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DRAFT STATUTORY INSTRUMENTS

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**2009 No.**

**The Health and Social Care Act 2008  
(Regulated Activities) Regulations 2009**

**PART 6**

**PENALTY NOTICES**

**28.**—(1) The offences under the provisions listed in the first column of Schedule 4 are prescribed as fixed penalty offences for the purposes of section 86 of the Act.

(2) The monetary amount of the penalty for each fixed penalty offence is prescribed in the third column of Schedule 4.

(3) The time by which the penalty specified in a penalty notice is to be paid is the end of the period of 28 days beginning with the date of receipt of the notice.

(4) Subject to paragraph (5), the methods by which a penalty may be paid are by cash, cheque, credit or debit card, postal order or electronic transfer of funds to the Commission's bank account.

(5) A penalty may only be paid by credit or debit card from the date on which the Commission has in place arrangements to accept such payments.

(6) 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 the period of 28 days beginning with the date of receipt of the notice.

(7) Section 93 of the Act applies to a penalty notice as it applies to a notice required to be given under Part 1 of the Act.

(8) Where a penalty notice is given by being sent by an electronic communication, in accordance with section 94 of the Act, the notice is, unless the contrary is proved, to be taken to have been received on the next working day after the day on which it is sent.

(9) A penalty notice must give such particulars of the circumstances alleged to constitute the offence as seem to the Commission to be reasonably required to provide the person to whom the notice is given with information about it.

(10) A penalty notice must state—

- (a) the name and address of the person to whom the notice is given;
- (b) the amount of the penalty;
- (c) the period during which proceedings will not be taken for the offence;
- (d) that payment within that period will discharge any liability for the offence;
- (e) the consequences of the penalty not being paid before the expiration of the period for paying it;
- (f) the person to whom and the address at which the penalty may be paid and to which any correspondence about the penalty may be sent; and
- (g) the means by which payment of the penalty may be made.

(11) The Commission may withdraw a penalty notice by giving written notice of the withdrawal to the person to whom the notice was given if—

- (a) the Commission determines that it ought not to have been given or it ought not to have been given to the person to whom it was addressed; or
- (b) it appears to the Commission that the notice contains material errors.

(12) A penalty notice may be withdrawn in accordance with paragraph (11) whether or not the period for payment referred to in paragraph (3) has expired, and whether or not the penalty has been paid.

(13) Where a penalty notice has been withdrawn in accordance with paragraph (11), the Commission must—

- (a) repay any amount paid by way of penalty in pursuance of that notice to the person who paid it, within 14 days beginning with the day on which written notice of the withdrawal was given; and
- (b) remove from publication any information about the payment of the penalty which has been published in accordance with regulations made under section 89 of the Act, within 7 days beginning with the day on which written notice of the withdrawal was given.

(14) Except as provided in paragraph (15), no proceedings may be instituted or continued against the person to whom a penalty notice was given for the offence to which the penalty notice relates where that notice has been withdrawn in accordance with paragraph (11).

(15) Where a penalty notice has been withdrawn pursuant to paragraph (11)(b), proceedings may be instituted or continued for the offence in connection with which that penalty notice was issued if a further penalty notice in respect of the offence has been given and the penalty has not been paid before the expiration of the period for payment referred to in paragraph (3).

(16) In this regulation—

“electronic communication” has the same meaning as in the Electronic Communications Act 2000<sup>(1)</sup>;

“working day” means any day other than—

- (a) a Saturday or Sunday;
- (b) Christmas Day or Good Friday; or
- (c) a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971<sup>(2)</sup>;

“debit card” means a card the use of which by its holder to make a payment results in a current account of the holder at a bank, or at any other institution providing banking services, being debited with the payment;

“credit card” means a card which is a credit-token within the meaning of section 14 of the Consumer Credit Act 1974<sup>(3)</sup>.

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(1) 2000 c.7; see section 15 as amended by the Communications Act 2003 (c.21), Schedule 17, paragraph 158.

(2) 1971 c. 80.

(3) 1974 c. 39.