

*These notes refer to the Health and Social Care (Community Health and Standards) Act 2003 (c.43) which received Royal Assent on 20 November 2003*

# **HEALTH AND SOCIAL CARE (COMMUNITY HEALTH AND STANDARDS) ACT 2003**

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## **EXPLANATORY NOTES**

## **ANNEX B:: CURRENT LAW RELATING TO SOCIAL CARE**

The following paragraphs provide a brief description of the framework of social services law.

### **COMMUNITY CARE SERVICES**

528. Section 47 of the National Health Services and Community Care Act 1990 requires local authorities to assess the needs of any person who appears to them to be in need of community care services and decide in the light of that assessment whether any community care services should be provided to that person.
529. Community care services are defined in section 46(3) of the 1990 Act.

### **CHILDREN'S SERVICES**

530. The Children Act 1989 makes provision for local authority support to children and families including services for children in need, the provision of accommodation, and advice and assistance; provision relating to the protection of children, care and supervision orders; for the regulation and inspection of day care and child minding, and provision in relation children's homes and private fostering. The Adoption and Children Act 2002 makes provision in relation to the adoption of children, including provision about the role and duties of local authorities in relation to adoptions.

### **CARE STANDARDS**

531. The Care Standards Act 2000 (as amended by this Act) makes provision relating to the registration and regulation of children's homes, independent hospitals and clinics, private and local authority care homes, residential family centres, independent medical agencies, domiciliary care agencies, fostering, nursing and voluntary adoption agencies.
532. Proprietors and managers of the establishments and agencies listed above are required to register with the appropriate registration authority, and to comply with regulatory requirements. The relevant registration authority has power to inspect, and may cancel registration or prosecute for non-compliance with specified regulations.

### **DIRECTION MAKING POWERS**

533. Section 84 of the Children Act 1989 provides that, where the Secretary of State is satisfied that any local authority has failed, without reasonable excuse, to comply with duties imposed upon them under the Act, he may make an order declaring them to be in default with respect to that duty. The order must contain the Secretary of State's reasons for making it, and may contain directions for the purpose of ensuring that the duty is complied with.
534. Section 7A of the Local Authority Social Services Act 1970 provides that every local authority shall exercise social services functions in accordance with directions made by the Secretary of State. Section 7C makes provision for Secretary of State to hold an inquiry. Section 7D empowers the Secretary of State to make specific directions where a local authority has failed to comply with duties which are social services functions.

### **COMPLAINTS**

535. The current provisions relating to complaints against social services are set out in section 7B of the Local Authority Social Services Act 1970 and sections 24D and 26 of the Children Act 1989, and in the Complaints Procedure Directions 1990 and the Representations Procedure (Children) Regulations 1991. This Act repeals section 7B of the Local Authority Social Services Act 1970 and enables the Secretary of State to make regulations about the handling and consideration of complaints about social services provided to adults. Complaints will continue to be considered by the local authority whose actions are complained about, but the regulations may provide for a complaint to be further considered by the CSCI, an independent panel, or another person or body. The

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Act also provides that the Secretary of State may make regulations enabling complaints made under the Children Act procedure to be considered by the CSCI or an independent panel, and extends the duty to consider complaints under section 26 of the Children Act 1989 to complaints relating to special guardianship support services.