force for specified purposes at Royal Assent, see s. 170

VALID FROM 01/04/2009

31 Urgent procedure for suspension, variation etc.

- (1) If the Commission has reasonable cause to believe that unless it acts under this section any person will or may be exposed to the risk of harm, the Commission may, by giving notice in writing under this section to a person registered as a service provider or manager in respect of a regulated activity, provide for any decision of the Commission that is mentioned in subsection (2) to take effect from the time when the notice is given.
- (2) Those decisions are—

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Changes to legislation: *There are currently no known outstanding effects for the Health and Social Care Act 2008, Chapter 2. (See end of Document for details)*

- (a) a decision under section 12(5) or 15(5) to vary or remove a condition for the time being in force in relation to the registration or to impose an additional condition;
 - (b) a decision under section 18 to suspend the registration or extend a period of suspension.
- (3) The notice must—
- (a) state that it is given under this section,
 - (b) state the Commission's reasons for believing that the circumstances fall within subsection (1),
 - (c) specify the condition as varied, removed or imposed or the period (or extended period) of suspension, and
 - (d) explain the right of appeal conferred by section 32.

VALID FROM 12/01/2009

32 Appeals to the Tribunal

- (1) An appeal against—
- (a) any decision of the Commission under this Chapter, other than a decision to give a warning notice under section 29, or
 - (b) an order made by a justice of the peace under section 30, lies to the Tribunal.
- (2) No appeal against a decision or order may be brought by a person more than 28 days after service on the person of notice of the decision or order.
- (3) On an appeal against a decision of the Commission, other than a decision to which a notice under section 31 relates, the Tribunal may confirm the decision or direct that it is not to have effect.
- (4) On an appeal against an order made by a justice of the peace the Tribunal may confirm the order or direct that it is to cease to have effect.
- (5) On an appeal against a decision to which a notice under section 31 relates, the Tribunal may confirm the decision or direct that it is to cease to have effect.
- (6) On an appeal against a decision or order, the Tribunal also has power—
- (a) to vary any discretionary condition for the time being in force in respect of the regulated activity to which the appeal relates,
 - (b) to direct that any such discretionary condition is to cease to have effect,
 - (c) to direct that any such discretionary condition as the Tribunal thinks fit shall have effect in respect of the regulated activity, or
 - (d) to vary the period of any suspension.
- (7) In this section—
- “discretionary condition”, in relation to registration under this Chapter, means any condition other than a registered manager condition required by section 13(1);

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Changes to legislation: There are currently no known outstanding effects for the Health and Social Care Act 2008, Chapter 2. (See end of Document for details)

“the Tribunal” means the tribunal established by section 9 of the Protection of Children Act 1999 (c. 14).

Offences

VALID FROM 01/04/2009

33 Failure to comply with conditions

A person who—

- (a) is registered under this Chapter in respect of a regulated activity (whether as a service provider or manager), and
- (b) fails, without reasonable excuse, to comply with any condition for the time being in force by virtue of this Chapter in relation to the registration,

is guilty of an offence and liable on summary conviction to a fine not exceeding £50,000.

VALID FROM 01/04/2009

34 Offences relating to suspension or cancellation of registration

- (1) If a person (“S”) who is registered under this Chapter as a service provider in respect of a regulated activity carries on that activity while S's registration is suspended, S is guilty of an offence.
- (2) A person (“M”) whose registration under this Chapter as a manager in respect of a regulated activity is suspended is guilty of an offence if, during the period of suspension, M manages that activity at a time when no one else has been registered under this Chapter as a manager in respect of the activity since the suspension of M's registration.
- (3) A person (“M”) whose registration under this Chapter as a manager in respect of a regulated activity has been cancelled is guilty of an offence if M manages that activity at a time when—
 - (a) a person (“S”) remains registered under this Chapter as a service provider in respect of the activity,
 - (b) S's registration remains subject to a registered manager condition, and
 - (c) no-one has been registered under this Chapter as a manager in respect of the activity since the cancellation of M's registration.
- (4) If a person (“M”) who is registered under this Chapter as a manager in respect of a regulated activity manages that activity while the registration of the person registered under this Chapter as a service provider in respect of the activity is suspended, M is guilty of an offence if M knows or could reasonably be expected to know of the suspension.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding £50,000.

