

HEALTH AND SOCIAL CARE ACT 2008

EXPLANATORY NOTES

TERRITORIAL EXTENT

Registration procedure

Sections 26 and 27: Notices of proposals and rights to make representations

156. **Section 26** requires the Commission to give written notice to applicants or registered persons where it proposes to do any of the following:
- to grant an application for registration which is subject to conditions that have not been agreed with the applicant (this excludes a registered manager condition required under section 13(1));
 - to refuse an application for registration;
 - to cancel a registration (except where the registered person has applied for cancellation of registration under section 19, or the Commission has applied for an order to urgently cancel a registration under section 30, or the Commission has cancelled a registered manager's registration in accordance with the conditions set out in section 17(2));
 - to suspend a registration (except where the Commission has urgently suspended a registration under section 31);
 - to amend the conditions of registration (except where the Commission has urgently removed or varied a condition or imposed an additional one under section 31);
 - to refuse an application by a provider or manager of regulated activities made under section 19(1) to vary or remove a condition, cancel their registration, or cancel or vary a period of suspension.
157. The written notice must set out the reasons for the proposal (*subsection (6)*). For example, in the case of a person applying to register for the first time, the notice of proposal must explain why the Commission takes the view that the person does not meet the relevant requirements or why particular conditions are thought to be necessary. Section 26 does not apply where the Commission decides to grant an application for registration unconditionally. Neither does it apply where the registration is subject only to a registered manager condition under section 13(1) or where the Commission and the service provider have already agreed the conditions (this must be by way of a written agreement). These situations are covered by section 28.
158. **Section 27** sets out that a notice of proposal under section 26 must state that the person has 28 days to make written representations to the Commission if they wish to dispute the Commission's proposal. This ensures that the person has an opportunity to make their point known. The Commission cannot make a decision until it has either received written representations, or it has received written confirmation that the person does not intend to make representations, or the 28-day period has elapsed.

Section 28: Notice of decisions

159. Section 28 requires the Commission to give the applicant notice of its decision to grant an application unconditionally, or subject only to a registered manager condition under section 13(1) and/or conditions already agreed in writing with the applicant (*subsection (1)*). The notice must state the conditions (*subsection (2)*).
160. Where the Commission has decided to give effect to a proposal of which notice was previously given under section 26, *subsection (3)* requires the Commission to serve a further notice in writing of its decision.
161. That further notice must explain the rights of appeal conferred under section 32. In the case of a decision to grant an application subject to conditions, or to vary the conditions of an existing registration, the notice must set out the conditions, or the changes to them. In the case of a decision to suspend registration, the notice must state the period of the suspension (*subsection (4)*).
162. A decision made by the Commission under section 28 to adopt a proposal of which notice has been given under section 26 will take effect, either from the date that the Commission receives notice that the provider does not intend to appeal, or after the outcome of any appeal has been determined or the appeal has been abandoned, or after 28 days if no appeal is brought.

Section 29: Warning notice

163. Section 29 allows the Commission to give a warning notice to a registered person when they have failed to comply with the relevant requirements. For example, the Commission may issue a warning notice where a registered person has failed to comply with regulations made under section 20.
164. The warning notice must set out the failure that appears to the Commission to have taken place and the requirement that appears to have been breached. It may also require the registered person to comply with the requirement within a specified timeframe, stating that further action may be taken if the failure is not put right in that time. No further action may be taken by the Commission in relation to the failure set out in the notice if the failure is remedied in that time.
165. Where the warning notice relates to a failure that has already been rectified when the notice is issued, no further action may be taken by the Commission.

Section 30: Urgent procedure for cancellation

166. Under section 30 the Commission may apply to a justice of the peace for the immediate cancellation of registration (known as the ‘urgent procedure’). The order may only be made where it appears to the justice of the peace that there will be a serious risk to a person's life, health or well-being unless the order is made. An order made under this section will have immediate effect.
167. *Subsection (3)* requires the Commission to notify the relevant local authority and/or the relevant PCT in accordance with regulations, if it makes an application to a justice of the peace under the urgent procedure. This is necessary so that the relevant bodies can comply with their statutory duties (for example, in the case of a local authority, to provide or arrange alternative care for service users). The relevant bodies will need to consider whether to make alternative provision for services.
168. Where the Commission makes an application under the urgent procedure regarding the registration of a PCT or an NHS Trust, the Commission must notify the relevant Strategic Health Authority. If the urgent procedure will affect an NHS Foundation Trust, the Commission must notify the Independent Regulator of NHS Foundation Trusts (‘Monitor’). The Commission must also notify any other persons it considers appropriate. It is important that all bodies that may be affected by the cancellation

of a provider's registration have as much notice as possible to make any necessary arrangements. As soon as possible after an order is made, the Commission must provide a copy of the order to the registered person, and details of their rights of appeal under section 32.

Section 31: Urgent procedure for suspension, variation etc.

169. **Section 31** allows the Commission to immediately suspend, or extend the period of suspension of, a person's registration as a service provider or registered manager, or to change the conditions that apply to a person's registration, where it believes that any person will or may be exposed to the risk of harm. Notice of the action must be given in writing and the notice must state either the reasons for the change of conditions, or the reasons for the period of suspension, and explain the rights of appeal under section 32.

Section 32: Appeals to the Tribunal

170. **Section 32** provides for an appeal against a decision by the Commission under Chapter 2 (excluding decisions to give warning notices). It also allows for an appeal against an order made by a justice of the peace under section 30. A person can appeal within 28 days from the date of the service of notice of the decision or order.
171. The appeal is to the Tribunal established under section 9 of the Protection of Children Act 1999, the Care Standards Tribunal, which currently hears appeals relating to registration under Part 2 of the Care Standards Act 2000. *Subsections (3) to (6)* provide for the Tribunal's powers in considering an appeal. The Tribunal may confirm or overturn a decision made by the Commission or a justice of the peace. It may also vary the length of a suspension or vary or remove any of the conditions of registration, with the exception of any 'registered manager condition' required by section 13(1), or add a new condition, again with the exception of a 'registered manager condition'.