

CARE STANDARDS ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part Iii Local Authority Services

121. **Part III** concerns local authority fostering and adoption services. The principle behind these provisions is that all such services, whoever provides them, should be required to meet the same standards. The registration authority will inspect these services, using powers in *sections 45* and *46*, applying equivalent standards as for voluntary adoption agencies and independent fostering agencies registered under Part II. Local authority provision will not be registered, but where an authority is found to be failing in England the National Care Standards Commission must report the authority to the Secretary of State. In Wales, the registration authority will report the matter to the relevant part of the National Assembly for Wales, which will take appropriate action.

Section 43 Introductory

122. This section defines the functions that are subject to inspection by the registration authority. In respect of adoption, the relevant functions are those of making or participating in arrangements for the adoption of children. These are the local authority functions with respect to which regulations may be made by virtue of section 9(3) of the Adoption Act 1976, and which are also carried out by voluntary adoption agencies (which will be regulated under Part II of this Act). The relevant functions cover, in particular, the approval of prospective adopters, the preparation of children for adoption and the making of adoptive placements.
123. In respect of fostering, the relevant functions are those which are capable of being delegated to other bodies by virtue of regulations made under paragraph 12(g) of Schedule 2 to the Children Act 1989. They include the approval of foster parents, the placement of children on behalf of the local authority, and the supervision of the placement. Bodies which act for local authorities under delegated powers are to be regulated as fostering agencies under Part II of this Act. Relevant functions for these purposes do not extend to any of the local authority's discretionary duties in respect of children it is looking after, for example to safeguard and promote welfare, to decide on the type of placement and to review their cases. Such duties may not be delegated.

Section 44 General powers of the Commission

124. *Section 44*, which provides that the Commission may give advice to the Secretary of State in respect of Part III matters, mirrors the provision in respect of Part II services in section 7(5). The Commission may therefore advise the Secretary of State of any changes that need to be made to secure improvements in the quality of local authority fostering and adoption services, and of any changes that may need to be made to the national minimum standards provided for in *section 49*.

Sections 45 and 46 Inspection of relevant adoption and fostering services

125. These sections provide for the inspection of relevant adoption and fostering services. To a large extent these provisions mirror those in sections 31 and 32, which provide for similar powers to be exercised in relation to the regulation of independent fostering agencies and voluntary adoption agencies. The powers in these two sections are wide and are exercisable by a person so authorised by the registration authority.

Section 45 Inspection by registration authority of adoption and fostering services

126. *Section 45* relates closely to section 31. *Subsection (1)(a)* obliges an authority to provide whatever information the authorised person requires and *subsection (1)(b)* provides for the entry and inspection of premises used by the authority in the discharge of relevant adoption and foster care functions. *Subsections (2)* and *(3)* make provision about access to documents and records, including computer records, and provides for an authorised person to interview in private any employee of the authority. If records are stored on a computer they must be produced in a legible, not encrypted, form. *Subsection (4)* provides for a regulation making power to determine the frequency of inspections.
127. *Subsection (5)* applies section 31(8) and (9), which provide for the proper identification of a person exercising powers of entry and inspection on behalf of the registration authority, and for offences. Obstruction or a failure to comply with inspection requirements without reasonable excuse is a summary offence, punishable by a fine at level 4 on the standard scale.

Section 46 Inspections: supplementary

128. *Section 46* relates closely to section 32. *Subsection (1)* permits an authorised person to remove any document or other material on the premises as evidence of possible non-compliance with the regulatory requirements (as defined by *subsection (7)*). *Subsection (2)* imposes a requirement to assist the authorised person, and permits the authorised person to take measurements and photographs and make recordings, for example, a tape or video recording, in the exercise of his inspection powers. *Subsection (3)* provides the authorised person with a right of access to computers.
129. *Subsection (4)* requires the registration authority to prepare a report after carrying out an inspection under this Part, and to send a copy of this report to the local authority as soon as possible. *Subsections (5)* and *(6)* provide that the registration authority must make the report available to the public.
130. *Subsection (7)* identifies the regulatory requirements that apply to this section and section 45. These are:
- requirements set out in regulations made under *section 48*;
 - regulations made under section 23(2)(a) of the Children Act 1989 (at present, the [Foster Placement \(Children\) Regulations 1991 \(SI 1991 No 910\)](#) (as amended) and [Arrangements for Placement of Children \(General\) Regulations 1991 \(SI 1991 No 890\)](#) (as amended));
 - regulations made under section 9(3) of the Adoption Act (at present, the [Adoption Agencies Regulations 1983 \(SI 1983 No 1964\)](#) (as amended));
 - regulations made under the Adoption (Intercountry Aspects) Act 1999 (none yet in force).
131. *Subsection (8)* provides that, in England, inspection reports shall be made available in the regional offices of the Commission in the region in which the relevant local authority is situated.

