



# Care Standards Act 2000

## 2000 CHAPTER 14

### PART I

#### INTRODUCTORY

##### *Preliminary*

#### **1 Children's homes.**

- (1) Subsections (2) to (6) have effect for the purposes of this Act.
- (2) An establishment is a children's home (subject to the following provisions of this section) if it provides care and accommodation wholly or mainly for children.
- (3) An establishment is not a children's home merely because a child is cared for and accommodated there by a parent or relative of his or by a foster parent.
- (4) An establishment is not a children's home if it is—
  - (a) a health service hospital;
  - (b) an independent hospital or an independent clinic; or
  - (c) a residential family centre,or if it is of a description excepted by regulations.
- (5) Subject to subsection (6), an establishment is not a children's home if it is a school.
- (6) A school is a children's home at any time if at that time accommodation is provided for children at the school and either—
  - (a) in each year that fell within the period of two years ending at that time, accommodation was provided for children, either at the school or under arrangements made by the proprietor of the school, for more than 295 days; or
  - (b) it is intended to provide accommodation for children, either at the school or under arrangements made by the proprietor of the school, for more than 295 days in any year;

and in this subsection "year" means a period of twelve months.

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But accommodation shall not for the purposes of paragraph (a) be regarded as provided to children for a number of days unless there is at least one child to whom it is provided for that number of days; and paragraph (b) shall be construed accordingly.

- (7) For the purposes of this section a person is a foster parent in relation to a child if—
- (a) he is a local authority foster parent in relation to the child;
  - (b) he is a foster parent with whom a child has been placed by a voluntary organisation under section 59(1)(a) of the 1989 Act; or
  - (c) he fosters the child privately.

#### Commencement Information

- II** S. 1 wholly in force at 1.4.2002; s. 1 not in force at Royal Assent see s. 122; s. 1 in force for W. at 1.7.2001 by S.I. 2001/2190, art. 2, Sch. Table; s. 1 in force for E. for certain purposes at 20.11.2001 by S.I. 2001/3852, arts. 1(4), 3(2)(3)(a)(i) (subject to transitional provisions in Sch. 1 and with transitional provisions in Sch. 2) (as amended by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 1 in force for E. for certain purposes at 1.1.2002 by S.I. 2001/3852, arts. 1(4), 3(2)(4)(a)(i)(5) (subject to transitional provisions in Sch. 1 and with transitional provisions in Sch. 2) (as amended by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 1 in force for E. in so far as not already in force at 1.4.2002 by S.I. 2001/3852, arts. 1(4), 3(2)(7)(a) (subject to transitional provisions in Sch. 1 and with transitional provisions in Sch. 2) (as amended by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210)

## 2 Independent hospitals etc.

- (1) Subsections (2) to (6) apply for the purposes of this Act.
- (2) A hospital which is not a health service hospital is an independent hospital.
- (3) “Hospital” (except in the expression health service hospital) means—
  - (a) an establishment—
    - (i) the main purpose of which is to provide medical or psychiatric treatment for illness or mental disorder or palliative care; or
    - (ii) in which (whether or not other services are also provided) any of the listed services are provided;
  - (b) any other establishment in which treatment or nursing (or both) are provided for persons liable to be detained under the <sup>M1</sup>Mental Health Act 1983.
- (4) “Independent clinic” means an establishment of a prescribed kind (not being a hospital) in which services are provided by medical practitioners (whether or not any services are also provided for the purposes of the establishment elsewhere).

But an establishment in which, or for the purposes of which, services are provided by medical practitioners in pursuance of the [<sup>F1</sup>National Health Service Act 2006 or the National Health Service (Wales) Act 2006] is not an independent clinic.

- (5) “Independent medical agency” means an undertaking (not being an independent clinic [<sup>F2</sup>or an independent hospital]) which consists of or includes the provision of services by medical practitioners.

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But if any of the services are provided for the purposes of an independent clinic, or by medical practitioners in pursuance of the <sup>F1</sup>National Health Service Act 2006 or the National Health Service (Wales) Act 2006], it is not an independent medical agency.

- (6) References to a person liable to be detained under the <sup>M2</sup>Mental Health Act 1983 do not include a person absent in pursuance of leave granted under section 17 of that Act.
- (7) In this section “listed services” means—
- (a) medical treatment under anaesthesia or sedation;
  - (b) dental treatment under general anaesthesia;
  - (c) obstetric services and, in connection with childbirth, medical services;
  - (d) termination of pregnancies;
  - (e) cosmetic surgery <sup>F3</sup>other than—
    - (i) ear and body piercing;
    - (ii) tattooing;
    - (iii) the subcutaneous injection of a substance or substances into the skin for cosmetic purposes; and
    - (iv) the removal of hair roots or small blemishes on the skin by the application of heat using an electric current];
  - (f) treatment using prescribed techniques or prescribed technology.
- (8) Regulations may—
- (a) except any description of establishment from the definitions in subsections (2) to (4);
  - (b) except any description of undertaking from the definition in subsection (5);
  - (c) modify the definition in subsection (7).

#### Textual Amendments

- F1** Words in s. 2(4)(5) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 2, 8, **Sch. 1 para. 199** (with Sch. 3 Pt. 1)
- F2** Words in s. 2(5) inserted (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), **ss. 106, 199**; S.I. 2004/759, art. 3(1); S.I. 2004/873, **art. 2**
- F3** Words in s. 2(7)(e) added (1.4.2002) by Private and Voluntary Health Care (Wales) Regulations 2002 (S.I. 2002/325), regs. 1(1), **3(4)** (with reg. 1(2))

#### Commencement Information

- I2** S. 2 wholly in force at 1.4.2002; s. 2 not in force at Royal Assent see s. 122; s. 2 in force for W. at 1.7.2001 by S.I. 2001/2190, art. 2, **Sch.** Table; s. 2 in force for E. at 20.11.2001 by S.I. 2001/3852, arts. 1(4), **3(2)(3)(a)(i)** (subject to transitional provisions in Sch. 1 and with transitional provisions in Sch. 2) (as amended by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 2 in force for E. for certain purposes at 1.1.2002 by S.I. 2001/3852, arts. 1(4), **3(2)(4)(a)(i)(5)** (subject to transitional provisions in Sch. 1 and with transitional provisions in Sch. 2) (as amended by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 2 in force for E. in so far as not already in force at 1.4.2002 by S.I. 2001/3852, arts. 1(4), **3(2)(7)(a)** (subject to transitional provisions in Sch. 1 and with transitional provisions in Sch. 2) (as amended by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210)

#### Marginal Citations

- M1** 1983 c. 20.

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M2 1983 c. 20.

### 3 Care homes.

- (1) For the purposes of this Act, an establishment is a care home if it provides accommodation, together with nursing or personal care, for any of the following persons.
- (2) They are—
  - (a) persons who are or have been ill;
  - (b) persons who have or have had a mental disorder;
  - (c) persons who are disabled or infirm;
  - (d) persons who are or have been dependent on alcohol or drugs.
- (3) But an establishment is not a care home if it is—
  - (a) a hospital;
  - (b) an independent clinic; or
  - (c) a children’s home,
 or if it is of a description excepted by regulations.

#### Commencement Information

- I3** S. 3 wholly in force at 1.4.2002; s. 3 not in force at Royal Assent see s. 122; s. 3 in force for W. at 1.7.2001 by S.I. 2001/2190, art. 2, Sch. Table; s. 3 in force for E. for certain purposes at 20.11.2001 by S.I. 2001/3852, arts. 1(4), 3(2)(3)(a)(i) (subject to transitional provisions in Sch. 1 and with transitional provisions in Sch. 2) (as amended by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 3 in force for E. for certain purposes at 1.1.2002 by S.I. 2001/3852, arts. 1(4), 3(2)(4)(a)(i)(5) (subject to transitional provisions in Sch. 1 and with transitional provisions in Sch. 2) (as amended by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 3 in force for E. in so far as not already in force at 1.4.2002 by S.I. 2001/3852, arts. 1(4), 3(2)(7)(a) (subject to transitional provisions in Sch. 1 and with transitional provisions in Sch. 2) (as amended by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210)

### 4 Other basic definitions.

- (1) This section has effect for the purposes of this Act.
- (2) “Residential family centre” means, subject to subsection (6), any establishment at which—
  - (a) accommodation is provided for children and their parents;
  - (b) the parents’ capacity to respond to the children’s needs and to safeguard their welfare is monitored or assessed; and
  - (c) the parents are given such advice, guidance or counselling as is considered necessary.
 In this subsection “parent”, in relation to a child, includes any person who is looking after him.
- (3) “Domiciliary care agency” means, subject to subsection (6), an undertaking which consists of or includes arranging the provision of personal care in their own homes

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for persons who by reason of illness, infirmity or disability are unable to provide it for themselves without assistance.

- (4) “Fostering agency” means, subject to subsection (6)—
- (a) an undertaking which consists of or includes discharging functions of local authorities in connection with the placing of children with foster parents; or
  - (b) a voluntary organisation which places children with foster parents under section 59(1) of the 1989 Act.
- (5) “Nurses agency” means, subject to subsection (6), an employment agency or employment business, being (in either case) a business which consists of or includes supplying, or providing services for the purpose of supplying, registered nurses [<sup>F4</sup>or registered midwives].
- (6) The definitions in subsections (2) to (5) do not include any description of establishment, undertaking or organisation excepted from those definitions by regulations.
- (7) “Voluntary adoption agency” means an adoption society within the meaning of the [<sup>F5</sup>the Adoption and Children Act 2002] which is a voluntary organisation within the meaning of that Act.
- [<sup>F6</sup>(7A) “Adoption support agency” has the meaning given by section 8 of the Adoption and Children Act 2002.]
- (8) Below in this Act—
- (a) any reference to a description of establishment is a reference to a children’s home [<sup>F7</sup>, a children’s home providing accommodation for the purpose of restricting liberty,] an independent hospital, an independent hospital in which treatment or nursing (or both) are provided for persons liable to be detained under the <sup>M3</sup>Mental Health Act 1983, an independent clinic, a care home or a residential family centre;
  - (b) a reference to any establishment is a reference to an establishment of any of those descriptions.
- (9) Below in this Act—
- (a) any reference to a description of agency is a reference to an independent medical agency, a domiciliary care agency, a nurses agency, a fostering agency [<sup>F8</sup>a voluntary adoption agency or an adoption support agency];
  - (b) a reference to any agency is a reference to an agency of any of those descriptions.

#### Textual Amendments

- F4** Words in s. 4(5) substituted (1.8.2004) by [The Health Act 1999 \(Consequential Amendments\) \(Nursing and Midwifery\) Order 2004 \(S.I. 2004/1771\)](#), art. 3, **Sch. para. 2(a)**
- F5** Words in s. 4(7) substituted (30.12.2005) by [Adoption and Children Act 2002 \(c. 38\)](#), ss. 139, 148, **Sch. 3 para. 104** (with [Sch. 4 paras. 6-8](#)); S.I. 2005/2213, {art. 2}
- F6** S. 4(7A) inserted (7.12.2004 for E. for certain purposes and 30.12.2005 otherwise) by [Adoption and Children Act 2002 \(c. 38\)](#), ss. 8(3)(a), 148 (with [Sch. 4 paras. 1, 6-8](#)); S.I. 2004/3203, **art. 2**; S.I. 2005/2213, {art. 3}; S.I. 2005/3112, **art. 2**
- F7** Words in s. 4(8)(a) inserted (1.4.2006 for W. and otherwise prosp.) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\)](#), ss. 107(1), 199; S.I. 2005/3285, **art. 2(2)**

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- F8** Words in s. 4(9)(a) substituted (7.12.2004 for E. for certain purposes and 30.12.2005 otherwise) by Adoption and Children Act 2002 (c. 38), ss. 8(3)(a), 148 (with Sch. 4 paras. 1, 6-8); S.I. 2004/3203, art. 2; S.I. 2005/2213, {art. 3}; S.I. 2005/3112, art. 2

#### Commencement Information

- I4** S. 4 wholly in force at 30.4.2003; s. 4 not in force at Royal Assent see s. 122; s. 4 in force for W. at 1.7.2001 by S.I. 2001/2190, art. 2, Sch. Table; s. 4 in force for E. for certain purposes at 20.11.2001 by S.I. 2001/3852, arts. 1(4), 3(2)(3)(a)(i) (subject to transitional provisions in Sch. 1 and with transitional provisions in Sch. 2) (as amended by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 4 in force for E. for certain purposes at 1.1.2002 by S.I. 2001/3852, arts. 1(4), 3(2)(4)(a)(i)(ii)(5) (subject to transitional provisions in Sch. 1 and with transitional provisions in Sch. 2) (as amended by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 4(4) in force for E. and s. 4(1)(6)(8)(9) in force for E. for certain purposes at 1.4.2002 by S.I. 2001/3852, arts. 1(4), 3(2)(7)(b) (subject to transitional provisions in Sch. 1 and with transitional provisions in Sch. 2) (as amended by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 4(1)(9) in force for E. for certain purposes, s. 4(2)(3)(5) in force for E. and s. 4(6)(8) in force for E. in so far as not already in force at 1.4.2003 by S.I. 2001/3852, arts. 1(4), 3(2)(8)(a) (subject to transitional provisions in Sch. 1 and with transitional provisions in Sch. 2) (as amended by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 4(7)(9) in force for E. for certain purposes at 25.2.2003 and otherwise in force for E. at 30.4.2003 by S.I. 2003/365, art. 3(1)(3)-(5) (subject to Sch.)

#### Marginal Citations

- M3** 1983 c. 20.

### Registration authorities

## 5 Registration authorities.

For the purposes of this Act—

- (a) the registration authority in relation to England is
- [<sup>F9</sup>(i) the CHAI, in the case of independent hospitals, independent clinics and independent medical agencies;
  - (ii) the CSCI, in the case of children’s homes, care homes, residential family centres, domiciliary care agencies, nurses agencies, fostering agencies, voluntary adoption agencies and adoption support agencies;]
- ;
- (b) the registration authority in relation to Wales is the National Assembly for Wales (referred to in this Act as “the Assembly”).

[<sup>F10</sup>(2) This section is subject to section 36A.]

#### Textual Amendments

- F9** S. 5(a)(i)(ii) substituted (20.11.2003 for certain purposes and 1.4.2004 otherwise) for words by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 147, 199, Sch. 9 para. 17; S.I. 2004/759, art. 5(2)
- F10** S. 5(2) inserted (25.2.2003 for E. for certain purposes, 30.4.2003 for E. otherwise and 28.11.2003 for W.) by Adoption and Children Act 2002 (c. 38), ss. 139, 148, Sch. 3 para. 105 (with Sch. 4 paras. 6-8); S.I. 2003/366, art. 2(1)(4); S.I. 2003/3079, art. 2(1)

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### Commencement Information

- I5** S. 5 partly in force; s. 5 not in force at Royal Assent see s. 122; s. 5 in force for W. at 1.7.2001 by [S.I. 2001/2190](#), [art. 2](#), [Sch.](#) Table; s. 5 in force for E. for certain purposes at 1.4.2002 by [S.I. 2001/3852](#), [art. 3\(2\)\(7\)\(c\)](#) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by [S.I. 2001/4150](#), 2002/1493, 2002/1790, 2002/2001, 2002/3210)

## [<sup>F11</sup>5A General duties of Commission for Healthcare Audit and Inspection

- (1) The Commission for Healthcare Audit and Inspection (referred to in this Act as “the CHAI”) shall have the general duty of keeping the Secretary of State informed about—
  - (a) the provision in England of independent health services; and
  - (b) in particular, the availability and quality of the services.
- (2) The CHAI shall have the general duty of encouraging improvement in the quality of independent health services provided in England.
- (3) The CHAI shall make information about independent health services provided in England available to the public.
- (4) When asked to do so by the Secretary of State, the CHAI shall give him advice or information on such matters relating to the provision in England of independent health services as may be specified in his request.
- (5) The CHAI may at any time give advice to the Secretary of State on—
  - (a) any changes which the CHAI thinks should be made, for the purpose of securing improvement in the quality of independent health services provided in England, in the standards set out in statements under section 23;
  - (b) any other matter connected with the provision in England of such services.
- (6) In the exercise of its functions under this Act the CHAI must have particular regard to the need to safeguard and promote the rights and welfare of children.
- (7) The Secretary of State may by regulations confer additional functions on the CHAI in relation to the provision in England of independent health services.
- (8) In this section “independent health services” means services of the kind provided by persons for whom the CHAI is the registration authority.]

### Textual Amendments

- F11** [S. 5A](#) inserted (20.11.2003 for certain purposes and 1.4.2004 otherwise) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\)](#), ss. {103}, 199; [S.I. 2004/759](#), [art. 3\(1\)](#)

## [<sup>F12</sup>5B General duties of Commission for Social Care Inspection

- (1) The Commission for Social Care Inspection (referred to in this Act as “the CSCIP”) shall have the general duty of keeping the Secretary of State informed about—
  - (a) the provision in England of registered social care services; and
  - (b) in particular, the availability and quality of the services.
- (2) The CSCIP shall have the general duty of encouraging improvement in the quality of registered social care services provided in England.

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- (3) The CSCI shall make information about registered social care services provided in England available to the public.
- (4) When asked to do so by the Secretary of State, the CSCI shall give him advice or information on such matters relating to the provision in England of registered social care services as may be specified in his request.
- (5) The CSCI may at any time give advice to the Secretary of State on—
  - (a) any changes which the CSCI thinks should be made, for the purpose of securing improvement in the quality of registered social care services provided in England, in the standards set out in statements under section 23;
  - (b) any other matter connected with the provision in England of registered social care services.
- (6) In the exercise of its functions under this Act the CSCI must have particular regard to the need to safeguard and promote the rights and welfare of children.
- (7) The Secretary of State may by regulations confer additional functions on the CSCI in relation to the provision in England of registered social care services.
- (8) In this section, “registered social care services” means services of the kind provided by persons for whom the CSCI is the registration authority.]

**Textual Amendments**  
**F12** S. 5B inserted (20.11.2003 for certain purposes and 1.4.2004 otherwise) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\)](#), ss. {104}, 199; S.I. 2004/759, [art. 4\(2\)](#)

**6 National Care Standards Commission.**

F13  
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**Textual Amendments**  
**F13** S. 6 repealed (1.4.2004) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\)](#), ss. 196, 199, [Sch. 14 Pt. 2](#); S.I. 2004/759, [art. 13](#)

**7 General duties of the Commission.**

F14  
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**Textual Amendments**  
**F14** S. 7 repealed (1.4.2004) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\)](#), ss. 196, 199, [Sch. 14 Pt. 2](#); S.I. 2004/759, [art. 13](#)

**8 General functions of the Assembly.**

- (1) The Assembly shall have the general duty of encouraging improvement in the quality of Part II services provided in Wales.



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- (2) The Assembly shall make information about Part II services provided in Wales available to the public.
- (3) In relation to Part II services provided in Wales, the Assembly shall have any additional function specified in regulations made by the Assembly; but the regulations may only specify a function corresponding to a function which, by virtue of [<sup>F15</sup>section 5A or 5B is exercisable by the CHAI or the CSCI] in relation to Part II services provided in England.
- (4) The Assembly may charge a reasonable fee determined by it in connection with the exercise of any power conferred on it by or under this Act.
- (5) The Assembly may provide training for the purpose of assisting persons to attain standards set out in any statements published by it under section 23.
- [<sup>F16</sup>(6) The Assembly must have particular regard to the need to safeguard and promote the rights and welfare of children in the exercise of—
- (a) its functions exercisable by virtue of section 5(b) and subsections (1) to (3) of this section; and
  - (b) any other functions exercisable by the Assembly corresponding to functions exercisable by the CSCI in relation to England.]
- [<sup>F17</sup>(6) In this section, “Part II services” means services of the kind provided by persons registered under Part II, other than the provision of—
- (a) medical or psychiatric treatment, or
  - (b) listed services (as defined in section 2).]

#### Textual Amendments

- F15** Words in s. 8(3) substituted (20.11.2003 for certain purposes and 1.4.2004 otherwise) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\)](#), ss. 147, 199, [Sch. 9 para. 18\(2\)](#); S.I. 2004/759, [art. 5\(2\)](#)
- F16** S. 8(6) inserted (1.4.2004) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\)](#), ss. 109, 199; S.I. 2004/873, [art. 2](#)
- F17** The s. 8(6) second appearing inserted (20.11.2003 for certain purposes and 1.4.2004 otherwise) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\)](#), ss. 147, 199, [Sch. 9 para. 18\(3\)](#); S.I. 2004/759, [art. 5\(2\)](#)

#### Commencement Information

- I6** S. 8 partly in force; s. 8 not in force at Royal Assent see s. 122; s. 8 in force for W. for certain purposes at 1.7.2001 by S.I. 2001/2190, [art. 2](#), [Sch. Table](#); s. 8 in force for W. for certain purposes at 1.4.2002 by S.I. 2002/920, [arts. 1\(4\), 3\(3\)](#) (subject to [art. 3\(4\)\(5\)](#) and to transitional provisions in [Schs. 1-3](#)); s. 8 in force for W. for certain purposes at 30.1.2003 by S.I. 2003/152, [art. 2](#); s. 8 in force for W. for certain purposes at 2.10.2003 by S.I. 2003/2528, [art. 2](#); s. 8 in force for W. for certain purposes at 1.4.2004 by S.I. 2004/1015, [art. 2](#); s. 8 in force for W. for certain purposes at 7.4.2004 by S.I. 2004/1730, [art. 2](#)

## 9 Co-operative working.

<sup>F18</sup> .....

