
DRAFT STATUTORY INSTRUMENTS

2010 No.

**The Health and Social Care Act 2008
(Regulated Activities) Regulations 2010**

PART 1

GENERAL

Citation and commencement

1. These Regulations may be cited as the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 and come into force on 1st April 2010.

Interpretation

2. In these Regulations—

“the Act” means the Health and Social Care Act 2008;

“the 1983 Act” means the Mental Health Act 1983(1);

“the 2006 Act” means the National Health Service Act 2006(2);

“the 2001 Order” means the Health Professions Order 2001(3);

“adult placement carer” means an individual who, under the terms of a carer agreement, provides, or intends to provide, personal care for service users together with, where necessary, accommodation in the individual’s home;

“adult placement scheme” means a scheme carried on (whether or not for profit) by a local authority or other person for the purposes of—

(a) recruiting and training adult placement carers;

(b) making arrangements for the placing of service users with adult placement carers; and

(c) supporting and monitoring placements;

“carer agreement” means an agreement entered into between a person carrying on an adult placement scheme and an individual for the provision, by that individual, of personal care to a service user together with, where necessary, accommodation in the individual’s home;

“chiroprapist or podiatrist” means a person registered as such with the Health Professions Council pursuant to article 5 of the 2001 Order(4);

“employment” means—

(a) employment under a contract of service, an apprenticeship, a contract for services or otherwise than under a contract (including under a carer agreement); and

(1) 1983 c.20.

(2) 2006 c.41.

(3) S.I. 2002/254.

(4) See the definition of “relevant professions” in Schedule 3, paragraph 1 of the 2001 Order as amended by S.I. 2004/2033, article 10(5)(b)(i).

- (b) the grant of practising privileges,
and “employed” and “employer” should be construed accordingly;
“employment agency” and “employment business” have the same meanings as in the Employment Agencies Act 1973⁽⁵⁾;
“health care professional” means, except in paragraph 5 of Schedule 1, a person who is registered as a member of any profession to which section 60(2) of the Health Act 1999⁽⁶⁾ applies;
“hospital”, except in paragraphs 1(3)(d) and 6 of Schedule 1, has the same meaning as in section 275 of the 2006 Act;
“institution within the further education sector” has the same meaning as in section 91 of the Further and Higher Education Act 1992⁽⁷⁾;
“local anaesthesia” means any anaesthesia other than general, spinal or epidural anaesthesia, and also excludes the administration of a regional nerve block;
“medical practitioner” means a registered medical practitioner⁽⁸⁾;
“nominated individual” must be construed in accordance with regulation 5(2);
“nurse” means a registered nurse;
“nursing care” means any services provided by a nurse and involving—
(a) the provision of care; or
(b) the planning, supervision or delegation of the provision of care,
other than any services which, having regard to their nature and the circumstances in which they are provided, do not need to be provided by a nurse;
“personal care” means—
(a) physical assistance given to a person in connection with—
(i) eating or drinking (including the administration of parenteral nutrition),
(ii) toileting (including in relation to the process of menstruation),
(iii) washing or bathing,
(iv) dressing,
(v) oral care, or
(vi) the care of skin, hair and nails (with the exception of nail care provided by a chiropodist or podiatrist); or
(b) the prompting, together with supervision, of a person, in relation to the performance of any of the activities listed in paragraph (a), where that person is unable to make a decision for themselves in relation to performing such an activity without such prompting and supervision;
“practising privileges” means the grant, by a person managing a hospital, to a medical practitioner of permission to practise as a medical practitioner in that hospital;
“premises” means—

(5) 1973 c.35. See section 13(2) and (3). Section 13(2) was amended by the Employment Relations Act 1999 (c.26), Schedule 7, paragraphs 1 and 7.

(6) 1999 c.8. Section 60(2) was amended by the Health and Social Care Act 2008, Schedule 8, paragraph 1(3) and Schedule 15, Part 2 and by S.I. 2002/253 and the 2001 Order.

(7) 1992 c.13.

(8) The definition of “registered medical practitioner” in Schedule 1 to the Interpretation Act 1978 (c.30) has been substituted by S.I. 2002/3135, Schedule 1, paragraph 10 with effect from 16th November 2009.