Section 47 Action following inspection

132. This section deals with the action to be taken by the Commission following inspection of a local authority in England. By *subsection (1)* the Commission must notify the Secretary of State at any time if it considers that a local authority does not satisfy the regulatory requirements, where the failure is substantial.
133. The Commission must also report to the Secretary of State following the exercise of its powers of inspection, and at the expiry of any time limit for improvement specified in a notice given to the local authority under *subsection (5)* (see below). At such times, the Secretary of State must be notified whether a local authority satisfies the regulatory requirements, or fails to do so. Alternatively, the Commission may, if it considers appropriate, give the local authority a notice under *subsection (5)* and inform the Secretary of State that it has done so. A notice under *subsection (5)* specifies those areas or issues in which the authority fails to satisfy the regulatory requirements and what action it should take to remedy the failure. The notice also imposes time constraints within which a failure should be remedied. At the end of the period specified in any notice, the Commission must notify the Secretary of State whether or not the local authority now satisfies the regulatory requirements.
134. Where the Commission has made a report to the Secretary of State to the effect that a local authority is not meeting regulatory requirements, *subsection (6)* applies so that the Commission is relieved of its duty of inspection until the Secretary of State notifies the Commission that *subsection (6)* ceases to apply. The purpose of this provision is to avoid duplication of powers and duties in the event that the Secretary of State decides to take enforcement action in respect of the local authority.
135. These powers do not apply in Wales since the National Assembly for Wales will both undertake regulatory responsibility and have enforcement powers in respect of the local authority.

Section 48 Regulation of the exercise of relevant fostering functions

136. This section provides for regulations imposing requirements concerning the exercise of a local authority's relevant fostering functions as defined by section 43(3)(b). Parallel provision is made in respect of "relevant adoption functions" by amendment to section 9(3) of the Adoption Act 1976. The powers mirror, with necessary adjustments, those in section 22 with the intention that similar standards should apply to both local authority and independent sector services. Regulations may provide for the fitness of workers, the suitability of premises; management and control of operations; numbers and types of workers and their management and training. By *section 52* the regulations may provide that breach of a specified provision is a summary offence, punishable by a fine not exceeding level 4[#]. The equivalent power in the Adoption Act 1976 is in section 9(4), as amended by this Act.

Section 49 National minimum standards

137. This section empowers the appropriate Minister to prepare and publish national minimum standards applicable to relevant local authority adoption and fostering functions, mirroring the provision in Part II for voluntary adoption agencies and fostering agencies. As provided for in Part II, any new standards or significant changes must be subject to consultation before being issued, and a failure to comply with the national minimum standards will be taken into account by the registration authority in deciding whether a local authority has met the regulatory requirements.

¹ See paragraph 97 of these notes for definition of standard scale

Section 50 Annual Returns

138. This section, which mirrors section 33, makes provision about annual returns of information to be made by the local authority in respect of its relevant adoption and fostering functions.

Section 51 Annual fee

139. Regulations may be made requiring an annual fee of a prescribed amount to be payable to the registration authority by the local authority. Unpaid fees may be recovered in the Magistrate's court.

Section 52 Contravention of regulations

140. In parallel with Part II, regulations made under this Part may create offences.

Section 53 Offences: general provisions

141. This section applies sections 29 (proceedings for offences) and 30 (offences by bodies corporate) to this Part.