

## CARE STANDARDS ACT 2000

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### EXPLANATORY NOTES

#### COMMENTARY ON SECTIONS

##### Part VIII Miscellaneous

263. **Part VIII** imposes a duty on the proprietor of any boarding school or further education colleges with accommodation to safeguard and promote the welfare of any children accommodated there. It empowers the registration authority to inspect the school or college and report on the welfare arrangements for the children there. Section 87 of the Children Act 1989 (which this Part amends), currently makes similar provision in relation to independent boarding schools only. The new requirements will apply to all types of boarding school and further education college, both state and independent sector. *Sections 105 to 110* amend the Children Act 1989. Unless otherwise stated, functions conferred on the Secretary of State in these sections are exercised in Wales by the National Assembly for Wales, and the term “appropriate authority” means, in relation to England, the Commission, and in relation to Wales, the Assembly.
264. Part VIII also makes new arrangements for the regulation of nurses agencies by removing their exemption from the Employment Agencies Act 1973 and repealing the Nurses Agencies Act 1957; and makes new provision for statutory guidance to be issued to local authorities in respect of charges for home care services.

##### Boarding Schools and Colleges

###### *Section 105 Welfare of children in boarding schools and colleges*

265. This section extends section 87 of the Children Act (welfare of children in independent schools), to all schools and further education colleges with boarding provision, and puts the duty to monitor welfare in schools onto the appropriate authority in place of the local authority. It imposes a duty upon proprietors and governing bodies to ensure that effective arrangements for the welfare of all children accommodated at boarding schools and colleges are in place and properly adhered to.
266. The appropriate authority is required to determine whether this duty is being adequately discharged and may carry out inspections for that purpose. Where the appropriate authority determines that a school or college is failing in its duty in respect of the welfare of children it must inform the local education authority, or in England the Secretary of State, as the case may be, for any appropriate enforcement action to be taken in accordance with education legislation. In Wales, the National Assembly will be responsible both for inspection and for any enforcement actions which would, in England, be undertaken by the Secretary of State. By existing section 87(9) of the Children Act, which is not reproduced in the Act, it is an offence to obstruct a person exercising powers of inspection under this section or regulations made under it.

###### *Section 106 Suspension of duty under section 87(3) of the 1989 Act*

267. This section amends sections 87A and 87B of the Children Act as inserted under the provisions of the Deregulation and Contracting Out Act 1994. Sections 87A and 87B

empower the Secretary of State (or in Wales, the Assembly) to appoint a body, which already acts as an inspector of independent boarding schools for other purposes, to undertake the welfare inspection functions conferred by section 87, and allow schools to make inspection arrangements with such substitute inspectors.

268. The effect of the amendments is to apply these provisions to all boarding schools and further education colleges. Any school or college may enter into an agreement with such a body to inspect its welfare arrangements. The substitute inspector must notify the appropriate authority of its appointment. In that case, the authority's duty to ensure the welfare of children accommodated at that school or college is suspended until the appointment is terminated or the agreement comes to an end.

### ***Section 107 Boarding schools: national minimum standards***

269. This section inserts a new section 87C making provision for national minimum standards that schools and colleges accommodating children must comply with in relation to the welfare of children. The national minimum standards will be taken into account by the appropriate authority or any substitute inspector in considering whether there has been a failure to safeguard and promote a child's welfare in any school or college, and in any related proceedings. The Secretary of State must undertake a consultation exercise before issuing or substantially amending any standards.

### ***Section 108 Annual fee for boarding school inspections***

270. This section inserts new section 87D which provides for regulations to be made regarding annual inspection fees payable to the appropriate authority. The level of such fees and when they become due will be set out in the regulations. Unpaid fees may be recovered in the Magistrate's court.

### ***Section 109 Inspection of schools etc. by persons authorised by Secretary of State***

271. The Secretary of State and the Assembly (by virtue of section 80(1) of the Children Act) have wide powers to inspect premises in which children are accommodated, including independent schools. This section extends powers under section 80 to inspect or to obtain information, to any school or college providing accommodation for any child. It also adds a person carrying on a fostering agency (as defined in section 4(4)) to those persons whom section 80(5) places under a duty to provide the Secretary of State (or in Wales, the National Assembly) with information or access to records for inspection purposes.

## **Fostering**

### ***Section 110 Extension of Part IX to school children during holidays***

272. The effect of this section is to apply existing provision, whereby a child who stays at an independent boarding school for more than two weeks in the school holidays is treated as a privately fostered child, to all schools. The local authority must be notified of the child's presence in the school and has to satisfy itself as to his welfare.

## **Employment Agencies**

### ***Section 111 Nurses Agencies***

273. This section repeals the Nurses Agencies Act 1957 and brings nurses agencies under the Employment Agencies Act 1973. Nurses agencies are currently licensed by local authorities under the Nurses Agencies Act 1957, while all other employment agencies and businesses are covered by the Employment Agencies Act 1973. The effect of this section is to bring nurses agencies into line with all other types of employment agencies and businesses. In addition, the Government has decided that nurses agencies should

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

be required to register with the Commission (or, for agencies in Wales, the Assembly).  
(See notes to section 4(5) )

274. These changes apply to England and Wales. Nurses agencies in Scotland will continue to be licensed under Part III of the Nurses (Scotland) Act 1951.

### **Charges for local authority welfare services**

#### ***Section 112 Charges for local authority welfare services***

275. Under *Section 112* the powers of local authorities to charge for certain non-residential social services are to be treated as social services functions as defined in the Local Authority Social Services Act 1970 (“LASS Act”). This will allow statutory guidance to be issued under section 7 of the LASS Act for charges for non-residential services. The need to produce statutory guidance follows the publication of the White Paper “Modernising Social Services”. This recognised that the scale of variation in local authorities’ home care charges was unacceptable. The Audit Commission report “Charging with Care”, which was published on 10 May 2000, highlighted the full extent of these variations.