

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

CARE STANDARDS ACT 2000

EXPLANATORY NOTES

ANNEX 1: EXISTING LEGISLATION

THE REGISTERED HOMES ACT 1984

Part I

298. The arrangements provided for under Part I of the Registered Homes Act 1984 apply to residential care homes, defined in section 1 as homes which provide or intend to provide board and personal care for persons who for various reasons, including age and disability, are in need of it. Several exemptions are identified, including hospitals and nursing homes (both NHS and those registered under Part II of the Act), children's homes (as defined in the Children Act 1989) and schools as well as, in certain limited circumstances, homes accommodating no more than three people. The registering authority for residential care homes is defined in section 20 as the local social services authority for the area in which the home is situated.
299. **Sections 4 to 9** set out the requirements and procedures for registration, including payment of a registration fee and an annual fee and the requirement for conditions of registration to be specified on the certificate of registration. Registration is granted unless a ground for refusing registration is made out (section 9). These grounds relate to the fitness of the person, the fitness of the premises and the provision of adequate services. Registration may be cancelled for example, on any grounds which would lead to an application for registration being refused, if an offence against the Act has been committed or if a condition of registration has been breached (section 10). An urgent procedure, requiring application to a magistrate, can be used if there is serious risk to life, health or well-being of the residents in the home (section 11).
300. **Section 12** requires the registering authority to serve a notice on the provider where the authority proposes to:
- grant registration subject to conditions not already agreed with the applicant;
 - refuse registration;
 - cancel registration (unless this is being sought through the emergency procedure)
 - vary an existing condition of registration or impose an additional condition of registration.
301. In these cases the provider has a right to make representations before the authority finalises its decision (section 13). When the decision is made the provider has a right of appeal if they are not satisfied. Appeals are heard by the Registered Homes Tribunal (Section 15). The decision will not take effect until the representations and appeal process has been completed. However, if the urgent procedure is used, the home closes immediately and any appeal is heard after the home has closed.
302. **Section 16** sets out regulation making powers, section 17 details the Secretary of State's powers of inspection (exercised through the registering authority), and section 18 sets out defences that may be used in proceedings brought under the Act.

Part II

303. Part II of the Act concerns nursing homes and mental nursing homes, the definitions of which are mutually exclusive. The definition of nursing home is very broad, and encompasses any premises where nursing care is provided, from a traditional nursing home for elderly people through to an acute hospital (Section 21). Provision is also made for the Secretary of State to define what are termed 'specially controlled techniques', which at present are class 3b and class 4 lasers. Settings where these techniques are used are also required to register. There are a range of exemptions to this definition, including NHS settings and services provided by local authorities. School sanatoria, first aid rooms, occupational health facilities and facilities to be used solely by a medical

or dental practitioner or a chiropodist are also exempt unless specially controlled techniques are in use.

304. Mental nursing homes are separately defined in Section 22, and include any settings where nursing care or treatment is provided for one or more mentally disordered patients. NHS settings and services provided by local authorities are the main exemptions to this definition.
305. The registration procedure is in many respects very similar to that employed under Part I of the Act. Although in this case the Secretary of State formally operates the registration scheme, in practice it is delegated to Health Authorities. Homes may be dually registered under Parts I and II.
306. The key differences between Parts I and II centre on the requirements relating to nursing or medical care in Part II. For example, applicants for mental nursing homes must declare if they wish to take patients detained under the Mental Health Act 1983 (section 23). The person in charge of a nursing or mental nursing home must be a registered medical practitioner, a qualified nurse or a registered midwife in the case of a maternity home, and conditions of registration will include the number of qualified nurses that must be on duty at any time.
307. Procedures relating to variation of registration conditions, cancellation of registration (including an urgent procedure), right to make representations (section 32) and right to appeal (section 34) and inspection powers in nursing homes are very similar to those under Part I. Special provision is made in section 35 for the inspection of mental nursing homes. This enables a medical practitioner to examine a patient in private and to inspect any medical records relating to that patient's treatment in the home.

Parts III, IV and V

308. The remaining parts of the Act deal with the Registered Homes Tribunal (Part III), offences (Part IV) and supplementary provisions (Part V).