(a) any building or other structure, including any machinery or engineering systems which are physically affixed and integral to such building or structure; or

(b) a vehicle;

“registered manager” means, in respect of a regulated activity, a person registered with the Commission under Chapter 2 of Part 1 of the Act as a manager in respect of that activity, and “manage” should be construed accordingly;

“registered person” means, in respect of a regulated activity, a person who is the service provider or registered manager in respect of that activity;

“school” has the same meaning as in the Education Act 1996(9);

“service provider” means, in respect of a regulated activity, a person registered with the Commission under Chapter 2 of Part 1 of the Act as a service provider in respect of that activity;

“service user” means a person who receives services provided in the carrying on of a regulated activity;

“treatment”, except in paragraph 6 of Schedule 1, includes—

(a) a diagnostic or screening procedure carried out for medical purposes;

(b) the ongoing assessment of a service user’s mental or physical state;

(c) nursing, personal and palliative care; and

(d) the giving of vaccinations and immunisations;

“vulnerable adult” has the same meaning as in section 59 of the Safeguarding Vulnerable Groups Act 2006(10).

PART 2

REGULATED ACTIVITIES

Prescribed activities

3.—(1) Subject to paragraphs (3) to (8), for the purposes of section 8(1) of the Act, the activities specified in Schedule 1 are prescribed as regulated activities.

(2) An activity which is ancillary to, or is carried on wholly or mainly in relation to, a regulated activity shall be treated as part of that activity.

(3) Subject to paragraph (4), until 1st October 2010, an activity is only a regulated activity if it is carried on by an English NHS body(11).

(4) Where services involving, or connected with, the provision of social care are provided by an English NHS body which is registered as an establishment or agency under Part 2 of the Care Standards Act 2000(12) in relation to the provision of those services then, to the extent that those services are capable of being a regulated activity for the purposes of these Regulations, they are only a regulated activity with effect from 1st October 2010.

(5) An activity is only a regulated activity if it is carried on in England.

(9) 1996 c.56; see section 4 for the meaning of “school”. Section 4 has been amended by the Education Act 1997 (c. 44), sections 51, 57(1) and (4) and Schedule 7, paragraphs 10(a) and (b) and Schedule 8, by the Education Act 2002 (c. 32), section 215(2) and Schedule 22, Part 3, and by the Childcare Act 2006 (c. 21), section 95(1), (2) and (3).

(10) 2006 c. 47. Section 59 was amended by S.I. 2008/912, Schedule 1, paragraph 21 and by the Education and Skills Act 2008 (c. 25), section 147(8).

(11) See section 97(1) of the Act for the definition of “English NHS body”.

(12) 2000 c. 14.

- (6) In Schedule 1, in paragraph 10(1), the words “by an English NHS provider” shall cease to have effect on 1st April 2011.
- (7) Subject to paragraph (8), the activities specified in Schedule 2 are not regulated activities.
- (8) In Schedule 2—
 - (a) paragraphs 3, 6 and 7 and, in paragraph 4, the words “and except where paragraph 3 applies”, shall cease to have effect on 1st April 2012; and
 - (b) paragraphs 9 and 11 shall cease to have effect on 1st April 2011.

PART 3

REQUIREMENTS RELATING TO PERSONS CARRYING ON OR MANAGING A REGULATED ACTIVITY

Requirements where the service provider is an individual or partnership

- 4.—(1) This regulation applies where a service provider (P) is an individual or a partnership.
- (2) P must not carry on a regulated activity unless P is fit to do so.
- (3) P is not fit to carry on a regulated activity unless P is—
 - (a) an individual who carries on the regulated activity, otherwise than in partnership with others, and satisfies the requirements set out in paragraph (4); or
 - (b) a partnership and each of the partners satisfies the requirements set out in paragraph (4);
- (4) The requirements referred to are that P or, where applicable, each of the partners is—
 - (a) of good character;
 - (b) physically and mentally fit to carry on the regulated activity and has the necessary qualifications, skills and experience to do so; and
 - (c) able to supply to the Commission, or arrange for the availability of, information relating to themselves specified in Schedule 3.

Requirement where the service provider is a body other than a partnership

- 5.—(1) This regulation applies where the service provider is a body other than a partnership.
- (2) The body must give notice to the Commission of the name, address and position in the body of an individual (in these Regulations referred to as “the nominated individual”) who is employed as a director, manager or secretary of the body and who is responsible for supervising the management of the carrying on of the regulated activity by the body.
- (3) The registered person must take all reasonable steps to ensure that the nominated individual is—
 - (a) of good character;
 - (b) physically and mentally fit to supervise the management of the carrying on of the regulated activity and has the necessary qualifications, skills and experience to do so; and
 - (c) able to supply to the registered person, or arrange for the availability of, the information specified in Schedule 3.

