



# Care Act 2014

## 2014 CHAPTER 23

### PART 2

#### CARE STANDARDS

##### *Quality of services*

#### 81 Duty of candour

In section 20 of the Health and Social Care Act 2008 (regulation of regulated activities), after subsection (5) insert—

“(5A) Regulations under this section must make provision as to the provision of information in a case where an incident of a specified description affecting a person's safety occurs in the course of the person being provided with a service.”

#### Commencement Information

- I1** S. 81 in force at 7.7.2014 for specified purposes by [S.I. 2014/1714](#), [art. 2\(a\)](#)  
**I2** S. 81 in force at 15.7.2014 in so far as not already in force by [S.I. 2014/1714](#), [art. 3\(1\)](#)

#### 82 Warning notice

(1) In section 29 of the Health and Social Care Act 2008 (warning notice), after subsection (1) insert—

“(1A) But a warning notice under this section may not be given to an NHS trust established under section 25 of the National Health Service Act 2006 or an NHS foundation trust.”

(2) In subsections (2) and (3)(a) of that section, after “warning notice” insert “ under this section ”.

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(3) After that section insert—

**“29A Warning notice: quality of health care**

- (1) If it appears to the Commission that the quality of health care provided by an NHS trust established under section 25 of the National Health Service Act 2006 or by an NHS foundation trust requires significant improvement, the Commission may give the trust a warning notice.
  - (2) A warning notice under this section is a notice in writing—
    - (a) stating that the Commission has formed the view that the quality of health care provided by the trust requires significant improvement,
    - (b) specifying the health care concerned,
    - (c) giving the Commission's reasons for its view, and
    - (d) requiring the trust to make a significant improvement to the quality of the health care concerned within a specified time.
  - (3) Where a warning notice under this section imposes more than one requirement under subsection (2)(d), it may specify different times for different requirements.
  - (4) The Commission must—
    - (a) where the notice specifies only one time under subsection (2)(d), determine at the end of that time whether the requirement has been complied with;
    - (b) where the notice specifies more than one time under subsection (2)(d), determine at the end of the latest of those times, whether the requirements have been complied with.
  - (5) Where, having carried out the duty under subsection (4), the Commission is satisfied that a requirement to which the notice relates has not been complied with, it—
    - (a) must decide what action to take in relation to the trust, and
    - (b) in so deciding in the case of an NHS foundation trust, must consider in particular whether to require Monitor to make an order under section 65D(2) of the National Health Service Act 2006 (appointment of trust special administrator).”
- (4) In each of the following provisions of that Act, after “section 29” insert “ or 29A ”
- (a) section 32(1)(a) (decisions against which appeal may not be made to the First-tier tribunal),
  - (b) section 39(2)(c) (bodies required to be given certain notices), and
  - (c) section 89(1)(e) and (2) (publication of information relating to enforcement action).
- (5) In section 88(1)(d) of that Act (guidance issued by the Commission about enforcement action), for “section 29” substitute “ sections 29 and 29A ”.

**Commencement Information**

**I3** S. 82 in force at 1.4.2015 by S.I. 2015/993, art. 2(v)

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### **83 Imposition of licence conditions on NHS foundation trusts**

- (1) Section 111 of the Health and Social Care Act 2012 (imposition by Monitor of licence conditions on NHS foundation trusts during transitional period) is amended as follows.
- (2) After subsection (2) insert—
  - “(2A) Where a warning notice under section 29A of the Health and Social Care Act 2008 is given to an NHS foundation trust, Monitor may include in the trust's licence such conditions as it considers appropriate in connection with the matters to which the notice relates.”
- (3) In subsections (3) to (5) and (7) to (9), after “subsection (1)” in each place it appears insert “ or (2A) ”.