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### Textual Amendments

**F18** S. 9 repealed (1.4.2004) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\)](#), ss. 196, 199, [Sch. 14 Pt. 2](#); S.I. 2004/759, [art. 13](#)

## 10 Inquiries.

- (1) <sup>F19</sup> . . . . .
- (2) The appropriate Minister may cause an inquiry to be held into any matter connected with a service provided in or by an establishment or agency.
- (3) Before an inquiry is begun, the person causing the inquiry to be held may direct that it shall be held in private.
- (4) Where no direction has been given, the person holding the inquiry may if he thinks fit hold it, or any part of it, in private.
- (5) Subsections (2) to (5) of section 250 of the <sup>M4</sup>Local Government Act 1972 (powers in relation to local inquiries) shall apply in relation to an inquiry under this section as they apply in relation to a local inquiry under that section; and references in those provisions as so applied to a Minister shall be taken to include references to the Assembly.
- (6) Subsections (3) and (4) apply in relation to an inquiry under section 35 of the <sup>M5</sup>Government of Wales Act 1998 into any matter relevant to the exercise of—
  - (a) any functions exercisable by the Assembly by virtue of section 5(b) or 8(3); or
  - (b) any other functions exercisable by the Assembly corresponding to functions exercisable [<sup>F20</sup>by the CHAI or the CSCI under this Act] in relation to England, as they apply in relation to an inquiry under this section.
- (7) The report of the person who held the inquiry shall, unless the Minister who caused the inquiry to be held considers that there are exceptional circumstances which make it inappropriate to publish it, be published in a manner which that Minister considers appropriate.

### Textual Amendments

**F19** S. 10(1) repealed (20.11.2003 for certain purposes and 1.4.2004 otherwise) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\)](#), ss. 147, 196, 199, [Sch. 9 para. 19\(b\)](#), [Sch. 14 Pt. 2](#); S.I. 2004/759, [arts. 5\(2\)](#), 13

**F20** Words in s. 10(6)(b) substituted (20.11.2003 for certain purposes and 1.4.2004 otherwise) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\)](#), ss. 147, 199, [Sch. 9 para. 19\(b\)](#); S.I. 2004/759, [art. 8](#)

### Commencement Information

**I7** S. 10 partly in force; s. 10 not in force at Royal Assent see s. 122; s. 10(1)-(5)(7) in force for E. at 1.4.2002 by S.I. 2001/3852, [art. 3\(2\)\(7\)\(e\)](#) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 10(2)-(7) in force for W. for certain purposes at 1.4.2002 by S.I. 2002/920, [arts. 1\(4\)](#), [3\(3\)](#) (subject to [art. 3\(4\)\(5\)](#) and to transitional provisions in [Schs. 1-3](#)); s. 10(2)-(7) in force for W. for certain purposes at 30.1.2003 by S.I. 2003/152, [art. 2](#); s. 10(2)-(7) in force for W. for certain purposes at 1.4.2004 by S.I. 2004/1015, [art. 2](#); s. 10(2)-(7) in force for W. for certain purposes at 7.4.2004 by S.I. 2004/1730, [art. 2](#)

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### Marginal Citations

**M4** 1972 c. 70.

**M5** 1998 c. 38.

## PART II

### ESTABLISHMENTS AND AGENCIES

#### Modifications etc. (not altering text)

- C1** Pt. 2 restricted (7.12.2004) by [Adoption and Children Act 2002 \(c. 38\), ss. 2\(4\)](#), 148 (with Sch. 4 paras. 1, 6-8); S.I. 2004/3203, [art. 2](#)
- C2** Pt. 2: functions transferred (20.11.2003 for certain purposes and 1.4.2004 otherwise) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\), ss. 102\(1\)-\(3\)](#), 199; S.I. 2004/759, [art. 5\(2\)](#)
- C3** Pt. 2 modified (W.) (30.4.2003) by [The Care Standards Act 2000 \(Commencement No. 10\) and Transitional Provisions \(Wales\) Order 2003 \(S.I. 2003/152\)](#), [art. 3](#)
- C4** Pt. 2 applied (with modifications) (E.) (31.8.2004) by [The Adult Placement Schemes \(England\) Regulations 2004 \(S.I. 2004/2071\)](#), [reg. 40\(2\)](#), Sch. 5
- C5** Pt. 2 applied (with modifications) (W.) (1.8.2004) by [The Adult Placement Schemes \(Wales\) Regulations 2004 \(S.I. 2004/1756\)](#), [reg. 3\(3\)](#), Sch. 1
- C6** Pt. 2: functions transferred (8.11.2006 for certain purposes and 1.4.2007 otherwise) by [Education and Inspections Act 2006 \(c. 40\), ss. 148\(1\), 188\(3\)](#); S.I. 2007/935, [art. 5](#)

### Registration

#### 11 Requirement to register.

- (1) Any person who carries on or manages an establishment or agency of any description without being registered under this Part in respect of it (as an establishment or, as the case may be, agency of that description) shall be guilty of an offence.
- (2) Where the activities of an agency are carried on from two or more branches, each of those branches shall be treated as a separate agency for the purposes of this Part.
- (3) The [F21]references in subsections (1) and (2) to an agency do] not include a reference to a voluntary adoption agency.
- (4) The Secretary of State may by regulations make provision about the keeping of registers by [F22]the CHAI or the CSCI] for the purposes of this Part.
- (5) A person guilty of an offence under this section shall be liable on summary conviction—
  - (a) if subsection (6) does not apply, to a fine not exceeding level 5 on the standard scale;
  - (b) if subsection (6) applies, to imprisonment for a term not exceeding six months, or to a fine not exceeding level 5 on the standard scale, or to both.
- (6) This subsection applies if—

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- (a) the person was registered in respect of the establishment or agency at a time before the commission of the offence but the registration was cancelled before the offence was committed; or
- (b) the conviction is a second or subsequent conviction of the offence and the earlier conviction, or one of the earlier convictions, was of an offence in relation to an establishment or agency of the same description.

#### Textual Amendments

- F21** Words in s. 11(3) substituted (25.2.2003 for E. for certain purposes, 30.4.2003 for E. otherwise and 28.11.2003 for W.) by [Adoption and Children Act 2002 \(c. 38\)](#), ss. 139, 148, **Sch. 3 para. 106** (with [Sch. 4 paras. 6-8](#)); S.I. 2003/366, art. 2(1)(4); S.I. 2003/3079, **art. 2(1)**
- F22** Words in s. 11(4) substituted (20.11.2003 for certain purposes and 1.4.2004 otherwise) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\)](#), ss. 147, 199, **Sch. 9 para. 20**; S.I. 2004/759, **art. 5(2)**

#### Modifications etc. (not altering text)

- C7** S. 11 applied (W.) (1.4.2003) by S.I. 2003/237, **reg. 52(4)(6)** (as substituted by [The Fostering Services \(Wales\) \(Amendment\) Regulations 2003 \(S.I. 2003/896\)](#), **reg. 2(2)**)
- C8** S. 11 applied (W.) (1.9.2003) by [The Residential Family Centres \(Wales\) Regulations 2003 \(S.I. 2003/781\)](#), **reg. 34(4)(b)**
- C9** S. 11(1)(5)(6) excluded (W.) (temp.) (1.4.2003) by S.I. 2003/237, **reg. 52(2)(3)** (as substituted by [The Fostering Services \(Wales\) \(Amendment\) Regulations 2003 \(S.I. 2003/896\)](#), **reg. 2(2)**)
- C10** S. 11(1)(5)(6) excluded (W.) (1.9.2003) by [The Residential Family Centres \(Wales\) Regulations 2003 \(S.I. 2003/781\)](#), **reg. 34(2)**

#### Commencement Information

- I8** S. 11 partly in force; s. 11 not in force at Royal Assent see s. 122; s. 11 in force for W. for certain purposes at 1.7.2001 by S.I. 2001/2190, **art. 2**, **Sch. Table**; s. 11 in force for E. for certain purposes at 20.11.2001 by S.I. 2001/3852, **arts. 1(4), 3(2)(3)(a)(i)** (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 11 in force for E. in so far as not already in force at 1.4.2002 by S.I. 2001/3852, **arts. 1(4), 3(2)(7)(a)** (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 11 in force for W. for certain purposes at 1.4.2002 by S.I. 2002/920, **arts. 1(4), 3(3)** (subject to [art. 3\(4\)\(5\)](#) and to transitional provisions in [Schs. 1-3](#)); s. 11 in force for W. for certain purposes at 30.1.2003 by S.I. 2003/152, **art. 2**; s. 11 in force for W. for certain purposes at 2.10.2003 by S.I. 2003/2528, **art. 2**; s. 11 in force for W. for certain purposes at 1.4.2004 by S.I. 2004/1015, **art. 2**; s. 11 in force for W. for certain purposes at 7.4.2004 by S.I. 2004/1730, **art. 2**

## 12 Applications for registration.

- (1) A person seeking to be registered under this Part shall make an application to the registration authority.
- (2) The application—
  - (a) must give the prescribed information about prescribed matters;
  - (b) must give any other information which the registration authority reasonably requires the applicant to give,

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and must be accompanied by [<sup>F23</sup>a fee of the amount determined under section 113A, where the registration authority is the CHAI or the CSCI, or of the prescribed amount, where the registration authority is the Assembly.]

- (3) A person who applies for registration as the manager of an establishment or agency must be an individual.
- (4) A person who carries on or manages, or wishes to carry on or manage, more than one establishment or agency must make a separate application in respect of each of them.

#### Textual Amendments

**F23** Words in s. 12(2) substituted (20.11.2003 for certain purposes and 1.8.2006 otherwise) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\)](#), ss. {105(3)}, 199; [S.I. 2006/1680](#), [art. 2\(2\)](#)

#### Modifications etc. (not altering text)

**C11** S. 12(2) modified (temp.) (E.) (26.6.2006) by [The Health and Social Care \(Community Health and Standards\) Act 2003 Commencement \(No. 9\) Order 2006 \(S.I. 2006/1680\)](#), [art. 4\(2\)](#)

#### Commencement Information

**I9** S. 12 partly in force; s. 12 not in force at Royal Assent see s. 122; s. 12 in force for W. for certain purposes at 1.7.2001 by [S.I. 2001/2190](#), [art. 2](#), [Sch. Table](#); s. 12 in force for E. for certain purposes at 20.11.2001 by [S.I. 2001/3852](#), [arts. 1\(4\)](#), [3\(2\)\(3\)\(a\)\(i\)](#) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by [S.I. 2001/4150](#), 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 12 in force for E. for certain purposes at 1.1.2002 by [S.I. 2001/3852](#), [arts. 1\(4\)](#), [3\(2\)\(4\)\(a\)\(i\)\(5\)](#) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by [S.I. 2001/4150](#), 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 12 in force for E. in so far as not already in force at 1.4.2002 by [S.I. 2001/3852](#), [arts. 1\(4\)](#), [3\(2\)\(7\)\(a\)](#) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by [S.I. 2001/4150](#), 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 12 in force for W. for certain purposes at 1.4.2002 by [S.I. 2002/920](#), [arts. 1\(4\)](#), [3\(3\)](#) (subject to [art. 3\(4\)\(5\)](#) and to transitional provisions in [Schs. 1-3](#)); s. 12 in force for W. for certain purposes at 30.1.2003 by [S.I. 2003/152](#), [art. 2](#); s. 12 in force for W. for certain purposes at 2.10.2003 by [S.I. 2003/2528](#), [art. 2](#); s. 11 in force for W. for certain purposes at 1.4.2004 by [S.I. 2004/1015](#), [art. 2](#); s. 12 in force for W. for certain purposes at 7.4.2004 by [S.I. 2004/1730](#), [art. 2](#)

### 13 Grant or refusal of registration.

- (1) Subsections (2) to (4) apply where an application under section 12 has been made with respect to an establishment or agency in accordance with the provisions of this Part.
- (2) If the registration authority is satisfied that—
  - (a) the requirements of regulations under section 22; and
  - (b) the requirements of any other enactment which appears to the registration authority to be relevant,are being and will continue to be complied with (so far as applicable) in relation to the establishment or agency, it shall grant the application; otherwise it shall refuse it.
- (3) The application may be granted either unconditionally or subject to such conditions as the registration authority thinks fit.

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- (4) On granting the application, the registration authority shall issue a certificate of registration to the applicant.
- (5) The registration authority may at any time—
  - (a) vary or remove any condition for the time being in force in relation to a person’s registration; or
  - (b) impose an additional condition.

#### Commencement Information

**I10** S. 13 partly in force; s. 13 not in force at Royal Assent see s. 122; s. 13 in force for E. for certain purposes at 1.1.2002 by S.I. 2001/3852, arts. 1(4), 3(2)(4)(a)(i)(5) (subject to transitional provisions in Sch. 1 and with transitional provisions in Sch. 2) (as amended by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 13 in force for E. in so far as not already in force at 1.4.2002 by S.I. 2001/3852, arts. 1(4), 3(2)(7)(a) (subject to transitional provisions in Sch. 1 and with transitional provisions in Sch. 2) (as amended by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 13 in force for W. for certain purposes at 1.4.2002 by S.I. 2002/920, arts. 1(4), 3(3) (subject to art. 3(4)(5) and to transitional provisions in Schs. 1-3); s. 13 in force for W. for certain purposes at 30.1.2003 by S.I. 2003/152, art. 2; s. 13 in force for W. for certain purposes at 2.10.2003 by S.I. 2003/2528, art. 2; s. 13 in force for W. for certain purposes at 1.4.2004 by S.I. 2004/1015, art. 2; s. 13 in force for W. for certain purposes at 7.4.2004 by S.I. 2004/1730, art. 2

## 14 Cancellation of registration.

- (1) The registration authority may at any time cancel the registration of a person in respect of an establishment or agency—
  - (a) on the ground that that person has been convicted of a relevant offence;
  - (b) on the ground that any other person has been convicted of such an offence in relation to the establishment or agency;
  - (c) on the ground that the establishment or agency is being, or has at any time been, carried on otherwise than in accordance with the relevant requirements;
  - (d) on any ground specified by regulations.
- (2) For the purposes of this section the following are relevant offences—
  - (a) an offence under this Part or regulations made under it;
  - (b) an offence under the <sup>M6</sup>Registered Homes Act 1984 or regulations made under it;
  - (c) an offence under the 1989 Act or regulations made under it;
  - [<sup>F24</sup>(d) an offence under regulations under section 1(3) of the Adoption (Intercountry Aspects) Act 1999,
  - (e) an offence under the Adoption and Children Act 2002 or regulations made under it]
- (3) In this section “relevant requirements” means—
  - (a) any requirements or conditions imposed by or under this Part; and
  - (b) the requirements of any other enactment which appear to the registration authority to be relevant.

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### Textual Amendments

**F24** S. 14(2)(d)(e) substituted (30.12.2005) for s. 14(2)(d) by [Adoption and Children Act 2002 \(c. 38\)](#), ss. 139, 148, [Sch. 3 para. 107](#) (with [Sch. 4 paras. 6-8](#)); S.I. 2005/2213, art. 2

### Modifications etc. (not altering text)

**C12** S. 14(1)(d) applied (with modifications) (E.) (2.8.2004) by [The Care Standards Act 2000 \(Extension of the Application of Part 2 to Adult Placement Schemes\) \(England\) Regulations 2004 \(S.I. 2004/1972\)](#), [regs. 2\(2\)\(a\)](#), 3

### Commencement Information

**I11** S. 14 partly in force; s. 14 not in force at Royal Assent see s. 122; s. 14 in force for W. for certain purposes at 1.7.2001 by [S.I. 2001/2190](#), [art. 2](#), [Sch. Table](#); s. 14 in force for E. for certain purposes at 20.11.2001 by [S.I. 2001/3852](#), [arts. 1\(4\)](#), [3\(2\)\(3\)\(a\)\(i\)](#) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by [S.I. 2001/4150](#), 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 14 in force for E. in so far as not already in force at 1.4.2002 by [S.I. 2001/3852](#), [arts. 1\(4\)](#), [3\(2\)\(7\)\(a\)](#) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by [S.I. 2001/4150](#), 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 14 in force for W. for certain purposes at 1.4.2002 by [S.I. 2002/920](#), [arts. 1\(4\)](#), [3\(3\)](#) (subject to [art. 3\(4\)\(5\)](#) and to transitional provisions in [Schs. 1-3](#)); s. 14 in force for W. for certain purposes at 30.1.2003 by [S.I. 2003/152](#), [art. 2](#); s. 14 in force for W. for certain purposes at 2.10.2003 by [S.I. 2003/2528](#), [art. 2](#); s. 14 in force for W. for certain purposes at 1.4.2004 by [S.I. 2004/1015](#), [art. 2](#); s. 14 in force for W. for certain purposes at 7.4.2004 by [S.I. 2004/1730](#), [art. 2](#)

### Marginal Citations

**M6** 1984 c. 23.

VALID FROM 01/04/2009

## [<sup>F25</sup>14A Suspension of registration

- (1) The Welsh Ministers may at any time suspend for a specified period the registration of a person in respect of an establishment or agency for which the Welsh Ministers are the registration authority.
- (2) Except where the Welsh Ministers give notice under section 20B, the power conferred by subsection (1) is exercisable only on the ground that the establishment or agency is being, or has at any time been, carried on otherwise than in accordance with the relevant requirements.
- (3) The suspension of a person's registration does not affect the continuation of the registration (but see sections 24A and 26 as to offences).
- (4) A period of suspension may be extended under subsection (1) on one or more occasions.
- (5) Reference in this Part to the suspension of a person's registration is to suspension under this section, and related expressions are to be read accordingly.
- (6) In this section “relevant requirements” has the same meaning as in section 14.]

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### Textual Amendments

**F25** S. 14A inserted (1.4.2009 for certain purposes and 1.10.2010 otherwise) by [Health and Social Care Act 2008 \(c. 14\)](#), ss. 95, 170(1)(b), [Sch. 5 para. 13](#); S.I. 2009/462, [art. 2](#), Sch. 1 para. 35; S.I. 2010/807, [art. 2\(2\)](#), Sch. 1 Pt. 2 (with arts. 3-22)

## 15 Applications by registered persons.

- (1) A person registered under this Part may apply to the registration authority—
  - (a) for the variation or removal of any condition for the time being in force in relation to the registration; or
  - (b) for the cancellation of the registration.
- (2) But a person may not make an application under subsection (1)(b)—
  - (a) if the registration authority has given him notice under section 17(4)(a) of a proposal to cancel the registration, unless the registration authority has decided not to take that step; or
  - (b) if the registration authority has given him notice under section 19(3) of its decision to cancel the registration and the time within which an appeal may be brought has not expired or, if an appeal has been brought, it has not been determined.
- (3) An application under subsection (1) shall be made in such manner and state such particulars as may be prescribed and, if made under paragraph (a) of that subsection, shall be accompanied by [<sup>F26</sup>a fee of—
  - (a) the amount determined under section 113A, where the registration authority is the CHAI or the CSCI; or
  - (b) the prescribed amount, where the registration authority is the Assembly.]
- (4) If the registration authority decides to grant an application under subsection (1)(a) it shall serve notice in writing of its decision on the applicant (stating, where applicable, the condition as varied) and issue a new certificate of registration.
- (5) If different amounts are prescribed under [<sup>F27</sup>subsection (3)(b)], the regulations may provide for [<sup>F28</sup>the Assembly] to determine which amount is payable in a particular case.

### Textual Amendments

**F26** Words in s. 15(3) substituted (20.11.2003 for certain purposes and 1.8.2006 otherwise) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\)](#), ss. [105\(4\)](#), 199; S.I. 2006/1680, [art. 2\(2\)](#)

**F27** Words in s. 15(5) substituted (20.11.2003 for certain purposes and 1.8.2006 otherwise) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\)](#), ss. [105\(5\)\(a\)](#), 199; S.I. 2006/1680, [art. 2\(2\)](#)

**F28** Words in s. 15(5) substituted (20.11.2003 for certain purposes and 1.8.2006 otherwise) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\)](#), ss. [105\(5\)\(b\)](#), 199; S.I. 2006/1680, [art. 2\(2\)](#)



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#### Modifications etc. (not altering text)

- C13** S. 15(3) modified (temp.) (E.) (26.6.2006) by [The Health and Social Care \(Community Health and Standards\) Act 2003 Commencement \(No. 9\) Order 2006 \(S.I. 2006/1680\)](#), [art. 4\(2\)](#)
- C14** S. 15(5) modified (temp.) (E.) (26.6.2006) by [The Health and Social Care \(Community Health and Standards\) Act 2003 Commencement \(No. 9\) Order 2006 \(S.I. 2006/1680\)](#), [art. 4\(3\)](#)

#### Commencement Information

- I12** S. 15 partly in force; s. 15 not in force at Royal Assent see s. 122; s. 15 in force for W. for certain purposes at 1.7.2001 by [S.I. 2001/2190](#), [art. 2](#), [Sch. Table](#); s. 15 in force for E. for certain purposes at 20.11.2001 by [S.I. 2001/3852](#), [arts. 1\(4\)](#), [3\(2\)\(3\)\(a\)\(i\)](#) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by [S.I. 2001/4150](#), 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 15 in force for E. in so far as not already in force at 1.4.2002 by [S.I. 2001/3852](#), [arts. 1\(4\)](#), [3\(2\)\(7\)\(a\)](#) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by [S.I. 2001/4150](#), 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 15 in force for W. for certain purposes at 1.4.2002 by [S.I. 2002/920](#), [arts. 1\(4\)](#), [3\(3\)](#) (subject to [art. 3\(4\)\(5\)](#) and to transitional provisions in [Schs. 1-3](#)); s. 15 in force for W. for certain purposes at 30.1.2003 by [S.I. 2003/152](#), [art. 2](#); s. 15 in force for W. for certain purposes at 2.10.2003 by [S.I. 2003/2528](#), [art. 2](#); s. 15 in force for W. for certain purposes at 1.4.2004 by [S.I. 2004/1015](#), [art. 2](#); s. 15 in force for W. for certain purposes at 7.4.2004 by [S.I. 2004/1730](#), [art. 2](#)

## 16 Regulations about registration.

- (1) Regulations may make provision about the registration of persons under this Part in respect of establishments or agencies, and in particular about—
- the making of applications for registration;
  - the contents of certificates of registration.
- (2) Regulations may provide that no application for registration under this Part may be made in respect of a fostering agency<sup>F29</sup> . . . which is an unincorporated body.
- [<sup>F30</sup>(3) Persons registered under this Part must also pay to the registration authority, at such time as may be prescribed, an annual fee—
- of such amount as may be determined under section 113A, where the registration authority is the CHAI or the CSCI; and
  - of such amount as may be prescribed, where the registration authority is the Assembly.]
- (4) A fee payable by virtue of this section may, without prejudice to any other method of recovery, be recovered summarily as a civil debt.