Requirements relating to registered managers

6.—(1) A person (M) shall not manage the carrying on of a regulated activity as a registered manager unless M is fit to do so.

(2) M is not fit to be a registered manager in respect of a regulated activity unless M is—

- (a) of good character;
- (b) physically and mentally fit to carry on the regulated activity and has the necessary qualifications, skills and experience to do so; and
- (c) able to supply to the Commission, or arrange for the availability of, the information relating to themselves specified in Schedule 3.

Registered person: training

7.—(1) If the service provider is—

- (a) an individual, the individual must undertake;
- (b) a partnership, it must ensure that one of the partners undertakes; or
- (c) a body other than a partnership, it must ensure that the nominated individual undertakes,

from time to time such training as is reasonably practicable and appropriate to ensure that there are the necessary experience and skills available for carrying on the regulated activity.

(2) The registered manager must undertake from time to time such training as is appropriate to ensure that the manager has the experience and skills necessary for managing the carrying on of the regulated activity.

PART 4

QUALITY AND SAFETY OF SERVICE PROVISION IN RELATION TO REGULATED ACTIVITY

General

8. A registered person must, in so far as they are applicable, comply with the requirements specified in regulations 9 to 24 in relation to any regulated activity in respect of which they are registered.

Care and welfare of service users

9.—(1) The registered person must take proper steps to ensure that each service user is protected against the risks of receiving care or treatment that is inappropriate or unsafe, by means of—

- (a) the carrying out of an assessment of the needs of the service user; and
- (b) the planning and delivery of care and, where appropriate, treatment in such a way as to—
 - (i) meet the service user's individual needs,
 - (ii) ensure the welfare and safety of the service user,
 - (iii) reflect, where appropriate, published research evidence and guidance issued by the appropriate professional and expert bodies as to good practice in relation to such care and treatment, and

- (iv) avoid unlawful discrimination including, where applicable, by providing for the making of reasonable adjustments in service provision to meet the service user's individual needs.

(2) The registered person must have procedures in place for dealing with emergencies which are reasonably expected to arise from time to time and which would, if they arose, affect, or be likely to affect, the provision of services, in order to mitigate the risks arising from such emergencies to service users.

Assessing and monitoring the quality of service provision

10.—(1) The registered person must protect service users, and others who may be at risk, against the risks of inappropriate or unsafe care and treatment, by means of the effective operation of systems designed to enable the registered person to—

- (a) regularly assess and monitor the quality of the services provided in the carrying on of the regulated activity against the requirements set out in this Part of these Regulations; and
- (b) identify, assess and manage risks relating to the health, welfare and safety of service users and others who may be at risk from the carrying on of the regulated activity.

(2) For the purposes of paragraph (1), the registered person must—

- (a) where appropriate, obtain relevant professional advice;
- (b) have regard to—
 - (i) the complaints and comments made, and views (including the descriptions of their experiences of care and treatment) expressed, by service users, and those acting on their behalf, pursuant to sub-paragraph (e) and regulation 19,
 - (ii) any investigation carried out by the registered person in relation to the conduct of a person employed for the purpose of carrying on the regulated activity,
 - (iii) the information contained in the records referred to in regulation 20,
 - (iv) appropriate professional and expert advice (including any advice obtained pursuant to sub-paragraph (a)),
 - (v) reports prepared by the Commission from time to time relating to the registered person's compliance with the provisions of these Regulations, and
 - (vi) periodic reviews and special reviews and investigations carried out by the Commission in relation to the provision of health or social care, where such reviews or investigations are relevant to the regulated activity carried on by the service provider;
- (c) where necessary, make changes to the treatment or care provided in order to reflect information, of which it is reasonable to expect that a registered person should be aware, relating to—
 - (i) the analysis of incidents that resulted in, or had the potential to result in, harm to a service user, and
 - (ii) the conclusions of local and national service reviews, clinical audits and research projects carried out by appropriate expert bodies;
- (d) establish mechanisms for ensuring that—
 - (i) decisions in relation to the provision of care and treatment for service users are taken at the appropriate level and by the appropriate person (P), and
 - (ii) P is subject to an appropriate obligation to answer for a decision made by P, in relation to the provision of care and treatment for a service user, to the person responsible for supervising or managing P in relation to that decision; and

- (e) regularly seek the views (including the descriptions of their experiences of care and treatment) of service users, persons acting on their behalf and persons who are employed for the purposes of the carrying on of the regulated activity, to enable the registered person to come to an informed view in relation to the standard of care and treatment provided to service users.