#### **Commencement Information**

**I4** [S. 83](#) in force at 1.4.2015 by [S.I. 2015/993](#), [art. 2\(v\)](#)

### **84 Trust special administration: appointment of administrator**

- (1) In section 65D of the National Health Service Act 2006 (NHS foundation trusts: appointment of trust special administrator), in subsection (1)—
  - (a) after “satisfied that” insert “—
    - (a)”,
    - and
  - (b) at the end insert “, or
    - (b) there is a serious failure by an NHS foundation trust to provide services that are of sufficient quality to be provided under this Act and it is appropriate to make an order under subsection (2).”
- (2) After that subsection insert—

“(1A) This section also applies if the Care Quality Commission—

  - (a) is satisfied that there is a serious failure by an NHS foundation trust to provide services that are of sufficient quality to be provided under this Act and that it is appropriate to make an order under subsection (2),
  - (b) informs the regulator that it is satisfied as mentioned in paragraph (a) and gives the regulator its reasons for being so satisfied, and
  - (c) requires the regulator to make an order under subsection (2).”
- (3) In subsection (2) of that section, after “The regulator may” insert “ or, where this section applies as a result of subsection (1A), must ”.
- (4) After subsection (3) of that section insert—

“(3A) Before imposing a requirement as mentioned in subsection (1A)(c), the Care Quality Commission must—

  - (a) consult the Secretary of State and the regulator, and
  - (b) having done that, consult—
    - (i) the trust,
    - (ii) the Board, and

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- (iii) any other person to which the trust provides services under this Act and which the Commission considers it appropriate to consult.”
- (5) In subsection (4) of that section, after “making an order under this section” insert “ (except where it is required to do so as a result of subsection (1A)) ”.
- (6) In section 65N of that Act (guidance for trust special administrators), after subsection (3) insert—
- “(3A) Before publishing guidance under this section, the Secretary of State must consult the Care Quality Commission.”
- (7) In subsection (4) of that section, for “the reference in subsection (1) to the Secretary of State is to be read as a reference” substitute “ the references in subsections (1) and (3A) to the Secretary of State are to be read as references ”.
- (8) In paragraph 24 of Schedule 14 to the Health and Social Care Act 2012 (abolition of NHS trusts in England: consequential amendments to section 65N of the National Health Service Act 2006), after sub-paragraph (2) insert—
- “(2A) In subsection (3A), for “the Secretary of State” substitute “ the regulator ”.”

#### Commencement Information

**I5** S. 84 in force at 15.7.2014 by S.I. 2014/1714, art. 3(2)(a)

## 85 Trust special administration: objective, consultation and reports

- (1) In section 65DA of the National Health Service Act 2006 (objective of trust special administration), in subsection (1), after paragraph (a) (but before the following “and”) insert—
- “(aa) that the services whose continuous provision is secured as mentioned in paragraph (a) are of sufficient safety and quality to be provided under this Act.”.
- (2) After subsection (5) of that section insert—
- “(5A) Before publishing guidance under subsection (4)(c), the regulator must consult the Care Quality Commission.”
- (3) In section 65F of that Act (administrator's draft report), in subsection (2)—
- (a) omit the “and” preceding paragraph (b), and
- (b) after that paragraph insert “, and
- (c) the Care Quality Commission.”
- (4) In subsection (5) of that section, in paragraph (a), for “65DA” substitute “ 65DA(1)(a) ”.
- (5) After that subsection insert—
- “(5A) Nor, in the case of an NHS foundation trust, may the administrator provide the draft report to the regulator under subsection (1) without having obtained from the Care Quality Commission a statement that it considers that the

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recommendation in the draft report would achieve that part of the objective set out in section 65DA(1)(aa).”

- (6) In subsection (6) of that section—
  - (a) after “Where the Board” insert “ or the Care Quality Commission ”,
  - (b) for “to that effect” substitute “ to the effect mentioned in subsection (5) or (5A) ”, and
  - (c) after “, the Board” insert “ or (as the case may be) the Commission ”.
- (7) In section 65G of that Act (consultation plan), in subsection (4), in paragraph (a), for “65DA” substitute “ 65DA(1)(a) ”.
- (8) After that subsection insert—

“(4A) Nor may the administrator make a variation to the draft report following the consultation period without having obtained from the Care Quality Commission a statement that it considers that the recommendation in the draft report as so varied would achieve that part of the objective set out in section 65DA(1)(aa).”
- (9) In subsection (5) of that section—
  - (a) after “Where the Board” insert “ or the Care Quality Commission ”,
  - (b) for “to that effect” substitute “ to the effect mentioned in subsection (4) or (4A) ”, and
  - (c) after “, the Board” insert “ or (as the case may be) the Commission ”.
- (10) In section 65H of that Act (consultation requirements)—
  - (a) in subsection (7), after paragraph (b) insert—

