



# Care Standards Act 2000

## 2000 CHAPTER 14

### PART IX

#### GENERAL AND SUPPLEMENTAL

### CHAPTER I

#### GENERAL

#### **113 Default powers of appropriate Minister**

- (1) The powers conferred by this section are exercisable by the Secretary of State if he is satisfied that the Commission or the English Council—
  - (a) has without reasonable excuse failed to discharge any of its functions; or
  - (b) in discharging any of its functions, has without reasonable excuse failed to comply with any directions or guidance given by him under section 6(2) or 54(4) in relation to those functions.
- (2) The powers conferred by this section are exercisable by the Assembly if it is satisfied that the Welsh Council—
  - (a) has without reasonable excuse failed to discharge any of its functions; or
  - (b) in discharging any of its functions, has without reasonable excuse failed to comply with any directions or guidance given by the Assembly under section 54(4) in relation to those functions.
- (3) The appropriate Minister may—
  - (a) make an order declaring the authority in question to be in default; and
  - (b) direct the authority to discharge such of its functions, and in such manner and within such period or periods, as may be specified in the direction.
- (4) If the authority fails to comply with the appropriate Minister's direction under subsection (3), the appropriate Minister may—
  - (a) discharge the functions to which the direction relates himself; or

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- (b) make arrangements for any other person to discharge those functions on his behalf.

#### **114 Schemes for the transfer of staff**

- (1) This section and the next apply to a scheme made under section 38, 70 or 79(3) for transferring eligible employees.
- (2) Subject to those provisions, such a scheme may apply to all, or any description of, employees or to any individual employee.
- (3) Such a scheme may be made by the appropriate Minister, and a recommendation may be made to Her Majesty in Council to make an Order containing such a scheme, only if any prescribed requirements about consultation have been complied with in relation to each of the employees to be transferred under the scheme.

#### **115 Effect of schemes**

- (1) The contract of employment of an employee transferred under the scheme—
  - (a) is not terminated by the transfer; and
  - (b) has effect from the date of transfer as if originally made between the employee and the transferee.
- (2) Where an employee is transferred under the scheme—
  - (a) all the rights, powers, duties and liabilities of the old employer under or in connection with the contract of employment are by virtue of this subsection transferred to the transferee on the date of transfer; and
  - (b) anything done before that date by or in relation to the old employer in respect of that contract or the employee is to be treated from that date as having been done by or in relation to the transferee.

This subsection does not prejudice the generality of subsection (1).

- (3) Subsections (1) and (2) do not transfer an employee's contract of employment, or the rights, powers, duties and liabilities under or in connection with it, if he informs the old employer or the transferee that he objects to the transfer.
- (4) Where an employee objects as mentioned in subsection (3), his contract of employment with the old employer is terminated immediately before the date of transfer; but he is not to be treated, for any purpose, as having been dismissed by that employer.
- (5) This section does not prejudice any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions.
 

But no such right arises by reason only that, by virtue of this section, the identity of his employer changes unless the employee shows that, in all the circumstances, the change is a significant change and is to his detriment.
- (6) In this section—
  - “date of transfer” means the date of transfer determined under the scheme in relation to the employee;
  - “transferee” means the new employer to whom the employee is or would be transferred under the scheme;

and expressions used in this section and in the provision under which the scheme is made have the same meaning as in that provision.

#### **116 Minor and consequential amendments**

Schedule 4 (which makes minor amendments and amendments consequential on the provisions of this Act) shall have effect.

#### **117 Transitional provisions, savings and repeals**

- (1) Schedule 5 (which makes transitional and saving provision) shall have effect; but nothing in that Schedule shall be taken to prejudice the operation of sections 16 and 17 of the Interpretation Act 1978 (which relate to the effect of repeals).
- (2) The enactments mentioned in Schedule 6 to this Act are repealed to the extent specified in that Schedule.

