

CARE STANDARDS ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part II Establishments and Agencies

60. **Part II** makes provision for registration, the registration procedure, regulations and standards, offences and miscellaneous provision. Sections 11 to 20 set out the provision for registration and the regulatory procedures to be followed by the registration authority. Provision for a right of appeal against decisions of the registration authority is made in [section 21](#). [Section 22](#) provides regulation making powers for the appropriate Minister to make provision as respects management and staffing, fitness of premises and the conduct of any services regulated under Part II. Section 22 will not apply to adoption agencies. The regulations governing their procedures will continue to be made under the Adoption Act 1976, as amended by the Act to match the provisions of section 22. [Section 23](#) enables the appropriate Minister to issue national minimum standards for England or Wales applicable to all regulated services. Any breach of these standards will not, of itself, be a breach of regulatory requirements, but the standards shall be taken into account when determining whether a breach of the regulations has occurred. [Sections 24](#) to [30](#) provide for offences under this Part, and [sections 31](#) to [42](#) make miscellaneous and supplemental provision.

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*[#]. 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', 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](#));

¹ See paragraph 97 of these notes for definition of standard scale.

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

- 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 (Intercountry 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.

Registration procedure

Sections 17 to 19 Notices and right to make representations

78. *Section 17* provides for the registration authority to give notice of decisions it intends to take (“notice of proposal”) with respect to applications for registration, cancellation of registration or any change to the conditions of registration. Notice must be given to the applicant or registered person and must set out the reasons (*subsection (6)*). For example, in the case of a person applying for registration for the first time, the notice of proposal will state whether or not the registration authority proposes to register them, and if so, the conditions subject to which they propose to grant the application. *Section 17* does not apply where the registration authority decides to grant an application for registration unconditionally, or subject to agreed conditions.
79. *Section 18* states that a notice given under *section 17* must indicate that the person can, if they so wish, make written representations to the registration authority within a time limit of 28 days (*subsection (1)*). This stage ensures that the applicant has the opportunity to make their point of view known. *Subsection (2)* provides that the registration authority may not make a decision until the 28 day period has ended unless they receive representations during the 28 day period or the person notifies the registration authority that he will not be making representations.
80. Once the representations stage has been completed, *section 19* requires the registration authority to serve a notice in writing of their decision on the applicant. The notice must explain the right of appeal conferred by *section 21* and in the case of a decision to grant an application subject to conditions or to vary conditions, set out those conditions. A decision to cancel registration, to grant an application subject to conditions which are not agreed, or to or change conditions will take effect only after the outcome of any appeal has been determined, or after 28 days if no appeal is brought. In the case of a decision to grant an application subject to conditions which are not agreed, if the applicant decides not to pursue his appeal the decision will take effect immediately.

Section 20 Urgent procedure for cancellation etc.

81. This section provides that the registration authority may apply to a justice of the peace for the immediate cancellation of registration or change in the conditions of registration of an establishment or agency. The justice may only make the order where it appears to him that unless the order is made there is a serious risk to a person’s life, health or well-being. An order made under this section has immediate effect. It is intended to provide for a fast track procedure for appeals to the Tribunal against orders made under this section (see *section 21*).
82. *Subsection (3)* requires the registration authority to notify the local authority and Health Authority as well as any other statutory authority it considers appropriate, of the making of an urgent application. This is necessary so that the local authority can comply with their statutory duties as required, for example to provide or arrange alternative care for the service users in accordance with their duties under *section 47(1)* of the National Health Service and Community Care Act 1990, and that the Health Authority may consider whether to make provision for NHS services. It will be important that all statutory bodies that may be affected by the cancellation of a provider’s registration have as much notice as possible to make any necessary arrangements. *Subsection (7)* defines a statutory authority for this purpose.

Section 21 Appeals to the Tribunal

83. *Section 21* provides for an appeal against a decision of the registration authority under Part II. The appeal is to the Tribunal established under *section 9* of the Protection of Children Act 1999. *Subsections (3) to (5)* provide for the Tribunal’s powers on considering an appeal.

Regulations and standards

84. *Section 22* provides regulation-making powers which will cover the management, staff, premises and conduct of establishments and agencies (other than voluntary adoption agencies). It also provides for regulations to be made regarding the welfare of service users. *Section 23* gives the appropriate Minister the power to publish statements of national minimum standards with which establishments and agencies are expected to comply. They are to be taken into account as stated in *subsection (4)*. For example, a regulation made under section 22 might state that suitable and nutritious food should be provided to all residents in a home. The national minimum standards would set out what registered providers are expected to provide in terms of the number of meals per day and their nutritional content.
85. Different services will have different sets of regulations and standards which will be appropriate to the type of service.