“(ba) the Care Quality Commission;”, and
  - (b) in subsection (9), after “subsection (7)(b),” insert “ (ba), ”.
- (11) In section 65KB of that Act (Secretary of State's response to regulator's decision), in subsection (1), after paragraph (c) insert—

“(ca) that the Care Quality Commission has discharged its functions for the purposes of this Chapter,”.
- (12) In subsection (2) of that section, in paragraph (b), after “the regulator” insert “ and the Care Quality Commission ”.
- (13) In section 65KD of that Act (Secretary of State's response to re-submitted final report), in subsection (3), for “(8)” substitute “ (8A) ”.
- (14) After subsection (8) of that section insert—

“(8A) If the notice states that the Care Quality Commission has failed to discharge a function—

  - (a) the Care Quality Commission is to be treated for the purposes of this Act as having failed to discharge the function, and
  - (b) the failure is to be treated for those purposes as significant (and section 82 of the Health and Social Care Act 2008 applies accordingly).”
- (15) In paragraph 15(4) of Schedule 14 to the Health and Social Care Act 2012 (abolition of NHS trusts in England: consequential amendments to section 65F of the National Health Service Act 2006)—

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- (a) in the new subsection (2A) to be inserted by paragraph 15(4), in paragraph (a), for “65DA” substitute “ 65DA(1)(a) ”,
- (b) after that new subsection, insert—
  - “(2AA) Nor may the administrator provide the draft report to the regulator under subsection (1) without having obtained from the Care Quality Commission a statement that it considers that the recommendation in the draft report would achieve that part of the objective set out in section 65DA(1)(aa).”, and
- (c) in the new subsection (2B) to be inserted by paragraph 15(4)—
  - (i) after “Where the Board” insert “ or the Care Quality Commission ”,
  - (ii) for “to that effect” substitute “ to the effect mentioned in subsection (2A) or (2AA) ”, and
  - (iii) after “, the Board” insert “ or (as the case may be) the Commission ”.

#### Commencement Information

**I6** S. 85 in force at 15.7.2014 by S.I. 2014/1714, art. 3(2)(b)

### Care Quality Commission

#### 86 Restriction on applications for variation or removal of conditions

- (1) Section 19 of the Health and Social Care Act 2008 (applications by registered persons to the Care Quality Commission for variation or removal of conditions, etc.) is amended as follows.
- (2) In subsection (1), after “Except in case A or B” insert “ and subject to subsections (3A) to (3F) ”.
- (3) After subsection (3) insert—
  - “(3A) R may not apply under subsection (1)(a) for the variation of a condition where either subsection (3B) or (3C) applies.
  - (3B) This subsection applies where—
    - (a) the Commission has given R notice under section 26(4)(c) of a proposal to make that variation (or a variation which would have substantially the same effect as that variation), and
    - (b) the Commission has not decided not to take that step.
  - (3C) This subsection applies where—
    - (a) the Commission has given R notice under section 28(3) of its decision to make that variation (or a variation which would have substantially the same effect as that variation), and
    - (b) either the time within which an appeal may be brought has not expired or, if an appeal has been brought, it has not yet been determined.
  - (3D) R may not apply under subsection (1)(a) for the removal of a condition where either subsection (3E) or (3F) applies.
  - (3E) This subsection applies where—

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- (a) the Commission has given R notice under section 26(4)(c) of a proposal to remove that condition, and
  - (b) the Commission has not decided not to take that step.
- (3F) This subsection applies where—
- (a) the Commission has given R notice under section 28(3) of its decision to remove that condition, and
  - (b) either the time within which an appeal may be brought has not expired or, if an appeal has been brought, it has not yet been determined.”
- (4) The amendments made by this section do not affect any application made under section 19(1)(a) of the Health and Social Care Act 2008 before the day on which those amendments come into force.

#### Commencement Information

**I7** S. 86 in force at 1.10.2014 by S.I. 2014/2473, art. 3(a)

## 87 Rights of appeal

- (1) In section 26 of the Health and Social Care Act 2008 (registration procedure: notice of proposals), after subsection (4) insert—
- “(4A) Where a proposal under subsection (4) names an individual and specifies action that the Commission would require the registered person to take in relation to that individual, the Commission must give that individual notice in writing of the proposal.”
- (2) In section 28 of that Act (notice of decisions), in subsection (6), for “subsection (7)” substitute “ subsections (7) to (9) ”.
- (3) In that section, after subsection (7) insert—
- “(8) But in a case where notice of the proposal has been given to an individual under section 26(4A) subsection (7) does not apply unless, by the time the Commission receives the applicant's notification, it has received notification from the individual that he or she does not intend to appeal.
- (9) And if the Commission receives notification from the individual after it receives the applicant's notification and before the end of the period mentioned in subsection (6)(a), the decision is to take effect when the Commission receives the individual's notification.”