#### Textual Amendments

- F29** Words in s. 16(2) repealed (30.12.2005) by [Adoption and Children Act 2002 \(c. 38\)](#), [ss. 139](#), [148](#), [Sch. 3 para. 108](#), [Sch. 5](#) (with [Sch. 4 paras. 6-8](#)); [S.I. 2005/2213](#), [art. 2](#); [S.I. 2005/2897](#), [art. 2](#)
- F30** S. 16(3) substituted (20.11.2003 for certain purposes and 1.8.2006 otherwise) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\)](#), [ss. 105\(6\)](#), [199](#); [S.I. 2006/1860](#), [art. 2\(2\)](#)

#### Modifications etc. (not altering text)

- C15** S. 16(1)(3) applied (with modifications) (E.) (2.8.2004) by [The Care Standards Act 2000 \(Extension of the Application of Part 2 to Adult Placement Schemes\) \(England\) Regulations 2004 \(S.I. 2004/1972\)](#), [regs. 2\(2\)\(b\)](#), [3](#)

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**C16** S. 16(3) modified (temp.) (E.) (26.6.2006) by [The Health and Social Care \(Community Health and Standards\) Act 2003 Commencement \(No. 9\) Order 2006 \(S.I. 2006/1680\)](#), [art. 4\(2\)](#)

#### Commencement Information

**I13** S. 16 wholly in force at 1.4.2002; s. 16 not in force at Royal Assent see s. 122; s. 16 in force for W. at 1.7.2001 by [S.I. 2001/2190](#), [art. 2](#), [Sch. Table](#); s. 16 in force for E. for certain purposes at 20.11.2001 by [S.I. 2001/3852](#), [arts. 1\(4\)](#), [3\(2\)\(3\)\(a\)\(i\)](#) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by [S.I. 2001/4150](#), [2002/1493](#), [2002/1790](#), [2002/2001](#), [2002/3210](#)); s. 16 in force for E. in so far as not already in force at 1.4.2002 by [S.I. 2001/3852](#), [arts. 1\(4\)](#), [3\(2\)\(7\)\(a\)](#) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by [S.I. 2001/4150](#), [2002/1493](#), [2002/1790](#), [2002/2001](#), [2002/3210](#))

### *Registration procedure*

## 17 Notice of proposals.

- (1) Subsections (2) and (3) apply where a person applies for registration in respect of an establishment or agency.
- (2) If the registration authority proposes to grant the application subject to any conditions which have not been agreed in writing between it and the applicant, it shall give the applicant written notice of its proposal and of the conditions subject to which it proposes to grant his application.
- (3) The registration authority shall give the applicant notice of a proposal to refuse the application.
- (4) Except where it makes an application under section 20, the registration authority shall give any person registered in respect of an establishment or agency notice of a proposal—
  - (a) to cancel the registration (otherwise than in accordance with an application under section 15(1)(b));
  - (b) to vary or remove (otherwise than in accordance with an application under section 15(1)(a)) any condition for the time being in force in relation to the registration; or
  - (c) to impose any additional condition in relation to the registration.
- (5) The registration authority shall give the applicant notice of a proposal to refuse an application under section 15(1)(a).
- (6) A notice under this section shall give the registration authority's reasons for its proposal.

#### Commencement Information

**I14** S. 17 partly in force; s. 17 not in force at Royal Assent see s. 122; s. 17 in force for E. at 1.4.2002 by [S.I. 2001/3852](#), [arts. 1\(4\)](#), [3\(2\)\(7\)\(f\)](#) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by [S.I. 2001/4150](#), [2002/1493](#), [2002/1790](#), [2002/2001](#), [2002/3210](#)); s. 17 in force for W. for certain purposes at 1.4.2002 by [S.I. 2002/920](#), [arts. 1\(4\)](#), [3\(3\)](#) (subject to [art. 3\(4\)\(5\)](#) and to transitional provisions in [Schs. 1-3](#)); s. 17 in force for W. for certain purposes at 30.1.2003 by [S.I. 2003/152](#), [art. 2](#); s. 17 in force for W. for certain purposes at 2.10.2003 by [S.I.](#)

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2003/2528, [art. 2](#); s. 17 in force for W. for certain purposes at 1.4.2004 by [S.I. 2004/1015, art. 2](#); s. 17 in force for W. for certain purposes at 7.4.2004 by [S.I. 2004/1730, art. 2](#)

## 18 Right to make representations.

- (1) A notice under section 17 shall state that within 28 days of service of the notice any person on whom it is served may make written representations to the registration authority concerning any matter which that person wishes to dispute.
- (2) Where a notice has been served under section 17, the registration authority shall not determine any matter to which the notice relates until either—
  - (a) any person on whom the notice was served has made written representations to it concerning the matter;
  - (b) any such person has notified the registration authority in writing that he does not intend to make representations; or
  - (c) the period during which any such person could have made representations has elapsed.

### Modifications etc. (not altering text)

**C17** S. 18(2) modified (W.) (2.10.2003) by [The Nurses Agencies \(Wales\) Regulations 2003 \(S.I. 2003/2527\)](#), [reg. 30, Sch. 5 para. 4\(2\)\(b\)](#)

### Commencement Information

**I15** S. 18 partly in force; s. 18 not in force at Royal Assent see s. 122; s. 18 in force for E. at 1.4.2002 by [S.I. 2001/3852, arts. 1\(4\), 3\(2\)\(7\)\(f\)](#) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by [S.I. 2001/4150](#), [2002/1493](#), [2002/1790](#), [2002/2001](#), [2002/3210](#)); s. 18 in force for W. for certain purposes at 1.4.2002 by [S.I. 2002/920, arts. 1\(4\), 3\(3\)](#) (subject to [art. 3\(4\)\(5\)](#) and to transitional provisions in [Schs. 1-3](#)); s. 18 in force for W. for certain purposes at 30.1.2003 by [S.I. 2003/152, art. 2](#); s. 18 in force for W. for certain purposes at 2.10.2003 by [S.I. 2003/2528, art. 2](#); s. 18 in force for W. for certain purposes at 1.4.2004 by [S.I. 2004/1015, art. 2](#); s. 18 in force for W. for certain purposes at 7.4.2004 by [S.I. 2004/1730, art. 2](#)

## 19 Notice of decisions.

- (1) If the registration authority decides to grant an application for registration in respect of an establishment or agency unconditionally, or subject only to conditions which have been agreed in writing between it and the applicant, it shall give the applicant written notice of its decision.
- (2) A notice under subsection (1) shall state the agreed conditions.
- (3) If the registration authority decides to adopt a proposal under section 17, it shall serve notice in writing of its decision on any person on whom it was required to serve notice of the proposal.
- (4) A notice under subsection (3) shall—
  - (a) explain the right of appeal conferred by section 21;
  - (b) in the case of a decision to adopt a proposal under section 17(2), state the conditions subject to which the application is granted; and

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- (c) in the case of a decision to adopt a proposal under section 17(4)(b) or (c), state the condition as varied, the condition which is removed or (as the case may be) the additional condition imposed.
- (5) Subject to subsection (6), a decision of the registration authority to adopt a proposal under section 17(2) or (4) shall not take effect—
- (a) if no appeal is brought, until the expiration of the period of 28 days referred to in section 21(2); and
  - (b) if an appeal is brought, until it is determined or abandoned.
- (6) Where, in the case of a decision to adopt a proposal under section 17(2), the applicant notifies the registration authority in writing before the expiration of the period mentioned in subsection (5)(a) that he does not intend to appeal, the decision shall take effect when the notice is served.

#### Commencement Information

**I16** S. 19 partly in force; s. 19 not in force at Royal Assent see s. 122; s. 19 in force for E. at 1.4.2002 by [S.I. 2001/3852, arts. 1\(4\), 3\(2\)\(7\)\(f\)](#) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by [S.I. 2001/4150](#), [2002/1493](#), [2002/1790](#), [2002/2001](#), [2002/3210](#)); s. 19 in force for W. for certain purposes at 1.4.2002 by [S.I. 2002/920, arts. 1\(4\), 3\(3\)](#) (subject to [art. 3\(4\)\(5\)](#) and to transitional provisions in [Schs. 1-3](#)); s. 19 in force for W. for certain purposes at 30.1.2003 by [S.I. 2003/152, art. 2](#); s. 19 in force for W. for certain purposes at 2.10.2003 by [S.I. 2003/2528, art. 2](#); s. 19 in force for W. for certain purposes at 1.4.2004 by [S.I. 2004/1015, art. 2](#); s. 19 in force for W. for certain purposes at 7.4.2004 by [S.I. 2004/1730, art. 2](#)

## 20 Urgent procedure for cancellation etc.

- (1) If—
- (a) the registration authority applies to a justice of the peace for an order—
    - (i) cancelling the registration of a person in respect of an establishment or agency;
    - (ii) varying or removing any condition for the time being in force by virtue of this Part; or
    - (iii) imposing an additional condition; and
  - (b) it appears to the justice that, unless the order is made, there will be a serious risk to a person's life, health or well-being,
- the justice may make the order, and the cancellation, variation, removal or imposition shall have effect from the time when the order is made.
- (2) An application under subsection (1) may, if the justice thinks fit, be made without notice.
- (3) As soon as practicable after the making of an application under this section, the registration authority shall notify the appropriate authorities of the making of the application.
- (4) An order under subsection (1) shall be in writing.
- (5) Where such an order is made, the registration authority shall, as soon as practicable after the making of the order, serve on the person registered in respect of the establishment or agency—

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- (a) a copy of the order; and
  - (b) notice of the right of appeal conferred by section 21.
- (6) For the purposes of this section the appropriate authorities are—
- (a) the local authority in whose area the establishment or agency is situated;
  - (b) the [<sup>F31</sup>Primary Care Trust or] Health Authority in whose area the establishment or agency is situated; and
  - (c) any statutory authority not falling within paragraph (a) or (b) whom the registration authority thinks it appropriate to notify.
- (7) In this section “statutory authority” means a body established by or under an Act of Parliament.

#### Textual Amendments

**F31** Words in s. 20(6)(b) inserted (1.10.2002) by [National Health Service Reform and Health Care Professions Act 2002 \(c. 17\), s. 2\(5\), Sch. 2 Pt. 2 para. 70](#); S.I. 2002/2478, arts. 2(1), **3(1)(d)** (subject to art. 3(3) and with transitional provisions in art. 4)

#### Modifications etc. (not altering text)

**C18** S. 20(2)(4)(5) applied (W.) (1.4.2003) by [S.I. 2003/237, reg. 52\(5\)](#) (as substituted by [The Fostering Services \(Wales\) \(Amendment\) Regulations 2003 \(S.I. 2003/896\), reg. 2\(2\)](#))

**C19** S. 20(2)(4)(5) applied (W.) (1.9.2003) by [The Residential Family Centres \(Wales\) Regulations 2003 \(S.I. 2003/781\), reg. 34\(5\)](#)

#### Commencement Information

**I17** S. 20 partly in force; s. 20 not in force at Royal Assent see s. 122; s. 20 in force for E. at 1.4.2002 by [S.I. 2001/3852, arts. 1\(4\), 3\(2\)\(7\)\(f\)](#) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by [S.I. 2001/4150](#), 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 20 in force for W. for certain purposes at 1.4.2002 by [S.I. 2002/920, arts. 1\(4\), 3\(3\)](#) (subject to [art. 3\(4\)\(5\)](#) and to transitional provisions in [Schs. 1-3](#)); s. 20 in force for W. for certain purposes at 30.1.2003 by [S.I. 2003/152, art. 2](#); s. 20 in force for W. for certain purposes at 2.10.2003 by [S.I. 2003/2528, art. 2](#); s. 20 in force for W. for certain purposes at 1.4.2004 by [S.I. 2004/1015, art. 2](#); s. 20 in force for W. for certain purposes at 7.4.2004 by [S.I. 2004/1730, art. 2](#)

VALID FROM 01/10/2010

#### [<sup>F32</sup>20A Urgent procedure for cancellation: Wales

- (1) If in respect of an establishment or agency for which the Welsh Ministers are the registration authority—
- (a) the Welsh Ministers apply to a justice of the peace for an order cancelling the registration of a person in respect of the establishment or agency, and
  - (b) it appears to the justice that, unless the order is made, there will be a serious risk to a person's life, health or well-being,
- the justice may make the order, and the cancellation has effect from the time when the order is made.
- (2) An application under subsection (1) may, if the justice thinks fit, be made without notice.

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- (3) As soon as practicable after the making of an application under this section, the Welsh Ministers must notify the appropriate authorities of the making of the application.
- (4) An order under subsection (1) is to be in writing.
- (5) Where such an order is made, the Welsh Ministers must, as soon as practicable after the making of the order, serve on the person registered in respect of the establishment or agency—
  - (a) a copy of the order, and
  - (b) notice of the right of appeal conferred by section 21.
- (6) For the purposes of this section the appropriate authorities are—
  - (a) the local authority in whose area the establishment or agency is situated,
  - (b) the Local Health Board in whose area the establishment or agency is situated, and
  - (c) any statutory authority not falling within paragraph (a) or (b) whom the Welsh Ministers think it appropriate to notify.
- (7) In this section “statutory authority” has the same meaning as in section 20.

#### Textual Amendments

**F32** Ss. 20A, 20B inserted (1.10.2010) by [Health and Social Care Act 2008 \(c. 14\)](#), ss. 95, 170(3), [Sch. 5 para. 19](#); S.I. 2010/807, [art. 2\(2\)](#), Sch. 1 Pt. 2 (with arts. 3-22)

VALID FROM 01/10/2010

#### **20B Urgent procedure for suspension or variation etc: Wales**

- (1) Subsection (2) applies where—
  - (a) a person is registered under this Part in respect of an establishment or agency for which the Welsh Ministers are the registration authority, and
  - (b) the Welsh Ministers have reasonable cause to believe that unless they act under this section any person will or may be exposed to the risk of harm.
- (2) Where this subsection applies, the Welsh Ministers may, by giving notice in writing under this section to the person registered in respect of the establishment or agency, provide for any decision of the Welsh Ministers that is mentioned in subsection (3) to take effect from the time when the notice is given.
- (3) Those decisions are—
  - (a) a decision under section 13(5) to vary or remove a condition for the time being in force in relation to the registration or to impose an additional condition;
  - (b) a decision under section 14A to suspend the registration or extend the period of suspension.
- (4) The notice must—
  - (a) state that it is given under this section,

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- (b) state the Welsh Ministers' reasons for believing that the circumstances fall within subsection (1)(b),
- (c) specify the condition as varied, removed or imposed or the period (or extended period) of suspension, and
- (d) explain the right of appeal conferred by section 21.]

#### Textual Amendments

**F32** Ss. 20A, 20B inserted (1.10.2010) by [Health and Social Care Act 2008 \(c. 14\)](#), ss. 95, 170(3), [Sch. 5 para. 19](#); [S.I. 2010/807](#), [art. 2\(2\)](#), [Sch. 1 Pt. 2](#) (with arts. 3-22)

## 21 Appeals to the Tribunal.

- (1) An appeal against—
  - (a) a decision of the registration authority under this Part; or
  - (b) an order made by a justice of the peace under section 20, shall lie to the Tribunal.
- (2) No appeal against a decision or order may be brought by a person more than 28 days after service on him of notice of the decision or order.
- (3) On an appeal against a decision of the registration authority the Tribunal may confirm the decision or direct that it shall not have effect.
- (4) On an appeal against an order made by a justice of the peace the Tribunal may confirm the order or direct that it shall cease to have effect.
- (5) The Tribunal shall also have power on an appeal against a decision or order—
  - (a) to vary any condition for the time being in force in respect of the establishment or agency to which the appeal relates;
  - (b) to direct that any such condition shall cease to have effect; or
  - (c) to direct that any such condition as it thinks fit shall have effect in respect of the establishment or agency.

#### Commencement Information

**I18** S. 21 partly in force; s. 21 not in force at Royal Assent see s. 122; s. 21 in force for E. for certain purposes at 20.11.2001 by [S.I. 2001/3852](#), arts. 1(4), 3(2)(3)(b) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by [S.I. 2001/4150](#), 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 21 in force for E. at 1.4.2002 by [S.I. 2001/3852](#), arts. 1(4), 3(2)(7)(f) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by [S.I. 2001/4150](#), 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 21 in force for W. for certain purposes at 1.4.2002 by [S.I. 2002/920](#), arts. 1(4), 3(3) (subject to [art. 3\(4\)\(5\)](#) and to transitional provisions in [Schs. 1-3](#)); s. 21 in force for W. for certain purposes at 30.1.2003 by [S.I. 2003/152](#), [art. 2](#); s. 21 in force for W. for certain purposes at 2.10.2003 by [S.I. 2003/2528](#), [art. 2](#); s. 21 in force for W. for certain purposes at 1.4.2004 by [S.I. 2004/1015](#), [art. 2](#); s. 21 in force for W. for certain purposes at 7.4.2004 by [S.I. 2004/1730](#), [art. 2](#)

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## *Regulations and standards*

### **22 Regulation of establishments and agencies.**

- (1) Regulations may impose in relation to establishments and agencies any requirements which the appropriate Minister thinks fit for the purposes of this Part and may in particular make any provision such as is mentioned in subsection (2), (7) or (8).
- (2) Regulations may—
  - (a) make provision as to the persons who are fit to carry on or manage an establishment or agency;
  - (b) make provision as to the persons who are fit to work at an establishment or for the purposes of an agency;
  - (c) make provision as to the fitness of premises to be used as an establishment or for the purposes of an agency;
  - (d) make provision for securing the welfare of persons accommodated in an establishment or provided with services by an establishment, an independent medical agency or a domiciliary care agency;
  - (e) make provision for securing the welfare of children placed, under section 23(2)(a) of the 1989 Act, by a fostering agency;
  - (f) make provision as to the management and control of the operations of an establishment or agency;
  - (g) make provision as to the numbers of persons, or persons of any particular type, working at an establishment or for the purposes of an agency;
  - (h) make provision as to the management and training of such persons;
  - (i) impose requirements as to the financial position of an establishment or agency;
  - (j) make provision requiring the person carrying on an establishment or agency to appoint a manager in prescribed circumstances.
- (3) Regulations under subsection (2)(a) may, in particular, make provision for prohibiting persons from managing an establishment or agency unless they are registered in, or in a particular part of, one of the registers maintained under section 56(1).
- (4) Regulations under subsection (2)(b) may, in particular, make provision for prohibiting persons from working in such positions as may be prescribed at an establishment, or for the purposes of an agency, unless they are registered in, or in a particular part of, one of the registers maintained under section 56(1).
- (5) Regulations under paragraph (d) of subsection (2) may, in particular, make provision—
  - (a) as to the promotion and protection of the health of persons such as are mentioned in that paragraph;
  - (b) as to the control and restraint of adults accommodated in, or provided with services by, an establishment;
  - (c) as to the control, restraint and discipline of children accommodated in, or provided with services by, an establishment.
- (6) Regulations under paragraph (e) of subsection (2) may, in particular, make provision—
  - (a) as to the promotion and protection of the health of children such as are mentioned in that paragraph;
  - (b) as to the control, restraint and discipline of such children.



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- (7) Regulations may make provision as to the conduct of establishments and agencies, and such regulations may in particular—
- (a) make provision as to the facilities and services to be provided in establishments and by agencies;
  - (b) make provision as to the keeping of accounts;
  - (c) make provision as to the keeping of documents and records;
  - (d) make provision as to the notification of events occurring in establishments or in premises used for the purposes of agencies;
  - (e) make provision as to the giving of notice by the person carrying on an establishment or agency of periods during which he or (if he does not manage it himself) the manager proposes to be absent from the establishment or agency, and specify the information to be supplied in such a notice;
  - (f) provide for the making of adequate arrangements for the running of an establishment or agency during a period when the manager is absent from it;
  - (g) make provision as to the giving of notice by a person registered in respect of an establishment or agency of any intended change in the identity of the manager or the person carrying it on;
  - (h) make provision as to the giving of notice by a person registered in respect of an establishment or agency which is carried on by a body corporate of changes in the ownership of the body or the identity of its officers;
  - (i) make provision requiring the payment [<sup>F33</sup>, in respect of any notification required to be made by virtue of paragraph (h), of a fee of—
    - (i) such amount as may be determined under section 113A, where notification is made to the CHAI or the CSCI; or
    - (ii) the prescribed amount, where notification is made to the Assembly]
  - (j) make provision requiring arrangements to be made by the person who carries on, or manages, an establishment or agency for dealing with complaints made by or on behalf of those seeking, or receiving, any of the services provided in the establishment or by the agency and requiring that person to take steps for publicising the arrangements;
  - (k) make provision requiring arrangements to be made by the person who carries on, or manages, an independent hospital, independent clinic or independent medical agency for securing that any medical or psychiatric treatment, or listed services, provided in or for the purposes of the establishment or (as the case may be) for the purposes of the agency are of appropriate quality and meet appropriate standards;
  - (l) make provision requiring arrangements to be made by the person who carries on, or manages, a care home for securing that any nursing provided by the home is of appropriate quality and meets appropriate standards.
- (8) Regulations may make provision—
- (a) <sup>F34</sup> .....
  - (b) imposing other requirements (in addition to those imposed by section 25 of the 1989 Act (use of accommodation for restricting liberty)) as to the placing of a child in accommodation provided for the purpose [<sup>F35</sup>of restricting liberty], including a requirement to obtain the permission of any local authority who are looking after the child;
  - (c) as to the facilities which are to be provided for giving religious instruction to children in children's homes.

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- (9) Before making regulations under this section, except regulations which amend other regulations made under this section and do not, in the opinion of the appropriate Minister, effect any substantial change in the provision made by those regulations, the appropriate Minister shall consult any persons he considers appropriate.
- (10) References in this section to agencies do not include references to voluntary adoption agencies<sup>[F36]</sup> or adoption support agencies.]
- (11) In subsection (7)(k), “listed services” has the same meaning as in section 2.

