

CARE STANDARDS ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part II Establishments and Agencies

Miscellaneous and Supplemental

Section 31 Inspections by persons authorised by the registration authority

105. *Subsection (1)* provides that the registration authority may require a person who carries on or manages an establishment or agency to provide it with any information to enable the registration authority to discharge its functions. *Subsection (2)* enables a person authorised by the registration authority to enter and inspect premises at any time if they are used or he believes them to be used as an establishment or for the purposes of an agency. These powers are necessary to ensure compliance with the regulatory framework.
106. Inspectors may also require relevant records or other documents to be produced for inspection on the premises wherever they may be kept, and where they are stored on computer, that they are produced in a legible, not encrypted, form. Inspectors will also be able to copy or remove relevant records (other than medical records), and will be able to interview, in private, the manager, employees, or any patients or persons accommodated or cared for there who consent to be interviewed (*subsections (3) and (4)*).
107. *Subsections (5) and (6)* allow a medical practitioner or registered nurse to examine in private, with their consent, a patient or resident, or their medical records, where they believe that the person may not be receiving proper care. If the person is incapable of giving their consent, a medical practitioner or registered nurse may still examine them and/ or their medical records if they believe they have not been receiving proper care.
108. *Subsection (7)* provides for a regulation-making power to determine the minimum frequency of inspections of premises by a registration authority, and *subsection (8)* requires inspectors to produce appropriate documentation showing their right to enter and inspect the premises if required so to do.
109. *Subsection (9)* makes it an offence for a person to intentionally obstruct the exercise of the powers under this section or *section 32*. The penalty on summary conviction is a fine not exceeding level 4 on the standard scale.

Section 32 Inspections: supplementary

110. *Section 32* allows a person (authorised to enter and inspect premises by virtue of section 31) to remove any material *etc.* which could be used as evidence of possible non-compliance with requirements. *Subsection (2)* imposes a requirement to assist the authorised person and permits the authorised person to take such measurements and photographs and make such recordings as he considers necessary to enable him to exercise his powers under this section. *Subsection (5)* requires the registration authority

to prepare a report after carrying out an inspection under section 31 and send a copy of the report to the registered persons. *Subsection (6)* provides that the registration authority must make the report available to the public. *Subsection (8)* provides that in England, inspection reports shall be made available in the regional offices of the Commission in the region in which the premises are situated.

Section 33 Annual Returns

111. *Section 33* enables the appropriate Minister to make regulations requiring the person carrying on an establishment or agency to provide the registration authority with an annual return to include whatever details and cover whatever period of time is prescribed.

Section 34 Liquidators etc.

112. *Section 34* enables the appropriate Minister to make regulations such that if an establishment or agency were to go into receivership or liquidation, the liquidator must inform the registration authority of his appointment. The regulations will require the liquidator to appoint a suitably qualified manager.

Section 35 Death of registered person

113. *Subsection (1)* enables the appropriate Minister to make provision in regulations for what is to happen in a case where a person who was the only person registered in respect of an establishment or agency dies. This might be the case if a person carrying on a care home is also in control of its day to day running. The personal representatives will be required to notify the registration authority. *Subsection (2)* enables the regulations to specify the period during which the personal representatives will be allowed to carry on the business. The regulations will permit the registration authority to decide whether it is appropriate for a personal representative or relative to carry on running the establishment or agency for a further period.

Section 36 Provision of copies of registers

114. *Subsection (1)* provides that copies of any register which it has to keep are available for inspection. A person may be provided with a copy or extracts of a register on request (*subsection (2)*). A charge may be made except where prescribed in regulations or the registration authority decides it should be provided free. However, it would not be acceptable to release some information contained in registers, for example a list of children's homes in a given area. *Subsection (3)* therefore enables regulations to be made providing that the register may not be inspected, or copies of the register or extracts are not to be made available, in such circumstances as the appropriate Minister may prescribe.

Section 37 Service of documents

115. *Section 37* makes provisions about service of documents. They may be delivered personally or sent by registered letter or recorded delivery. Service will be deemed to have taken place on the third day after the day on which the document is sent.

Section 38 Transfers of staff under Part II

116. *Section 38* makes provision for the appropriate Minister to transfer eligible staff from Health Authority and local authority inspection units to the registration authority. Their existing contract of employment will have effect as if made between the designated members of staff and the registration authority (see notes to *sections 114* and *115*).

Section 39 Temporary extension of meaning of “nursing home”

117. *Section 39* makes interim provision for the regulation of dental practitioners using premises for the wholly private treatment of patients under general anaesthesia. Responsibility for the registration of such premises will ultimately pass from the Health Authority to the Commission or the Assembly. The section amends the existing exemptions under the Registered Homes Act 1984, which had previously excepted all premises used by dental practitioners for the treatment of their patients, unless the treatment involved the use of class 3B and 4 lasers. This provision will have effect for the period during which the Registered Homes Act remains in force.

Section 40 Temporary extension of meaning of “children’s home”

118. *Section 40* makes interim provision for the regulation of small private children’s homes accommodating fewer than four children. This section amends the definition of “children’s home” in section 63 of the Children Act 1989 so as to require small children’s homes to be registered. This will have the effect of requiring these homes to be registered with local authorities under existing legislation until such time as the registration provisions in Part II are commenced, at which point the responsibility will pass to the Commission or the Assembly.

Section 41 Children’s homes temporary provision about cancellation of registration

119. This section makes provision about the cancellation of registration of all children’s homes, for to cover the period up to full implementation of Part II of the Act. In particular, it will apply to small homes required to register under the Children Act for the first time by section 40. 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 past history.

Section 42 Power to extend application of Part II

120. This section makes provision, through regulations, for the future registration of other services which are not covered on the face of the Act. The services concerned are those that are, or are similar to services which local authorities provide in the exercise of their social services functions, or similar to those provided by certain NHS bodies. An example of such a local authority service would be day care for adults. NHS-type services to which this provision may apply include, for example, treatment provided in private patients’ own homes through future developments in telecare and telemedicine. The extension could also be applied to agencies that supply staff who provide any of these services.