Draft Regulations laid before Parliament under section 304(5)(jb) of the Health and Social Care Act 2012, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2022 No.

SOCIAL CARE, ENGLAND

NATIONAL HEALTH SERVICE, ENGLAND

PUBLIC HEALTH, ENGLAND

The Adult Social Care Information (Enforcement) Regulations 2022

Made - - - - ***

Coming into force in accordance with regulation 1(1)

The Secretary of State, in exercise of the powers conferred by sections 277E and 304(9) and (10) of the Health and Social Care Act 2012(**a**), makes the following Regulations.

A draft of this instrument was laid before and approved by a resolution of each House of Parliament in accordance with section 304(5)(jb)(**b**) of the Health and Social Care Act 2012.

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Adult Social Care Information (Enforcement) Regulations 2022 and come into force on the 21st day after the day on which they are made.

(2) These Regulations extend to England and Wales.

(3) In these Regulations—

"final notice" has the meaning given in regulation 6(2);

"notice of intent" has the meaning given in regulation 4(1).

(**a**) 2012 c. 7. Section 277E was inserted by section 100 of the Health and Care Act 2022 (c. 31).
(**b**) Paragraph (jb) was inserted by section 100(3) of the Health and Care Act 2022.

Financial penalty for breach of information duties

2. The Secretary of State may impose a financial penalty on a person, other than a public body(**a**), who without reasonable excuse—

(a) fails to comply with a requirement to provide information imposed under section 277A(1) of the Health and Social Care Act 2012(**b**);

(b) provides information in response to such a requirement that is false or misleading to a material extent.

Amount of financial penalty

3.—(1) The amount of a financial penalty is the same as the relevant provider fee.

(2) In paragraph (1), "the relevant provider fee" means the fee payable to the Care Quality Commission by the person on whom the financial penalty is imposed for the grant or subsistence of that person's registration if that fee were to be determined in accordance with the provision made and published under section 85(1)(a)(ii) of the Health and Social Care Act 2008(**c**) in the form current at the time the financial penalty is imposed.

Notice of intent

4.—(1) Before imposing a financial penalty on a person under regulation 2, the Secretary of State must give the person written notice (a "notice of intent") of the proposed financial penalty.

(2) The notice of intent must set out—

(a) the amount of the proposed financial penalty;

(b) the reasons for proposing to impose the penalty;

(c) the circumstances in which the Secretary of State may not impose the penalty; and

(d) information about the right to make written representations in accordance with regulation 5, including the period within which such representations may be made.

Right to make representations

5.—(1) A person to whom a notice of intent has been given may, within the period specified in the notice of intent, make written representations to the Secretary of State about the proposed financial penalty.

(2) The period specified in the notice of intent for making written representations must not be a period of less than 14 days beginning with the day after the day on which the notice of intent was given.

Final decision and notice

6.—(1) Within 28 days of the end of the period specified in the notice of intent for making written representations, the Secretary of State must decide whether to impose the financial penalty.

(2) If the Secretary of State decides to impose the financial penalty, the Secretary of State must give a notice (a "final notice") imposing the penalty.

(3) The final notice must set out—

(a) the amount of the financial penalty;

(**a**) "Public body" has the meaning given by section 250(7) of the Health and Social Care Act 2012; *see* section 277E(5) of that Act.

(**b**) Section 277A was inserted by section 99 of the Health and Care Act 2022.

(**c**) 2008 c. 14. The current fee provision is published at www.cqc.org.uk/guidance-providers/fees/fees. Accessible formats including hard copies can be obtained by emailing enquiries@cqc.org.uk, telephoning the CQC on 03000 616161 or completing the online form at the webpage above.

(b) the reasons for imposing the penalty;

(c) information about how to pay the penalty;

(d) the period for payment of the penalty;

(e) information about the right of appeal including the time limit within which the application notice must be sent to the First-tier Tribunal if an appeal is to be brought; and

(f) the consequences of failure to pay the penalty in accordance with the notice.

Notices

7.—(1) The Secretary of State may at any time withdraw a notice of intent or a final notice by giving notice in writing to the person to whom the notice was given.

(2) Any notice given under these Regulations must be in writing and is validly given to a person if—

(a) it is delivered to that person at their proper address;

(b) it is sent to that person's proper address by first class post, recorded delivery or prepaid registered post;

(c) it is sent by electronic means to that person's proper address.

(3) In the case of a body corporate, a notice may be given to an officer of that body.

(4) In the case of a partnership, a notice may be given to a partner or a person having control or management of the partnership business.