THE CHILDREN ACT 1989

Fostering

309. Voluntary organisations which provide accommodation for children are currently regulated under section 59 and 64 of the Children Act 1989, but the position of fostering agencies acting on behalf of local authorities is far less clear. In schedule 2 of the Children Act 1989 (paragraph 12(g)) and subsequent regulations ([Foster Placement \(Children\) Regulations \(SI 1991 No 910, regulation 8\)](#)), local authorities are given powers to delegate the fostering arrangements for any particular child to a voluntary organisation. Agencies recruit and approve prospective foster parents to care for children who are looked after by local authorities, and then provide support for the placement and training for the foster parents whilst the child is placed with them.

Children's Homes

310. The current system for registering and regulating children's homes is set out in the Children Act 1989. There are three categories of children's home – community homes, defined as those provided directly by local authorities or in partnership with a voluntary organisation or trust; voluntary homes, provided by non-profit making organisations; and registered children's homes, whose providers are private individuals or private sector, rather than local government or voluntary, organisations. These categories of home are dealt with in parts VI, VII and VIII of the Children Act 1989 respectively.

Part VI – Community Homes

311. Community homes provided by local authorities are called maintained community homes. Community homes provided by voluntary organisations are divided into two further categories (section 53). Where the local authority manages a home provided by a voluntary organisation, the home is designated a controlled community home. Where the voluntary organisation manages the home, it is designated an assisted community home.
312. No type of community home is registered, but controlled and assisted community homes are managed in accordance with an instrument of management, which is made by the Secretary of State. In addition to providing the constitution for the body of managers for the home, the instrument may specify the nature and purpose of the home, require a specified proportion of the places to be made available to the local authority or any other named body, and any provision for fees that to be charged. It may also contain any other provisions the Secretary of State considers appropriate. Parts II and III of schedule 4 deal with the management and regulation, of, respectively controlled and assisted community homes.
313. Local authorities make arrangements for inspecting their own community homes. In addition, the Social Services Inspectorate inspect local authority children's services as part of their wider remit to inspect Social Services. Children's residential care is part of those services. When inspecting a local authority's provision they would inspect the community homes maintained by that authority, and an inspection of assisted and controlled community homes might also form part of that wider inspection. As an example, in 1997/8 SSI carried out inspections of 17 local authorities on the theme 'Safety of Children Looked After'.
314. [Sections 54-58](#) contain provisions relating to the closure of controlled and assisted community homes. There are very few of these homes still in existence, and these provisions are very rarely used.

Part VII – voluntary homes and voluntary organisations

315. Part VII deals with voluntary homes and voluntary organisations. Voluntary organisations (such as Barnardo's), may accommodate a child by placing them with family, another suitable person, placing them in a children's home or making other appropriate arrangements. Secretary of State has power to make regulations regarding placements with foster parents and the nature of any alternative arrangements that may be made (Section 59). The current regulations are the [Arrangements for Placement of Children \(General\) Regulations 1991 \(SI 1991 No 890\)](#) and the Foster Placement (Children) Regulations 1991.
316. Voluntary homes must be registered with the Secretary of State, and are defined, subject to certain exceptions, as homes providing care and accommodation for children which are carried on by a voluntary organisation (Section 60). Schedule 5 details the registration procedure. Secretary of State may grant or refuse registration as he thinks fit, and may grant the application subject to such conditions, as he thinks appropriate. This is in contrast to the approach taken in the Registered Homes Act 1984, whereby registration is granted providing the applicant is a fit person, the premises are suitable and adequate services and facilities will be provided.
317. [Section 61](#) places a duty on a voluntary organisation to safeguard and promote the welfare of any child it arranges or provides accommodation for (though where a local authority with care places a child in a voluntary home, this overarching duty remains with the local authority under section 23). The duty involves making reasonable use of any services available for children cared for by their own parents and to advise, assist and befriend the child with a view to preparing the child for the time they cease to be looked after by the organisation. Before making any decisions regarding the child, the

organisation should take account of the child's wishes and those of their parents and any other person they consider to be relevant.

318. [Section 62](#) lays duties on local authorities regarding any voluntary organisation within its area or any voluntary organisation outside its area providing accommodation for a child on behalf of the authority. The authority has to satisfy itself that the welfare of the children is being safeguarded and promoted, and this includes visiting the child. If the authority is not satisfied, they have a duty to take all reasonable steps to place the child in the care of a parent or relative, so long as this is not contrary to the child's interests, or to consider taking the child into the care of the local authority. The authority has powers of inspection, and it is an offence to obstruct an inspector.