#### Textual Amendments

- F33** Words in s. 22(7)(i) substituted (20.11.2003 for certain purposes and 1.8.2006 otherwise) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\), ss. 105\(7\), 199; S.I. 2006/1680, art. 2\(2\)](#)
- F34** S. 22(8)(a) repealed (1.4.2006 for W. and otherwise prosp.) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\), ss. 107\(2\)\(a\), 196, 199, Sch. 14 Pt. 2; S.I. 2005/3285, art. 2\(2\)\(c\)](#)
- F35** Words in s. 22(8)(b) substituted (1.4.2006 for W. and otherwise prosp.) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\), ss. 107\(2\)\(b\), 199; S.I. 2005/3285, art. 2](#)
- F36** Words in s. 22(10) inserted (30.12.2005) by [Adoption and Children Act 2002 \(c. 38\), ss. 139, 148, Sch. 3 para. 109 \(with Sch. 4 paras. 6-8\); S.I. 2005/2213, art. 2](#)

#### Modifications etc. (not altering text)

- C20** S. 22 applied (with modifications) (E.) (2.8.2004) by [The Care Standards Act 2000 \(Extension of the Application of Part 2 to Adult Placement Schemes\) \(England\) Regulations 2004 \(S.I. 2004/1972\), regs. 2\(2\)\(c\), 3](#)
- C21** S. 22(7)(i) modified (temp.) (E.) (26.6.2006) by [The Health and Social Care \(Community Health and Standards\) Act 2003 Commencement \(No. 9\) Order 2006 \(S.I. 2006/1680\), art. 4\(2\)](#)

#### Commencement Information

- I19** S. 22 wholly in force at 20.11.2001; s. 22 not in force at Royal Assent see s. 122; s. 22 in force for W. at 1.7.2001 by [S.I. 2001/2190, art. 2, Sch. Table](#); s. 22 in force for E. at 20.11.2001 by [S.I. 2001/3852, arts. 1\(4\), 3\(2\)\(3\)\(c\)](#) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by [S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210](#))

VALID FROM 01/04/2010

#### <sup>[F37]</sup> 22A Power of CIECSS to serve notice where person is failing to comply with regulations

- (1) This section applies if—
- (a) a person (“P”) is registered in respect of a relevant establishment or agency; and
  - (b) the CIECSS is of the opinion that P is failing or has failed to comply with a requirement imposed on P in relation to that establishment or agency.
- (2) The CIECSS may serve a compliance notice on P.
- (3) A compliance notice is a notice which—
- (a) states that the CIECSS is of the opinion mentioned in subsection (1)(b);

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- (b) specifies the requirement with which the CIECSS considers P is failing or has failed to comply;
  - (c) specifies how the CIECSS considers that P is failing or has failed to comply with that requirement;
  - (d) specifies the establishment or agency in relation to which the CIECSS considers P is failing or has failed to comply with that requirement;
  - (e) specifies the steps the CIECSS considers need to be taken by P in relation to that establishment or agency to comply with that requirement or (as the case may be) to prevent a recurrence of the failure to comply with that requirement;
  - (f) specifies a period for the taking of those steps; and
  - (g) explains the effect of subsections (4) and (5).
- (4) Failing to take the steps specified in a compliance notice within the period so specified is an offence.
- (5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (6) In this section—
- (a) a “relevant establishment or agency” means an establishment or agency in relation to which the functions of the registration authority under section 13 are exercisable by the CIECSS;
  - (b) references to a “requirement” are references to a requirement imposed by regulations under—
    - (i) section 22;
    - (ii) section 9 of the Adoption Act 1976; or
    - (iii) section 9 of the Adoption and Children Act 2002.]

#### Textual Amendments

**F37** S. 22A inserted (1.4.2010 for E. and otherwise prosp.) by [Children and Young Persons Act 2008](#) (c. 23), **ss. 26(2), 44**; S.I. 2009/3354, **art. 3(2)**

VALID FROM 01/04/2010

#### **[<sup>F38</sup>22B Notice restricting accommodation at certain establishments**

- (1) The registration authority may serve a notice on a person who is registered in respect of an establishment to which this section applies imposing on that person the requirement in subsection (2) in relation to that establishment.
- (2) The requirement is to ensure that no child is accommodated at the establishment unless the child—
  - (a) was accommodated there when the notice was served; and
  - (b) has continued to be accommodated there since the notice was served.
- (3) A notice under subsection (1) must—
  - (a) explain the requirement imposed by the notice;

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- (b) specify the establishment in relation to which that requirement is imposed;
  - (c) give the registration authority's reasons for serving the notice;
  - (d) explain the right of appeal conferred by section 21.
- (4) A notice under subsection (1) ceases to have effect—
- (a) at such time as may be specified in the notice;
  - (b) if the registration authority serves a notice to that effect on the person on whom the notice under subsection (1) was served;
  - (c) if the Tribunal so directs under section 21(4A) or (4B).
- (5) Subsection (6) applies if—
- (a) the registration authority serves a notice on a person under subsection (1) or (4)(b); and
  - (b) one or more other persons are registered in respect of the establishment to which the notice relates.
- (6) The registration authority must as soon as practicable serve a notice in the same terms under subsection (1) or (as the case may be) (4)(b) on the persons mentioned in subsection (5)(b).
- (7) The reference in subsection (5) to serving a notice on a person does not include a reference to serving a notice on a person in pursuance of subsection (6).
- (8) This section applies to the following establishments—
- (a) a children's home;
  - (b) a residential family centre.]

#### Textual Amendments

**F38** S. 22B inserted (1.4.2010 for E. and 26.4.2010 for W.) by [Children and Young Persons Act 2008](#) (c. 23), [ss. 27, 44](#); [S.I. 2009/3354](#), [art. 3\(2\)](#); [S.I. 2010/1329](#), [art. 2](#)

### 23 National minimum standards.

- (1) The appropriate Minister may prepare and publish statements of national minimum standards applicable to establishments or agencies.
- (2) The appropriate Minister shall keep the standards set out in the statements under review and may publish amended statements whenever he considers it appropriate to do so.
- (3) Before issuing a statement, or an amended statement which in the opinion of the appropriate Minister effects a substantial change in the standards, the appropriate Minister shall consult any persons he considers appropriate.
- (4) The standards shall be taken into account—
  - (a) in the making of any decision by the registration authority under this Part;
  - (b) in any proceedings for the making of an order under section 20;
  - (c) in any proceedings on an appeal against such a decision or order; and
  - (d) in any proceedings for an offence under regulations under this Part <sup>F39</sup>or proceedings against a voluntary adoption agency for an offence under section 9(4) of the Adoption Act 1976 or <sup>F40</sup>against a voluntary adoption

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agency or adoption support agency for an offence under] section 9 of the Adoption and Children Act 2002].

#### Textual Amendments

- F39** Words in s. 23(4)(d) inserted (30.4.2003 for E., 28.11.2003 for W. for certain purposes and 30.12.2005 for W. otherwise) by [Adoption and Children Act 2002 \(c. 38\)](#), ss. 139, 148, [Sch. 3 para. 110](#) (with [Sch. 4 paras. 6-8](#)); [S.I. 2003/366](#), [art. 2\(4\)](#); [S.I. 2003/3079](#), [art. 2\(1\)](#); [S.I. 2005/2213](#), [art. 2](#)
- F40** Words in s. 23(4)(d) inserted (20.11.2003 for certain purposes, 1.4.2004 for E. so far as not already in force, otherwise prosp.) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\)](#), ss. 147, 199, [Sch. 9 para. 21](#); [S.I. 2004/759](#), [art. 4\(2\)](#)

#### Commencement Information

- I20** S. 23 wholly in force at 1.4.2002; s. 23 not in force at Royal Assent see s. 122; s. 23(1)-(3) in force for E. at 2.3.2001 by [S.I. 2001/731](#), [arts. 1\(2\)](#), 2; s. 23 in force for W. at 1.7.2001 by [S.I. 2001/2190](#), [art. 2](#), [Sch. Table](#); s. 23(4) in force for E. for certain purposes at 1.1.2002 by [S.I. 2001/3852](#), [arts. 1\(4\)](#), 3(2)(4)(b)(6) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by [S.I. 2001/4150](#), 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 23 in force for E. in so far as not already in force at 1.4.2002 by [S.I. 2001/3852](#), [arts. 1\(4\)](#), 3(2)(7)(a) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by [S.I. 2001/4150](#), 2002/1493, 2002/1790, 2002/2001, 2002/3210)

### Offences

#### 24 Failure to comply with conditions.

If a person registered in respect of an establishment or agency fails, without reasonable excuse, to comply with any condition for the time being in force by virtue of this Part in respect of the establishment or agency, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### Commencement Information

- I21** S. 24 partly in force; s. 24 not in force at Royal Assent see s. 122; s. 24 in force for E. at 1.4.2002 by [S.I. 2001/3852](#), [arts. 1\(4\)](#), 3(2)(7)(f) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by [S.I. 2001/4150](#), 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 24 in force for W. for certain purposes at 1.4.2002 by [S.I. 2002/920](#), [arts. 1\(4\)](#), 3(3) (subject to [art. 3\(4\)\(5\)](#) and to transitional provisions in [Schs. 1-3](#)); s. 24 in force for W. for certain purposes at 30.1.2003 by [S.I. 2003/152](#), [art. 2](#); s. 24 in force for W. for certain purposes at 2.10.2003 by [S.I. 2003/2528](#), [art. 2](#); s. 24 in force for W. for certain purposes at 1.4.2004 by [S.I. 2004/1015](#), [art. 2](#); s. 24 in force for W. for certain purposes at 7.4.2004 by [S.I. 2004/1730](#), [art. 2](#)

VALID FROM 01/04/2009

#### <sup>F41</sup>24A Offences relating to suspension

- (1) If a person who is registered under this Part in respect of an establishment or agency carries on or (as the case may be) manages the establishment or agency while the person's registration is suspended, the person is guilty of an offence.

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(2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.]

#### Textual Amendments

**F41** S. 24A inserted (1.4.2009) by [Health and Social Care Act 2008 \(c. 14\)](#), ss. 95, 170(3), [Sch. 5 para. 22](#); [S.I. 2009/462](#), [art. 2](#), [Sch. 1 para. 35](#)

## 25 Contravention of regulations.

- (1) Regulations under this Part may provide that a contravention of or failure to comply with any specified provision of the regulations shall be an offence.
- (2) A person guilty of an offence under the regulations shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

#### Modifications etc. (not altering text)

**C22** S. 25(1) applied (with modifications) (E.) (2.8.2004) by [The Care Standards Act 2000 \(Extension of the Application of Part 2 to Adult Placement Schemes\) \(England\) Regulations 2004 \(S.I. 2004/1972\)](#), [regs. 2\(2\)\(d\)](#), 3

#### Commencement Information

**I22** S. 25 wholly in force at 1.4.2002; s. 25 not in force at Royal Assent see s. 122; s. 25 in force for W. at 1.7.2001 by [S.I. 2001/2190](#), [art. 2](#), [Sch.](#) Table; s. 25 in force for E. for certain purposes at 20.11.2001 by [S.I. 2001/3852](#), [arts. 1\(4\)](#), 3(2)(3)(a)(i) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by [S.I. 2001/4150](#), 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 25 in force for E. in so far as not already in force at 1.4.2002 by [S.I. 2001/3852](#), [arts. 1\(4\)](#), 3(2)(7)(a) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by [S.I. 2001/4150](#), 2002/1493, 2002/1790, 2002/2001, 2002/3210)

## 26 False descriptions of establishments and agencies.

- (1) A person who, with intent to deceive any person—
  - (a) applies any name to premises in England or Wales; or
  - (b) in any way describes such premises or holds such premises out,
 

so as to indicate, or reasonably be understood to indicate, that the premises are an establishment, or an agency, of a particular description shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale unless registration has been effected under this Part in respect of the premises as an establishment or agency of that description.
- (2) References to premises in subsection (1) shall be taken to include references to an undertaking or organisation.
- (3) No person shall, with intent to deceive any person, in any way describe or hold out an establishment or agency as able to provide any service or do any thing the provision or doing of which would contravene a condition for the time being in force by virtue of this Part in respect of the establishment or agency.

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- (4) A person who contravenes subsection (3) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### Commencement Information

**I23** S. 26 partly in force; s. 26 not in force at Royal Assent see s. 122; s. 26 in force for E. at 1.4.2002 by S.I. 2001/3852, arts. 1(4), 3(2)(7)(f) (subject to transitional provisions in Sch. 1 and with transitional provisions in Sch. 2) (as amended by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 26 in force for W. for certain purposes at 1.4.2002 by S.I. 2002/920, arts. 1(4), 3(3) (subject to art. 3(4)(5) and to transitional provisions in Schs. 1-3); s. 26 in force for W. for certain purposes at 30.1.2003 by S.I. 2003/152, art. 2; s. 26 in force for W. for certain purposes at 2.10.2003 by S.I. 2003/2528, art. 2; s. 26 in force for W. for certain purposes at 1.4.2004 by S.I. 2004/1015, art. 2; s. 26 in force for W. for certain purposes at 7.4.2004 by S.I. 2004/1730, art. 2

## 27 False statements in applications.

- (1) Any person who, in an application for registration under this Part or for the variation of any condition in force in relation to his registration, knowingly makes a statement which is false or misleading in a material respect shall be guilty of an offence.
- (2) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

#### Commencement Information

**I24** S. 27 partly in force; s. 27 not in force at Royal Assent see s. 122; s. 27 in force for E. for certain purposes at 1.1.2002 by S.I. 2001/3852, arts. 1(4), 3(2)(4)(b)(6) (subject to transitional provisions in Sch. 1 and with transitional provisions in Sch. 2) (as amended by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 27 in force for E. in so far as not already in force at 1.4.2002 by S.I. 2001/3852, arts. 1(4), 3(2)(7)(a) (subject to transitional provisions in Sch. 1 and with transitional provisions in Sch. 2) (as amended by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 27 in force for W. for certain purposes at 1.4.2002 by S.I. 2002/920, arts. 1(4), 3(3) (subject to art. 3(4)(5) and to transitional provisions in Schs. 1-3); s. 27 in force for W. for certain purposes at 30.1.2003 by S.I. 2003/152, art. 2; s. 27 in force for W. for certain purposes at 2.10.2003 by S.I. 2003/2528, art. 2; s. 27 in force for W. for certain purposes at 1.4.2004 by S.I. 2004/1015, art. 2; s. 27 in force for W. for certain purposes at 7.4.2004 by S.I. 2004/1730, art. 2

## 28 Failure to display certificate of registration.

- (1) A certificate of registration issued under this Part in respect of any establishment or agency shall be kept affixed in a conspicuous place in the establishment or at the agency.
- (2) If default is made in complying with subsection (1), any person registered in respect of the establishment or agency shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

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#### Modifications etc. (not altering text)

- C23** S. 28(1) modified (W.) (1.1.2009) by [The Private Dentistry \(Wales\) Regulations 2008 \(S.I. 2008/1976\)](#), [reg. 4](#)

#### Commencement Information

- I25** S. 28 partly in force; s. 28 not in force at Royal Assent see s. 122; s. 28 in force for E. at 1.4.2002 by [S.I. 2001/3852](#), [arts. 1\(4\)](#), [3\(2\)\(7\)\(f\)](#) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by [S.I. 2001/4150](#), 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 28 in force for W. for certain purposes at 1.4.2002 by [S.I. 2002/920](#), [arts. 1\(4\)](#), [3\(3\)](#) (subject to [art. 3\(4\)\(5\)](#) and to transitional provisions in [Schs. 1-3](#)); s. 28 in force for W. for certain purposes at 30.1.2003 by [S.I. 2003/152](#), [art. 2](#); s. 28 in force for W. for certain purposes at 2.10.2003 by [S.I. 2003/2528](#), [art. 2](#); s. 28 in force for W. for certain purposes at 1.4.2004 by [S.I. 2004/1015](#), [art. 2](#); s. 28 in force for W. for certain purposes at 7.4.2004 by [S.I. 2004/1730](#), [art. 2](#)

## 29 Proceedings for offences.

- (1) Proceedings in respect of an offence under this Part or regulations made under it shall not, without the written consent of the Attorney General, be taken by any person other than—
- (a) <sup>F42</sup>the CHAI or the CSCI (as appropriate)] or, in relation to any functions of <sup>F43</sup>either the CHAI or the CSCI] which the Secretary of State is by virtue of section 113 for the time being discharging, the Secretary of State; or
  - (b) the Assembly.
- (2) Proceedings for an offence under this Part or regulations made under it may be brought within a period of six months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to his knowledge; but no such proceedings shall be brought by virtue of this subsection more than three years after the commission of the offence.

#### Textual Amendments

- F42** Words in [s. 29\(1\)](#) substituted (20.11.2003 for certain purposes and 1.4.2004 otherwise) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\)](#), ss. 147, 199, [Sch. 9 para. 22\(a\)](#); [S.I. 2004/759](#), [art. 5\(2\)](#)
- F43** Words in [s. 29\(1\)](#) substituted (20.11.2003 for certain purposes and 1.4.2004 otherwise) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\)](#), ss. 147, 199, [Sch. 9 para. 22\(b\)](#); [S.I. 2004/759](#), [art. 5\(2\)](#)

#### Commencement Information

- I26** S. 29 partly in force; s. 29 not in force at Royal Assent see s. 122; s. 29 in force for E. at 1.4.2002 by [S.I. 2001/3852](#), [arts. 1\(4\)](#), [3\(2\)\(7\)\(f\)](#) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by [S.I. 2001/4150](#), 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 29 in force for W. for certain purposes at 1.4.2002 by [S.I. 2002/920](#), [arts. 1\(4\)](#), [3\(3\)](#) (subject to [art. 3\(4\)\(5\)](#) and to transitional provisions in [Schs. 1-3](#)); s. 29 in force for W. for certain purposes at 30.1.2003 by [S.I. 2003/152](#), [art. 2](#); s. 29 in force for W. for certain purposes at 2.10.2003 by [S.I. 2003/2528](#), [art. 2](#); s. 29 in force for W. for certain purposes at 1.4.2004 by [S.I. 2004/1015](#), [art. 2](#); s. 29 in force for W. for certain purposes at 7.4.2004 by [S.I. 2004/1730](#), [art. 2](#)



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### 30 Offences by bodies corporate.

- (1) This section applies where any offence under this Part or regulations made under it is committed by a body corporate.
- (2) If the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
  - (a) any director, manager, or secretary of the body corporate; or
  - (b) any person who was purporting to act in any such capacity,he (as well as the body corporate) shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
- (3) The reference in subsection (2) to a director, manager or secretary of a body corporate includes a reference—
  - (a) to any other similar officer of the body; and
  - (b) where the body is a local authority, to any officer or member of the authority.

#### Commencement Information

**I27** S. 30 partly in force; s. 30 not in force at Royal Assent see s. 122; s. 30 in force for E. at 1.4.2002 by S.I. 2001/3852, arts. 1(4), 3(2)(7)(f) (subject to transitional provisions in Sch. 1 and with transitional provisions in Sch. 2) (as amended by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 30 in force for W. for certain purposes at 1.4.2002 by S.I. 2002/920, arts. 1(4), 3(3) (subject to art. 3(4)(5) and to transitional provisions in Schs. 1-3); s. 30 in force for W. for certain purposes at 30.1.2003 by S.I. 2003/152, art. 2; s. 30 in force for W. for certain purposes at 2.10.2003 by S.I. 2003/2528, art. 2; s. 30 in force for W. for certain purposes at 1.4.2004 by S.I. 2004/1015, art. 2; s. 30 in force for W. for certain purposes at 7.4.2004 by S.I. 2004/1730, art. 2

VALID FROM 21/07/2008

#### <sup>F44</sup>Penalty notices

#### Textual Amendments

**F44** Ss. 30ZA, 30ZB and preceding cross-heading inserted (21.7.2008 for certain purposes and 1.4.2009 otherwise) by Health and Social Care Act 2008 (c. 14), ss. 95, 170(1)(b)(3), Sch. 5 para. 25; S.I. 2009/462, art. 2, Sch. 1 para. 35

### 30ZA Penalty notices

- (1) Where the Welsh Ministers are satisfied that a person has committed a fixed penalty offence, they may give the person a penalty notice in respect of the offence.
- (2) A fixed penalty offence is any relevant offence which—
  - (a) relates to an establishment or agency for which the Welsh Ministers are the registration authority, and
  - (b) is prescribed for the purposes of this section.
- (3) A relevant offence is—
  - (a) an offence under this Part or under regulations made under this Part, or

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- (b) an offence under regulations made under section 9 of the Adoption and Children Act 2002.
- (4) A penalty notice is a notice offering the person the opportunity of discharging any liability to conviction for the offence to which the notice relates by payment of a penalty in accordance with the notice.
- (5) Where a person is given a penalty notice, proceedings for the offence to which the notice relates may not be instituted before the end of such period as may be prescribed.
- (6) Where a person is given a penalty notice, the person cannot be convicted of the offence to which the notice relates if the person pays the penalty in accordance with the notice.
- (7) Penalties under this section are payable to the Welsh Ministers.
- (8) In this section “prescribed” means prescribed by regulations made by the Welsh Ministers.

### **30ZB Penalty notices: supplementary provision**

- (1) The Welsh Ministers may by regulations make—
  - (a) provision as to the form and content of penalty notices,
  - (b) provision as to the monetary amount of the penalty and the time by which it is to be paid,
  - (c) provision determining the methods by which penalties may be paid,
  - (d) provision as to the records to be kept in relation to penalty notices,
  - (e) provision for or in connection with the withdrawal, in prescribed circumstances, of a penalty notice, including—
    - (i) repayment of any amount paid by way of penalty under a penalty notice which is withdrawn, and
    - (ii) prohibition of the institution or continuation of proceedings for the offence to which the withdrawn notice relates,
  - (f) provision for a certificate—
    - (i) purporting to be signed by or on behalf of a prescribed person, and
    - (ii) stating that payment of any amount paid by way of penalty was or, as the case may be, was not received on or before a date specified in the certificate,
 to be received in evidence of the matters so stated,
  - (g) provision as to action to be taken if a penalty is not paid in accordance with a penalty notice, and
  - (h) such other provision in relation to penalties or penalty notices as the Welsh Ministers think necessary or expedient.
- (2) Regulations under subsection (1)(b)—
  - (a) may make provision for penalties of different amounts to be payable in different cases, including provision for the penalty payable under a penalty notice to differ according to the time by which it is paid, but
  - (b) must secure that the amount of any penalty payable in respect of any offence does not exceed one half of the maximum amount of the fine to which a person committing the offence would be liable on summary conviction.