(5) Service is deemed to have been given—

(a) in the case of notifications given under paragraph (2)(a), on the day on which the notice is delivered;

(b) in the case of notifications given under paragraph (2)(b), on the third working day after the day on which the notice is sent;

(c) in the case of notifications given under paragraph (2)(c), on the first working day after the day on which the notice is sent.

(6) For the purposes of this regulation—

"proper address" means—

(a) in the case of a body corporate or an officer of that body—

(i) the registered or principal office of that body; or

(ii) the email address of that officer;

(b) in the case of a partnership or a partner or a person having control or management of the partnership business—

(i) the principal office of the partnership; or

(ii) the email address of the partner or person having that control or management;

(c) in any other case, a person's last known address, which may be an email address;

"working day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday in England under the Banking and Financial Dealings Act 1971(**a**).

(**a**) 1971 c. 80, to which there are amendments not relevant to these Regulations.

Appeals

8.—(1) A person to whom a final notice is given may appeal to the First-tier Tribunal against—

(a) the decision to impose the penalty; or

(b) the amount of the penalty.

(2) If a person appeals under this regulation, the final notice is suspended until the appeal is finally determined or withdrawn.

(3) An appeal under this regulation—

(a) is to be a re-hearing of the Secretary of State's decision; but

(b) may be determined having regard to matters of which the Secretary of State was unaware when the decision was made.

(4) On an appeal under this regulation, the First-tier Tribunal may confirm, quash or vary the final notice.

(5) The final notice may not be varied under paragraph (4) so as to impose a financial penalty which is not the amount determined in accordance with regulation 3.

Recovery of financial penalty

9.—(1) This regulation applies if a person does not pay the whole or any part of a financial penalty which, in accordance with these Regulations, that person is liable to pay.

(2) The Secretary of State may recover the penalty or part on the order of the county court as if it were payable under an order of that court.

(3) In proceedings before the county court for the recovery of a financial penalty or part of a financial penalty, a certificate which—

(a) is signed by the Secretary of State (including any person authorised to act in the name of the Secretary of State for this purpose); and

(b) states that the amount due has not been received by a date specified in the certificate,

is conclusive evidence that the amount has not been received by that date.

(4) A certificate to that effect and purporting to be so signed is to be treated as being so signed, unless the contrary is proved.

Proceeds of financial penalties

10. Where the Secretary of State receives a financial penalty under these Regulations, it must be paid into the Consolidated Fund.

Review

11.—(1) The Secretary of State must from time to time—

(a) carry out a review of the regulatory provision contained in these Regulations; and

(b) publish a report setting out the conclusions of the review.

(2) The first report must be published before the end of the period of five years beginning with the date on which these Regulations come into force.

(3) Subsequent reports must be published at intervals not exceeding five years.

(4) Section 30(4) of the Small Business, Enterprise and Employment Act 2015(**a**) requires that a report published under this regulation must, in particular—

(**a**) 2015 c. 26. Section 30 has been amended but not in a way which is relevant to these Regulations.

(a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a);

(b) assess the extent to which those objectives are achieved;

(c) assess whether those objectives remain appropriate; and

(d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(5) In this regulation, "regulatory provision" has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

Signed by authority of the Secretary of State for Health and Social Care

Name
Minister of State
Date Department of Health and Social Care

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to financial penalties which can be imposed where a person, without reasonable excuse, breaches certain information duties under Part 9 of the Health and Social Care Act 2012 (c. 7), as amended by the Health and Care Act 2022 (c. 31). A financial penalty can be imposed when a person fails to comply with a requirement to provide information imposed under section 277A(1) of the Health and Social Care Act 2012 or provides information in response to such a requirement that is false or misleading to a material extent.

Regulation 3 makes provision as to the amount of the financial penalty. The amount is to be the same as the fee payable to the Care Quality Commission for the grant or subsistence of the provider's registration determined by reference to the fee scheme which is current at the time the financial penalty is imposed.

Regulation 4 provides for a notice of intent to be given before a financial penalty is imposed.

Regulation 5 provides for a right for a person to whom a notice of intent is given to make written representations about the proposal to impose a financial penalty.

Regulation 6 provides for final decisions by the Secretary of State after the period for making representations, and makes provision as to the content of the final notice where the Secretary of State decides to impose a financial penalty.

Regulation 7 provides for the Secretary of State to be able to withdraw a notice of intent or a final notice. Regulation 7 also makes provision in relation to the giving of notices under the Regulations.

Regulation 8 provides for a person to whom a final notice is given to be able to appeal to the First-tier Tribunal. Regulation 9 makes provision for financial penalties to be recovered in the county court and regulation 10 makes provision for financial penalties to be paid into the Consolidated Fund.

Regulation 11 provides for a review of the Regulations every five years in accordance with the Small Business, Enterprise and Employment Act 2015 (c. 26).

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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