#### Commencement Information

**I8** S. 87 in force at 1.10.2014 by S.I. 2014/2473, art. 3(b)

## 88 Unitary board

- (1) In paragraph 3 of Schedule 1 to the Health and Social Care Act 2008 (membership of the Care Quality Commission), in sub-paragraph (1)—
- (a) after paragraph (a), omit “and”, and

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- (b) at the end of paragraph (b) insert “,
  - (c) a chief executive appointed by the members appointed under paragraphs (a) and (b), and
  - (d) other members appointed by the members appointed under paragraphs (a) and (b).”
- (2) After that sub-paragraph, insert—
  - “(1A) The members appointed under sub-paragraph (1)(a) and (b)—
    - (a) are not employees of the Commission, and
    - (b) are referred to in this Schedule as the “non-executive members”.
  - (1B) The members appointed under sub-paragraph (1)(c) and (d)—
    - (a) are employees of the Commission, and
    - (b) are referred to in this Schedule as the “executive members”.
  - (1C) The number of non-executive members must exceed the number of executive members.”
- (3) In sub-paragraph (2) of that paragraph—
  - (a) for “sub-paragraph (1)”, substitute “ sub-paragraph (1)(a) and (b) ”, and
  - (b) for “the members”, substitute “ the non-executive members ”.
- (4) In sub-paragraph (3) of that paragraph, for “any other member”, substitute “ any other non-executive member ”.
- (5) In sub-paragraph (4) of that paragraph—
  - (a) in paragraph (a)—
    - (i) for “other members”, substitute “ other non-executive members ”, and
    - (ii) for “of members who may be appointed”, substitute “ of such members who may be appointed ”,
  - (b) after paragraph (a), omit “and”,
  - (c) in paragraph (b), for “other members”, substitute “ other non-executive members ”, and
  - (d) after paragraph (b), insert—
    - “(c) the limits on the total number of members who may be appointed, and
    - (d) the minimum total number of members who must be appointed.”
- (6) In paragraph 4 of that Schedule (the cross-heading preceding which becomes “ Remuneration and allowances for non-executive members ”), in sub-paragraphs (1) and (2), for “any other member”, substitute “ any other non-executive member ”.
- (7) In paragraph 5 of that Schedule (employees), omit sub-paragraph (1).
- (8) In sub-paragraph (2) of that paragraph, for “such other employees”, substitute “ such employees (in addition to the executive members appointed by the non-executive members) ”.



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#### Commencement Information

**I9** S. 88 in force at 1.10.2014 by S.I. 2014/2473, art. 3(c)

### *Increasing the independence of the Care Quality Commission*

## **89 Chief Inspectors**

After paragraph 3 of Schedule 1 to the Health and Social Care Act 2008 insert—

### **“Chief Inspectors**

- 3A (1) The non-executive members must—
- (a) appoint an executive member to be the Chief Inspector of Hospitals,
  - (b) appoint an executive member to be the Chief Inspector of Adult Social Care, and
  - (c) appoint an executive member to be the Chief Inspector of General Practice.
- (2) Each of those executive members is to exercise such functions of the Commission on its behalf as it determines.
- (3) When exercising functions under sub-paragraph (2), an executive member must have regard to the importance of safeguarding and promoting the Commission's independence from the Secretary of State.”

#### Commencement Information

**I10** S. 89 in force at 1.10.2014 by S.I. 2014/2473, art. 3(d)

## **90 Independence of the Care Quality Commission**

- (1) Part 1 of the Health and Social Care Act 2008 (the Care Quality Commission) is amended as follows.
- (2) In section 48 (special reviews or investigations), omit subsection (7) (Secretary of State's power to make regulations as to procedure for representations before publication of report).
- (3) In section 54 (studies as to economy, efficiency etc), in subsections (1) and (3), omit “, with the approval of the Secretary of State,”.
- (4) After subsection (2) of that section, insert—

“(2A) The Commission may not exercise the power under subsection (1)(a), so far as it relates to the activity mentioned in subsection (2)(d), without the approval of the Secretary of State.”
- (5) In section 55 (publication of results of studies under section 54), omit subsection (2) (Secretary of State's power to make regulations as to procedure for representations before publication of report).