(3) The registered person must send to the Commission, when requested to do so, a written report setting out how, and the extent to which, in the opinion of the registered person, the requirements of paragraph (1) are being complied with, together with any plans that the registered person has for improving the standard of the services provided to service users with a view to ensuring their health and welfare.

Safeguarding service users from abuse

11.—(1) The registered person must make suitable arrangements to ensure that service users are safeguarded against the risk of abuse by means of—

- (a) taking reasonable steps to identify the possibility of abuse and prevent it before it occurs; and
- (b) responding appropriately to any allegation of abuse.

(2) Where any form of control or restraint is used in the carrying on of the regulated activity, the registered person must have suitable arrangements in place to protect service users against the risk of such control or restraint being—

- (a) unlawful; or
- (b) otherwise excessive.

(3) For the purposes of paragraph (1), “abuse”, in relation to a service user, means—

- (a) sexual abuse;
- (b) physical or psychological ill-treatment;
- (c) theft, misuse or misappropriation of money or property; or
- (d) neglect and acts of omission which cause harm or place at risk of harm.

Cleanliness and infection control

12.—(1) The registered person must, so far as reasonably practicable, ensure that—

- (a) service users;
- (b) persons employed for the purpose of the carrying on of the regulated activity; and
- (c) others who may be at risk of exposure to a health care associated infection arising from the carrying on of the regulated activity,

are protected against identifiable risks of acquiring such an infection by the means specified in paragraph (2).

(2) The means referred to in paragraph (1) are—

- (a) the effective operation of systems designed to assess the risk of and to prevent, detect and control the spread of a health care associated infection;
- (b) where applicable, the provision of appropriate treatment for those who are affected by a health care associated infection; and
- (c) the maintenance of appropriate standards of cleanliness and hygiene in relation to—
 - (i) premises occupied for the purpose of carrying on the regulated activity,

- (ii) equipment and reusable medical devices used for the purpose of carrying on the regulated activity, and
- (iii) materials to be used in the treatment of service users where such materials are at risk of being contaminated with a health care associated infection.

Management of medicines

13. The registered person must protect service users against the risks associated with the unsafe use and management of medicines, by means of the making of appropriate arrangements for the obtaining, recording, handling, using, safe keeping, dispensing, safe administration and disposal of medicines used for the purposes of the regulated activity.

Meeting nutritional needs

14.—(1) Where food and hydration are provided to service users as a component of the carrying on of the regulated activity, the registered person must ensure that service users are protected from the risks of inadequate nutrition and dehydration, by means of the provision of—

- (a) a choice of suitable and nutritious food and hydration, in sufficient quantities to meet service users' needs;
- (b) food and hydration that meet any reasonable requirements arising from a service user's religious or cultural background; and
- (c) support, where necessary, for the purposes of enabling service users to eat and drink sufficient amounts for their needs.

(2) For the purposes of this regulation, “food and hydration” includes, where applicable, parenteral nutrition and the administration of dietary supplements where prescribed.

Safety and suitability of premises

15.—(1) The registered person must ensure that service users and others having access to premises where a regulated activity is carried on are protected against the risks associated with unsafe or unsuitable premises, by means of—

- (a) suitable design and layout;
- (b) appropriate measures in relation to the security of the premises; and
- (c) adequate maintenance and, where applicable, the proper—
 - (i) operation of the premises, and
 - (ii) use of any surrounding grounds,

which are owned or occupied by the service provider in connection with the carrying on of the regulated activity.

(2) In paragraph (1), the term “premises where a regulated activity is carried on” does not include a service user's own home.

Safety, availability and suitability of equipment

16.—(1) The registered person must make suitable arrangements to protect service users and others who may be at risk from the use of unsafe equipment by ensuring that equipment provided for the purposes of the carrying on of a regulated activity is—

- (a) properly maintained and suitable for its purpose; and
- (b) used correctly.

(2) The registered person must ensure that equipment is available in sufficient quantities in order to ensure the safety of service users and meet their assessed needs.

(3) Where equipment is provided to support service users in their day to day living, the registered person must ensure that, as far as reasonably practicable, such equipment promotes the independence and comfort of service users.

(4) For the purposes of this regulation—

- (a) “equipment” includes a medical device; and
- (b) “medical device” has the same meaning as in the Medical Devices Regulations 2002(13).