Part VIII – Registered Children's Homes

319. Part VIII concerns privately operated children's homes, ie those not run by a local authority or voluntary organisation. These are homes which accommodate four or more children and which must register with and be inspected by the local authority. They are known as *registered children's homes*. Privately run homes which accommodate fewer than four children ("small children's homes") are not required to register. Section 63 also provides further exemptions including homes registered under the Registered Homes Act 1984 (ie registered care homes, nursing homes and mental nursing homes), NHS settings and most schools. Independent schools are not regarded as children's homes unless they provide accommodation for three or more children for more than 295 days a year.
320. The registration procedure is detailed in Schedule 6. It is very similar to that for voluntary homes, with a few exceptions. The applications for registration are made to the local authority in which the home is situated, and not to the Secretary of State. A registration fee must also be paid. The local authority is required to conduct an annual review of the registration of every registered home. If they are satisfied that the home is being conducted in accordance with its conditions of registration and any other relevant requirements, then the registration is renewed for another year, and an annual fee becomes payable. Should registration be refused or cancelled, the applicant cannot re-apply for a period of six months. Other matters relating to the registration procedure, right to make representations and appeals are identical to those under Part VII.
321. [Section 64](#) concerns the welfare of children in children's homes, and places a duty to safeguard and protect the children's welfare on the person carrying on the home rather than the local authority. Provision is made for section 62 – duties of local authorities, detailed in paragraph 279 above – to apply to registered children's homes as well as voluntary homes.

Regulations relating to children's homes

322. The principal instrument governing the conduct of children's homes is the Children's Homes Regulations 1991. Requirements for the conduct of children's homes and the administration of homes apply to all types of home, so despite the variety of categories and registration procedures, the same standards should apply in all settings.

THE ADOPTION ACT 1976

323. The relevant legislation is the Adoption Act 1976 ("the Adoption Act") and the Adoption (Intercountry Aspects) Act 1999 (not yet in force). By section 1 of the Adoption Act, local authorities are placed under a duty to establish and maintain an adoption service for children who have been or who may be adopted; parents and guardians of such children; and persons who have adopted or who may adopt a child. Local authorities may use approved adoption societies to provide this service. In addition, local authorities are under a duty to ensure that their adoption service is provided in conjunction with other local authority social services and services provided by adoption societies in the area. The services provided by local authorities are known

as their “adoption service”. An adoption agency means a local authority or an approved adoption society.

324. [Section 3](#) of the Act deals with the approval of adoption societies by the Secretary of State. In addition to considering the standards, qualifications of staff, financial resources etc of the agency, the Secretary of State must also consider whether the agency will make an effective contribution to the adoption service. This provision is effectively a means of controlling the market. Where the agency will operate extensively in the area of a given local authority, he is required to seek the views of that authority and take them into account when considering the application. Approvals are given for three years, after which time the agency has to go through the full application process again.
325. Approval may be withdrawn if the Secretary of State considers that the agency is no longer making an effective contribution to the Adoption Service (section 4). If the Secretary of State proposes to refuse an application, or withdraw approval, the applicant has the right to make representations but there is no right of appeal against a decision to refuse the application or withdraw approval (section 5).
326. Section 6 of the Adoption Act places a duty on all adoption agencies, that is, both approved adoption societies and local authorities, to safeguard and promote the welfare of the child, and to take his wishes and feelings into account as far as possible. This is similar to the duty placed on local authorities under Part III of the Children Act 1989 in respect of children of need and children who are being looked after by the authority. Section 7 requires the agency to take account of the wishes of the child’s parent or guardian, so far as possible, regarding the religious upbringing of a child placed for adoption.
327. The conduct of all adoption agencies is regulated by the [Adoption Agencies Regulations 1983 \(S.I. 1983 No 1964\)](#) made under section 9 of the Act. These make provision for the approval of adoption societies and for annual reports and other information to be supplied. They provide for the establishment of adoption panels by adoption agencies and for arrangements to be made by agencies in relation to their adoption work. They specify the procedures to be followed before and after a child is placed for adoption. They make provision for confidentiality and preservation of case records and for access to access to case records and disclosure of information. They also make provision in respect of transfer of case records between adoption agencies and progress reports to former parents of children who have been freed for adoption.
328. The Adoption (Intercountry Aspects) Act 1999 makes provision for intercountry adoption generally and in particular for the ratification of the Hague Convention on the Protection of Children and Cooperation in respect of intercountry Adoption 1993. Section 2(2) makes provision for an approved adoption society to act as an accredited body for the purpose of the Convention.

