

# CARE STANDARDS ACT 2000

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part I Introductory

#### Registration authorities

##### *Sections 5 and 6 and Schedule 1 Registration authorities*

42. These sections establish the National Care Standards Commission as the registration authority in England, and the registration authority in Wales, which is to be established as either a department or an executive agency of the National Assembly for Wales.

##### *Section 6 National Care Standards Commission*

43. *Section 6* establishes the National Care Standards Commission. It is a statutory body corporate, which will exercise in England the functions conferred upon it by or under this Act or other legislation. The constitutional arrangements and general provisions for the Commission are set out in *Schedule 1*, which makes provision for the Commission, the General Social Care Council and the Care Council for Wales (see notes on *section 54* below).
44. *Subsection (2)* provides that the Commission must, in the exercise of its functions, act in accordance with directions given to it by, and under the general guidance of, the Secretary of State. *Subsection (4)* provides that the power for the Secretary of State to issue directions, includes directions in connection with organisational and structural matters, such as, for instance, the establishment of regional offices, or a separate division for private and voluntary healthcare.
45. The Commission will be responsible for the regulation of the whole range of care services from care homes for the elderly, children's homes, domiciliary care, fostering and adoption agencies through to independent hospitals, clinics, medical agencies and nurses agencies. It will also inspect boarding schools, further education colleges which provide accommodation and local authority fostering and adoption services. It will take on the regulation and inspection functions that are currently split between local authorities, Health Authorities and the Department of Health centrally. Some services will be regulated for the first time – these include local authorities' own care homes and children's homes and domiciliary care agencies.
46. Under the provisions of *Schedule 1* the Commission (subject to directions) may take any necessary or expedient action to fulfil its statutory duties (*paragraph 3*). The Secretary of State has powers to make regulations governing the procedures of the Commission, and the appointment of members (*paragraph 6*) and for the appointment of a chief officer (*paragraph 8*). The first chief officer will be appointed by the Secretary of State. The Commission will appoint subsequent chief officers itself, subject to the approval of Secretary of State. The following paragraphs are worthy of additional comment:

47. *Paragraph 9:* The Secretary of State will be able to direct the Commission to appoint regional directors. In line with the White Paper, *Modernising Social Services*, it is intended that these regions will be based upon the regions of the NHS Executive.
48. *Paragraph 10* provides that the Commission must appoint a member of staff as a children's rights director, whose role will be prescribed in regulations. The intention is that he should ensure that the work of the Commission in regulating children's services takes full account of children's rights and welfare. *Paragraph 11* provides that the Commission must appoint a director of private and voluntary healthcare, who will be a member of staff with functions to be prescribed in regulations. The intention is that s/he will preside over a separate healthcare division within the Commission, and will oversee the Commission's interests in, and responsibilities for, the regulation of independent healthcare.
49. *Paragraph 12* makes provision for an authority to appoint staff and provides that an authority may pay or make provision for the payment of pensions, allowances, gratuities or compensation, subject to directions from the Secretary of State.
50. *Paragraph 13* provides that the Commission may arrange for any of its functions to be carried out by a committee or member of staff of the Commission, or by another person. *Paragraph 14* makes provision to enable staff from other bodies, such as Health Authorities and the Commission for Health Improvement, to be placed at the disposal of the Commission and *vice versa*.
51. *Paragraph 15* provides that the Commission may run conferences, seminars and other training events. *Paragraph 17* allows the Commission to charge a reasonable fee for non-regulatory activities. Although registration and annual fees will cover the costs of regulation, there are some activities which the Commission will carry out which it would not be fair to expect all registered services to pay for. The Commission might, for example, wish to charge a fee to those who attend its training events, in order to recover its outlay.