Respecting and involving service users

17.—(1) The registered person must, so far as reasonably practicable, make suitable arrangements to ensure—

- (a) the dignity, privacy and independence of service users; and
 - (b) that service users are enabled to make, or participate in making, decisions relating to their care or treatment.
- (2) For the purposes of paragraph (1), the registered person must—
- (a) treat service users with consideration and respect;
 - (b) provide service users with appropriate information and support in relation to their care or treatment;
 - (c) encourage service users, or those acting on their behalf, to—
 - (i) understand the care or treatment choices available to the service user, and discuss with an appropriate health care professional, or other appropriate person, the balance of risks and benefits involved in any particular course of care or treatment, and
 - (ii) express their views as to what is important to them in relation to the care or treatment;
 - (d) where necessary, assist service users, or those acting on their behalf, to express the views referred to in sub-paragraph (c)(ii) and, so far as appropriate and reasonably practicable, accommodate those views;
 - (e) where appropriate, provide opportunities for service users to manage their own care or treatment;
 - (f) where appropriate, involve service users in decisions relating to the way in which the regulated activity is carried on in so far as it relates to their care or treatment;
 - (g) provide appropriate opportunities, encouragement and support to service users in relation to promoting their autonomy, independence and community involvement; and
 - (h) take care to ensure that care and treatment is provided to service users with due regard to their age, sex, religious persuasion, sexual orientation, racial origin, cultural and linguistic background and any disability they may have.

Consent to care and treatment

18. The registered person must have suitable arrangements in place for obtaining, and acting in accordance with, the consent of service users in relation to the care and treatment provided for them.

(13) [S.I. 2002/618](#); the relevant amending instrument is [S.I. 2008/2936](#).

Complaints

19.—(1) For the purposes of assessing, and preventing or reducing the impact of, unsafe or inappropriate care or treatment, the registered person must have an effective system in place (referred to in this regulation as “the complaints system”) for identifying, receiving, handling and responding appropriately to complaints and comments made by service users, or persons acting on their behalf, in relation to the carrying on of the regulated activity.

(2) In particular, the registered person must—

- (a) bring the complaints system to the attention of service users and persons acting on their behalf in a suitable manner and format;
- (b) provide service users and those acting on their behalf with support to bring a complaint or make a comment, where such assistance is necessary;
- (c) ensure that any complaint made is fully investigated and, so far as reasonably practicable, resolved to the satisfaction of the service user, or the person acting on the service user’s behalf; and
- (d) take appropriate steps to coordinate a response to a complaint where that complaint relates to care or treatment provided to a service user in circumstances where the provision of such care or treatment has been shared with, or transferred to, others.

(3) The registered person must send to the Commission, when requested to do so, a summary of the—

- (a) complaints made pursuant to paragraph (1); and
- (b) responses made by the registered person to such complaints.

Records

20.—(1) The registered person must ensure that service users are protected against the risks of unsafe or inappropriate care and treatment arising from a lack of proper information about them by means of the maintenance of—

- (a) an accurate record in respect of each service user which shall include appropriate information and documents in relation to the care and treatment provided to each service user; and
- (b) such other records as are appropriate in relation to—
 - (i) persons employed for the purposes of carrying on the regulated activity, and
 - (ii) the management of the regulated activity.

(2) The registered person must ensure that the records referred to in paragraph (1) (which may be in paper or electronic form) are—

- (a) kept securely and can be located promptly when required;
- (b) retained for an appropriate period of time; and
- (c) securely destroyed when it is appropriate to do so.

Requirements relating to workers

21. The registered person must—

- (a) operate effective recruitment procedures in order to ensure that no person is employed for the purposes of carrying on a regulated activity unless that person—
 - (i) is of good character,

- (ii) has the qualifications, skills and experience which are necessary for the work to be performed, and
 - (iii) is physically and mentally fit for that work;
- (b) ensure that information specified in Schedule 3 is available in respect of a person employed for the purposes of carrying on a regulated activity, and such other information as is appropriate;
- (c) ensure that a person employed for the purposes of carrying on a regulated activity is registered with the relevant professional body where such registration is required by, or under, any enactment in relation to—
 - (i) the work that the person is to perform, or
 - (ii) the title that the person takes or uses; and
- (d) take appropriate steps in relation to a person who is no longer fit to work for the purposes of carrying on a regulated activity including—
 - (i) where the person is a health care professional, informing the body responsible for regulation of the health care profession in question, or
 - (ii) where the person is a social care worker registered with the General Social Care Council, informing the Council⁽¹⁴⁾.

