



Health and Social Care Act 2008

2008 CHAPTER 14

PART 1

THE CARE QUALITY COMMISSION

CHAPTER 2

REGISTRATION IN RESPECT OF PROVISION OF HEALTH OR SOCIAL CARE

Registration procedure

26 Notice of proposals

- (1) Subsections (2) and (3) apply where a person applies for registration as a service provider or manager in respect of a regulated activity.
- (2) If the Commission proposes to grant the application subject to any condition which has not been agreed in writing between it and the applicant, other than a registered manager condition required by section 13(1), it must give the applicant notice in writing of its proposal and of the conditions subject to which it proposes to grant the application.
- (3) The Commission must give the applicant notice in writing of a proposal to refuse the application.
- (4) Except where it makes an application under section 30 or gives notice under section 31, the Commission must give any person registered as a service provider or manager in respect of a regulated activity notice in writing of a proposal—
 - (a) to cancel the registration (otherwise than by virtue of section 17(2) or in accordance with an application under section 19(1)(b)),
 - (b) to suspend the registration or extend a period of suspension,
 - (c) to vary or remove (otherwise than in accordance with an application under section 19(1)(a)) any condition for the time being in force in relation to the registration, or

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- (d) to impose in relation to the registration any additional condition.
- (5) The Commission must give the applicant notice in writing of a proposal to refuse an application under section 19(1)(a), (b) or (c).
- (6) A notice under this section must give the Commission's reasons for its proposal.

Modifications etc. (not altering text)

- C1** S. 26(2) excluded (11.12.2009) by [The Health and Social Care Act 2008 \(Commencement No. 13, Transitory and Transitional Provisions and Electronic Communications\) Order 2009 \(S.I. 2009/3023\)](#), arts. 1(1), **7(1)(a)** (as amended (8.2.2010) by [S.I. 2010/47](#), art. 2)

Commencement Information

- I1** S. 26(1)(3)(6) in force at 12.1.2009 for specified purposes by [S.I. 2008/3168](#), **art. 2**
- I2** S. 26(4)(5) in force at 1.4.2009 for specified purposes by [S.I. 2009/462](#), **art. 2**, **Sch. 1 para. 9**

27 Right to make representations

- (1) A notice under section 26 must state that within 28 days of service of the notice any person on whom it was served may make written representations to the Commission concerning any matter which that person wishes to dispute.
- (2) Where a notice has been served under section 26, the Commission must not determine any matter to which the notice relates until either—
- (a) any person on whom the notice was served has made written representations to it concerning the matter,
 - (b) any such person has notified the Commission in writing that the person does not intend to make such representations, or
 - (c) the period during which any such person could have made representations has elapsed.

Commencement Information

- I3** S. 27 in force at 12.1.2009 for specified purposes by [S.I. 2008/3168](#), **art. 2**

28 Notice of decisions

- (1) If the Commission decides to grant an application for registration as a service provider or manager in respect of a regulated activity—
- (a) unconditionally, or
 - (b) subject only to conditions each of which is either required by section 13(1) or agreed in writing between the Commission and the applicant,
- it must give the applicant notice in writing of the decision.
- (2) A notice under subsection (1) must state the conditions subject to which registration is granted.
- (3) If the Commission decides to adopt a proposal of which it was required to give notice under section 26, it must give notice in writing of its decision to any person to whom it was required by section 26 to give notice of the proposal.

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- (4) A notice under subsection (3) must—
 - (a) explain the right of appeal conferred by section 32,
 - (b) in the case of a decision to adopt a proposal under section 26(2), state the conditions subject to which the application is granted,
 - (c) in the case of a decision to adopt a proposal under section 26(4)(b), state the period (or extended period) of suspension, and
 - (d) in the case of a decision to adopt a proposal under section 26(4)(c) or (d), state the condition as varied, the condition which is removed or (as the case may be) the additional condition imposed.
- (5) Where a person (“M”) is registered as a manager in respect of a regulated activity, the Commission must—
 - (a) give M a copy of any notice given under subsection (3) to the person (“S”) registered as a service provider in respect of the regulated activity, and
 - (b) give S a copy of any such notice given under that subsection to M.
- (6) Subject to subsection (7), a decision of the Commission to adopt a proposal under section 26(2) or (4) takes effect—
 - (a) at the end of the period of 28 days referred to in section 32(2), or
 - (b) if an appeal is brought, on the determination or abandonment of the appeal.
- (7) Where the applicant notifies the Commission in writing before the end of the period mentioned in subsection (6)(a) that the applicant does not intend to appeal, the decision is to take effect when the Commission receives the applicant's notification.