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Changes to legislation: There are currently no known outstanding effects for the Health and Social Care Act 2008, Chapter 2. (See end of Document for details)

35 **Contravention of regulations**

Regulations under this Chapter may provide that a contravention of or failure to comply with any specified provision of the regulations is to be an offence, but may not provide for an offence to be triable on indictment or to be punishable with imprisonment or with a fine exceeding—

- (a) in the case of regulations under section 20 (regulation of regulated activities), £50,000, or
- (b) in any other case, level 4 on the standard scale.

Commencement Information

I8 S. 35 partly in force; S. 35 in force for specified purposes at Royal Assent, see s. 170

VALID FROM 01/04/2009

36 **False description of concerns, premises etc.**

- (1) Any person who, with intent to deceive any person—
 - (a) applies any name to any concern carried on in England or to any premises in England, or
 - (b) in any way describes such a concern or such premises or holds such a concern or such premises out,
 so as to indicate, or reasonably be understood to indicate, that the carrying on of the concern is a regulated activity or that the premises are used for the carrying on of a regulated activity is guilty of an offence unless the conditions in subsection (2) are met.
- (2) Those conditions are—
 - (a) that a person is registered under this Chapter as a service provider in respect of the regulated activity in question, and
 - (b) that the registration has not been suspended.
- (3) Any person who, with intent to deceive any person, in any way describes or holds out any person registered under this Chapter as a service provider in respect of a regulated activity as able to provide a service or do any thing the provision or doing of which would contravene a condition for the time being in force by virtue of this Chapter in relation to the regulated activity is guilty of an offence.
- (4) A person guilty of an offence under subsection (1) or (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) In this section “concern” includes any organisation.

VALID FROM 12/01/2009

37 **False statements in applications**

- (1) Subsection (2) applies to any application under this Chapter by a person (“A”)—

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- (a) for registration,
 - (b) for the variation or removal of any condition in force in relation to A's registration,
 - (c) for the variation or cancellation of any suspension of A's registration, or
 - (d) for the cancellation of A's registration.
- (2) If, in an application to which this subsection applies, A knowingly makes a statement which is false or misleading in a material respect, A is guilty of an offence.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Information to be available to public

38 Provision of copies of registers

- (1) Subject to subsection (3), the Commission must secure that copies of any register kept for the purposes of this Chapter are available at its offices for inspection at all reasonable times by any person.
- (2) Subject to subsections (3) and (4), any person who asks the Commission for a copy of, or an extract from, a register kept for the purposes of this Chapter is entitled to have one.
- (3) Regulations may provide that subsections (1) and (2) do not apply—
 - (a) in such circumstances as may be prescribed, or
 - (b) to such parts of a register as may be prescribed.
- (4) A fee determined by the Commission is payable for the copy or extract except—
 - (a) in prescribed circumstances, or
 - (b) in any case where the Commission considers it appropriate to provide the copy or extract free of charge.

Commencement Information

19 S. 38 partly in force; S. 38 in force for specified purposes at Royal Assent, see s. 170

Miscellaneous

39 Bodies required to be notified of certain matters

- (1) Where the Commission gives a notice to which this section applies in respect of a regulated activity, it must give a copy of the notice—
 - (a) to such Primary Care Trust or English local authority as may be determined in accordance with regulations,
 - (b) where the person registered as a service provider in respect of the activity is a Primary Care Trust or National Health Service trust, to such Strategic Health Authority as may be so determined,

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- (c) where the person registered as a service provider in respect of the activity is an NHS foundation trust, to the Independent Regulator of NHS Foundation Trusts, and
 - (d) to such other persons as the Commission considers appropriate.
- (2) This section applies to the following notices—
- (a) a notice under section 26 (notice of proposals),
 - (b) a notice under subsection (1) or (3) of section 28 (notice of decisions),
 - (c) a warning notice under section 29 (warning notice), and
 - (d) a notice under section 31 (urgent procedure for suspension, variation etc.).
- (3) The Commission must notify each of the persons mentioned in subsection (1)(a) to (d) of either of the following events in relation to a person registered under this Chapter—
- (a) the payment of a penalty in accordance with a penalty notice issued under section 86, or
 - (b) the commencement of proceedings in respect of a Part 1 offence.
- (4) Regulations may prescribe cases in which subsection (1) or (3) does not apply.

