

# CARE STANDARDS ACT 2000

---

## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part IX and Schedules 4, 5 and 6: General and Supplemental

##### *Chapter I: General*

##### *Section 113 Default powers of the appropriate Minister*

276. *Subsection (1)* confers default powers on the Secretary of State in respect of the Commission and the General Social Care Council (GSCC). *Subsection (2)* makes similar provision for default powers for the National Assembly for Wales in respect of the Care Council for Wales (CCW). If the appropriate Minister is satisfied that the Commission or the GSCC or the CCW has failed to discharge any of its functions, without good reason, or in discharging its functions has failed to comply with any directions or guidance given to it, this section confers a two-fold default power.
277. *Subsection (3)* details the first stage: the appropriate Minister may make an order declaring the Commission or Council to be in default and issue directions requiring them to take specific action within a specific timescale. If the Commission or Council fail to comply with the directions, the second stage (*subsection (4)*) is triggered. This results in the appropriate Minister either carrying out the functions himself or nominating a person or organisation to discharge these functions on his behalf.

##### *Section 114 Schemes for transfer of staff*

278. This section provides that the provisions in both this section and [section 94](#) apply to all transfers of staff made under the Act (see sections 38, 70 and 79(3)). *Subsection (3)* provides that schemes may be made, provided that prescribed requirements for consultation have been met in respect of every individual to be transferred.

##### *Section 115 Effect of schemes*

279. This section provides that all staff transfers made under the Act will reflect the [Transfer of Undertakings \(Protection of Employment\) Regulations 1981 \(SI 1981 No 1794\)](#) (TUPE) principle, that staff transferred will do so on their existing terms and conditions. In addition, the new bodies may make provision for occupational pensions and compensation for loss of employment. It is intended that staff who transfer will continue to have pension provision through their existing schemes.
280. *Subsection (1)* provides that under a scheme an employee's existing contract of employment would not be terminated, but would transfer to the new employer and be treated as having effect from the date it was originally made.
281. *Subsections (3)* and *(4)* provide that an employee may object to transferring to a new employer, and that their contract of employment can be terminated before the date of transfer. This would not be treated as a dismissal.

*These notes refer to the Care Standards Act 2000  
(c.14) which received Royal Assent on 20 July 2000*

282. *Subsection (5)* provides that these arrangements will not affect the right of an employee to terminate his or her contract if their working conditions were to suffer a significant change which was to their detriment.

#### ***Section 116 and Schedule 4 Minor and consequential amendments***

283. *Section 116* makes provision for *Schedule 4*, which makes minor and consequential amendments other legislation. The following amendments are of particular note:
284. *Paragraph 5* amends the Adoption Act 1976 to provide for the regulation of voluntary adoption agencies under this Act.
285. *Paragraph 14* makes amendments to the Children Act 1989, in particular to the definition of “registered children’s home”, which becomes a “private children’s home” in order to avoid confusion. An “appropriate children’s home” is any type of children’s home (that is, private, voluntary or community home), in respect of which a person is registered under the Care Standards Act.
286. *Paragraph 26(3)* amends section 9(2) of the Protection of Children Act 1999 in order that the Tribunal established under that Act should also determine appeals against decisions made under this Act.

#### ***Section 117 and Schedules 5 and 6: Transitional provisions, savings and repeals***

287. *Section 117* makes provision for *Schedule 5*, which details transitional provisions and savings, and *Schedule 6* which details repeals.

#### ***Schedule 5 Transitional provisions and savings***

288. Limited transitional provision has been made in *Schedule 5* for fostering agencies, voluntary adoption agencies and the Children’s Commissioner for Wales. Further transitional provisions will be required in respect the other elements of this Act. This will be dealt with by Order under *section 119*.

#### ***Schedule 6 Repeals***

289. *Schedule 6* details repeals.

### ***Chapter II: Supplemental***

#### ***Section 118 Orders and regulations***

290. *Section 118* provides that all orders and regulations made under the Act, other than certain orders making staff transfer schemes, will be made by statutory instrument. Apart from commencement orders, in England these will be subject to Parliamentary scrutiny under negative procedures. The Government of Wales Act 1998 places duties on the National Assembly for Wales in respect of making regulations. These are set out in full in Standing Order 22 of the Assembly. An order made by the Secretary of State under section 119(2) which amends the text of an Act is subject to Parliamentary scrutiny under the affirmative procedure. Although the Secretary of State and the Assembly can make regulations independently under this Act, they can also act jointly if they so wish.
291. *Subsection (5)* gives the appropriate Minister power to use any regulation making power flexibly to make similar or different provision for various cases. For example, in section 22 a power is given to set out in regulations what constitutes ‘fit premises’. Different requirements will need to be set depending on whether the premises are to be used as a home, an agency, or another type of registrable establishment.

***Section 119 Supplementary and consequential provision etc.***

292. *Section 119* gives the appropriate Minister power enabling him to make such additional provision as he considers necessary in order to give full effect to the provisions of the Act.

***Section 120 Wales***

293. *Section 120* provides for receipts to the Assembly from registration and other fees to be paid into its own budget rather than the Consolidated Fund.

***Section 121 General Interpretation etc.***

294. *Section 121* is a general interpretation provision.

***Section 122 Commencement and Section 123 Short title and extent***

295. *Section 122* makes standard provision for commencement. *Section 123* provides that this Act extends only to England and Wales, except section 70 (abolition of CCETSW), which also extends to Scotland and Northern Ireland. In addition, sections 114 and 115 (which relate to schemes for the transfer of staff) and 118 (concerning orders and regulations) also apply to Scotland and Northern Ireland in so far as they relate to staff transfers from CCETSW or the winding-up of CCETSW. Amendments or repeals of any enactments extending to Scotland or Northern Ireland will also extend to those countries.