Modifications etc. (not altering text)

- C2** S. 28(4)(b) excluded (11.12.2009) by [The Health and Social Care Act 2008 \(Commencement No. 13, Transitory and Transitional Provisions and Electronic Communications\) Order 2009 \(S.I. 2009/3023\)](#), arts. 1(1), **7(1)(a)** (as amended (8.2.2010) by [S.I. 2010/47](#), art. 2)

Commencement Information

- I4** S. 28(1)-(3) (4)(a) in force at 12.1.2009 for specified purposes by [S.I. 2008/3168](#), **art. 2** (with [art. 8](#))
- I5** S. 28(4)(c)(d) in force at 1.4.2009 for specified purposes by [S.I. 2009/462](#), art. 2, **Sch. 1 para. 10**

29 Warning notice

- (1) If it appears to the Commission that a person who is registered under this Chapter as a service provider or manager in respect of a regulated activity has failed to comply with the relevant requirements, the Commission may give the registered person a warning notice.
- (2) A warning notice is a notice in writing—
 - (a) specifying the conduct which appears to the Commission to constitute a failure to comply with the relevant requirements,
 - (b) specifying the requirement concerned, and
 - (c) where it appears to the Commission that the failure is continuing—
 - (i) requiring the registered person to comply with the requirement concerned within a specified time, and

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- (ii) stating that, if the registered person fails to do so within that time, the Commission may take action to secure compliance with the relevant requirements.
- (3) Subsections (4) and (5) apply where—
- (a) a warning notice has been given to any person, and
 - (b) where any failure to comply with a requirement is specified under subsection (2)(c), the requirement has been complied with within the specified time.
- (4) The failure to which the notice relates, so far as occurring before the relevant time, is not to constitute a ground for the cancellation or suspension of registration, the variation of the conditions of registration, the removal of a condition or the imposition of any additional condition.
- (5) No proceedings may be brought against any person registered in respect of the regulated activity for a Part 1 offence that arises out of the failure to which the notice relates, so far as occurring before the relevant time.
- (6) In subsections (4) and (5) “the relevant time” means—
- (a) where a time is specified under subsection (2)(c)(i), the time so specified, and
 - (b) in any other case, the date on which the notice was given.
- (7) In this section “relevant requirements” means—
- (a) any requirements or conditions imposed by or under this Chapter or Chapter 6, and
 - (b) the requirements of any other enactment which appears to the Commission to be relevant.

Commencement Information

16 S. 29 in force at 1.4.2009 for specified purposes by [S.I. 2009/462](#), art. 2, [Sch. 1 para. 11](#)

30 Urgent procedure for cancellation

- (1) If—
- (a) the Commission applies to a justice of the peace for an order cancelling the registration of a person as a service provider or manager in respect of a regulated activity, and
 - (b) it appears to the justice that, unless the order is made, there will be a serious risk to a person's life, health or well-being,
- the justice may make the order, and the cancellation has effect from the time when the order is made.
- (2) An application under subsection (1) may, if the justice thinks fit, be made without notice having been given to the registered person.
- (3) As soon as practicable after the making of an application under this section, the Commission must give notice of the application—
- (a) to such Primary Care Trust or English local authority as may be determined in accordance with regulations,

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- (b) where the person registered as a service provider is a Primary Care Trust or National Health Service trust, to such Strategic Health Authority as may be so determined,
 - (c) where the person registered as a service provider is an NHS foundation trust, to the Independent Regulator of NHS Foundation Trusts, and
 - (d) to such other persons as the Commission considers appropriate.
- (4) An order under subsection (1) must be in writing.
- (5) Where such an order is made, the Commission must, as soon as practicable after the making of the order, serve on the person registered as a service provider or manager in respect of the regulated activity—
- (a) a copy of the order, and
 - (b) notice of the right of appeal conferred by section 32.