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- (6) In section 57 (reviews of data, studies and research), in subsection (1), omit “, with the approval of the Secretary of State,”.
- (7) In section 61 (inspections carried out for registration purposes), omit—
  - (a) subsection (1) (Secretary of State's power to make regulations specifying frequency etc. of inspections), and
  - (b) subsection (4) (Secretary of State's power to make regulations as to procedure for representations before publication of report).
- (8) In section 83 (annual reports), omit subsection (3) (Secretary of State's power to direct preparation of separate reports).
- (9) In paragraph 5 of Schedule 4 (inspection programmes etc.), omit—
  - (a) in sub-paragraph (1) (preparation of programme etc.), “, or at such times as the Secretary of State may specify by order,” and
  - (b) sub-paragraph (3) (Secretary of State's power to specify form of programme etc.).
- (10) In consequence of subsections (3) and (6), omit section 293(3) and (4) of the Health and Social Care Act 2012.

#### Commencement Information

**III** S. 90 in force at 1.10.2014 by S.I. 2014/2473, art. 3(e)

### *Performance ratings*

## **91 Reviews and performance assessments**

- (1) Chapter 3 of Part 1 of the Health and Social Care Act 2008 (the Care Quality Commission: quality of health and social care) is amended as follows.
- (2) For section 46 (periodic reviews of health and social care provision) substitute—

#### **“46 Reviews and performance assessments**

- (1) The Commission must, in respect of such regulated activities and such registered service providers as may be prescribed—
  - (a) conduct reviews of the carrying on of the regulated activities by the service providers,
  - (b) assess the performance of the service providers following each such review, and
  - (c) publish a report of its assessment.
- (2) Regulations under subsection (1) may prescribe—
  - (a) all regulated activities or regulated activities of a particular description;
  - (b) all registered service providers or particular registered service providers;
  - (c) the whole of a regulated activity or a particular aspect of it.

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- (3) The assessment of the performance of a registered service provider is to be by reference to whatever indicators of quality the Commission devises.
  - (4) The Commission must prepare a statement—
    - (a) setting out the frequency with which reviews under this section are to be conducted and the period to which they are to relate, and
    - (b) describing the method that it proposes to use in assessing and evaluating the performance of a registered service provider under this section.
  - (5) The Commission may—
    - (a) use different indicators for different cases,
    - (b) make different provision about frequency and period of reviews for different cases, and
    - (c) describe different methods for different cases.
  - (6) The Commission must publish—
    - (a) any indicators it devises for the purpose of subsection (3), and
    - (b) the statement it prepares for the purpose of subsection (4).
  - (7) Before doing so, the Commission—
    - (a) must consult the Secretary of State and such other persons, or other persons of such a description, as may be prescribed, and
    - (b) may also consult any other persons it considers appropriate.
  - (8) The Commission may from time to time revise—
    - (a) any indicators it devises for the purpose of subsection (3), and
    - (b) the statement it prepares for the purpose of subsection (4);and, if it does so, it must publish the indicators and statement as revised.
  - (9) Subsection (7) applies to revised indicators and a revised statement, so far as the Commission considers the revisions in question to be significant.
  - (10) In this section “registered service provider” means a person registered under Chapter 2 as a service provider.
  - (11) Consultation undertaken before the commencement of this section is as effective for the purposes of subsection (7) as consultation undertaken after that commencement.”
- (3) Sections 47 (frequency and period of reviews under section 46) and 49 (power to extend periodic review function) are repealed.
  - (4) In section 48 (special reviews and investigations), in subsection (1)—
    - (a) omit “, with the approval of the Secretary of State,”, and
    - (b) at the end insert “ ; but the Commission may not conduct a review or investigation under subsection (2)(ba) or (bb) without the approval of the Secretary of State. ”
  - (5) Omit subsection (1A) of that section.
  - (6) In subsection (2) of that section, for “a periodic review” substitute “ a review under section 46 ”.

