

# CARE STANDARDS ACT 2000

---

## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part I Introductory

23. **Part I** sets out definitions of establishments *etc* and other terms for the purposes of the Act. *Section 6* establishes the National Care Standards Commission (“the Commission”) as the registration authority in England. *Section 7* sets out general duties of the Commission, which include monitoring the provision and quality of registered social care services, informing and advising the Secretary of State, supporting consumers through the provision of information, and encouraging the development of better services. *Section 5* identifies the National Assembly for Wales as the equivalent registration authority in Wales, and *section 8* makes equivalent provision for its general duties in respect of its functions under Part II.

#### Preliminary

24. *Sections 1-4* define the services which are to be regulated by the registration authorities. The services are children’s homes, independent hospitals, clinics and medical agencies, care homes, residential family centres, domiciliary care agencies, nurses agencies, fostering agencies and voluntary adoption agencies.

#### *Section 1 Children’s homes*

25. *Subsection (2)* defines a children’s home as an establishment which provides care and accommodation wholly or mainly for children. This will catch community homes, voluntary homes and registered children’s homes (including small private children’s homes) as defined in the Children Act 1989, and homes for disabled children. *Subsection (3)* excludes a place where a child is cared for by his parents, a relative, a person with parental responsibility for him or a foster parent. *Subsection (4)* excludes NHS hospitals, independent hospitals and clinics, schools and other institutions and gives the appropriate Minister the power to make other exceptions in regulations. It is intended that regulations will be made to except, for example, homes where children take holidays or certain hostels set up by professionals to accommodate apprentices (such as footballers or jockeys). *Subsection (6)* provides that any school which provides accommodation for more than 295 days a year for any individual child must register also as a children’s home. *Subsection (7)* clarifies the definition of foster parent for the purposes of this section.
26. Small private children’s homes, accommodating fewer than four children, are not required to register under the Children Act 1989. However, *section 40* amends the Children Act to require the registration of such homes by local authorities in the interim.

#### *Section 2 Independent hospitals etc.*

27. *Section 2* sets out the range of independent healthcare services which are to be regulated. *Subsection (2)* excludes NHS hospitals from the definition of independent hospitals and clinics.

28. *Subsection (3)* defines an independent hospital as any establishment which has as its main purpose the provision of psychiatric or medical treatment for illness or mental disorder (including palliative care) or which provides one or more of the services listed in *subsection (7)* (“listed services”), and any other establishment which provides treatment for people liable to be detained under the provisions of the Mental Health Act 1983. *Subsection (6)* provides that the definition of “people liable to be detained” does not include people who are on leave granted under section 17 of that Act. This definition of “independent hospital” will encompass all those hospitals and mental nursing homes registered to take detained patients which are currently regulated under Part II of the Registered Homes Act 1984 and other private or voluntary hospitals which are currently not regulated – for example those run by bodies established by Royal Charter or by special Act of Parliament.
29. *Subsection (4)* defines an independent clinic as a prescribed type of establishment (other than a hospital) where medical practitioners provide services (including services which are provided for the purpose of an independent clinic otherwise than on the clinic’s premises, for example in a patient’s home). The definition excludes an establishment in which medical practitioners provide NHS services. This will bring private primary care premises, where prescribed, within the regulatory framework for the first time.
30. *Subsection (5)* defines an independent medical agency as an undertaking (which is not an independent clinic) which consists of or includes the provision of services for private patients by medical practitioners. It excludes any agency that provides NHS services. This will bring wholly private GP call-out services within the regulatory framework.
31. Premises in which “listed services” are provided come within the definition of a hospital. *Subsection (7)* defines the listed services as medical treatment under anaesthesia or sedation, dental treatment under general anaesthesia, obstetric services and medical services in connection with childbirth, termination of pregnancies or cosmetic surgery. The category of dental treatment under anaesthesia will, by means of regulations, apply to wholly private dentistry only, and NHS arrangements will be changed so that comparable requirements apply to both public and private sector dentistry. It also provides for the appropriate Minister to specify other treatments involving the use of prescribed techniques or technologies. These would be treatments which pose a particular risk to patients. For example, at present regulations made under the Registered Homes Act 1984 prescribe treatment with Class 3B and Class 4 lasers as such treatment.
32. *Subsection (8)* gives the appropriate Minister power to make regulations excepting establishments from the requirement to be regulated and to amend the list of “listed services” by adding or removing services.

### **Section 3 Care homes**

33. *Section 3* defines a care home as any home which provides accommodation together with nursing or personal care for any person who is or has been ill (including mental disorder), is disabled or infirm, or who has a past or present dependence on drugs or alcohol. The definition is intended to include residential care homes and nursing homes, as defined in the 1984 Act. The Commission will be able to impose conditions on care homes as to the categories of person they can accommodate. Residential care homes run by NHS bodies will be required to be registered under this definition of care homes as the provision of residential (as against nursing) homes is not a core NHS function as such. Local authority provision under Part III of the National Assistance Act 1948 will be required to be registered.
34. “Personal care” in the context of care homes includes assistance with bodily functions where such assistance is required. This may include, for instance, assistance with bathing, dressing and eating for people who are unable to do these things without help – see *section 121(9)*. This means that an establishment is not defined as a care home unless that type of assistance is provided where required.