Staffing

22. In order to safeguard the health, safety and welfare of service users, the registered person must take appropriate steps to ensure that, at all times, there are sufficient numbers of suitably qualified, skilled and experienced persons employed for the purposes of carrying on the regulated activity.

Supporting workers

23.—(1) The registered person must have suitable arrangements in place in order to ensure that persons employed for the purposes of carrying on the regulated activity are appropriately supported in relation to their responsibilities, to enable them to deliver care and treatment to service users safely and to an appropriate standard, including by—

- (a) receiving appropriate training, professional development, supervision and appraisal; and
- (b) being enabled, from time to time, to obtain further qualifications appropriate to the work they perform.

(2) Where the regulated activity carried on involves the provision of health care, the registered person must (as part of a system of clinical governance and audit) ensure that healthcare professionals employed for the purposes of carrying on the regulated activity are enabled to provide evidence to their relevant professional body demonstrating, where it is possible to do so, that they continue to meet the professional standards which are a condition of their ability to practise.

(3) For the purposes of paragraph (2), “system of clinical governance and audit” means a framework through which the registered person endeavours continuously to—

- (a) evaluate and improve the quality of the services provided; and
- (b) safeguard high standards of care by creating an environment in which clinical excellence can flourish.

⁽¹⁴⁾ The General Social Care Council is established under Part 5 of the Care Standards Act 2000 (c.14). See section 55 of that Act for the definition of “social care worker”, and S.I. 2004/561.

Cooperating with other providers

24.—(1) The registered person must make suitable arrangements to protect the health, welfare and safety of service users in circumstances where responsibility for the care and treatment of service users is shared with, or transferred to, others, by means of—

- (a) so far as reasonably practicable, working in cooperation with others to ensure that appropriate care planning takes place;
- (b) subject to paragraph (2), the sharing of appropriate information in relation to—
 - (i) the admission, discharge and transfer of service users, and
 - (ii) the co-ordination of emergency procedures; and
- (c) supporting service users, or persons acting on their behalf, to obtain appropriate health and social care support.

(2) Nothing in this regulation shall require or permit any disclosure or use of information which is prohibited by or under any enactment, or by court order.

PART 5

COMPLIANCE AND OFFENCES

Compliance with regulations

25. Where there is more than one registered person in respect of a regulated activity, or in respect of that activity as carried on at or from particular premises, anything which is required under these Regulations to be done by the registered person shall, if done by one of the registered persons, not be required to be done by any of the other registered persons.

Guidance and Code

26.—(1) For the purposes of compliance with the requirements set out in these Regulations, the registered person must have regard to—

- (a) guidance issued by the Commission in relation to the requirements set out in Parts 3 and 4 (with the exception of regulation 12 in so far as it applies to health care associated infections); and
 - (b) in relation to regulation 12, any Code of Practice issued by the Secretary of State in relation to the prevention or control of health care associated infections.
- (2) For the purposes of paragraph (1)—
- (a) “guidance” means the guidance referred to in section 23 of the Act; and
 - (b) “Code of Practice” means the code of practice referred to in section 21 of the Act.

Offences

27.—(1) A failure to comply with any of the provisions of regulations 9 to 24 shall be an offence.

(2) The Commission may not bring proceedings in respect of a failure by a registered person to comply with any of those provisions unless—

- (a) the alleged failure is one in respect of which the Commission has given a warning notice to the registered person under section 29 of the Act;
- (b) that warning notice specified a time within which the registered person must take action to secure compliance pursuant to section 29(2)(c)(ii) of the Act; and

(c) the registered person did not secure compliance within the specified time.

(3) A person guilty of an offence under paragraph (1) is liable, on summary conviction, to a fine not exceeding £50,000.

(4) In any proceedings for an offence under this regulation, it is a defence for the registered person to prove that they took all reasonable steps or exercised all due diligence to ensure that the provision in question was complied with.

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⁽¹⁵⁾;

“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⁽¹⁶⁾;

“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⁽¹⁷⁾.

PART 7

REVOCATION

Revocation

29. The Health and Social Care Act 2008 (Registration of Regulated Activities) Regulations 2009⁽¹⁸⁾ are revoked.

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

⁽¹⁶⁾ 1971 c. 80.

⁽¹⁷⁾ 1974 c. 39.

⁽¹⁸⁾ S.I. 2009/660.

Signed by authority of the Secretary of State for Health

Date

Name
Parliamentary Under Secretary of State
Department of Health