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- (7) In that subsection, after paragraph (ba) (but before the following “or”) insert—
- “(bb) the exercise of the functions of English local authorities in arranging for the provision of adult social services,”.
- (8) After subsection (3) of that section insert—
- “(3A) A review or investigation under subsection (2)(b), in so far as it involves a review or investigation into the arrangements made for the provision of the adult social services in question, is to be treated as a review under subsection (2)(bb) (and the requirement for approval under subsection (1) is accordingly to apply).”
- (9) In consequence of the preceding provisions of this section—
- (a) in section 50(1) of the Health and Social Care Act 2008 (failings by English local authorities), omit “or 49”;
  - (b) in section 51(1) of that Act (failings by Welsh NHS bodies), omit “or 49”;
  - (c) in section 70(3)(a) of that Act (provision by Commission to Monitor of material relevant to review under section 46 or 49), omit “or 49”;
  - (d) in section 72(a) of that Act (provision by Commission to Comptroller and Auditor General of material relevant to review under section 46 or 49), omit “or 49”;
  - (e) in section 293 of the Health and Social Care Act 2012, omit subsections (1) and (2);
  - (f) in Schedule 5 to that Act (amendments in consequence of Part 1 of that Act), omit paragraphs 157, 159, 163 and 164.

#### Commencement Information

**I12** S. 91(1)(2) in force at 7.7.2014 for specified purposes by [S.I. 2014/1714](#), [art. 2\(b\)](#)

**I13** S. 91(1)(2) in force at 1.10.2014 in so far as not already in force by [S.I. 2014/1714](#), [art. 4](#)

**I14** S. 91(3)-(9) in force at 1.10.2014 by [S.I. 2014/1714](#), [art. 4](#)

#### *False or misleading information*

## 92 Offence

- (1) A care provider of a specified description commits an offence if—
- (a) it supplies, publishes or otherwise makes available information of a specified description,
  - (b) the supply, publication or making available by other means of information of that description is required under an enactment or other legal obligation, and
  - (c) the information is false or misleading in a material respect.
- (2) But it is a defence for a care provider to prove that it took all reasonable steps and exercised all due diligence to prevent the provision of false or misleading information as mentioned in subsection (1).
- (3) “Care provider” means—
- (a) a public body which provides health services or adult social care in England,

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- (b) a person who provides health services or adult social care in England pursuant to arrangements made with a public body exercising functions in connection with the provision of such services or care, or
  - (c) a person who provides health services or adult social care in England all or part of the cost of which is paid for by means of a direct payment under section 12A of the National Health Service Act 2006 or under Part 1 of this Act.
- (4) “Health services” means services which must or may be provided as part of the health service.
- (5) “Adult social care”—
- (a) includes all forms of personal care and other practical assistance for individuals who, by reason of age, illness, disability, pregnancy, childbirth, dependence on alcohol or drugs, or any other similar circumstances, are in need of such care or other assistance, but
  - (b) does not include anything provided by an establishment or agency for which Her Majesty's Chief Inspector of Education, Children's Services and Skills is the registration authority under section 5 of the Care Standards Act 2000.
- (6) “Specified” means specified in regulations.
- (7) If a care provider commits an offence under either of the provisions mentioned in subsection (8) in respect of the provision of information, the provision of that information by that provider does not also constitute an offence under subsection (1).
- (8) The provisions referred to in subsection (7) are—
- (a) section 44 of the Competition Act 1998 (provision of false or misleading information) as applied by section 72 of the Health and Social Care Act 2012 (functions of the OFT under Part 1 of the Competition Act 1998 to be concurrent functions of Monitor), and
  - (b) section 117 of the Enterprise Act 2002 (provision of false or misleading information) as applied by section 73 of the Health and Social Care Act 2012 (functions of the OFT under Part 4 of the Enterprise Act 2002 to be concurrent functions of Monitor).
- (9) If a care provider commits an offence under subsection (1) in respect of the provision of information, the provision of that information by that provider does not also constitute an offence under section 64 of the Health and Social Care Act 2008 (failure to comply with request to provide information).

#### Commencement Information

- I15** S. 92(1)(3)-(6) in force at 15.7.2014 for specified purposes by [S.I. 2014/1714, art. 3\(3\)\(a\)](#)
- I16** S. 92(1)(3)-(6) in force at 1.4.2015 in so far as not already in force by [S.I. 2015/993, art. 2\(w\)](#)
- I17** S. 92(2)(7)-(9) in force at 1.4.2015 by [S.I. 2015/993, art. 2\(w\)](#)

## 93 Penalties

- (1) A person who is guilty of an offence under section 92 is liable—
- (a) on summary conviction, to a fine;
  - (b) on conviction on indictment, to imprisonment for not more than two years or a fine (or both).