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(3) In this section—

“penalty” means a penalty under a penalty notice;

“penalty notice” has the meaning given by section 30ZA(4).]

*Miscellaneous and supplemental*

**[<sup>F45</sup>30A Notification of matters relating to persons carrying on or managing certain establishments or agencies**

(1) This section applies where a person (“P”) is carrying on or managing an establishment or agency mentioned in subsection (6).

(2) If the registration authority—

- (a) has decided to adopt a proposal under section 17(4)(a) to cancel the registration of P in respect of the establishment or agency,
- (b) has brought proceedings against P for a relevant offence which it alleges P committed in relation to the establishment or agency, or
- (c) has served a notice on P under section 22B,

it must as soon as practicable notify each local authority in England and Wales of that fact.

(3) If the registration authority becomes aware of any prescribed circumstances which relate to P it must as soon as practicable notify each local authority in England and Wales of those circumstances.

(4) A notification under this section must contain such information as may be prescribed.

(5) A notification under this section may be transmitted to a local authority electronically if—

- (a) the local authority has agreed that notifications may be given to them by being transmitted to an electronic address and in an electronic form specified in the agreement; and
- (b) the notification is a notification to which that agreement applies.

(6) The establishments and agencies are—

- (a) a children's home;
- (b) a residential family centre;
- (c) a fostering agency;
- (d) a voluntary adoption agency;
- (e) an adoption support agency;
- (f) a provider of social work services.

(7) In this section—

“electronic address” includes any number or address used for the purposes of receiving electronic communications;

“electronic communication” means an electronic communication within the meaning of the Electronic Communications Act 2000 the processing of which on receipt is intended to produce writing;

“electronically” means in the form of an electronic communication;

“relevant offence” means an offence under—

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- (a) this Part;
  - (b) regulations under this Part;
  - (c) section 9(4) of the Adoption Act 1976;
  - (d) regulations under section 9 of the Adoption and Children Act 2002;
- “prescribed” means prescribed by regulations made—
- (a) in relation to England, by the Secretary of State;
  - (b) in relation to Wales, by the Welsh Ministers.]

#### Textual Amendments

**F45** S. 30A inserted (1.9.2009 for E. for certain purposes, 26.4.2010 for W. for certain purposes, 28.3.2011 for W. otherwise, and 1.4.2011 for E. otherwise) by [Children and Young Persons Act 2008 \(c. 23\)](#), **ss. 29, 44**; [S.I. 2009/2273](#), **art. 2(2)**; [S.I. 2010/1329](#), **art. 2**; [S.I. 2010/2981](#), **art. 4**; [S.I. 2011/949](#), **art. 3**

### 31 Inspections by persons authorised by registration authority.

- (1) The registration authority may at any time require a person who carries on or manages an establishment or agency to provide it with any information relating to the establishment or agency which the registration authority considers it necessary or expedient to have for the purposes of its functions under this Part.

[<sup>F46</sup>(1A) The power under subsection (1) to require the provision of information includes—

- (a) power to require the provision of copies of any documents or records (including medical and other personal records); and
- (b) in relation to records kept by means of a computer, power to require the provision of the records in legible form.]

- (2) A person authorised by the registration authority may at any time enter and inspect premises which are used, or which he has reasonable cause to believe to be used, as an establishment or for the purposes of an agency.

- (3) A person authorised by virtue of this section to enter and inspect premises may—
- (a) make any examination into the state and management of the premises and treatment of patients or persons accommodated or cared for there which he thinks appropriate;
  - (b) inspect and take copies of any documents or records [<sup>F47</sup>(including medical and other personal records)] required to be kept in accordance with regulations under this Part, [<sup>F48</sup>section 9 of the Adoption and Children Act 2002], section 23(2)(a) or 59(2) of the 1989 Act or section 1(3) of the <sup>M7</sup>Adoption (Intercountry Aspects) Act 1999;
  - (c) interview in private the manager or the person carrying on the establishment or agency;
  - (d) interview in private any person [<sup>F49</sup>working] there;
  - (e) interview in private any patient or person accommodated or cared for there who consents to be interviewed.

- (4) The powers under subsection (3)(b) include—
- (a) power to require the manager or the person carrying on the establishment or agency to produce any documents or records, wherever kept, for inspection on the premises; and

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- (b) in relation to records which are kept by means of a computer, power to require the records to be produced in a form in which they are legible and can be taken away.
- (5) Subsection (6) applies where the premises in question are used as an establishment and the person so authorised—
- (a) is a medical practitioner or registered nurse; and
- (b) has reasonable cause to believe that a patient or person accommodated or cared for there is not receiving proper care.
- (6) The person so authorised may, with the consent of the person mentioned in subsection (5)(b), examine him in private <sup>F50</sup> . . . .
- The <sup>F51</sup>power] conferred by this subsection may be exercised in relation to a person who is incapable of giving consent without that person's consent.
- (7) The Secretary of State may by regulations require <sup>F52</sup>the CHAI or the CSCII to arrange for premises which are used as an establishment or for the purposes of an agency to be inspected on such occasions or at such intervals as may be prescribed.
- (8) A person who proposes to exercise any power of entry or inspection conferred by this section shall if so required produce some duly authenticated document showing his authority to exercise the power.
- (9) Any person who—
- (a) intentionally obstructs the exercise of any power conferred by this section or section 32; or
- (b) fails without a reasonable excuse to comply with any requirement under this section or that section,
- shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

#### Textual Amendments

- F46** S. 31(1A) inserted (1.4.2004) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\), ss. 108\(2\)](#), 199; S.I. 2004/759, [art. 5\(2\)](#); S.I. 2004/873, [art. 2](#)
- F47** Words in s. 31(3)(b) substituted (1.4.2004) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\), ss. 108\(3\)\(a\)](#), 199; S.I. 2004/759, [art. 5\(2\)](#); S.I. 2004/873, [art. 2](#)
- F48** Words in s. 31(3)(b) substituted (30.12.2005) by [Adoption and Children Act 2002 \(c. 38\), ss. 139, 148, Sch. 3 para. 111](#) (with [Sch. 4 paras. 6-8](#)); S.I. 2005/2213, {art. 3}; S.I. 2005/3112, [art. 2](#)
- F49** Word in s. 31(3)(d) substituted (1.4.2004) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\), ss. 108\(3\)\(b\)](#), 199; S.I. 2004/759, [art. 5\(2\)](#); S.I. 2004/873, [art. 2](#)
- F50** Words in s. 31(6) repealed (1.4.2004) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\), ss. 108\(4\), 196, 199, Sch. 14 Pt. 2](#); S.I. 2004/759, {arts. 5(2), 13}; S.I. 2004/873, [art. 2](#)
- F51** Word in s. 31(6) substituted (20.11.2003 for certain purposes and 1.4.2004 otherwise) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\), ss. 147, 199, Sch. 9 para. 23\(a\)](#); S.I. 2004/759, [art. 5\(2\)\(b\)](#)
- F52** Words in s. 31(7) substituted (20.11.2003 for certain purposes and 11.3.2004 otherwise) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\), ss. 147, 199, Sch. 9 para. 23\(b\)](#); S.I. 2004/759, [art. 5\(1\)\(b\)](#)

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#### Modifications etc. (not altering text)

- C24** S. 31(7) applied (with modifications) (E.) (2.8.2004) by [The Care Standards Act 2000 \(Extension of the Application of Part 2 to Adult Placement Schemes\) \(England\) Regulations 2004 \(S.I. 2004/1972\)](#), [regs. 2\(2\)\(e\)](#), 3

#### Commencement Information

- I28** S. 31 partly in force; s. 31 not in force at Royal Assent see s. 122; s. 31 in force for E. for certain purposes at 20.11.2001 by [S.I. 2001/3852](#), [arts. 1\(4\)](#), [3\(2\)\(3\)\(a\)\(i\)](#) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by [S.I. 2001/4150](#), 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 31 in force for E. for certain purposes at 1.1.2002 by [S.I. 2001/3852](#), [arts. 1\(4\)](#), [3\(2\)\(4\)\(c\)\(6\)](#), [Sch. 1 para. 5\(2\)\(3\)](#) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by [S.I. 2001/4150](#), 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 31 in force for E. in so far as not already in force at 1.4.2002 by [S.I. 2001/3852](#), [arts. 1\(4\)](#), [3\(2\)\(7\)\(a\)](#) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by [S.I. 2001/4150](#), 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 31 in force for W. for certain purposes at 1.4.2002 by [S.I. 2002/920](#), [arts. 1\(4\)](#), [3\(3\)](#) (subject to [art. 3\(4\)\(5\)](#) and to transitional provisions in [Schs. 1-3](#)); s. 31 in force for W. for certain purposes at 30.1.2003 by [S.I. 2003/152](#), [art. 2](#); s. 31 in force for W. for certain purposes at 2.10.2003 by [S.I. 2003/2528](#), [art. 2](#); s. 31 in force for W. for certain purposes at 1.4.2004 by [S.I. 2004/1015](#), [art. 2](#); s. 31 in force for W. for certain purposes at 7.4.2004 by [S.I. 2004/1730](#), [art. 2](#)

#### Marginal Citations

- M7** 1999 c. 18.

## 32 Inspections: supplementary.

- (1) A person authorised by virtue of section 31 to enter and inspect any premises may seize and remove any document or other material or thing found there which he has reasonable grounds to believe may be evidence of a failure to comply with any condition or requirement imposed by or under this Part.
- (2) A person so authorised—
  - (a) may require any person to afford him such facilities and assistance with respect to matters within the person's control as are necessary to enable him to exercise his powers under section 31 or this section;
  - (b) may take such measurements and photographs and make such recordings as he considers necessary to enable him to exercise those powers.
- (3) A person authorised by virtue of section 31 to inspect any records shall be entitled to have access to, and to check the operation of, any computer and any associated apparatus which is or has been in use in connection with the records in question.
- (4) The references in section 31 to the person carrying on the establishment or agency include, in the case of an establishment or agency which is carried on by a company, a reference to any director, manager, secretary or other similar officer of the company.
- (5) Where any premises which are used as an establishment or for the purposes of an agency have been inspected under section 31, the registration authority—
  - (a) shall prepare a report on the matters inspected; and
  - (b) shall without delay send a copy of the report to each person who is registered in respect of the establishment or agency.

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- (6) The registration authority shall make copies of any report prepared under subsection (5) available for inspection at its offices by any person at any reasonable time; and may take any other steps for publicising a report which it considers appropriate.
- (7) Any person who asks the registration authority for a copy of a report prepared under subsection (5) shall be entitled to have one on payment of a reasonable fee determined by the registration authority; but nothing in this subsection prevents the registration authority from providing a copy free of charge when it considers it appropriate to do so.
- (8) <sup>F53</sup> .....

#### Textual Amendments

**F53** S. 32(8) repealed (1.4.2004) by [Health and Social Care \(Community Health and Standards\) Act 2003](#) (c. 14), ss. 196, 199, [Sch. 14 Pt. 2](#); S.I. 2004/759, [art. 13](#)

#### Commencement Information

**I29** S. 32 partly in force; s. 32 not in force at Royal Assent see s. 122; s. 32 in force for E. for certain purposes at 1.1.2002 by [S.I. 2001/3852](#), [arts. 1\(4\), 3\(2\)\(4\)\(c\)\(6\)](#), [Sch. 1 para. 5\(2\)\(3\)](#) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by [S.I. 2001/4150](#), 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 32 in force for E. in so far as not already in force at 1.4.2002 by [S.I. 2001/3852](#), [arts. 1\(4\), 3\(2\)\(7\)\(a\)](#) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by [S.I. 2001/4150](#), 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 32 in force for W. for certain purposes at 1.4.2002 by [S.I. 2002/920](#), [arts. 1\(4\), 3\(3\)](#) (subject to [art. 3\(4\)\(5\)](#) and to transitional provisions in [Schs. 1-3](#)); s. 32 in force for W. for certain purposes at 30.1.2003 by [S.I. 2003/152](#), [art. 2](#); s. 32 in force for W. for certain purposes at 2.10.2003 by [S.I. 2003/2528](#), [art. 2](#); s. 32 in force for W. for certain purposes at 1.4.2004 by [S.I. 2004/1015](#), [art. 2](#); s. 32 in force for W. for certain purposes at 7.4.2004 by [S.I. 2004/1730](#), [art. 2](#)

### 33 Annual returns.

- (1) Regulations may require the person carrying on an establishment or agency to make an annual return to the registration authority.
- (2) Provision may be made by the regulations as to the contents of the return and the period in respect of which and date by which it is to be made.

#### Modifications etc. (not altering text)

**C25** S. 33 applied (with modifications) (E.) (2.8.2004) by [The Care Standards Act 2000 \(Extension of the Application of Part 2 to Adult Placement Schemes\) \(England\) Regulations 2004](#) (S.I. 2004/1972), [regs. 2\(2\)\(f\), 3](#)

#### Commencement Information

**I30** S. 33 wholly in force at 1.4.2002; s. 33 not in force at Royal Assent see s. 122; s. 33 in force for W. at 1.7.2001 by [S.I. 2001/2190](#), [art. 2](#), [Sch.](#) Table; s. 33 in force for E. for certain purposes at 20.11.2001 by [S.I. 2001/3852](#), [arts. 1\(4\), 3\(2\)\(3\)\(a\)\(i\)](#) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by [S.I. 2001/4150](#), 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 33 in force for E. in so far as not already in force at 1.4.2002 by [S.I. 2001/3852](#), [arts. 1\(4\), 3\(2\)\(7\)\(a\)](#) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch.](#)

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2 and with transitional provisions in Sch. 2) (as amended by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210)

### 34 Liquidators etc.

- (1) Regulations may—
- (a) require any person to whom this section applies to give notice of his appointment to the registration authority;
  - (b) require any person to whom this section applies to appoint a person to manage the establishment or agency in question.
- (2) This section applies to any person appointed as—
- (a) a receiver or manager of the property of a relevant company;
  - (b) the liquidator or provisional liquidator of a relevant company; or
  - (c) the trustee in bankruptcy of a relevant individual.
- (3) In this section—
- “company” includes a partnership;
  - “relevant company” means a company which is registered under this Part in respect of an establishment or agency; and
  - “relevant individual” means an individual who is registered under this Part in respect of an establishment or agency.

#### Modifications etc. (not altering text)

**C26** S. 34 applied (with modifications) (E.) (2.8.2004) by [The Care Standards Act 2000 \(Extension of the Application of Part 2 to Adult Placement Schemes\) \(England\) Regulations 2004](#) (S.I. 2004/1972), [regs. 2\(2\)\(g\), 3](#)

#### Commencement Information

**I31** S. 34 wholly in force at 1.4.2002; s. 34 not in force at Royal Assent see s. 122; s. 34 in force for W. at 1.7.2001 by [S.I. 2001/2190](#), [art. 2](#), [Sch.](#) Table; s. 34 in force for E. for certain purposes at 20.11.2001 by [S.I. 2001/3852](#), [arts. 1\(4\), 3\(2\)\(3\)\(a\)\(i\)](#) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by [S.I. 2001/4150](#), 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 34 in force for E. in so far as not already in force at 1.4.2002 by [S.I. 2001/3852](#), [arts. 1\(4\), 3\(2\)\(7\)\(a\)](#) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by [S.I. 2001/4150](#), 2002/1493, 2002/1790, 2002/2001, 2002/3210)

### 35 Death of registered person.

- (1) Regulations may—
- (a) provide for the provisions of this Part to apply with prescribed modifications in cases where a person who was the only person registered under this Part in respect of an establishment or agency has died;
  - (b) require the personal representatives of a deceased person who was registered in respect of an establishment or agency to notify the registration authority of his death.
- (2) Regulations under subsection (1)(a) may in particular—



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- (a) provide for the establishment or agency to be carried on for a prescribed period by a person who is not registered in respect of it; and
- (b) include provision for the prescribed period to be extended by such further period as the registration authority may allow.

#### Modifications etc. (not altering text)

**C27** S. 35 applied (with modifications) (E.) (2.8.2004) by [The Care Standards Act 2000 \(Extension of the Application of Part 2 to Adult Placement Schemes\) \(England\) Regulations 2004 \(S.I. 2004/1972\)](#), [regs. 2\(2\)\(h\), 3](#)

#### Commencement Information

**I32** S. 35 wholly in force at 1.4.2002; s. 35 not in force at Royal Assent see s. 122; s. 35 in force for W. at 1.7.2001 by [S.I. 2001/2190, art. 2, Sch. Table](#); s. 35 in force for E. for certain purposes at 20.11.2001 by [S.I. 2001/3852, arts. 1\(4\), 3\(2\)\(3\)\(a\)\(i\)](#) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by [S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210](#)); s. 35 in force for E. in so far as not already in force at 1.4.2002 by [S.I. 2001/3852, arts. 1\(4\), 3\(2\)\(7\)\(a\)](#) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by [S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210](#))

### 36 Provision of copies of registers.

- (1) Subject to subsection (3), the registration authority shall secure that copies of any register kept for the purposes of this Part are available at its offices for inspection at all reasonable times by any person.
- (2) Subject to subsections (3) and (4), any person who asks the registration authority for a copy of, or of an extract from, a register kept for the purposes of this Part shall be entitled to have one.
- (3) Regulations may provide that subsections (1) and (2) shall not apply—
  - (a) in such circumstances as may be prescribed; or
  - (b) to such parts of a register as may be prescribed.
- (4) A fee determined by the registration authority shall be payable for the copy except—
  - (a) in prescribed circumstances;
  - (b) in any other case where the registration authority considers it appropriate to provide the copy free of charge.

#### Modifications etc. (not altering text)

**C28** S. 36(3) applied (with modifications) (E.) (2.8.2004) by [The Care Standards Act 2000 \(Extension of the Application of Part 2 to Adult Placement Schemes\) \(England\) Regulations 2004 \(S.I. 2004/1972\)](#), [regs. 2\(2\)\(i\), 3](#)

#### Commencement Information

**I33** S. 36 partly in force; s. 36 not in force at Royal Assent see s. 122; s. 36 in force for W. for certain purposes at 1.7.2001 by [S.I. 2001/2190, art. 2, Sch. Table](#); s. 36 in force for E. for certain purposes at 20.11.2001 by [S.I. 2001/3852, arts. 1\(4\), 3\(2\)\(3\)\(a\)\(i\)](#) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by [S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210](#)); s. 36 in force for E. in so far as not already in force at 1.4.2002 by [S.I.](#)

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2001/3852, arts. 1(4), 3(2)(7)(a) (subject to transitional provisions in Sch. 1 and with transitional provisions in Sch. 2) (as amended by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 36 in force for W. for certain purposes at 1.4.2002 by S.I. 2002/920, arts. 1(4), 3(3) (subject to art. 3(4)(5) and to transitional provisions in Schs. 1-3); s. 36 in force for W. for certain purposes at 30.1.2003 by S.I. 2003/152, art. 2; s. 36 in force for W. for certain purposes at 2.10.2003 by S.I. 2003/2528, art. 2; s. 36 in force for W. for certain purposes at 1.4.2004 by S.I. 2004/1015, art. 2; s. 36 in force for W. for certain purposes at 7.4.2004 by S.I. 2004/1730, art. 2

### [<sup>F54</sup>36A Voluntary adoption agencies: distribution of functions

- (1) This section applies to functions relating to voluntary adoption agencies conferred on the registration authority by or under this Part or under Chapter 2 of Part 1 of the Adoption and Children Act 2002.
- (2) Subject to the following provisions, functions to which this section applies are exercisable—
  - (a) where the principal office of an agency is in England, by [<sup>F55</sup>the CSCI],
  - (b) where the principal office of an agency is in Wales, by the Assembly.
- (3) So far as those functions relate to the imposition, variation or removal of conditions of registration, they may only be exercised after consultation with the Assembly or (as the case may be) [<sup>F55</sup>the CSCI].
- (4) But—
  - (a) where such a function as is mentioned in subsection (3) is exercisable by the [<sup>F55</sup>the CSCI] in relation to an agency which has a branch in Wales, it is exercisable only with the agreement of the Assembly,
  - (b) where such a function as is mentioned in subsection (3) is exercisable by the Assembly in relation to an agency which has a branch in England, it is exercisable only with the agreement of [<sup>F55</sup>the CSCI].
- (5) The functions conferred on the registration authority by sections 31 and 32 of this Act in respect of any premises of a voluntary adoption agency are exercisable—
  - (a) where the premises are in England, by [<sup>F55</sup>the CSCI]
  - (b) where the premises are in Wales, by the Assembly.
- (6) In spite of subsections (2) to (5), regulations may provide for any function to which this section applies to be exercisable by [<sup>F55</sup>the CSCI] instead of the Assembly, or by the Assembly instead of [<sup>F55</sup>the CSCI], or by one concurrently with the other, or by both jointly or by either with the agreement of or after consultation with the other.
- (7) In this section, “regulations” means regulations relating to England and Wales.]

#### Textual Amendments

- F54** S. 36A inserted (1.2.2003 for W., 25.2.2003 for E. for certain purposes, 30.4.2003 for E. for certain further purposes and 30.12.2005 for E. otherwise) by Adoption and Children Act 2002 (c. 38), ss. 16, 148 (with Sch. 4 paras. 1, 6-8); S.I. 2003/181, art. 2; S.I. 2003/366, art. 2(1)(4); S.I. 2005/2213, art. 3
- F55** Words in s. 36A substituted (20.11.2003 for certain purposes and 1.4.2004 for E. otherwise) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 147, 199, Sch. 9 para. 24; S.I. 2004/759, art. 4(2)

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#### Modifications etc. (not altering text)

**C29** S. 36A amended (temp.) (25.2.2003) by [Adoption and Children Act 2002 \(c. 38\)](#), ss. 139, 148, [Sch. 4 para. 4\(2\)](#) (with [Sch. 4 paras. 6-8](#)); S.I 2003/366, {art. 2}

### 37 Service of documents.

- (1) Any notice or other document required under this Part to be served on a person carrying on or managing, or intending to carry on or manage, an establishment or agency may be served on him—
  - (a) by being delivered personally to him; or
  - (b) by being sent by post to him in a registered letter or by the recorded delivery service at his proper address.
- (2) For the purposes of section 7 of the <sup>M8</sup>Interpretation Act 1978 (which defines “service by post”) a letter addressed to a person carrying on or managing an establishment or agency enclosing a notice or other document under this Act shall be deemed to be properly addressed if it is addressed to him at the establishment or agency.
- (3) Where a notice or other document is served as mentioned in subsection (1)(b), the service shall, unless the contrary is proved, be deemed to have been effected on the third day after the day on which it is sent.
- (4) Any notice or other document required to be served on a body corporate or a firm shall be duly served if it is served on the secretary or clerk of that body or a partner of that firm.
- (5) For the purposes of this section, and of section 7 of the <sup>M9</sup>Interpretation Act 1978 in its application to this section, without prejudice to subsection (2) above, the proper address of a person shall be—
  - (a) in the case of a secretary or clerk of a body corporate, that of the registered or principal office of that body;
  - (b) in the case of a partner of a firm, that of the principal office of the firm; and
  - (c) in any other case, the last known address of the person.