Commencement Information

II0 S. 39 partly in force; S. 39 in force for specified purposes at Royal Assent, see s. 170

40 Periodic returns

- (1) Regulations may require the person carrying on a regulated activity to make a return to the Commission at such intervals as may be prescribed.
- (2) Provision may be made by the regulations as to the contents of the return and the period in respect of which and date by which it is to be made.

Commencement Information

III S. 40 partly in force; S. 40 in force for specified purposes at Royal Assent, see s. 170

41 Liquidators etc.

- (1) Regulations may—
 - (a) require any person to whom this section applies to give notice of the person's appointment to the Commission;
 - (b) require any person to whom this section applies to appoint a person to manage the regulated activity in question.
- (2) This section applies to any person appointed as—
 - (a) a receiver or manager of the property of a relevant company,
 - (b) the liquidator or provisional liquidator of a relevant company, or
 - (c) the trustee in bankruptcy of a relevant individual.
- (3) In this section—
 - “company” includes a partnership;

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Changes to legislation: There are currently no known outstanding effects for the Health and Social Care Act 2008, Chapter 2. (See end of Document for details)

“relevant company” means a company which is registered under this Chapter as a service provider in respect of a regulated activity;

“relevant individual” means an individual who is registered under this Chapter as a service provider in respect of a regulated activity.

Commencement Information

I12 S. 41 partly in force; S. 41 in force for specified purposes at Royal Assent, see s. 170

42 Death of registered person

(1) Regulations may—

- (a) provide for the provisions of this Chapter to apply with prescribed modifications in cases where a person who was the only person registered under this Chapter as a service provider in respect of a regulated activity has died;
- (b) require the personal representatives of a deceased person who was registered as a service provider in respect of a regulated activity to notify the Commission of the person's death.

(2) Regulations under subsection (1)(a) may in particular—

- (a) provide for the regulated activity to be carried on for a prescribed period by a person who is not registered in respect of it, and
- (b) include provision for the prescribed period to be extended by such further period as the Commission may allow.

Commencement Information

I13 S. 42 partly in force; S. 42 in force for specified purposes at Royal Assent, see s. 170

Power to modify provisions of Chapter

43 Power to modify Chapter in relation to newly regulated activities

(1) Regulations may modify the provisions of this Chapter in their application to any newly regulated activity of a prescribed description.

(2) A “newly regulated activity” is any regulated activity other than one which—

- (a) consists of or includes the carrying on of a relevant concern,
- (b) under the 2000 Act as it has effect immediately before commencement, is regulated under Part 2 of that Act by virtue of regulations under section 42 of that Act (power to extend application of that Part), or
- (c) consists of the provision of health care by a National Health Service body, as defined by section 121 of that Act.

(3) For this purpose a relevant concern is anything which, under the 2000 Act as it has effect immediately before commencement, would for the purposes of that Act be—

- (a) an independent hospital,
- (b) an independent clinic,

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- (c) an independent medical agency,
 - (d) a care home,
 - (e) a domiciliary care agency, or
 - (f) a nurses agency.
- (4) Any regulated activity carried on by or on behalf of the Crown is for this purpose a newly regulated activity.
- (5) In this section—
- “the 2000 Act” means the Care Standards Act 2000 (c. 14);
 - “commencement” means the commencement of section 10 of this Act.

Commencement Information

I14 S. 43 partly in force; S. 43 in force for specified purposes at Royal Assent, see s. 170

VALID FROM 12/01/2009

Interpretation

44 Interpretation of Chapter 2

In this Chapter—

“health care associated infection” is to be read in accordance with section 20(6) and (7);

“registered manager condition” is to be read in accordance with section 13(3).

Status:

Point in time view as at 21/07/2008. This version of this chapter contains provisions that are not valid for this point in time.

Changes to legislation:

There are currently no known outstanding effects for the Health and Social Care Act 2008, Chapter 2.