35. *Subsection (3)* excludes NHS hospitals and private hospitals and clinics, including establishments which receive patients liable to be detained under the Mental Health Act 1983 (see paragraph 28 above), and gives the appropriate Minister power to make other exceptions in regulations. (Homes which take patients on section 17 leave under the 1983 Act but do not take detained patients will need to be registered as a care home not as a hospital).
36. Homes which provide personal care and accommodation for disabled children are to be treated as children's homes and not care homes.

#### ***Section 4 Other basic definitions***

37. *Subsection (2)* defines residential family centres. Such centres undertake monitoring and/or an assessment of parenting capacity on a residential basis where there is concern that parents may be unable to respond appropriately to the needs of their children. This could include specific accommodation for teenage mothers and their babies. They may be operated by local authorities, voluntary organisations or private agencies. At present they are not regulated, but in future all residential family centres will be required to register with the registration authority.
38. *Subsection (3)* defines domiciliary care agencies. These agencies supply staff who provide personal care for people in their own homes. The definition encompasses any agency that arranges the provision of personal care for people who need assistance by reason of illness, infirmity or disability. Individual care workers are not included unless they themselves carry on or manage the agency.
39. *Subsection (4)* defines fostering agencies. The definition is intended to include both independent agencies which provide a fostering agency service to local authorities, and voluntary organisations (such as Barnardos) who operate in their own right. Both types of fostering agency recruit and train foster parents and place children with them. Agencies defined by *subsection (4)(a)* make placements under powers delegated to them by local authorities, and they may or may not be voluntary organisations. Agencies defined by *subsection (4)(b)* are voluntary organisations which place children with foster parents in their own right.
40. *Subsection (5)* defines nurses agencies. These will now be subject to registration by the Commission. In addition, the Nurses Agencies Act 1957 will be repealed, and nurses agencies will also be subject to the provisions of the Employment Agencies Act 1973 (see notes to *section 111*).
41. *Subsection (7)* defines a voluntary adoption agency as an adoption society within the meaning of the Adoption Act 1976, which is a voluntary organisation. An "adoption society" is defined in that Act as a body of persons whose functions consist of or include making arrangements for adoption.

### **Registration authorities**

#### ***Sections 5 and 6 and Schedule 1 Registration authorities***

42. These sections establish the National Care Standards Commission as the registration authority in England, and the registration authority in Wales, which is to be established as either a department or an executive agency of the National Assembly for Wales.

#### ***Section 6 National Care Standards Commission***

43. *Section 6* establishes the National Care Standards Commission. It is a statutory body corporate, which will exercise in England the functions conferred upon it by or under this Act or other legislation. The constitutional arrangements and general provisions for the Commission are set out in *Schedule 1*, which makes provision for the Commission,

the General Social Care Council and the Care Council for Wales (see notes on [section 54](#) below).

44. *Subsection (2)* provides that the Commission must, in the exercise of its functions, act in accordance with directions given to it by, and under the general guidance of, the Secretary of State. *Subsection (4)* provides that the power for the Secretary of State to issue directions, includes directions in connection with organisational and structural matters, such as, for instance, the establishment of regional offices, or a separate division for private and voluntary healthcare.
45. The Commission will be responsible for the regulation of the whole range of care services from care homes for the elderly, children's homes, domiciliary care, fostering and adoption agencies through to independent hospitals, clinics, medical agencies and nurses agencies. It will also inspect boarding schools, further education colleges which provide accommodation and local authority fostering and adoption services. It will take on the regulation and inspection functions that are currently split between local authorities, Health Authorities and the Department of Health centrally. Some services will be regulated for the first time – these include local authorities' own care homes and children's homes and domiciliary care agencies.
46. Under the provisions of [Schedule 1](#) the Commission (subject to directions) may take any necessary or expedient action to fulfil its statutory duties ([paragraph 3](#)). The Secretary of State has powers to make regulations governing the procedures of the Commission, and the appointment of members ([paragraph 6](#)) and for the appointment of a chief officer ([paragraph 8](#)). The first chief officer will be appointed by the Secretary of State. The Commission will appoint subsequent chief officers itself, subject to the approval of Secretary of State. The following paragraphs are worthy of additional comment:
47. [Paragraph 9](#): The Secretary of State will be able to direct the Commission to appoint regional directors. In line with the White Paper, *Modernising Social Services*, it is intended that these regions will be based upon the regions of the NHS Executive.
48. [Paragraph 10](#) provides that the Commission must appoint a member of staff as a children's rights director, whose role will be prescribed in regulations. The intention is that he should ensure that the work of the Commission in regulating children's services takes full account of children's rights and welfare. [Paragraph 11](#) provides that the Commission must appoint a director of private and voluntary healthcare, who will be a member of staff with functions to be prescribed in regulations. The intention is that s/he will preside over a separate healthcare division within the Commission, and will oversee the Commission's interests in, and responsibilities for, the regulation of independent healthcare.
49. [Paragraph 12](#) makes provision for an authority to appoint staff and provides that an authority may pay or make provision for the payment of pensions, allowances, gratuities or compensation, subject to directions from the Secretary of State.
50. [Paragraph 13](#) provides that the Commission may arrange for any of its functions to be carried out by a committee or member of staff of the Commission, or by another person. [Paragraph 14](#) makes provision to enable staff from other bodies, such as Health Authorities and the Commission for Health Improvement, to be placed at the disposal of the Commission and *vice versa*.
51. [Paragraph 15](#) provides that the Commission may run conferences, seminars and other training events. [Paragraph 17](#) allows the Commission to charge a reasonable fee for non-regulatory activities. Although registration and annual fees will cover the costs of regulation, there are some activities which the Commission will carry out which it would not be fair to expect all registered services to pay for. The Commission might, for example, wish to charge a fee to those who attend its training events, in order to recover its outlay.