## **CHAPTER II**

### **SUPPLEMENTAL**

#### **118 Orders and regulations**

- (1) Any power conferred on the Secretary of State, the Assembly or the appropriate Minister to make regulations or an order under this Act except an order under section 38 or 79(3) shall be exercised by statutory instrument.
- (2) An order making any provision by virtue of section 119(2) which adds to, replaces or omits any part of the text of an Act shall not be made by the Secretary of State unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament.
- (3) Subject to subsection (2), an instrument containing regulations or an order made by the Secretary of State, except an instrument containing an order under section 122, shall be subject to annulment in pursuance of a resolution of either House of Parliament.

In subsection (2) and this subsection, references to the Secretary of State include the Secretary of State and the Assembly acting jointly.
- (4) Subsections (5) to (7) apply to any power of the Secretary of State, the Assembly or the appropriate Minister to make regulations or an order under this Act; and subsections (5) and (6) apply to any power of Her Majesty to make an Order in Council under section 70.
- (5) The power may be exercised either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of case.
- (6) The power may be exercised so as to make, as respects the cases in relation to which it is exercised—
  - (a) the same provision for all cases in relation to which the power is exercised, or different provision for different cases or different classes of case, or different provision as respects the same case or class of case for different purposes;

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- (b) any such provision either unconditionally or subject to any specified condition.
- (7) The power may be exercised so as to make—
  - (a) any supplementary, incidental or consequential provision,
  - (b) any transitory, transitional or saving provision,
 which the person exercising the power considers necessary or expedient.
- (8) The provision which, by virtue of subsection (7), may be made by regulations under the Part of this Act which relates to the Children’s Commissioner for Wales includes provision amending or repealing any enactment or instrument.

### **119 Supplementary and consequential provision etc**

- (1) The appropriate Minister may by order make—
  - (a) any supplementary, incidental or consequential provision,
  - (b) any transitory, transitional or saving provision,
 which he considers necessary or expedient for the purposes of, in consequence of or for giving full effect to any provision of this Act.
- (2) The provision which may be made under subsection (1) includes provision amending or repealing any enactment or instrument.

### **120 Wales**

- (1) Section 84(1) of the Government of Wales Act 1998 (payment of Assembly receipts into the Consolidated Fund) does not apply to any sums received by the Assembly by virtue of any provision of this Act.
- (2) The reference to the 1989 Act in Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 is to be treated as referring to that Act as amended by or under this Act.
- (3) Subsection (2) does not affect the power to make further Orders varying or omitting that reference.

### **121 General interpretation etc**

- (1) In this Act—
  - “adult” means a person who is not a child;
  - “appropriate Minister” means—
    - (a) in relation to England, Scotland or Northern Ireland, the Secretary of State;
    - (b) in relation to Wales, the Assembly;
 and in relation to England and Wales means the Secretary of State and the Assembly acting jointly;
  - “child” means a person under the age of 18;
  - “community home” has the same meaning as in the 1989 Act;
  - “employment agency” and “employment business” have the same meanings as in the Employment Agencies Act 1973; but no business which is an employment business shall be taken to be an employment agency;

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“enactment” includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978);

“to foster a child privately” has the same meaning as in the 1989 Act;

“harm”—

(a) in relation to an adult who is not mentally impaired, means ill-treatment or the impairment of health;

(b) in relation to an adult who is mentally impaired, or a child, means ill-treatment or the impairment of health or development;

“health service hospital” has the same meaning as in the National Health Service Act 1977;

“illness” includes any injury;

“independent school” has the same meaning as in the Education Act 1996;

“local authority” has the same meaning as in the 1989 Act;

“local authority foster parent” has the same meaning as in the 1989 Act;

“medical” includes surgical;

“mental disorder” means mental illness, arrested or incomplete development of mind, psychopathic disorder, and any other disorder or disability of mind;

“National Health Service body” means a National Health Service trust, a Health Authority, a Special Health Authority or a Primary Care Trust;

“parent”, in relation to a child, includes any person who is not a parent of his but who has parental responsibility for him;

“parental responsibility” has the same meaning as in the 1989 Act;

“prescribed” means prescribed by regulations;

“proprietor”, in relation to a school, has the same meaning as in the Education Act 1996;