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- (2) A court before which a care provider is convicted of an offence under section 92 may (whether instead of or as well as imposing a fine under subsection (1)) make either or both of the following orders—
  - (a) a remedial order,
  - (b) a publicity order.
- (3) A “remedial order” is an order requiring the care provider to take specified steps to remedy one or more of the following—
  - (a) the conduct specified in section 92(1),
  - (b) any matter that appears to the court to have resulted from the conduct,
  - (c) any deficiency, as regards the management of information, in the care provider's policies, systems or practices of which the conduct appears to the court to be an indication.
- (4) A “publicity order” is an order requiring the care provider to publicise in a specified manner—
  - (a) the fact that it has been convicted of an offence under section 92,
  - (b) specified particulars of the offence,
  - (c) the amount of any fine imposed, and
  - (d) the terms of any remedial order made.
- (5) A remedial order may be made only on an application by the prosecution specifying the terms of the proposed order; and any such order must be on such terms (whether those proposed or others) as the court considers appropriate having regard to any representations made, and any evidence adduced, in relation to that matter by the prosecution or on behalf of the care provider.
- (6) A remedial order must specify a period within which the steps referred to in subsection (3) are to be taken.
- (7) A publicity order must specify a period within which the requirements referred to in subsection (4) are to be complied with.
- (8) A care provider that fails to comply with a remedial order or a publicity order commits an offence and is liable on conviction on indictment to a fine.

#### **Commencement Information**

**I18** S. 93 in force at 1.4.2015 by S.I. 2015/993, art. 2(w)

## **94 Offences by bodies**

- (1) Subsection (2) applies where an offence under section 92(1) is committed by a body corporate and it is proved that the offence is committed by, or with the consent or connivance of, or is attributable to neglect on the part of—
  - (a) a director, manager or secretary of the body, or
  - (b) a person purporting to act in such a capacity.
- (2) The director, manager, secretary or person purporting to act as such (as well as the body) is guilty of the offence and liable to be proceeded against and punished accordingly (but section 93(2) does not apply).

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- (3) The reference in subsection (2) to a director, manager or secretary of a body corporate includes a reference—
  - (a) to any other similar officer of the body, and
  - (b) where the body is a local authority, to a member of the authority.
- (4) Proceedings for an offence under section 92(1) alleged to have been committed by an unincorporated association are to be brought in the name of the association (and not in that of any of the members); and rules of court relating to the service of documents have effect as if the unincorporated association were a body corporate.
- (5) In proceedings for an offence under section 92(1) brought against an unincorporated association, section 33 of the Criminal Justice Act 1925 and Schedule 3 to the Magistrates' Courts Act 1980 apply as they apply in relation to a body corporate.
- (6) A fine imposed on an unincorporated association on its conviction for an offence under section 92(1) is to be paid out of the funds of the association.
- (7) Subsection (8) applies if an offence under section 92(1) is proved—
  - (a) to have been committed by, or with the consent or connivance of, an officer of the association or a member of its governing body, or
  - (b) to be attributable to neglect on the part of such an officer or member.
- (8) The officer or member (as well as the association) is guilty of the offence and liable to be proceeded against accordingly (but section 93(2) does not apply).

#### Commencement Information

**I19** S. 94(1)-(5)(7)(8) in force at 1.4.2015 by S.I. 2015/993, art. 2(w)

**I20** S. 94(6) in force at 1.10.2014 for specified purposes by S.I. 2014/2473, art. 4(1)(a)

**I21** S. 94(6) in force at 1.4.2015 in so far as not already in force by S.I. 2015/993, art. 2(w)

### *Regulated activities*

## **95 Training for persons working in regulated activity**

In section 20 of the Health and Social Care Act 2008 (regulation of regulated activities), after subsection (4) insert—

“(4A) Regulations made under this section by virtue of subsection (3)(d) may in particular include provision for a specified person to set the standards which persons undergoing the training in question must attain.”

#### Commencement Information

**I22** S. 95 in force at 1.10.2014 by S.I. 2014/2473, art. 3(f)

**Status:**

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