

CARE STANDARDS ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part I Introductory

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.