### ***Section 7 General duties of the Commission***

52. *Section 7* sets out the general duties of the Commission, and therefore applies only to England. The duties in *subsections (1) to (7)* relate to services that are subject to regulation under Part II, with the exception of private and voluntary healthcare. These services are collectively known as "Part II services". The duties include monitoring the availability and quality of such services, supporting consumers through the provision of information and encouraging the development of better services.
53. *Subsection (1)* provides that the Commission must keep the Secretary of State informed as to the provision, availability and quality of Part II services. This will include reporting on trends in the provision of long term care. *Subsection (2)* provides that the Commission will have the general duty of encouraging improvements in the quality of Part II services. It will do this by, for example, disseminating examples of good practice and giving advice to providers on how to meet the national minimum standards (see *section 23*). Under *subsection (3)* the Commission is required to provide information about Part II services to the public. This might include information about the location and types of services available, as well as the results of its inspections of individual providers. *Subsection (4)* provides that the Secretary of State may require advice or information from the Commission about any aspect of the provision of Part II services. *Subsection (5)* enables the Commission to advise the Secretary of State about changes to the national minimum standards with a view to seeking improvement in the quality of services. *Subsection (6)* provides for the Secretary of State to make regulations conferring additional functions on the Commission.

### ***Section 8 General functions of the Assembly***

54. This section makes similar provision for the Assembly, as section 7 makes for the Commission. *Subsection (1)* sets out the general duties of the Assembly in relation to Part II services to encourage improvement in quality of services. *Subsection (2)* provides that the Assembly shall make information available to the public about Part II services. *Subsection (3)* provides a parallel power to that in section 7(6) so that the Assembly may, by regulations, confer additional functions on itself, but only where that function has already been conferred on the Commission by the Secretary of State. *Subsection (4)* provides for the Assembly to have powers to charge for fees in connection with its regulatory duties. *Subsection (5)* provides for the Assembly to provide training in relation to the attainment of national standards. Equivalent powers for the Commission are in *Schedule 1*, which does not apply to the Assembly.

### ***Section 9 Co-operative working***

55. This section gives the Secretary of State a power to introduce regulations enabling the Commission (or the Assembly) and the Commission for Health Improvement (CHI) to delegate functions to one another. It recognises that, although their roles are distinct (CHI is a key part of the arrangements for modernising the NHS and will review the arrangements that NHS organisations have in place to update and improve the services they deliver; in contrast, the Commission will seek to ensure the individual independent healthcare providers have safeguards and quality assurance systems in place by regulating them against set national minimum standards), they also have common interests. For instance, CHI's review of NHS Trusts will include those that have contracts with independent healthcare providers that the Commission will regulate. The two bodies will, therefore, need to liaise and work together effectively. The intention of this provision is to help enable them to do so. All regulations made under this section must be made by the Secretary of State, but he may not make regulations enabling CHI's functions to be exercised by the Assembly without the agreement of the Assembly.

### ***Section 10 Inquiries***

56. *Subsection (1)* enables the Secretary of State to act on any concerns over the Commission's exercise of its functions, by setting up an inquiry. *Subsection (2)* allows the Secretary of State to set up an inquiry into any matter connected with a regulated service. For example, if a consultant surgeon working in a private hospital was found to have unusually high death rates among his patients, the Secretary of State could set up an inquiry to investigate. *Subsections (3)* and *(4)* enable an inquiry to be held in private. This might be necessary to protect, for example, a victim of child abuse.
57. *Subsection (5)* provides for section 250 (2) to (5) of the Local Government Act 1972 to apply in relation to an inquiry. This will enable the person holding the inquiry to issue a summons requiring an individual to give evidence or produce any documents in their custody or under their control at a stated time and place. If that person fails to attend (for reasons other than not having the necessary expenses of their visit paid or tendered), they are liable to a fine or imprisonment.
58. *Subsection (6)* provides for the Assembly to have similar powers to those referred to in paragraph 56 above.
59. *Subsection (7)* requires that reports of inquiries set up under the powers in this section should be published unless the appropriate Minister considers that there are exceptional circumstances that make publication inappropriate. Grounds for not publishing may include, for example, publication being prejudicial to ongoing criminal investigations or proceedings.