#### Commencement Information

**I34** S. 37 partly in force; s. 37 not in force at Royal Assent see s. 122; s. 37 in force for E. at 1.4.2002 by [S.I. 2001/3852](#), arts. 1(4), 3(2)(7)(f) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by [S.I. 2001/4150](#), 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 37 in force for W. for certain purposes at 1.4.2002 by [S.I. 2002/920](#), arts. 1(4), 3(3) (subject to [art. 3\(4\)\(5\)](#) and to transitional provisions in [Schs. 1-3](#)); s. 37 in force for W. for certain purposes at 30.1.2003 by [S.I. 2003/152](#), [art. 2](#); s. 37 in force for W. for certain purposes at 2.10.2003 by [S.I. 2003/2528](#), [art. 2](#); s. 37 in force for W. for certain purposes at 1.4.2004 by [S.I. 2004/1015](#), [art. 2](#); s. 37 in force for W. for certain purposes at 7.4.2004 by [S.I. 2004/1730](#), [art. 2](#)

#### Marginal Citations

**M8** 1978 c. 30.  
**M9** 1978 c. 30.

**Status:** Point in time view as at 01/03/2007. This version of this Act contains provisions that are not valid for this point in time.

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### 38 Transfers of staff under Part II.

(1) The appropriate Minister may by order make a scheme for the transfer to the new employer of any eligible employee.

(2) In this section—

“eligible employee” means a person who is employed under a contract of employment with an old employer on work which would have continued but for the provisions of this Part;

“new employer” means the registration authority;

“old employer” means a local authority or a Health Authority.

#### Commencement Information

**I35** S. 38 wholly in force at 20.11.2001; s. 38 not in force at Royal Assent see s. 122; s. 38 in force for W. at 1.7.2001 by [S.I. 2001/2190](#), [art. 2](#), [Sch.](#) Table; s. 38 in force for E. at 20.11.2001 by [S.I. 2001/3852](#), [arts. 1\(4\)](#), [3\(2\)\(3\)\(c\)](#) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by [S.I. 2001/4150](#), [2002/1493](#), [2002/1790](#), [2002/2001](#), [2002/3210](#))

### 39 Temporary extension of meaning of “nursing home”.

In section 21 of the <sup>M10</sup>Registered Homes Act 1984 (meaning of nursing home)—

- (a) in subsection (1), after “(3)” there is inserted “ and (3A) ”;
- (b) in subsection (2), for “subsection (1) above” there is substituted “ this section ”;
- (c) in subsection (3)(e)(ii), “dental practitioner or” is omitted; and
- (d) after subsection (3) there is inserted—

“(3A) The definition in subsection (1) above does not include any premises used, or intended to be used, wholly or mainly by a dental practitioner for the purpose of treating his patients unless subsection (3B) or (3C) below applies.

(3B) This subsection applies if—

- (a) the premises are also used, or intended to be used, by that or another dental practitioner for the purpose of treating his patients under general anaesthesia; and
- (b) the premises are not used, or intended to be used, by any dental practitioner for the purpose of treating his patients under general anaesthesia—
  - (i) in pursuance of the <sup>M11</sup>National Health Service Act 1977; or
  - (ii) under an agreement made in accordance with Part I of the <sup>M12</sup>National Health Service (Primary Care) Act 1997.

(3C) This subsection applies if the premises are used, or intended to be used, for the provision of treatment by specially controlled techniques and are not excepted by regulations under subsection (3)(g) above.”

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#### Commencement Information

**I36** S. 39 wholly in force at 31.8.2001; s. 39 not in force at Royal Assent see s. 122; s. 39 in force for E. for certain purposes at 19.2.2001 and for E. in so far as not already in force at 19.3.2001 by [S.I. 2001/290](#), [arts. 1\(3\), 2](#) (with transitional provisions in [art. 3](#)); s. 39 in force for W. for certain purposes at 31.7.2001 and for W. at 31.8.2001 as to the remainder by [S.I. 2001/2504](#), [art. 2](#) (with transitional provisions in [art. 3](#))

#### Marginal Citations

**M10** 1984 c. 23.  
**M11** 1977 c. 49.  
**M12** 1997 c. 46.

### 40 Temporary extension of meaning of “children’s home”.

In section 63(3)(a) of the 1989 Act (meaning of “children’s home”), for “more than three children at any one time” there shall be substituted “ children ”.

#### Commencement Information

**I37** S. 40 wholly in force at 28.2.2001; s. 40 not in force at Royal Assent see s. 122; s. 40 in force for E. for certain purposes at 15.10.2000 and s. 40 in force for E. in so far as not already in force at 1.1.2001 by [S.I. 2000/2795](#), [art. 2\(1\)\(2\)\(a\)](#) (with [art. 3](#)); s. 40 in force for W. for certain purposes at 1.2.2001 and s. 40 in force for W. in so far as not already in force at 28.2.2001 by [S.I. 2001/139](#), [arts. 1\(3\), 2](#) (with transitional provisions in [art. 3](#))

### 41 Children’s homes: temporary provision about cancellation of registration.

(1) In paragraph 1(4) of Schedule 5 to the 1989 Act (voluntary homes and voluntary organisations)—

- (a) in paragraph (a), after “is not” there shall be inserted “ , or has not been, ”;
- (b) after “is” there shall be inserted “ , or has been, ”.

(2) In paragraph 2 of that Schedule, after sub-paragraph (5) there shall be inserted—

“(6) In relation to a home which has ceased to exist, the reference in sub-paragraph (4) to any person carrying on the home shall be taken to be a reference to each of the persons who carried it on.”

(3) In paragraph 3(3) of Schedule 6 to the 1989 Act (registered children’s homes), after “is being” there shall be inserted “ and has been ”.

(4) In paragraph 4 of that Schedule—

- (a) in sub-paragraph (3) after “is being” there shall be inserted “ , or has been, ”;
- (b) after sub-paragraph (4) there shall be inserted—

“(5) In relation to a home which has ceased to exist, references in this paragraph and paragraph 5(4) to the person, or any person, carrying on the home include references to each of the persons who carried it on.”

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### Commencement Information

**I38** S. 41 wholly in force at 28.2.2001; s. 41 not in force at Royal Assent see s. 122; s. 41 in force for E. at 1.1.2001 by S.I. 2000/2795, **art. 2(2)(a)** (with **art. 3**); s. 41 in force for W. at 28.2.2001 by S.I. 2001/139, **arts. 1(3), 2(2)(a)** (with transitional provisions in **art. 3**)

## 42 Power to extend the application of Part II.

- (1) Regulations may provide for the provisions of this Part to apply, with such modifications as may be specified in the regulations, to prescribed persons to whom subsection (2) or (3) applies.
- (2) This subsection applies to—
  - (a) local authorities providing services in the exercise of their social services functions; and
  - (b) persons who provide services which are similar to services which—
    - (i) may or must be so provided by local authorities; or
    - (ii) may or must be provided by Health Authorities, Special Health Authorities, NHS trusts [<sup>F56</sup>, NHS foundation trusts] or Primary Care Trusts.
- (3) This subsection applies to persons who carry on or manage an undertaking (other than an establishment or agency) which consists of or includes supplying, or providing services for the purpose of supplying, individuals mentioned in subsection (4).
- (4) The individuals referred to in subsection (3) are those who provide services for the purpose of any of the services mentioned in subsection (2).
- [<sup>F57</sup>(5) Regulations under subsection (1) made by the Secretary of State may in particular specify whether, for the purposes of the application of this Part to any person, the registration authority is to be the CHAI or the CSCI.]

### Textual Amendments

- F56** Words in s. 42(2)(b)(ii) inserted (20.11.2003 for certain purposes and 1.4.2004 otherwise) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 34, 199, **Sch. 4 para. 111**; S.I. 2004/759, **art. 2**
- F57** S. 42(5) inserted (20.11.2003 for certain purposes and 1.4.2004 otherwise) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 147, 199, **Sch. 9 para. 25**; S.I. 2004/759, **art. 5(2)**

### Commencement Information

**I39** S. 42 wholly in force at 1.9.2003; s. 42 not in force at Royal Assent see s. 122; s. 42 in force for W. at 1.7.2001 by S.I. 2001/2190, **art. 2, Sch. Table**; s. 42 in force for E. at 1.9.2003 by S.I. 2003/933, **art. 2(3)**

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## PART III

### LOCAL AUTHORITY SERVICES

#### Modifications etc. (not altering text)

**C30** Pt. 3: functions transferred (20.11.2003 for certain purposes and 1.4.2004 otherwise) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\)](#), ss. {102(4)}, 199; [S.I. 2004/759](#), [art. 5\(2\)](#)

#### 43 Introductory.

- (1) This section has effect for the purposes of this Part.
- (2) “Relevant functions”, in relation to a local authority, means relevant adoption functions and relevant fostering functions.
- (3) In relation to a local authority—
  - (a) “relevant adoption functions” means functions under [<sup>F58</sup>the Adoption and Children Act 2002] of making or participating in arrangements for the adoption of children [<sup>F59</sup>or the provision of adoption support services (as defined in section 2(6) of the Adoption and Children Act 2002)]; and
  - (b) “relevant fostering functions” means functions under section 23(2)(a) of the 1989 Act or regulations under any of paragraphs (a), (b) or (d) to (f) of paragraph 12 of Schedule 2 to that Act.

#### Textual Amendments

- F58** Words in s. 43(3)(a) substituted (30.12.2005) by [Adoption and Children Act 2002 \(c. 38\)](#), ss. 139, 148, [Sch. 3 para. 112](#) (with [Sch. 4 paras. 6-8](#)); [S.I. 2005/2213](#), [art. 3](#); [S.I. 2005/3112](#), [art. 2](#)
- F59** Words in s. 43(3)(a) inserted (30.12.2005) by [Adoption and Children Act 2002 \(c. 38\)](#), ss. 139, 148, [Sch. 3 para. 112](#) (with [Sch. 4 paras. 6-8](#)); [S.I. 2005/2213](#), [art. 3](#); [S.I. 2005/3112](#), [art. 2](#)

#### Commencement Information

**I40** S. 43 wholly in force at 30.4.2003; s. 43 not in force at Royal Assent see s. 122; s. 43 in force for W. at 1.7.2001 by [S.I. 2001/2190](#), [art. 2](#), [Sch.](#) Table; s. 43 in force for E. for certain purposes at 20.11.2001 by [S.I. 2001/3852](#), [arts. 1\(4\)](#), 3(2)(3)(a)(ii) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) as amended by [S.I. 2001/4150](#), 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 43(1)(2)(3)(b) in force for E. for certain purposes at 1.4.2002 by [S.I. 2001/3852](#), [arts. 1\(4\)](#), 3(2)(7)(g) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by [S.I. 2001/4150](#), 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 43(1)(2)(3)(a) in force for E. for certain purposes at 24.2.2003 and for remaining purposes at 30.4.2003 by [S.I. 2003/365](#), [art. 3\(2\)\(5\)](#) (subject to [Sch.](#))

#### 44 General powers of the Commission.

F60  
.....

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**Textual Amendments**

**F60** S. 44 repealed (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 14), ss. 196, 199, **Sch. 14 Pt.2**; S.I. 2004/759, **art. 13**

**45 Inspection by registration authority of adoption and fostering services.**

- (1) <sup>F61</sup> .....
- (2) <sup>F61</sup> .....
- (3) <sup>F61</sup> .....
- (4) [<sup>F62</sup>Subject to section 47(6)], the Secretary of State may by regulations require [<sup>F63</sup>the CSCI] to arrange for premises which are used by a local authority in its discharge of relevant functions to be inspected on such occasions or at such intervals as may be prescribed [<sup>F64</sup>; and an inspection under this section shall be regarded for all purposes as undertaken under section 80 of the Health and Social Care (Community Health and Standards) Act 2003].
- (5) <sup>F61</sup> .....

**Textual Amendments**

- F61** S. 45(1)-(3)(5) repealed (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 196, 199, **Sch. 14 Pt. 2**; S.I. 2004/759, **art. 13**
- F62** Words in s. 45(4) omitted (20.11.2003 for certain purposes, 1.4.2004 for E., otherwise prosp.) by virtue of Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 147, 199, **Sch. 9 para. 26(a)**; S.I. 2004/759, **art. 4(2)**
- F63** Words in s. 45(4) substituted (20.11.2003 for certain purposes, 1.4.2004 for E., otherwise prosp.) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 147, 199, **Sch. 9 para. 26(b)**; S.I. 2004/759, **art. 4(2)**
- F64** Words in s. 45(4) inserted (20.11.2003 for certain purposes, 1.4.2004 for E., otherwise prosp.) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), ss. 147, 199, **Sch. 9 para. 26(c)**; S.I. 2004/759, **art. 4(2)**

**Commencement Information**

**I41** S. 45 wholly in force at 30.4.2003; s. 45 not in force at Royal Assent see s. 122; s. 45(4) in force for E. for certain purposes at 20.11.2001 by S.I. 2001/3852, arts. 1(4), 3(2)(3)(a)(ii) (subject to transitional provisions in Sch. 1 and with transitional provisions in Sch. 2) (as amended by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 45 in force for E. for certain purposes in so far as not already in force at 1.4.2002 by S.I. 2001/3852, arts. 1(4), 3(2)(7)(g) (subject to transitional provisions in Sch. 1 and with transitional provisions in Sch. 2) (as amended by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 45 in force for W. at 30.1.2003 by S.I. 2003/152, **art. 2**; s. 45(4) in force for E. for certain purposes at 24.2.2003 and for remaining purposes at 30.4.2003 by S.I. 2003/365, **art. 3(2)(5)**

**46 Inspections: supplementary.**

<sup>F65</sup> .....



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### Textual Amendments

**F65** Ss. 46, 47 repealed (1.4.2004) by [Health and Social Care \(Community Health and Standards\) Act 2003](#) (c. 14), ss. 196, 199, [Sch. 14 Pt. 2](#); S.I. 2004/759, [art. 13](#)

## 47 Action following inspection.

**F66** .....

### Textual Amendments

**F66** Ss. 46, 47 repealed (1.4.2004) by [Health and Social Care \(Community Health and Standards\) Act 2003](#) (c. 14), ss. 196, 199, [Sch. 14 Pt. 2](#); S.I. 2004/759, [art. 13](#)

## 48 Regulation of the exercise of relevant fostering functions.

- (1) Regulations may make provision about the exercise by local authorities of relevant fostering functions, and may in particular make provision—
  - (a) as to the persons who are fit to work for local authorities in connection with the exercise of such functions;
  - (b) as to the fitness of premises to be used by local authorities in their exercise of such functions;
  - (c) as to the management and control of the operations of local authorities in their exercise of such functions;
  - (d) as to the numbers of persons, or persons of any particular type, working for local authorities in connection with the exercise of such functions;
  - (e) as to the management and training of such persons;
  - <sup>F67</sup>(f) as to the fees or expenses which may be paid to persons assisting local authorities in making decisions in the exercise of such functions].
- (2) Regulations under subsection (1)(a) may, in particular, make provision for prohibiting persons from working for local authorities in such positions as may be prescribed unless they are registered in, or in a particular part of, one of the registers maintained under section 56(1).

### Textual Amendments

**F67** [S. 48\(1\)\(f\)](#) inserted (30.12.2005) by [Adoption and Children Act 2002](#) (c. 38), ss. 139, 148, [Sch. 3 para. 114](#) (with [Sch. 4 paras. 6-8](#)); S.I. 2005/2213, [art. 2](#)

### Commencement Information

**I42** [S. 48](#) wholly in force at 1.4.2002; [s. 48](#) not in force at Royal Assent see [s. 122](#); [s. 48](#) in force for W. at 1.7.2001 by S.I. 2001/2190, [art. 2](#), [Sch. Table](#); [s. 48](#) in force for E. for certain purposes at 20.11.2001 by S.I. 2001/3852, [arts. 1\(4\)](#), 3(2)(3)(a)(ii) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210); [s. 48](#) in force for E. for remaining purposes at 1.4.2002 by S.I. 2001/3852, [arts. 1\(4\)](#), 3(2)(7)(g) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210)

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**49 National minimum standards.**

- (1) Subsections (1), (2) and (3) of section 23 shall apply to local authorities in their exercise of relevant functions as they apply to establishments and agencies.
- (2) <sup>F68</sup> .....

**Textual Amendments**

**F68** S. 49(2) repealed (1.4.2004) by [Health and Social Care \(Community Health and Standards\) Act 2003](#) (c. 43), ss. 196, 199, [Sch. 14 Pt. 2](#); S.I. 2004/759, [art. 13](#)

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**Commencement Information**

**I43** S. 49 wholly in force at 30.4.2003; s. 49 not in force at Royal Assent see [s. 122](#); s. 49 in force for W. at 1.7.2001 by S.I. 2001/2190, [art. 2](#), [Sch. Table](#); s. 49 in force for E. for certain purposes at 20.11.2001 by S.I. 2001/3852, [arts. 1\(4\)](#), 3(2)(3)(d)(i) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 49 in force for E. for certain purposes at 1.4.2002 by S.I. 2001/3852, [arts. 1\(4\)](#), 3(2)(7)(g) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 49 in force for E. for certain purposes at 24.2.2003 and 30.4.2003 by S.I. 2003/365, and for remaining purposes at 30.4.2003 by S.I. 2003/365, [art. 3\(2\)\(5\)](#) (subject to [Sch.](#))

**50 Annual returns.**

- (1) Regulations may require a local authority to make to the registration authority an annual return containing such information with respect to the exercise by the local authority of relevant functions as may be prescribed.
- (2) Provision may be made by the regulations as to the period in respect of which and date by which the return is to be made.

**Commencement Information**

**I44** S. 50 partly in force; s. 50 not in force at Royal Assent see [s. 122](#); s. 50 in force for W. at 1.7.2001 by S.I. 2001/2190, [art. 2](#), [Sch. Table](#); s. 50 in force for E. for certain purposes at 20.11.2001 by S.I. 2001/3852, [arts. 1\(4\)](#), 3(2)(3)(a)(ii) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 50 in force for E. for certain purposes at 1.4.2002 by S.I. 2001/3852, [arts. 1\(4\)](#), 3(2)(7)(g) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210)

**51 Annual fee.**

<sup>F69</sup> .....

**Textual Amendments**

**F69** S. 51 repealed (1.4.2004) by [Health and Social Care \(Community Health and Standards\) Act 2003](#) (c. 14), ss. 196, 199, [Sch. 14 Pt.2](#); S.I. 2004/759, [art. 13](#)

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## 52 Contravention of regulations.

- (1) Regulations under this Part may provide that a contravention of or failure to comply with any specified provision of the regulations shall be an offence.
- (2) A person guilty of an offence under the regulations shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

### Commencement Information

**I45** S. 52 partly in force; s. 52 not in force at Royal Assent see s. 122; s. 52 in force for W. at 1.7.2001 by S.I. 2001/2190, art. 2, Sch. Table; s. 52 in force for E. for certain purposes at 20.11.2001 by S.I. 2001/3852, arts. 1(4), 3(2)(3)(a)(ii) (subject to transitional provisions in Sch. 1 and with transitional provisions in Sch. 2) (as amended by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 52 in force for E. for certain purposes in so far as not already in force at 1.4.2002 by S.I. 2001/3852, arts. 1(4), 3(2)(7)(g) (subject to transitional provisions in Sch. 1 and with transitional provisions in Sch. 2) (as amended by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210)

## 53 Offences: general provisions.

Sections 29 and 30 apply in relation to this Part as they apply in relation to Part II.

### Commencement Information

**I46** S. 53 partly in force; s. 53 not in force at Royal Assent see s. 122; s. 53 in force for E. at 1.4.2002 by S.I. 2001/3852, arts. 1(4), 3(2)(7)(g) (subject to transitional provisions in Sch. 1 and with transitional provisions in Sch. 2) (as amended by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 53 in force for W. for certain purposes at 30.1.2003 by S.I. 2003/152, art. 2; s. 53 in force for E. for remaining purposes at 30.4.2003, by S.I. 2003/365, art. 3(5)(b) (subject to Sch.)

## PART IV

### SOCIAL CARE WORKERS

#### *Preliminary*

## 54 Care Councils.

- (1) There shall be—
  - (a) a body corporate to be known as the General Social Care Council (referred to in this Act as “the English Council”); and
  - (b) a body corporate to be known as the Care Council for Wales or Cyngor Gofal Cymru (referred to in this Act as “the Welsh Council”),which shall have the functions conferred on them by or under this Act or any other enactment.
- (2) It shall be the duty of the English Council to promote in relation to England—
  - (a) high standards of conduct and practice among social care workers; and
  - (b) high standards in their training.

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- (3) It shall be the duty of the Welsh Council to promote in relation to Wales—
  - (a) high standards of conduct and practice among social care workers; and
  - (b) high standards in their training.
- (4) Each Council shall, in the exercise of its functions, act—
  - (a) in accordance with any directions given to it by the appropriate Minister; and
  - (b) under the general guidance of the appropriate Minister.
- (5) Directions under subsection (4) shall be given in writing.
- (6) Schedule 1 shall have effect with respect to a Council.
- (7) In this Act, references to a Council are—
  - (a) in relation to England, a reference to the General Social Care Council,
  - (b) in relation to Wales, a reference to the Care Council for Wales.