LEGISLATION RELATING TO CHILD MINDING, DAY CARE AND NURSERY PROVISION

Children Act 1989 Part X and Schedule 9: Child Minding and Day Care for Young Children

329. The current system for the regulation of child minding and day care is set out in Part X and Schedule 9 of the Children Act 1989. Sections 18 and 19 in Part III of the Act confer other duties on local authorities in respect of day care provision.
330. [Section 71](#) of the Act requires local authorities to keep a register of all persons who act as child minders on domestic premises within their area or who provide day care for children under eight within their area. A child minder is defined as a person: who is not a parent or a relative; who looks after one or more children aged under 8 for over 2 hours a day; and who does so for reward. Day care is defined as care, not on domestic

- premises, which exceeds two hours a day. Day care does not necessarily have to be for reward. Provision is made in Schedule 9 for occasional arrangements to be exempted.
331. Under Sections 72 and 73, a local authority has the power to require providers to meet any reasonable requirements it sets (as appropriate in each particular case) as a condition of registration. Registration may be cancelled under Section 74 if the circumstances justify it: for example, if the child minder has failed to comply with the registration requirements.
332. **Section 75** provides for court orders to be available to cancel or vary a registration. The Court may make the order if it appears to them that a child is suffering or is likely to suffer significant harm. The more standard route is dealt with under Section 77. Fourteen days notice must be given of a refusal or cancellation of registration and provision is made for the person affected to object to the step. Appeal against the decision is to the Magistrate's Court.
333. Under Section 76, a local authority has powers to inspect any domestic premises on which childminding is, at any time, carried out or at which day care is being provided. It may inspect the premises, the children being looked after, the arrangements made for their welfare and any records relating to them which are kept under Part X. The local authority must inspect at least once a year.
334. A person providing day care who contravenes the registration requirement commits an offence (Section 78(1)). A child minder only commits an offence if she continues to act as a child minder without being registered when an enforcement notice has been served on her (Section 78(6)). This gives the local authority some discretion in enforcing the requirements. It is also an offence to fail to comply with the requirements set by the local authority in respect of the registration: for example, exceeding the number of children who may be cared for on the premises.
335. **Schedule 9** sets out requirements for applications for registration and the conditions for disqualification from registration. It exempts certain types of school, including a local education authority maintained school, as well as certain other establishments such as a registered children's home. The Schedule also deals with the issue of certificates in respect of registration and for fees chargeable for registration and inspection. There is also a requirement for co-operation between local authorities in the exercise of their functions under Part X.

The legislation governing Nursery Education inspections

336. The inspection of nursery education is governed by Section 122 of the School Standards and Framework Act 1998 and Schedule 26 to that Act.
337. Broadly speaking, any state or state-subsidised provider of nursery education, other than in a nursery school, will be inspected at prescribed intervals by Her Majesty's Chief Inspector Schools. His responsibility is to assess the quality and standards of relevant nursery education and the spiritual moral social and cultural development of children for whom nursery education is provided. He also has a role in advising the Secretary of State more generally with respect to nursery education. The Chief Inspector has no further powers in relation to the provision of such education, he merely reports to the Secretary of State and advises him in relation to such education.
338. The inspection requirements do not apply where nursery education is provided at a state school, including a maintained nursery school. These are subject to inspection under the Schools Inspection Act 1996. The application of the inspection regime is, effectively, limited to state sector nursery education and state subsidised nursery education or nursery education which the local authority is considering subsidising.
339. Under paragraph 6(4) of Schedule 26, provision is made that where an inspection is also due to take place under the Children Act 1989 then the education inspector is to consult with the local authority before undertaking the education inspection.

340. Under paragraph 8, a register of nursery education inspectors is to be established and maintained. Only those who the Chief Inspector considers fit and proper persons and competent for the job may be registered. Registration may impose conditions, and a person is only authorised to act as a nursery education inspector in so far as the conditions permit (paragraph 8(7)). Provision is also made under paragraph 8 for removal from the register and variation of the conditions of registration.