“regulations” (except where provision is made for them to be made by the Secretary of State or the Assembly) means regulations made by the appropriate Minister;

“relative” has the same meaning as in the 1989 Act;

“school” has the same meaning as in the Education Act 1996;

“social services functions” means functions which are social services functions for the purposes of the Local Authority Social Services Act 1970;

“treatment” includes diagnosis;

“the Tribunal” means the tribunal established by section 9 of the 1999 Act;

“undertaking” includes any business or profession and—

(a) in relation to a public or local authority, includes the exercise of any functions of that authority; and

(b) in relation to any other body of persons, whether corporate or unincorporate, includes any of the activities of that body;

“voluntary organisation” has the same meaning as in the Adoption Act 1976.

(2) For the purposes of this Act—

(a) a person is disabled if—

(i) his sight, hearing or speech is substantially impaired;

(ii) he has a mental disorder; or

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- (iii) he is physically substantially disabled by any illness, any impairment present since birth, or otherwise;
- (b) an adult is mentally impaired if he is in a state of arrested or incomplete development of mind (including a significant impairment of intelligence and social functioning).
- (3) In this Act, the expression “personal care” does not include any prescribed activity.
- (4) For the purposes of this Act, the person who carries on a fostering agency falling within section 4(4)(b), or a voluntary adoption agency, is the voluntary organisation itself.
- (5) References in this Act to a person who carries on an establishment or agency include references to a person who carries it on otherwise than for profit.
- (6) For the purposes of this Act, a community home which is provided by a voluntary organisation shall be taken to be carried on by—
- (a) the person who equips and maintains it; and
- (b) if the appropriate Minister determines that the body of managers for the home, or a specified member of that body, is also to be treated as carrying on the home, that body or member.
- (7) Where a community home is provided by a voluntary organisation, the appropriate Minister may determine that for the purposes of this Act the home is to be taken to be managed solely by—
- (a) any specified member of the body of managers for the home; or
- (b) any other specified person on whom functions are conferred under the home’s instrument of management.
- (8) A determination under subsection (6) or (7) may be made either generally or in relation to a particular home or class of homes.
- (9) An establishment is not a care home for the purposes of this Act unless the care which it provides includes assistance with bodily functions where such assistance is required.
- (10) References in this Act to a child’s being looked after by a local authority shall be construed in accordance with section 22 of the 1989 Act.
- (11) For the purposes of this Act an individual is made redundant if—
- (a) he is dismissed; and
- (b) for the purposes of the Employment Rights Act 1996 the dismissal is by reason of redundancy.
- (12) Any register kept for the purposes of this Act may be kept by means of a computer.
- (13) In this Act, the expressions listed in the left-hand column have the meaning given by, or are to be interpreted in accordance with, the provisions listed in the right-hand column.

<i>Expression</i>	<i>Provision of this Act</i>
1989 Act	Children Act 1989
1999 Act	Protection of Children Act 1999
Assembly	Section 5
Care home	Section 3

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<i>Expression</i>	<i>Provision of this Act</i>
CCETSW	Section 70
Children’s home	Section 1
Commission	Section 6
Commissioner	Section 72
Council, the English Council, the Welsh Council	Section 54
Domiciliary care agency	Section 4
Fostering agency	Section 4
Hospital and independent hospital	Section 2
Independent clinic and independent medical agency	Section 2
Registration authority	Section 5
Residential family centre	Section 4
Voluntary adoption agency	Section 4

## **122 Commencement**

This Act, except section 70(2) to (5) and this Chapter, shall come into force on such day as the appropriate Minister may by order appoint, and different days may be appointed for different purposes.

## **123 Short title and extent**

- (1) This Act may be cited as the Care Standards Act 2000.
- (2) Subject to subsections (3) and (4), this Act extends to England and Wales only.
- (3) Section 70 and, so far as relating to subsections (2) to (5) of that section, sections 114, 115 and 118 extend also to Scotland and Northern Ireland.
- (4) The amendment or repeal by this Act of an enactment extending to Scotland or Northern Ireland extends also to Scotland or, as the case may be, Northern Ireland.