

# **HEALTH AND SOCIAL CARE (COMMUNITY HEALTH AND STANDARDS) ACT 2003**

---

## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 2 –Standards**

##### ***Chapter 7 – Functions under the Care Standards Act 2000***

221. The National Care Standards Commission (“NCSC”) was established by the Care Standards Act 2000 (“CSA 2000”) to regulate specified types of social care and private and voluntary health care services in England. Its functions were set out in Parts 1 to 3 and Part 8 of the CSA 2000.
222. Regulation is dealt with in Part 2 of the CSA 2000. The types of service subject to regulation under Part 2 are collectively defined in the Act as “establishments and agencies”. Persons wishing to carry on establishments and agencies of the types required to be regulated must apply to be registered in respect of the establishment or agency which they wish to carry on. Under section 11 of the CSA 2000, it is a criminal offence to carry on or manage an establishment or agency subject to registration requirements without having registered with the registration authority.
223. Where an establishment or agency applies to register under the CSA 2000, it is assessed whether it meets the applicable regulatory requirements under the CSA 2000 or other legislation. In deciding this, the regulator is obliged to take into account the requirements of any National Minimum Standards applying to the service in question issued by the Secretary of State under section 23 of the CSA 2000. The registration authority may grant or refuse an application to register an establishment or agency or may register it subject to conditions. The establishment or agency may appeal to an independent tribunal against the refusal of registration or the imposition of conditions.
224. The registration authority will periodically re-inspect the establishment or agency to ensure that appropriate standards continue to be maintained. Section 14 of the CSA 2000 provides that the registration authority may cancel registration in the circumstances set out in that section. Section 20 sets out an urgent cancellation procedure whereby the registration authority may apply to a justice of the peace for an order cancelling registration, or varying any conditions imposed as to registration.
225. The types of establishment and agency currently regulated under the Act are as follows:
- residential and nursing homes,
  - children’s homes,
  - private and voluntary hospitals and clinics,
  - fostering agencies,
  - independent medical agencies,

*These notes refer to the Health and Social Care (Community Health and Standards) Act 2003 (c.43) which received Royal Assent on 20 November 2003*

- domiciliary care agencies,
- nurse agencies,
- residential family centres and
- voluntary adoption agencies.

## **Functions of CHAI and CSCI**

### ***Section 102: Transfer of functions to CHAI and CSCI***

226. This section transfers to the CHAI the responsibility for regulating independent hospitals, independent clinics and independent medical agencies, and transfers to the CSCI the responsibility for regulating children's homes, residential and nursing homes, residential family centres, domiciliary care agencies, nurses agencies, fostering agencies, voluntary adoption agencies and adoption support agencies (defined in [section 107](#) of the Act as 'registered social care services'). The NCSC is abolished by [section 44](#) of the Act.
227. Part 3 of the CSA 2000 gave the NCSC the function of inspecting local authority adoption and fostering services. These are defined as 'relevant services' by section 43 of the CSA 2000. In carrying out such inspections, the NCSC was obliged to take account of national minimum standards issued under section 23 of that Act. This part of the CSA 2000 is repealed in part (see [Schedule 14](#)).
228. [Chapter 5](#) of this Act provides the CSCI with general powers to inspect local authority social services. These powers also allow the CSCI to inspect local authority adoption and fostering services. The separate powers of inspection with regard to adoption and fostering services in Part 3 of the Care Standards Act are, therefore, no longer needed. The elements of Part 3 that have been retained provide for the Secretary of State to make regulations with regard to relevant services and also to make regulations prescribing the frequency with which relevant services must be inspected by CSCI.
229. [Subsection \(4\)](#) transfers the inspection of relevant services, previously carried out by the NCSC, to CSCI for any interim period before CSCI takes on its general powers to inspect local authority social services under Chapter 5.

### ***Section 105: Fees***

230. Fees are currently chargeable in respect of registered social care services and independent health care services under the CSA 2000. They are set out in regulations made by the Secretary of State. This section amends section 113 of the CSA 2000 to provide for the CHAI and the CSCI to determine fees in respect of their respective functions under Part 2 of that Act. Both Commissions and the Secretary of State must consult appropriate persons before fees devised by them come into effect ([subsections \(5\) and \(6\)](#) of the new [section 113A](#)). [Subsection \(4\)](#) of the new [section 113A](#) provides that Secretary of State must approve any fees determined by either Commission before they come into effect.

## **Miscellaneous**

### ***Section 106: Meaning of "independent medical agency"***

231. For the avoidance of doubt [section 106](#) amends section 2(4) of the CSA 2000 to make clear that the term 'independent medical agency' neither includes independent clinics nor independent hospitals. The term "independent clinic" in the CSA 2000 refers to an establishment in which one or more medical practitioners provide services other than those that would render the establishment an independent hospital.

***Section 107: Children’s homes providing secure accommodation***

232. This section amends the CSA 2000 so that children’s homes providing secure accommodation will require registration by the CSCI. Previously such combined services had to be registered with the NCSC to operate and with the Secretary of State to provide secure accommodation. Under the provisions in the Act the CSCI took on both the registration role of the NCSC and the Secretary of State’s function of assessing suitability to provide secure accommodation.

***Section 108: Information and inspection***

233. *Subsection (2)* of this section amends section 31 of the CSA 2000 to give inspectors the power to require at any time, from a person who carries on or manages an establishment or agency, copies of any medical or other personal records or other documents, insofar as is necessary to enable the registration authority – the CHAI or the CSCI in England, the Assembly in Wales - to discharge its functions. Where these documents or records are stored on a computer they must be produced in a legible form. Currently inspectors may only inspect such documents or records when they are already engaged in the inspection of an establishment or agency.
234. *Subsections (3)(a)* and *(4)* also amend section 31 to enable inspectors to inspect and take copies of medical and other personal records when inspecting a premises. *Subsection 3(b)* replaces the inspectors’ power to interview anyone ‘employed’ at premises with a power to interview anyone ‘working’ there. This will enable inspectors to interview temporary and agency staff contracted by a provider as well as permanent employees.

***Section 109: Assembly: duties relating to children***

235. *Section 109* amends the CSA 2000 so that the Assembly must have particular regard to the need to safeguard and promote the rights and welfare of children in the exercise of its regulatory functions under that Act.