

HEALTH AND SOCIAL CARE ACT 2008

EXPLANATORY NOTES

TERRITORIAL EXTENT

Offences

Sections 33 to 37: Offences

172. *Sections 33 to 37* set out further offences relating to registration under Chapter 2. The Commission will be the prosecuting authority in respect of these offences, using its powers of entry and inspection under Chapter 6 to gather evidence.
173. *Section 33* makes it an offence for a service provider or a registered manager to fail to adhere to the conditions of their registration. The penalty for an offence under this section is a fine of up to £50,000 on summary conviction.
174. It is an offence to carry on regulated activities without being registered to do so (section 10). *Subsection (1)* of section 34 also makes it an offence for registered service providers to continue carrying on regulated activities whilst their registration is suspended.
175. *Section 13* obliges the Commission to place a condition on the registration of a service provider requiring them to have a registered manager to manage certain regulated activities in prescribed circumstances. Section 34 provides that a person who is a registered manager is guilty of an offence if he continues to manage the activity during a period in which his registration is suspended, unless another person has been registered as a manager in his place (*subsection (2)*). A registered manager is also guilty of an offence if he continues to manage the activity while the registration of the service provider is suspended, if he knows or could reasonably be expected to know of the suspension (*subsection (4)*). A person whose registration as a manager has been cancelled is guilty of an offence if he continues to manage the activity after cancellation, but only if a service provider remains registered in respect of the activity, a registered manager condition is still in place and no new registered manager has been appointed (*subsection (3)*). The penalty for an offence under section 34 is a fine of up to £50,000 on summary conviction.
176. *Section 35* allows regulations to be made under Chapter 2 that will make failure to comply with specified regulations an offence. For instance, it is intended that it will be an offence to fail to comply with certain requirements made in regulations under section 20 (regulation of regulated activities). The amount of the fine prescribed will not exceed £50,000 in respect of regulations made under section 20 (regulation of regulated activities) and in any other case will not exceed level 4 (currently £2,500) on the standard scale. Regulations may not provide for offences to be triable on indictment or to carry penalties of imprisonment.
177. *Section 36* makes it an offence for a person, with intent to deceive another, to claim that a concern is carrying on regulated activities, or that premises are used for carrying on regulated activities, if a person is not registered with the Commission to carry on those activities, or a person is registered to carry them on but their registration has

*These notes refer to the Health and Social Care Act 2008
(c.14) which received Royal Assent on 21 July 2008*

been suspended. This would apply to someone who provides care to people under false pretences, for example a hotel claiming to be a nursing home. It also makes it an offence for a person, with intent to deceive another, to claim that any person who is registered as a service provider is able to provide a particular service or do anything which would contravene a condition of their registration. The penalty for an offence under this section is a fine not exceeding level 5 on the standard scale (currently £5,000).

178. **Section 37** makes it an offence for someone knowingly to make a false or misleading statement in an application to the Commission. The section applies to applications to register as a service provider or registered manager, to vary or remove conditions on their registration, to vary or cancel the suspension of their registration or to cancel their registration. The penalty is a fine of up to level 4 on the standard scale (currently £2,500). Application forms will inform people of this offence so that they are aware of the potential result of failing to complete their applications accurately.