### ***Section 7 General duties of the Commission***

52. *Section 7* sets out the general duties of the Commission, and therefore applies only to England. The duties in *subsections (1) to (7)* relate to services that are subject to regulation under Part II, with the exception of private and voluntary healthcare. These services are collectively known as “Part II services”. The duties include monitoring the availability and quality of such services, supporting consumers through the provision of information and encouraging the development of better services.
53. *Subsection (1)* provides that the Commission must keep the Secretary of State informed as to the provision, availability and quality of Part II services. This will include reporting on trends in the provision of long term care. *Subsection (2)* provides that the Commission will have the general duty of encouraging improvements in the quality of Part II services. It will do this by, for example, disseminating examples of good practice and giving advice to providers on how to meet the national minimum standards (see *section 23*). Under *subsection (3)* the Commission is required to provide information about Part II services to the public. This might include information about the location and types of services available, as well as the results of its inspections of individual providers. *Subsection (4)* provides that the Secretary of State may require advice or information from the Commission about any aspect of the provision of Part II services. *Subsection (5)* enables the Commission to advise the Secretary of State about changes to the national minimum standards with a view to seeking improvement in the quality of services. *Subsection (6)* provides for the Secretary of State to make regulations conferring additional functions on the Commission.

### ***Section 8 General functions of the Assembly***

54. This section makes similar provision for the Assembly, as section 7 makes for the Commission. *Subsection (1)* sets out the general duties of the Assembly in relation to Part II services to encourage improvement in quality of services. *Subsection (2)* provides that the Assembly shall make information available to the public about Part II services. *Subsection (3)* provides a parallel power to that in section 7(6) so that the Assembly may, by regulations, confer additional functions on itself, but only where that function has already been conferred on the Commission by the Secretary of State. *Subsection (4)* provides for the Assembly to have powers to charge for fees in connection with its regulatory duties. *Subsection (5)* provides for the Assembly to provide training in relation to the attainment of national standards. Equivalent powers for the Commission are in *Schedule 1*, which does not apply to the Assembly.

### ***Section 9 Co-operative working***

55. This section gives the Secretary of State a power to introduce regulations enabling the Commission (or the Assembly) and the Commission for Health Improvement (CHI) to delegate functions to one another. It recognises that, although their roles are distinct (CHI is a key part of the arrangements for modernising the NHS and will review the arrangements that NHS organisations have in place to update and improve the services they deliver; in contrast, the Commission will seek to ensure the individual independent healthcare providers have safeguards and quality assurance systems in place by regulating them against set national minimum standards), they also have common interests. For instance, CHI’s review of NHS Trusts will include those that have contracts with independent healthcare providers that the Commission will regulate. The two bodies will, therefore, need to liaise and work together effectively. The intention of this provision is to help enable them to do so. All regulations made under this section must be made by the Secretary of State, but he may not make regulations enabling CHI’s functions to be exercised by the Assembly without the agreement of the Assembly.

### **Section 10 Inquiries**

56. *Subsection (1)* enables the Secretary of State to act on any concerns over the Commission's exercise of its functions, by setting up an inquiry. *Subsection (2)* allows the Secretary of State to set up an inquiry into any matter connected with a regulated service. For example, if a consultant surgeon working in a private hospital was found to have unusually high death rates among his patients, the Secretary of State could set up an inquiry to investigate. *Subsections (3) and (4)* enable an inquiry to be held in private. This might be necessary to protect, for example, a victim of child abuse.
57. *Subsection (5)* provides for section 250 (2) to (5) of the Local Government Act 1972 to apply in relation to an inquiry. This will enable the person holding the inquiry to issue a summons requiring an individual to give evidence or produce any documents in their custody or under their control at a stated time and place. If that person fails to attend (for reasons other than not having the necessary expenses of their visit paid or tendered), they are liable to a fine or imprisonment.
58. *Subsection (6)* provides for the Assembly to have similar powers to those referred to in paragraph 56 above.
59. *Subsection (7)* requires that reports of inquiries set up under the powers in this section should be published unless the appropriate Minister considers that there are exceptional circumstances that make publication inappropriate. Grounds for not publishing may include, for example, publication being prejudicial to ongoing criminal investigations or proceedings.