Section 22 Regulation of establishments or agencies

86. *Subsection (1)* provides a general power to make regulations imposing any requirements as the appropriate Minister thinks fit. *Subsection (2)* amplifies this, providing for regulations to be made that will be key to the registration of establishments and agencies. It will be essential that the registration authority can ensure establishments and agencies are carried on or managed by persons who are fit to do so. This subsection allows regulations to be made to ensure that establishments and agencies are suitably managed, staffed and equipped and that premises are fit for their purpose.
87. *Subsection (2) (d)* provides powers to make regulations regarding the welfare of persons accommodated in establishments or provided with services by them, or who use the services of an independent medical agency or domiciliary care agency. *Subsection (2) (e)* provides similar powers to make regulations to secure the welfare of children placed by independent fostering agencies.
88. *Subsections (3) and (4)* provide that regulations may be made prohibiting a person's appointment as manager of, or employment in, an establishment or agency unless they are on a register of social care workers, maintained under *section 56*.
89. *Subsections (5) and (6)* provide that the welfare regulation making powers in 22 (2) (d) and (e) may cover the protection and promotion of health, the control and restraint of adults, and the control and restraint and discipline of children. This will enable regulations to set out what is acceptable behaviour management for adults and children.
90. *Subsection (7)* gives the appropriate Minister power to make provision as to the conduct of an establishment or agency, including the provision of facilities and services, record keeping, notification of events, arrangements for dealing with complaints and in relation to independent hospitals and clinics, the arrangements to be made to secure that any medical or psychiatric treatment or listed services meet appropriate standards.
91. *Subsections (7)(h) and (i)*. Just as it will be important for the registration authority to be made aware of a change in the person managing a home or branch of an agency, so will it be important to have notice of changes in the ownership or the officers of a company which was registered in respect of a service. Fit person checks of company officers have a cost, and so in order to satisfy itself that the officers of the company taking over are fit persons, the registration authority would need to carry out these checks and be able to charge for this.
92. *Subsection (8)* concerns regulations made in respect of secure accommodation for children, which may cover both its provision and its use, and facilities for religious instruction in children's homes.

93. *Subsection (9)* requires the appropriate Minister to consult such persons as he considers appropriate before making or significantly amending regulations under the powers in this section.
94. *Subsection (10)* Voluntary adoption agencies are excepted from the regulation-making powers set out in this section as equivalent provision is being made for them through amendments to the Adoption Act 1976 (see *Schedule 4, paragraph 5(6)(b)*).

Section 23 National minimum standards

95. *Section 23* provides for the appropriate Minister to prepare and publish national minimum standards applicable to establishments and agencies. These will specify the standards applicable to the services and which, as *subsection (4)* makes clear, must be taken into account by a registration authority when making any decision, or in any proceedings for an offence under regulations under Part II. The standards may include parts of the GSCC codes of conduct and practice for employers of social care staff (see note to *section 62*).

Offences

96. *Sections 24 to 30* set out the offences under this Part of the Act. The registration authority will be the prosecuting authority in respect of these offences, using the powers of entry and inspection under *section 31* and *section 32* to gather evidence.
97. The registration authority will have two possible routes for enforcement action where a provider is not fulfilling their obligations: they can prosecute, or they can take action that may ultimately lead to cancellation of registration (see sections 14 and 20). It is intended that both courses of action could be pursued at the same time, if necessary. If convicted of an offence under this Part the registered person would be liable to the prescribed fine, as per the *standard scale*², or in some cases, imprisonment. Similar provisions for offences, including those with regard to proceedings and offences by bodies corporate, were made under the Registered Homes Act 1984 in Part IV (sections 46 to 53).

Section 24 Failure to comply with conditions

98. Where the conditions of registration are not adhered to without reasonable excuse, the registration authority may prosecute.

Section 25 Contravention of regulations

99. *Subsection (1)* provides that regulations made under this Part may provide that a failure to comply with the regulations will be an offence. It is intended that the regulations will provide that the registration authority may serve a notice in respect of a breach of a regulatory requirement, requiring it to be remedied within a specified period. If at the end of that period the breach has not been remedied, the person shall be guilty of an offence. *Subsection (2)* provides the fine shall not exceed level 4 on the standard scale.

Section 26 False descriptions of establishments and agencies.

100. *Section 26* makes it an offence for a person to describe any premises as a particular kind of establishment or agency when it is not registered as such. This would catch, for example, an unscrupulous hotel proprietor who tried to pretend his hotel was a nursing home. It would also catch registered persons who misrepresent the nature of their establishment, by claiming it is suitable for a particular category of resident when it is not. The penalty on summary conviction is a fine not exceeding level 5 on the standard scale.

² There are five levels to the standard scale for fines as defined in section 75 of the Criminal Justice Act 1982. A court may impose a fine up to the maximum for the prescribed level. Currently the levels are: level 1 = £200; level 2 = £500; level 3 = £1,000; level 4 = £2,500 and level 5 = £5,000.

Section 27 False statements in applications

101. This section makes it an offence for an applicant knowingly to make a false or misleading statement in applications to the registration authority. The penalty will be a fine of up to level 4 on the standard scale. The application forms will inform people of this offence, which should act as a strong incentive for people to complete their applications accurately.

Section 28 Failure to display certification of registration

102. *Section 28* makes it an offence not to display a certificate of registration. The penalty on summary conviction is a fine not exceeding level 2 on the standard scale.

Section 29 Proceedings for offences

103. *Section 29* provides that proceedings in respect of offences under Part II may not be taken by any person, without the consent of the Attorney General, other than the Commission or, in the context of his default powers the Secretary of State; or the National Assembly for Wales. *Subsection (2)* extends the time allowed for proceedings to be brought in respect of offences under this Part. The usual limit for the prosecution of summary offences is six months after the offence is committed. However, in some cases, offences may only come to light after an inspection or whistleblowing. *Subsection (2)* therefore provides for a six month time limit from when the offence comes to light, with an overall time limit of three years from the commission of the offence.

Section 30 Offences by bodies corporate

104. *Subsection (2)* provides that if an offence under Part II is proved to have been committed with the consent or connivance of an officer of a body corporate then he as well as the company are guilty of the offence. Individual officers of a body corporate who are complicit in an offence under this Part of the Act, will not be able to escape prosecution simply because the body corporate is liable: both may be liable to prosecution.

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 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.