WELFARE INSPECTIONS OF BOARDING SCHOOLS

341. Under Section 87 of the Children Act 1989, a duty is placed on the proprietor or person in charge of an independent boarding school to safeguard the welfare of the children. A duty is placed on the local authority to satisfy themselves that the welfare of the children is being adequately safeguarded. The authority has a power to inspect at any reasonable time and examine records. Intentional obstruction of an authorised person is an offence. If the authority consider the school is failing in its duty, a report is made to the Secretary of State (for Education and Employment). Sections 87A and 87B were inserted by the Deregulation and Contracting Out Act 1994, and make provision for the appointment of substitute inspectors.

NURSES AGENCIES ACT 1957

342. The current arrangements for nurses agencies are set out in the Nurses Agencies Act 1957 and associated regulations. In order to operate, agencies have to be licensed. The licensing authority is the County or Borough Council, and in many cases this duty has been delegated to District Councils. The principal requirement regarding conduct of an agency on the face of the 1957 Act is that the selection of each nurse for each placement must be made by, or under the supervision of, a qualified nurse. The Nurses Agencies Regulations 1961 (as amended) set out the classes of nurse that agencies can supply, the form that applications for registration should take, the records agencies should keep and the registration and annual fees payable.

REGULATION OF PROFESSIONAL SOCIAL WORK TRAINING

343. There are approximately one million people who work in social care. The large majority have no recognised qualifications or training, and there are no nationally agreed standards of practice or conduct. A relatively small number of these million or so workers are employed as *social workers*. The majority of social workers have a professional qualification, which may be the Diploma in Social Work (DipSW), the current qualification, or its predecessors, the Certificate of Social Services and the Certificate of Qualification in Social Work. The training of social workers is currently regulated by the Central Council for Education and Training in Social Work (CCETSW).
344. CCETSW was originally established under the Health Visiting and Social Work (Training) Act 1962, under the name of "the Council for Training in Social Work". It has undergone two major changes since then, and was established in its present form under section 10 of the Health and Social Services and Social Security Adjudications Act 1983 (the HASSASSA Act).
345. CCETSW's functions are concerned with training in relevant social work, with some additional functions. 'Relevant social work' is defined in section 10(16) to mean such social work as is required in connection with health, education or social services provided by local authorities, voluntary organisations and certain Northern Ireland bodies, or in connection with the probation service. The functions are set out in section 10(3) of the HASSASSA Act as follows:
- (3) **To** promote training in relevant social work by:
- (a) seeking to secure facilities for training persons in such work,

- (b) approving courses as suitable to be attended by persons engaged, or intending to engage, in such work; and
 - (c) seeking to attract persons to such courses.
346. Approvals for courses are made in accordance with the CCETSW's rules, which are made by CCETSW and approved by the Privy Council. The approval process may include specifying subjects to be included in the course and specifying the conditions for admissions to the courses. Section 10(6)(a) empowers the Council to conduct examinations for approved courses. Section 10(4)(b) gives CCETSW the power to make a professional social work award to students who successfully complete one of the courses it regulates.
347. If CCETSW considers that the provision of training is inadequate, it has power in section 10(5) to provide or to secure provision of courses for this purpose, although in practice sufficient courses have come forward seeking CCETSW's approval. There is a further power in section 10(6)(b) to enable the Council to carry out, or assist others in carrying out research into relevant social work training.
348. In order to attract people to the courses, section 10(7) enables the Council to make grants and pay travelling and other allowances to people resident in Great Britain, to enable them to take up training. This power extends to Great Britain only; the Department of Health and Social Services for Northern Ireland continues to award grants directly to residents of Northern Ireland who undertake social work training.
349. [Section 10\(11\)](#) enables the Secretary of State to confer additional functions on CCETSW by regulation. This has been exercised once, through the [Central Council for Education and Training in Social Work \(Functions\) Regulations 1991 \(SI 1991 No 1123\)](#). The effect of these regulations is to extend CCETSW's powers to include responsibility for training in the private sector.
350. Schedule 3 of the HASSASSA Act sets out the constitution of CCETSW, including membership of the Council, its committees, proceedings, staff, payment of allowances to members and arrangements for accounts and audit. CCETSW is funded by grant-in-aid to cover approved