

# CARE STANDARDS ACT 2000

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part II Establishments and Agencies

##### Registration

61. *Sections 11 to 20* set out the procedures which underpin the registration process, the registration authorities' day-to-day activities of considering applications for registration, conditions of registration, cancellation of registration and procedures for notifying applicants or providers of decisions. *Section 21* provides for rights of appeal. The establishments and agencies in respect of which registration is required are those defined in *sections 1 to 4*.

##### *Section 10 Requirement to register*

62. *Subsection (1)* provides that any person who carries on or manages an establishment or agency of any description must be registered, and it will be an offence to carry on or manage such an establishment without being registered in respect of it. The principle is that each establishment or agency should have a registered owner or proprietor (person who 'carries on' the business). If the person who carries on the business is not in day-to-day control of it, it is intended that the regulations will require the appointment of a manager who must also be registered by the registration authority (see *section 22*). *Subsection (2)* provides that an agency operating from several branches must register each branch separately.
63. *Subsection (3)* – registration is required in respect of voluntary adoption agencies under the provisions of Part II, but the relevant sanctions remain within section 11 of the Adoption Act 1976.
64. *Subsection (4)* enables the Secretary of State to make provision about registers to be kept by the Commission.
65. *Subsections (5) and (6)* relate to offences. A person who carries on or manages an establishment or agency without being registered will be guilty of an offence and liable to a fine up to level 5 on the *standard scale*<sup>#</sup>. If the person continues to run an unregistered establishment or agency after having been convicted of this offence, or after their registration has been cancelled, then they will be guilty of an offence and liable to six months' imprisonment, or a fine, or both.

##### *Section 12 Applications for registration*

66. This section sets out the framework for applications for registration, with *subsection (1)* requiring that the application for registration must be made to the registration authority. *Subsection (3)* requires that a person applying for registration as a manager of an establishment or agency must be an individual, and not other types of legal 'person',

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<sup>1</sup> See paragraph 97 of these notes for definition of standard scale.

such as a limited company or local authority. (See also the notes to [sections 22](#) and [56](#), which together provide that a manager may be required to register on an appropriate part of the Council's register of social care workers.)

### ***Section 13 Grant or refusal of registration***

67. Registration will only be granted if the registration authority is satisfied that the applicant has demonstrated that they have complied or will comply with all relevant requirements. The burden of proof is with the applicant rather than the registration authority.
68. *Subsection (2)* provides that if the registration authority is satisfied that the applicant is complying or will comply with any requirements set out in regulations under [section 22](#) and the requirements of any other legislation which appears to the registration authority to be relevant, it must grant the application for registration, otherwise it must refuse it. If it grants the application, it must issue a certificate of registration (*subsection (4)*).
69. *Subsection (3)* provides that the registration authority will be able to grant an application either unconditionally or subject to such conditions as it thinks fit. Conditions may be generic or specific. For example, the registration authority will be able to impose conditions on care homes specifying the categories of patients and the number of residents that may be accommodated. In some cases a specific condition may be required to take account of the circumstances in that individual home, centre, agency, private hospital or clinic. For example, there might be a condition that a particular door be kept locked to prevent confused residents from wandering directly on to a busy road.
70. *Subsection (5)* The registration authority may vary or remove a condition of registration at any time or impose an additional condition.

### ***Section 14 Cancellation of registration***

71. This section gives the registration authority the power to cancel the registration of a person in respect of an establishment or agency, where a condition of registration has been breached, where a regulatory requirement has been breached or where a relevant offence has been committed. Further grounds for cancelling registration may be specified in regulations. Registration can be formally cancelled, even if an owner closes the establishment or agency before the cancellation process has been completed. This will ensure that the owner's record accurately reflects the situation, and they will not be able to open a new home elsewhere without the registration authority being aware of the previous history.
72. Relevant offences for the purposes of section 14 are -
  - failure to comply with conditions ([section 24](#));
  - contravention of regulations ([section 25](#));
  - false description of an establishment or agency ([section 26](#));
  - false statements in applications ([section 27](#));
  - failure to display a certificate of registration ([section 28](#));
  - obstructing an inspector ([section 31](#));
  - the offence of contravening regulations under section 9(2) of the Adoption Act 1976;
  - any offence under the Children Act 1989 or any regulations made under it;
  - offences under regulations made under section 1(3) of the Adoption (Inter-country Aspects) Act 1999;

- offences under the Registered Homes Act 1984 or regulations made under it.
73. Cancellation of registration would not normally be the first step in a formal enforcement action. It is more likely to be used where other actions such as prosecution have failed to ensure compliance by the establishment or agency. If a registered person is convicted of a relevant offence, such as breaching a condition of registration (an offence under [section 24](#)), and still fails to remedy the breach, the registration authority will be able to consider cancellation of the person's registration.

### ***Section 15 Applications by registered persons***

74. *Subsection (1)* enables the registered person to apply for a change to their conditions of registration (for example to change the number of people accommodated in the home) or to apply voluntarily for the cancellation of registration, for example, if they plan to close or sell the business. *Subsection (2)* prevents a person voluntarily cancelling his registration if the registration authority have given notice of intention to, or decided to, cancel registration. *Subsection (3)* enables the appropriate Minister to make regulations specifying the particulars to accompany such an application, including provision for a prescribed fee. *Subsection (4)* provides that if the registration authority grant the application they must give notice in writing and issue a new certificate of registration.

### ***Section 16 Regulations about registration***

75. *Section 16* provides for regulation-making powers with respect to registration. Regulations covering applications for registration (*subsection (1)(a)*) will deal with matters such as the information that should be provided in the application. Regulations made under *subsection (1)(b)* may require certificates of registration to include, for example, the conditions of registration for that person in respect of that establishment or agency *eg* the categories of person a care home may accommodate.
76. *Subsection (2)* concerns fostering and adoption agencies. The appropriate Minister will be able to make regulations to provide that fostering agencies or voluntary adoption agencies which are unincorporated bodies are ineligible to apply to be registered. This provision restates section 9(1) of the Adoption Act in respect of voluntary adoption societies (which is to be repealed) and applies it to fostering agencies.
77. *Subsection (3)* enables regulations to be made requiring registered persons to pay an annual fee. These may be set at different levels or on a different basis for different types of organisation. Decisions will be made about the level and structuring of fees at a later date. *Subsection (4)* provides that unpaid fees may be recovered in the Magistrate's court.