Commencement Information

I7 S. 30 partly in force; S. 30 in force for specified purposes at Royal Assent, see s. 170

I8 S. 30 in force at 1.4.2009 for specified purposes by [S.I. 2009/462, art. 2, Sch. 1 para. 11](#)

31 Urgent procedure for suspension, variation etc.

- (1) If the Commission has reasonable cause to believe that unless it acts under this section any person will or may be exposed to the risk of harm, the Commission may, by giving notice in writing under this section to a person registered as a service provider or manager in respect of a regulated activity, provide for any decision of the Commission that is mentioned in subsection (2) to take effect from the time when the notice is given.
- (2) Those decisions are—
- (a) a decision under section 12(5) or 15(5) to vary or remove a condition for the time being in force in relation to the registration or to impose an additional condition;
 - (b) a decision under section 18 to suspend the registration or extend a period of suspension.
- (3) The notice must—
- (a) state that it is given under this section,
 - (b) state the Commission's reasons for believing that the circumstances fall within subsection (1),
 - (c) specify the condition as varied, removed or imposed or the period (or extended period) of suspension, and
 - (d) explain the right of appeal conferred by section 32.

Commencement Information

I9 S. 31 in force at 1.4.2009 for specified purposes by [S.I. 2009/462, art. 2, Sch. 1 para. 11](#)

32 Appeals to the Tribunal

- (1) An appeal against—

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- (a) any decision of the Commission under this Chapter, other than a decision to give a warning notice under section 29, or
- (b) an order made by a justice of the peace under section 30, lies to the [^{F1}First-tier Tribunal].
- (2) No appeal against a decision or order may be brought by a person more than 28 days after service on the person of notice of the decision or order.
- (3) On an appeal against a decision of the Commission, other than a decision to which a notice under section 31 relates, the [^{F2}First-tier Tribunal] may confirm the decision or direct that it is not to have effect.
- (4) On an appeal against an order made by a justice of the peace the [^{F2}First-tier Tribunal] may confirm the order or direct that it is to cease to have effect.
- (5) On an appeal against a decision to which a notice under section 31 relates, the [^{F2}First-tier Tribunal] may confirm the decision or direct that it is to cease to have effect.
- (6) On an appeal against a decision or order, the [^{F2}First-tier Tribunal] also has power—
- (a) to vary any discretionary condition for the time being in force in respect of the regulated activity to which the appeal relates,
- (b) to direct that any such discretionary condition is to cease to have effect,
- (c) to direct that any such discretionary condition as the [^{F2}First-tier Tribunal] thinks fit shall have effect in respect of the regulated activity, or
- (d) to vary the period of any suspension.
- (7) In this section—
- “discretionary condition”, in relation to registration under this Chapter, means any condition other than a registered manager condition required by section 13(1);
- ^{F3}
...

Textual Amendments

- F1** Words in s. 32(1) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 474(a)**
- F2** Words in s. 32(3)-(6) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 474(a)**
- F3** Words in s. 32(7) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 474(b)**

Modifications etc. (not altering text)

- C3** S. 32 applied (12.1.2009) by [Health and Social Care Act 2008 \(Commencement No.6, Transitory and Transitional Provisions\) Order 2008 \(S.I. 2008/3168\)](#), **art. 7(6)**
- C4** S. 32 applied (11.12.2009) by [The Health and Social Care Act 2008 \(Commencement No. 13, Transitory and Transitional Provisions and Electronic Communications\) Order 2009 \(S.I. 2009/3023\)](#), arts. 1(1), **7(6)** (as amended (8.2.2010) by S.I. 2010/47, art. 2)
- C5** S. 32(7) modified (12.1.2009) by [Health and Social Care Act 2008 \(Commencement No.6, Transitory and Transitional Provisions\) Order 2008 \(S.I. 2008/3168\)](#), **art. 5**

Commencement Information

- I10** S. 32 in force at 12.1.2009 for specified purposes by [S.I. 2008/3168](#), **art. 2**

Status:

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Changes to legislation:

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