#### Commencement Information

**I47** S. 54 partly in force; s. 54 not in force at Royal Assent see s. 122; s. 54(1)(3)(7) in force for W. at 1.4.2001 for certain purposes by S.I. 2000/2992, art. 2(2), Sch. 2; s. 54(6) in force for E. for certain purposes at 10.4.2001 by S.I. 2001/1536, arts. 1(3), 2(1); s. 54(1)(a)(4)(5)(6)(7)(a) in force for E. for certain purposes at 7.5.2001 by S.I. 2001/1536, arts. 1(3), 2(2)(a)(i)(ii); s. 54(2) in force for E. at 25.3.2002 by S.I. 2002/1245, arts. 1(3), 2(1)(a)

## 55 Interpretation.

- (1) This section has effect for the purposes of this Part.
- (2) “Social care worker” means a person (other than a person excepted by regulations) who—
  - (a) engages in relevant social work (referred to in this Part as a “social worker”);
  - (b) is employed at a children’s home, care home or residential family centre or for the purposes of a domiciliary care agency, a fostering agency [<sup>F70</sup>, a voluntary adoption agency or an adoption support agency];
  - (c) manages an establishment, or an agency, of a description mentioned in paragraph (b); or
  - (d) is supplied by a domiciliary care agency to provide personal care in their own homes for persons who by reason of illness, infirmity or disability are unable to provide it for themselves without assistance.
- (3) Regulations may provide that persons of any of the following descriptions shall be treated as social care workers—
  - (a) a person engaged in work for the purposes of a local authority’s social services functions, or in the provision of services similar to services which may or must be provided by local authorities in the exercise of those functions;
  - (b) a person engaged in the provision of personal care for any person;
  - (c) a person who manages, or is employed in, an undertaking (other than an establishment or agency) which consists of or includes supplying, or providing services for the purpose of supplying, persons to provide personal care;

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- (d) a person employed in connection with the discharge of functions of the appropriate Minister under section 80 of the 1989 Act (inspection of children’s homes etc.);
  - (e) staff of [<sup>F71</sup>the CSCI] or the Assembly who—
    - (i) inspect premises under section 87 of the 1989 Act (welfare of children accommodated in independent schools and colleges) or [<sup>F72</sup>section 31 of this Act or section 88 or 98 of the Health and Social Care (Community Health and Standards) Act 2003]; or
    - (ii) are responsible for persons who do so;  
and staff of the Assembly who inspect premises under section 79T of that Act (inspection of child minding and day care in Wales) or are responsible for persons who do so;
  - (f) a person employed in a day centre;
  - (g) a person participating in a course approved by a Council under section 63 for persons wishing to become social workers.
- (4) “Relevant social work” means social work which is required in connection with any health, education or social services provided by any person.
- (5) “Day centre” means a place where nursing or personal care (but not accommodation) is provided wholly or mainly for persons mentioned in section 3(2).

#### Textual Amendments

- F70** Words in s. 55(2)(b) substituted (30.12.2005) by [Adoption and Children Act 2002 \(c. 38\)](#), ss. 139, 148, [Sch. 3 para. 115](#) (with [Sch. 4 paras. 6-8](#)); S.I. 2005/2213, {art. 3}
- F71** Words in s. 55(3)(e) substituted (20.11.2003 for certain purposes and 1.4.2004 for E. otherwise) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\)](#), ss. 147, 199, [Sch. 9 para. 28\(a\)](#); S.I. 2004/759, [art. 4\(2\)](#)
- F72** Words in s. 55(3)(e) substituted (20.11.2003 for certain purposes and 1.4.2004 for E. otherwise) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\)](#), ss. 147, 199, [Sch. 9 para. 28\(b\)](#); S.I. 2004/759, [art. 4\(2\)](#)

#### Commencement Information

- I48** S. 55 partly in force; s. 55 not in force at Royal Assent see s. 122; s. 55 in force for W. at 1.4.2001 by [S.I. 2000/2992](#), [art. 2\(2\)](#), [Sch. 2](#); s. 55 in force for E. for certain purposes at 7.5.2001 by [S.I. 2001/1536](#), [arts. 1\(3\)](#), [2\(2\)\(b\)](#); s. 55 in force for E. for certain purposes at 25.3.2002 by [S.I. 2002/1245](#), [arts. 1\(3\)](#), [2\(1\)\(d\)](#); s. 55(1)(2)(a)(4) in force for E. for certain purposes at 7.3.2003 by [S.I. 2003/933](#), [art. 2](#); s. 55(3)(g) in force for E. for certain purposes at 1.3.2004 by [S.I. 2004/484](#), [art. 2](#)

### Registration

#### 56 The register.

- (1) Each Council shall maintain a register of—
- (a) social workers; and
  - (b) social care workers of any other description specified by the appropriate Minister by order.
- (2) There shall be a separate part of the register for social workers and for each description of social care workers so specified.

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- (3) The appropriate Minister may by order provide for a specified part of the register to be closed, as from a date specified by the order, so that on or after that date no further persons can become registered in that part.
- (4) The appropriate Minister shall consult the Council before making, varying or revoking any order under this section.

#### Commencement Information

**I49** S. 56 partly in force; s. 56 not in force at Royal Assent see s. 122; s. 56 in force for W. for certain purposes at 30.4.2002 by [S.I. 2002/1175](#), [arts. 1\(3\), 2\(1\)](#); s. 56 (1)(a) in force for E. for certain purposes at 1.4.2003 by [S.I. 2003/933](#), [art. 2\(2\)](#); s. 56 in force for W. so far as not already in force at 1.6.2003 by [S.I. 2003/501](#), [art. 2\(4\)](#); s. 56 in force for E. for certain purposes at 1.3.2004 by [S.I. 2004/484](#), [art. 2](#)

### 57 Applications for registration.

- (1) An application for registration under this Part shall be made to the Council in accordance with rules made by it.
- (2) An application under subsection (1) shall specify each part of the register in which registration is sought and such other matters as may be required by the rules.

#### Commencement Information

**I50** S. 57 partly in force; s. 57 not in force at Royal Assent see s. 122; s. 57 in force for W. for certain purposes at 30.4.2002 by [S.I. 2002/1175](#), [arts. 1\(3\), 2\(1\)](#); s. 57 in force for E. for certain purposes at 7.3.2003 by [S.I. 2003/933](#), [art. 2\(1\)](#); s. 57 otherwise in force for W. at 1.4.2003 by [S.I. 2003/501](#), [art. 2\(2\)](#)

### 58 Grant or refusal of registration.

- (1) If the Council is satisfied that the applicant—
  - (a) is of good character;
  - (b) is physically and mentally fit to perform the whole or part of the work of persons registered in any part of the register to which his application relates; and
  - (c) satisfies the following conditions,
 it shall grant the application, either unconditionally or subject to such conditions as it thinks fit; and in any other case it shall refuse it.
- (2) The first condition is that—
  - (a) in the case of an applicant for registration as a social worker—
    - (i) he has successfully completed a course approved by the Council under section 63 for persons wishing to become social workers;
    - (ii) he satisfies the requirements of section 64; or
    - (iii) he satisfies any requirements as to training which the Council may by rules impose in relation to social workers;

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- (b) in the case of an applicant for registration as a social care worker of any other description, he satisfies any requirements as to training which the Council may by rules impose in relation to social care workers of that description.
- (3) The second condition is that the applicant satisfies any requirements as to conduct and competence which the Council may by rules impose.

#### Commencement Information

**I51** S. 58 partly in force; s. 58 not in force at Royal Assent see s. 122; s. 58 in force for W. for certain purposes at 30.4.2002 by S.I. 2002/1175, arts. 1(3), 2(1); s. 58 in force for E. for certain purposes at 1.4.2003 by S.I. 2003/933, art. 2(2); s. 58 otherwise in force for W. at 1.6.2003 by S.I. 2003/501, art. 2(4)

VALID FROM 03/12/2007

#### <sup>F73</sup>58A Visiting social workers from relevant European States

- (1) This section applies to an exempt person (“V”) who is lawfully established as a social worker in a relevant European State other than the United Kingdom.
- (2) Subsection (3) applies if V has the benefit of regulation 8 of the General Systems Regulations in connection with the provision by V of services as a social worker in the United Kingdom on a temporary and occasional basis (V having complied with any requirements imposed under Part 2 of those Regulations in connection with the provision by V of services as a social worker).
- (3) V is entitled to be registered in the visiting European part of the register maintained by a Council; and the Council shall give effect to the entitlement.
- (4) If V is entitled under subsection (3) to be registered in the visiting European part of a register but is not registered in that part, V shall be treated as being registered in that part.
- (5) V's entitlement under subsection (3) ceases if V ceases, whether as a result of the operation of regulation 17 of the General Systems Regulations or otherwise, to have the benefit of regulation 8 of those Regulations in connection with the provision by V of services as a social worker in the United Kingdom on a temporary and occasional basis.
- (6) If—
  - (a) V's entitlement under subsection (3) ceases by reason of the operation of subsection (5), and
  - (b) V is registered in the visiting European part of the register maintained by a Council,that Council may remove V from that part.
- (7) Subsections (1) to (6) are not to be taken to prejudice the application, in relation to persons registered in the visiting European part of the register maintained by a Council, of rules under section 59.]

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### Textual Amendments

**F73** S. 58A inserted (3.12.2007) by [The European Qualifications \(Health and Social Care Professions\) Regulations 2007 \(S.I. 2007/3101\)](#), [reg. 235](#)

## 59 Removal etc. from register.

- (1) Each Council shall by rules determine circumstances in which, and the means by which—
- (a) a person may be removed from a part of the register, whether or not for a specified period;
  - (b) a person who has been removed from a part of the register may be restored to that part;
  - (c) a person's registration in a part of the register may be suspended for a specified period;
  - (d) the suspension of a person's registration in a part of the register may be terminated;
  - (e) an entry in a part of the register may be removed, altered or restored.
- (2) The rules shall make provision as to the procedure to be followed, and the rules of evidence to be observed, in proceedings brought for the purposes of the rules, whether before the Council or any committee of the Council.
- (3) The rules shall provide for such proceedings to be in public except in such cases (if any) as the rules may specify.
- (4) Where a person's registration in a part of the register is suspended under subsection (1) (c), he shall be treated as not being registered in that part notwithstanding that his name still appears in it.

### Commencement Information

**I52** S. 59 partly in force; s. 59 not in force at Royal Assent see s. 122; s. 59 in force for E. for certain purposes at 7.5.2001 by [S.I. 2001/1536](#), arts. 1(3), 2(2)(a)(iii); s. 59 in force for W. for certain purposes at 30.4.2002 by [S.I. 2002/1175](#), arts. 1(3), [2\(1\)](#); s. 59 in force for E. for certain purposes at 7.3.2003 by [S.I. 2003/933](#), [art. 2\(2\)](#); s. 59 otherwise in force for W. at 1.4.2003 by [S.I. 2003/501](#), [art. 2\(4\)](#)

## 60 Rules about registration.

A Council may by rules make provision about the registration of persons under this Part and, in particular—

- (a) as to the keeping of the register;
- (b) as to the documentary and other evidence to be produced by those applying for registration or for additional qualifications to be recorded, or for any entry in the register to be altered or restored;
- (c) for a person's registration to remain effective without limitation of time (subject to removal from the register in accordance with rules made by virtue of section 59) or to lapse after a specified period or in specified cases, or to be subject to renewal as and when provided by the rules.



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#### Commencement Information

**I53** S. 60 partly in force; s. 60 not in force at Royal Assent see s. 122; s. 60 in force for E. for certain purposes at 7.5.2001 by S.I. 2001/1536, arts. 1(3), 2(2)(a)(iii); s. 60 in force for W. for certain purposes at 30.4.2002 by S.I. 2002/1175, arts. 1(3), 2(1); s. 60(b) in force for W. for certain purposes at 1.4.2003 and otherwise in force for W. at 1.6.2003 by S.I. 2003/501, art. 2(2)(4); s. 60 in force for E. for certain purposes at 1.4.2003 by S.I. 2003/933, art. 2(2)

#### 61 Use of title “social worker” etc.

- (1) If a person who is not registered as a social worker in any relevant register with intent to deceive another—
  - (a) takes or uses the title of social worker;
  - (b) takes or uses any title or description implying that he is so registered, or in any way holds himself out as so registered,he is guilty of an offence.
- (2) For the purposes of subsection (1), a register is a relevant register if it is—
  - (a) maintained by a Council; or
  - (b) a prescribed register maintained under a provision of the law of Scotland or Northern Ireland which appears to the appropriate Minister to correspond to the provisions of this Part.
- (3) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### Commencement Information

**I54** S. 61 wholly in force at 1.4.2005; s. 61 not in force at Royal Assent see s. 122; s. 61 in force for W. for certain purposes at 30.4.2002 by S.I. 2002/1175, arts. 1(3), 2(1); s. 61(2)(b) in force for certain purposes at 1.3.2005 and s. 61 in force so far as not already in force at 1.4.2005 by S.I. 2005/375, art. 2

#### *Codes of practice*

#### 62 Codes of practice.

- (1) Each Council shall prepare and from time to time publish codes of practice laying down—
  - (a) standards of conduct and practice expected of social care workers; and
  - (b) standards of conduct and practice in relation to social care workers, being standards expected of persons employing or seeking to employ them.
- (2) The Council shall—
  - (a) keep the codes under review; and
  - (b) vary their provisions whenever it considers it appropriate to do so.
- (3) Before issuing or varying a code, a Council shall consult any persons it considers appropriate to consult.

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- (4) A code published by a Council shall be taken into account—
  - (a) by the Council in making a decision under this Part; and
  - (b) in any proceedings on an appeal against such a decision.
- (5) Local authorities making any decision about the conduct of any social care workers employed by them shall, if directed to do so by the appropriate Minister, take into account any code published by the Council.
- (6) Any person who asks a Council for a copy of a code shall be entitled to have one.

#### Commencement Information

**I55** S. 62 partly in force; s. 62 not in force at Royal Assent see s. 122; s. 62 in force for E. for certain purposes at 7.5.2001 by S.I. 2001/1536, arts. 1(3), 2(2)(a)(iii); s. 62 in force for W. for certain purposes at 30.4.2002 by S.I. 2002/1175, arts. 1(3), 2(1); s. 62 in force for E. for certain purposes at 25.3.2002 by S.I. 2002/1245, arts. 1(3), 2(1)(b)(i); s. 62 otherwise in force for W. at 1.6.2003 by S.I. 2003/501, art. 2(4)

### Training

#### 63 Approval of courses etc.

- (1) Each Council may, in accordance with rules made by it, approve courses in relevant social work for persons who are or wish to become social workers.
- (2) An approval given under this section may be either unconditional or subject to such conditions as the Council thinks fit.
- (3) Rules made by virtue of this section may in particular make provision—
  - (a) about the content of, and methods of completing, courses;
  - (b) as to the provision to the Council of information about courses;
  - (c) as to the persons who may participate in courses, or in parts of courses specified in the rules;
  - (d) as to the numbers of persons who may participate in courses;
  - (e) for the award by the Council of certificates of the successful completion of courses;
  - (f) about the lapse and renewal of approvals; and
  - (g) about the withdrawal of approvals.
- (4) A Council may—
  - (a) conduct, or make arrangements for the conduct of, examinations in connection with such courses as are mentioned in this section or section 67; and
  - (b) carry out, or assist other persons in carrying out, research into matters relevant to training for relevant social work.
- (5) A course for persons who wish to become social workers shall not be approved under this section unless the Council considers that it is such as to enable persons completing it to attain the required standard of proficiency in relevant social work.
- (6) In subsection (5) “the required standard of proficiency in relevant social work” means the standard described in rules made by the Council.

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- (7) The Council shall from time to time publish a list of the courses which are approved under this section.

**Modifications etc. (not altering text)**

**C31** S. 63(2)-(4)(a)(7) applied (1.10.2007) by 1983 c. 20, s. 114A(2) (as inserted by Mental Health Act 2007 (c. 12), ss. 19, 56; S.I. 2007/2798, art. 2)

**Commencement Information**

**I56** S. 63 partly in force; s. 63 not in force at Royal Assent see s. 122; s. 63 in force for E. for certain purposes at 7.5.2001 by S.I. 2001/1536, arts. 1(3), 2(2)(a)(iii); s. 63 in force for W. at 31.7.2001 by S.I. 2001/2538, art. 2(1)(3)(a); s. 63 in force for E. for certain purposes at 25.3.2002 by S.I. 2002/1245, arts. 1(3), 2(1)(b)(ii)

**64 Qualifications gained outside a Council's area.**

- (1) An applicant for registration as a social worker in the register maintained by the English Council satisfies the requirements of this section if—

- (a) being a national of any EEA State—
- (i) he has professional qualifications, obtained in an EEA State other than the United Kingdom, which the Secretary of State has by order designated as having Community equivalence for the purposes of such registration; and
  - (ii) he satisfies any other requirements which the Council may by rules impose; or
- (b) he has, elsewhere than in England, undergone training in relevant social work and either—
- (i) that training is recognised by the Council as being to a standard sufficient for such registration; or
  - (ii) it is not so recognised, but the applicant has undergone in England or elsewhere such additional training as the Council may require.

- (2) An applicant for registration as a social worker in the register maintained by the Welsh Council satisfies the requirements of this section if—

- (a) being a national of any EEA State—
- (i) he has professional qualifications, obtained in an EEA State other than the United Kingdom, which the Assembly has by order designated as having Community equivalence for the purposes of such registration; and
  - (ii) he satisfies any other requirements which the Council may by rules impose; or
- (b) he has, elsewhere than in Wales, undergone training in relevant social work and either—
- (i) that training is recognised by the Council as being to a standard sufficient for such registration; or
  - (ii) it is not so recognised, but the applicant has undergone in Wales or elsewhere such additional training as the Council may require.

- (3) An order under subsection (1)(a) or (2)(a) may provide that a professional qualification designated by the order is to be regarded as having Community equivalence for the

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purposes of registration as a social worker in the register maintained by the English or, as the case may be, Welsh Council only if prescribed conditions required by a directive issued by the Council of the European Communities are fulfilled; and different conditions may be prescribed with respect to the same qualification for different circumstances.

(4) Any person who—

- (a) is not a national of an EEA State; but
- (b) is, by virtue of a right conferred by Article 11 of Council Regulation (EEC) No. 1612/68 (on freedom of movement for workers within the Community) or any other enforceable Community right, entitled to be treated, as regards the right to engage in relevant social work, no less favourably than a national of such a State,

shall be treated for the purposes of subsection (1)(a) or (2)(a) as if he were such a national.

(5) In this section—

[<sup>F74</sup>“EEA State” means a member State, Norway, Liechtenstein, Iceland or Switzerland; ]

<sup>F75</sup>

“national”, in relation to an EEA State, means the same as it does for the purposes of the Community Treaties [<sup>F76</sup>but does not include a person who by virtue of Article 2 of Protocol No.3 (Channel Islands and Isle of Man) to the Treaty of Accession is not to benefit from Community provisions relating to the free movement of persons and services].

#### Textual Amendments

- F74** S. 64(5): definition of "EEA State" substituted (18.8.2004) by [The European Qualifications \(Health and Social Care Professions and Accession of New Member States\) Regulations 2004 \(S.I. 2004/1947\)](#), [reg. 20\(2\)\(a\)](#)
- F75** S. 64(5): definition of "EEA Agreement" omitted (18.8.2004) by virtue of [The European Qualifications \(Health and Social Care Professions and Accession of New Member States\) Regulations 2004 \(S.I. 2004/1947\)](#), [reg. 20\(2\)\(b\)](#)
- F76** S. 64(5): words in definition of "national" inserted (18.8.2004) by [The European Qualifications \(Health and Social Care Professions and Accession of New Member States\) Regulations 2004 \(S.I. 2004/1947\)](#), [reg. 20\(2\)\(c\)](#)

#### Commencement Information

- I57** S. 64 partly in force; s. 64 not in force at Royal Assent see s. 122; s. 64(2)-(4) in force for W. for a certain purpose at 30.4.2002 by [S.I. 2002/1175](#), [arts. 1\(3\), 2\(1\)](#); s. 64(1)(b) in force for E. for certain purposes at 1.4.2003 by [S.I. 2003/933](#), [art. 2\(2\)](#); s. 64(2)-(5) otherwise in force for W. at 1.6.2003 by [S.I. 2003/501](#), [art. 2\(4\)](#)

## 65 Post registration training.

- (1) A Council may make rules requiring persons registered under this Part in any part of the register to undertake further training.
- (2) The rules may, in particular, make provision with respect to persons who fail to comply with any requirements of rules made by the Council, including provision for their registration to cease to have effect.

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- (3) Before making, or varying, any rules by virtue of this section the Council shall take such steps as are reasonably practicable to consult the persons who are registered in the relevant part of the register and such other persons as the Council considers appropriate.

#### Commencement Information

**I58** S. 65 partly in force; s. 65 not in force at Royal Assent see s. 122; s. 65 in force for E. for certain purposes at 7.5.2001 by [S.I. 2001/1536](#), arts. 1(3), 2(2)(a)(iii); s. 65 in force for W. for a certain purpose at 30.4.2002 by [S.I. 2002/1175](#), arts. 1(3), 2(1); s. 65 in force for E. for certain purposes at 1.4.2003 by [S.I. 2003/933](#), art. 2(2); s. 65 otherwise in force for W. at 1.6.2003 by [S.I. 2003/501](#), art. 2(4)

## 66 Visitors for certain social work courses.

- (1) A Council may by rules make provision for the visiting of places at which or institutions by which or under whose direction—
- (a) any relevant course (or part of such a course) is, or is proposed to be, given; or
  - (b) any examination is, or is proposed to be, held in connection with any relevant course.
- (2) The rules may make provision—
- (a) for the appointment of visitors;
  - (b) for reports to be made by visitors on—
    - (i) the nature and quality of the instruction given, or to be given, and the facilities provided or to be provided, at the place or by the institution visited; and
    - (ii) such other matters as may be specified in the rules;
  - (c) for the payment by the Council of fees, allowances and expenses to persons appointed as visitors;
  - (d) for such persons to be treated, for the purposes of Schedule 1, as members of the Council's staff.
- (3) In subsection (1) “relevant course”, in relation to a Council, means—
- (a) any course for which approval by the Council has been given, or is being sought, under section 63; or
  - (b) any training which a person admitted to the part for social workers of the register maintained by the Council may be required to undergo after registration.

