

# HEALTH AND SOCIAL CARE ACT 2008

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## EXPLANATORY NOTES

### TERRITORIAL EXTENT

#### *Enforcement*

#### *Sections 86 and 87: Penalty notices*

282. **Section 86** gives the Commission power to issue penalty notices. This is a new power that is not available to CHAI and CSCI under the existing law. Where a person commits a prescribed offence under Part 1, or under regulations under Part 1, the Commission may give the person a penalty notice. This is an invitation to pay a penalty instead of being prosecuted for the offence. The Commission might, for example, issue a penalty notice where the Commission becomes aware of an offence that has been committed in the past (such as failure by someone to comply with one of the conditions of their registration) but is satisfied that the offence was relatively minor and that they are now complying with the condition in question. In those circumstances the person may pay the penalty specified in the penalty notice as recognition of the offence and the Commission would then take no further action in relation to that offence. If, however, that person subsequently breached the same condition of their registration then they would be liable to be prosecuted for the new (repeat) offence.
283. The Commission will receive any amounts paid, but will then pay them to the Secretary of State who will pay them into the Consolidated Fund.
284. **Section 87** confers a regulation-making power which allows the procedural details about penalty notices to be set out in regulations.

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

285. **Section 88** requires the Commission to publish guidance on how it will exercise its enforcement powers under Part 1. This guidance is expected to cover how the Commission intends to work with Monitor in relation to enforcement action involving NHS Foundation Trusts. The Commission must consult on this guidance, and regulations may set out any particular people that it must include in such a consultation.

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

286. **Section 89** enables regulations to be made which will either authorise or require the Commission to publish details of enforcement action it has taken. The regulations may set out what information the Commission can or must publish in each instance, as well as when and how it must publish it. This will enable the Commission to make information available to the public about the action it has taken using its powers under Part 1.
287. If information is to be published about warning notices, the regulations must allow the people to whom the notices were given to make representations to the Commission before the information is published. This is because there is no right of appeal in respect of a warning notice.

***Section 90: Proceedings for offences***

288. **Section 90** provides that only the Commission or, if he is carrying out any of the Commission's functions, the Secretary of State, can commence proceedings in relation to offences under Part 1 or under regulations under it without written consent of the Attorney General.
289. *Subsection (2)* provides that a prosecution must be commenced within 12 months from the date on which there was sufficient evidence to prosecute, with a long stop of 3 years from the date on which the offence was committed.

***Section 91: Offences by bodies corporate***

290. **Section 91** deals with corporate liability. If an offence under Part 1 of the Act, or regulations made under it, is proved to have been committed with the consent or connivance of an officer of a body corporate then they, as well as the company, are guilty of the offence.

***Section 92: Unincorporated associations***

291. **Section 92** contains provisions dealing with certain procedural matters where criminal proceedings are brought against unincorporated associations. *Subsection (1)* provides that proceedings are to be brought in the name of the association (and not any of the individual members). However, *subsection (5)* makes clear that if an offence is proved to have been committed with the consent or connivance of an officer of the association or a member of its governing body, then they, as well as the association, are guilty of the offence. Individual officers or members of the association will not be able to escape prosecution simply because the association is liable; both may be liable for prosecution.