#### Modifications etc. (not altering text)

**C32** S. 66 applied (1.10.2007) by [1983 c. 20](#), s. 114A(2) (as inserted by [Mental Health Act 2007 \(c. 12\)](#), ss. 19, 56; [S.I. 2007/2798](#), art. 2)

#### Commencement Information

**I59** S. 66 partly in force; s. 66 not in force at Royal Assent see s. 122; s. 66 in force for E. for certain purposes at 7.5.2001 by [S.I. 2001/1536](#), arts. 1(3), 2(2)(a)(iii); s. 66 in force for W. at 31.7.2001 by [S.I.](#)

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2001/2538, art. 2(1)(3)(b); s. 66 in force for E. for certain purposes at 25.3.2002 by S.I. 2002/1245, arts. 1(3), 2(1)(b)(iii)

## 67 Functions of the appropriate Minister.

- (1) The appropriate Minister has the function of—
  - (a) ascertaining what training is required by persons who are or wish to become social care workers;
  - (b) ascertaining what financial and other assistance is required for promoting such training;
  - (c) encouraging the provision of such assistance;
  - (d) drawing up occupational standards for social care workers.
- (2) The appropriate Minister shall encourage persons to take part in courses approved by a Council under section 63 and other courses relevant to the training of persons who are or wish to become social care workers.
- (3) If it appears to the appropriate Minister that adequate provision is not being made for training persons who are or wish to become social care workers, the appropriate Minister may provide, or secure the provision of, courses for that purpose.
- (4) The appropriate Minister may, upon such terms and subject to such conditions as the Minister considers appropriate—
  - (a) make grants, and pay travelling and other allowances, to persons resident in England and Wales, in order to secure their training in the work of social care workers;
  - (b) make grants to organisations providing training in the work of social care workers.
- (5) Any functions of the Secretary of State under this section—
  - (a) may be delegated by him to the English Council; or
  - (b) may be exercised by any person, or by employees of any person, authorised to do so by the Secretary of State.
- (6) Any functions of the Assembly under this section—
  - (a) may be delegated by the Assembly to the Welsh Council; or
  - (b) may be exercised by any person, or by employees of any person, authorised to do so by the Assembly.
- (7) For the purpose of determining—
  - (a) the terms and effect of an authorisation under subsection (5)(b) or (6)(b); and
  - (b) the effect of so much of any contract made between the appropriate Minister and the authorised person as relates to the exercise of the function,

Part II of the <sup>M13</sup>Deregulation and Contracting Out Act 1994 shall have effect as if the authorisation were given by virtue of an order under section 69 of that Act and, in respect of an authorisation given by the Assembly, references to a Minister included the Assembly; and in subsection (5)(b) and (6)(b) “employee” has the same meaning as in that Part.

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#### Commencement Information

**I60** S. 67 partly in force; s. 67 not in force at Royal Assent see s. 122; s. 67 in force for W. at 1.10.2001 by S.I. 2001/2538, art. 2(2)(4)(a); s. 67(1)-(4)(7) in force for E. for certain purposes and s. 67(5) in force for E. at 25.3.2002 by S.I. 2002/1245, arts. 1(3), 2(1)(c)

#### Marginal Citations

**M13** 1994 c. 40.

VALID FROM 28/04/2008

#### [<sup>F77</sup>67A Exercise by Special Health Authority of functions under s. 67(4)(a)]

- (1) The Secretary of State may direct a Special Health Authority to exercise such of his functions under section 67(4)(a) as may be specified in the directions.
- (2) If the Secretary of State gives a direction under subsection (1), the National Health Service Act 2006 shall have effect as if—
  - (a) the direction were a direction of the Secretary of State under section 7 of that Act, and
  - (b) the functions were exercisable by the Special Health Authority under section 7.
- (3) Directions under subsection (1)—
  - (a) shall be given by an instrument in writing, and
  - (b) may be varied or revoked by subsequent directions.]

#### Textual Amendments

**F77** S. 67A inserted (28.4.2008) by Health Act 2006 (c. 28), ss. 72 (as amended by 2006 c. 43, s. 2, Sch. 1 para. 287), 83; S.I. 2008/1147, art. 4

### *Miscellaneous and supplemental*

#### **68 Appeals to the Tribunal.**

- (1) An appeal against a decision of a Council under this Part in respect of registration shall lie to the Tribunal.
- (2) On an appeal against a decision, the Tribunal may confirm the decision or direct that it shall not have effect.
- (3) The Tribunal shall also have power on an appeal against a decision—
  - (a) to vary any condition for the time being in force in respect of the person to whom the appeal relates;
  - (b) to direct that any such condition shall cease to have effect; or
  - (c) to direct that any such condition as it thinks fit shall have effect in respect of that person.

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#### Commencement Information

- I61** S. 68 partly in force; s. 68 not in force at Royal Assent see s. 122; s. 68 in force for E. for certain purposes at 1.4.2003 by [S.I. 2003/933](#), [art. 2\(2\)](#); s. 68 in force for W. at 1.6.2003 by [S.I. 2003/501](#), [art. 2\(4\)](#)

#### 69 Publication etc. of register.

- (1) A Council shall publish the register maintained by it in such manner, and at such times, as it considers appropriate.
- (2) Any person who asks the Council for a copy of, or of an extract from, the register shall be entitled to have one.

#### Commencement Information

- I62** S. 69 partly in force; s. 69 not in force at Royal Assent see s. 122; s. 69 in force for E. for certain purposes at 1.4.2003 by [S.I. 2003/933](#), [art. 2\(2\)](#); s. 69 in force for W. at 1.6.2003 by [S.I. 2003/501](#), [art. 2\(4\)](#)

#### 70 Abolition of Central Council for Education and Training in Social Work.

- (1) The Central Council for Education and Training in Social Work (referred to in this Act as “CCETSW”) shall cease to exercise in relation to England and Wales the functions conferred on it by or under section 10 of the <sup>M14</sup>Health and Social Services and Social Security Adjudications Act 1983.
- (2) Her Majesty may by Order in Council make a scheme under subsection (3), or make any provision under subsection (4), which She considers necessary or expedient in consequence of the functions of CCETSW referred to in subsection (1) ceasing, by virtue of that subsection, an Act of the Scottish Parliament or an Act of the Northern Ireland Assembly, to be exercisable in relation to any part of the United Kingdom.
- (3) A scheme may provide—
  - (a) for the transfer to the new employer of any eligible employee;
  - (b) for the transfer to any person of any property belonging to CCETSW;
  - (c) for any person to have such rights and interests in relation to any property belonging to CCETSW as Her Majesty considers appropriate (whether in connection with a transfer or otherwise);
  - (d) for the transfer to any person of any liabilities of CCETSW.
- (4) The Order in Council may make—
  - (a) any supplementary, incidental or consequential provision;
  - (b) any transitory, transitional or saving provision,
 including provision amending Schedule 3 to that Act or repealing that Schedule, section 10 of that Act and any reference in any enactment to CCETSW.
- (5) In this section—
 

“eligible employee” means a person who is employed under a contract of employment with the old employer;

“new employer” means—



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- (a) in relation to England or Wales, the Council;
  - (b) in relation to Scotland or Northern Ireland, any body established under a provision of the law of Scotland or (as the case may be) Northern Ireland which appears to Her Majesty to perform functions corresponding to those of a Council;
- “old employer” means CCETSW;  
“property” includes rights and interests of any description.

#### Commencement Information

**I63** S. 70 wholly in force at 1.4.2002; s. 70(2)-(5) in force at Royal Assent see s. 122; s. 70(1) in force for W. at 1.10.2001 by S.I. 2001/2538, art. 2(2)(4)(b); s. 70(1) in force for E. at 1.4.2002 by S.I. 2002/1245, arts. 1(3), 2(2)

#### Marginal Citations

**M14** 1983 c. 41.

## 71 Rules.

- (1) Any power of a Council to make rules under this Part may be exercised—
  - (a) 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; and
  - (b) so as to make, as respects the cases in relation to which it is exercised, 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.
- (2) Rules made by a Council under this Part may make provision for the payment of reasonable fees to the Council in connection with the discharge of the Council’s functions.
- (3) In particular, the rules may make provision for the payment of such fees in connection with—
  - (a) registration (including applications for registration or for amendment of the register);
  - (b) the approval of courses under section 63;
  - (c) the provision of training;
  - (d) the provision of copies of codes of practice or copies of, or extracts from, the register,including provision requiring persons registered under this Part to pay a periodic fee to the Council of such amount, and at such time, as the rules may specify.
- (4) No rules shall be made by a Council under this Part without the consent of the appropriate Minister.

#### Modifications etc. (not altering text)

**C33** S. 71 applied (1.10.2007) by 1983 c. 20, s. 114A(2) (as inserted by Mental Health Act 2007 (c. 12), ss. 19, 56; S.I. 2007/2798, art. 2)

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#### Commencement Information

**I64** S. 71 partly in force; s. 71 not in force at Royal Assent see s. 122; s. 71 in force for E. for certain purposes at 7.5.2001 by S.I. 2001/1536, arts. 1(3), 2(2)(a)(iii); s. 71 in force for W. for certain purposes at 31.7.2001 by S.I. 2001/2538, art. 2(1)(3)(c); s. 71 in force for E. for certain purposes at 25.3.2002 by S.I. 2002/1245, arts. 1(3), 2(1)(b)(iv); s. 71 in force for W. in so far as not already in force at 30.4.2002 by S.I. 2002/1175, arts. 1(3), 2(2)

## PART V

### THE CHILDREN’S COMMISSIONER FOR WALES

#### 72 Children’s Commissioner for Wales.

- (1) There shall be an office of the Children’s Commissioner for Wales or Comisiynydd Plant Cymru.
- (2) Schedule 2 shall have effect with respect to the Children’s Commissioner for Wales (referred to in this Act as “the Commissioner”).

#### Commencement Information

**I65** S. 72 in force for W. at 13.11.2000 by S.I. 2000/2992, art. 2(1), Sch. 1

#### [<sup>F78</sup>72A Principal aim of the Commissioner

The principal aim of the Commissioner in exercising his functions is to safeguard and promote the rights and welfare of children to whom this Part applies.]

#### Textual Amendments

**F78** S. 72A inserted (26.8.2001 for W.) by 2001 c. 18, s. 2; S.I. 2001/2783, art. 2(2)(b)

#### Commencement Information

**I66** S. 72A in force for W. at 26.8.2001 by S.I. 2001/2782, art. 2(1)(2)(a)

#### [<sup>F79</sup>72B Review of exercise of functions of Assembly and other persons

- (1) The Commissioner may review the effect on children to whom this Part applies of—
  - (a) the exercise or proposed exercise of any function of the Assembly, including the making or proposed making of any subordinate legislation; or
  - (b) the exercise or proposed exercise in relation to Wales of any function of any person mentioned in Schedule 2A.
- (2) The Assembly may by order amend this section or Schedule 2A by—
  - (a) adding any person to that Schedule;
  - (b) omitting any person from that Schedule;
  - (c) altering the description of any person mentioned in that Schedule; or

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- (d) making provision specifying, in respect of a person mentioned in that Schedule and specified in the order, a function of the person which although exercisable in relation to Wales is not to be treated as such for the purposes of subsection (1)(b).
- (3) An order under subsection (2) may add a person to Schedule 2A only if—
- (a) some or all of the person’s functions are in a field in which the Assembly has functions;
  - (b) the person is established under an enactment or by virtue of Her Majesty’s prerogative or is established in any other way by a Minister of the Crown or government department or by the Assembly; and
  - (c) (unless consent is given by the Secretary of State under subsection (4)), at least half of the person’s expenditure on the exercise of functions in relation to Wales (or, where the person’s functions relate only to a part of Wales, in relation to the part of Wales to which they relate) is met directly from payments made by the Assembly.
- (4) An order under subsection (2) may add to Schedule 2A a person who does not satisfy the condition in subsection (3)(c) if the Secretary of State gives consent.
- (5) An order under subsection (2) must not add to Schedule 2A a person whose sole or main activity is—
- (a) the investigation of complaints by members of the public about the actions of any person; or
  - (b) the supervision or review of, or of steps taken following, such an investigation.
- (6) The Assembly may not make an order under subsection (2) if the result would be that the Commissioner could review the effect of the exercise or proposed exercise of a person’s function in a field in which the Assembly does not have functions.
- (7) In subsection (1)(a) “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30).]

#### Textual Amendments

**F79** S. 72B inserted (26.8.2001 for W.) by 2001 c. 18, s. 3(1); S.I. 2001/2783, art. 2(2)(c)

#### Commencement Information

**I67** S. 72B in force for W. at 26.8.2001 by S.I. 2001/2782, art. 2(1)(2)(b)

### 73 Review and monitoring of arrangements.

- (1) The Commissioner may review, and monitor the operation of, arrangements falling within subsection (2), [<sup>F80</sup>(2A), (2B), (2C),](3) or (4) for the purpose of ascertaining whether, and to what extent, the arrangements are effective in safeguarding and promoting the rights and welfare of children [<sup>F81</sup>—
- (a) to or in respect of whom services are provided in Wales by, or on behalf of or under arrangements with, a person mentioned in Schedule 2B; or
  - (b) to or in respect of whom regulated children’s services in Wales are provided.]

[<sup>F82</sup>(1A) The Commissioner may also assess the effect on such children of the failure of any person to make such arrangements.]

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- (2) The arrangements falling within this subsection are the arrangements made by the providers of regulated children’s services in Wales, or by the Assembly, for dealing with complaints or representations [<sup>F83</sup>about such services made by or on behalf of children to whom such services are provided].
- [<sup>F84</sup>(2A) The arrangements falling within this subsection are the arrangements made by a person mentioned in Schedule 2B for dealing with complaints or representations made to the person by or on behalf of a child about services provided in Wales by the person to or in respect of the child.
- (2B) The arrangements falling within this subsection are the arrangements made by a person providing services in Wales on behalf of, or under arrangements with, a person mentioned in Schedule 2B for dealing with complaints or representations made to the person by or on behalf of a child about a service which is so provided to or in respect of the child.
- (2C) The arrangements falling within this subsection are the arrangements made by the Assembly for dealing with complaints or representations made by or on behalf of a child about a service which is provided in Wales to or in respect of the child by, or on behalf of or under arrangements with, a person mentioned in Schedule 2B (other than the Assembly).]
- (3) The arrangements falling within this subsection are arrangements made by the providers of regulated children’s services in Wales, [<sup>F85</sup>by the Assembly, or by another person mentioned in Schedule 2B or subsection (2B)], for ensuring that proper action is taken in response to any disclosure of information which may tend to show—
- (a) that a criminal offence has been committed;
  - (b) that a person has failed to comply with any legal obligation to which he is subject;
  - (c) that the health and safety of any person has been endangered; or
  - (d) that information tending to show that any matter falling within one of the preceding paragraphs has been deliberately concealed,
- in the course of or in connection with the provision of [<sup>F86</sup>the services mentioned in subsection (3A)].
- [<sup>F87</sup>(3A) The services are—
- (a) in the case of a person mentioned in Schedule 2B, services provided in Wales by the person to or in respect of a child;
  - (b) in the case of a person mentioned in subsection (2B), services provided in Wales by the person to or in respect of a child on behalf of, or under arrangements with, a person mentioned in Schedule 2B;
  - (c) in the case of a provider of regulated children’s services in Wales, those services.]
- (4) The arrangements falling within this subsection are arrangements made (whether by providers of regulated children’s services in Wales, by the Assembly or by any other person) for making persons available—
- (a) to represent the views and wishes of children [<sup>F88</sup>—
    - (i) to or in respect of whom services are provided in Wales by, or on behalf of or under arrangements with, a person mentioned in Schedule 2B; or

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- (ii) to or in respect of whom regulated children’s services in Wales are provided]
- ; or
- (b) to provide such children with advice and support of any prescribed kind.
- (5) Regulations may confer power on the Commissioner to require prescribed persons to provide any information which the Commissioner considers it necessary or expedient to have for the purposes of his functions under this section.
- [<sup>F89</sup>(5A) The Assembly may by order amend this section or Schedule 2B by—
- (a) adding any person to that Schedule;
  - (b) omitting any person from that Schedule;
  - (c) altering the description of any person mentioned in that Schedule; or
  - (d) making provision specifying, in respect of a person mentioned in that Schedule and specified in the order, services which although provided by the person in Wales are not to be treated as such for the purposes of the exercise of the Commissioner’s functions.
- (5B) An order under subsection (5A) may add a person to Schedule 2B only if—
- (a) the person provides services in Wales to or in respect of children;
  - (b) some or all of the person’s functions are in a field in which the Assembly has functions;
  - (c) the person is established under an enactment or by virtue of Her Majesty’s prerogative or is established in any other way by a Minister of the Crown or government department or by the Assembly; and
  - (d) (unless consent is given by the Secretary of State under subsection (5C)), at least half of the person’s expenditure on the exercise of functions in relation to Wales (or, where the person’s functions relate only to a part of Wales, in relation to the part of Wales to which they relate) is met directly from payments made by the Assembly.
- (5C) An order may add to Schedule 2B a person who does not satisfy the condition in subsection (5B)(d) if the Secretary of State gives consent.
- (5D) An order under subsection (5A) must not add to Schedule 2B a person whose sole or main activity is—
- (a) the investigation of complaints by members of the public about the actions of any person; or
  - (b) the supervision or review of, or of steps taken following, such an investigation.
- (5E) The Assembly may not make an order under subsection (5A) if the result would be that the Commissioner could exercise functions in relation to a person’s functions in a field in which the Assembly does not have functions.]

#### Textual Amendments

- F80** Words in s. 73(1) inserted (26.8.2001 for W.) by 2001 c. 18, s. 4(2)(a); S.I. 2001/2783, art. 2(2)(d)
- F81** Words in s. 73(1) substituted (26.8.2001 for W.) by 2001 c. 18, s. 4(2)(b); S.I. 2001/2783, art. 2(2)(d)
- F82** S. 73(1A) inserted (26.8.2001 for W.) by 2001 c. 18, s. 4(3); S.I. 2001/2783, art. 2(2)(d)
- F83** Words in s. 73(2) substituted (26.8.2001 for W.) by 2001 c. 18, s. 4(4); S.I. 2001/2783, art. 2(2)(d)
- F84** S. 73(2A)-(2C) inserted (26.8.2001 for W.) by 2001 c. 18, s. 4(5); S.I. 2001/2783, art. 2(2)(d)
- F85** Words in s. 73(3) substituted (26.8.2001 for W.) by 2001 c. 18, s. 4(6)(a); S.I. 2001/2783, art. 2(2)(d)

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- F86** Words in s. 73(3) substituted (26.8.2001 for W.) by 2001 c. 18, s. 4(6)(b); S.I. 2001/2783, art. 2(2)(d)  
**F87** S. 73(3A) inserted (26.8.2001 for W.) by 2001 c. 18, s. 4(7); S.I. 2001/2783, art. 2(2)(d)  
**F88** Words in s. 73(4) substituted (26.8.2001 for W.) by 2001 c. 18, s. 4(8); S.I. 2001/2783, art. 2(2)(d)  
**F89** S. 73(5A)-(5E) inserted (26.8.2001 for W.) by 2001 c. 18, s. 4(9); S.I. 2001/2783, art. 2(2)(d)

#### Commencement Information

- I68** S. 73 in force for W. at 26.8.2001 by S.I. 2001/2782, art. 2(1)(2)(c)

## 74 Examination of cases.

- (1) Regulations may [<sup>F90</sup>, in connection with the Commissioner’s functions under this Part,]make provision for the examination by the Commissioner of the cases of particular children to whom this Part applies.

[<sup>F91</sup>(1A) The reference in subsection (1) to functions of the Commissioner does not include a reference to his power to consider and make representations by virtue of section 75A(1).]

- (2) The regulations may include provision about—
- the types of case which may be examined;
  - the circumstances in which an examination may be made;
  - the procedure for conducting an examination, including provision about the representation of parties;
  - the publication of reports following an examination.
- (3) The regulations may make provision for—
- requiring persons to provide the Commissioner with information; or
  - requiring persons who hold or are accountable for information to provide the Commissioner with explanations or other assistance,
- for the purposes of an examination or for the purposes of determining whether any recommendation made in a report following an examination has been complied with.
- (4) For the purposes mentioned in subsection (3), the Commissioner shall have the same powers as the High Court in respect of—
- the attendance and examination of witnesses (including the administration of oaths and affirmations and the examination of witnesses abroad); and
  - the provision of information.
- (5) No person shall be compelled for the purposes mentioned in subsection (3) to give any evidence or provide any information which he could not be compelled to give or provide in civil proceedings before the High Court.
- (6) The regulations may make provision for the payment by the Commissioner of sums in respect of expenses or allowances to persons who attend or provide information for the purposes mentioned in subsection (3).

#### Textual Amendments

- F90** Words in s. 74(1) inserted (26.8.2001 for W.) by 2001 c. 18, s. 5(2)(a); S.I. 2001/2783, art. 2(2)(e)  
**F91** S. 74(1A) inserted (26.8.2001 for W.) by 2001 c. 18, s. 5(2)(b); S.I. 2001/2783, art. 2(2)(e)

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**Commencement Information**

**169** S. 74 in force for W. at 26.8.2001 by S.I. 2001/2782, art. 2(1)(2)(d)

**75 Obstruction etc.**

- (1) The Commissioner may certify an offence to the High Court where—
  - (a) a person, without lawful excuse, obstructs him or any member of his staff in the exercise of any of his functions under regulations made by virtue of section 73(5) or 74; or
  - (b) a person is guilty of any act or omission in relation to an examination under regulations made by virtue of section 74 which, if that examination were proceedings in the High Court, would constitute contempt of court.
- (2) Where an offence is so certified the High Court may inquire into the matter; and after hearing—
  - (a) any witnesses who may be produced against or on behalf of the person charged with the offence; and
  - (b) any statement that may be offered in defence,the High Court may deal with the person charged with the offence in any manner in which it could deal with him if he had committed the same offence in relation to the High Court.

**Commencement Information**

**170** S. 75 in force for W. at 26.8.2001 by S.I. 2001/2782, art. 2(1)(2)(e)

[<sup>F92</sup>75ZA] **Working with the Commissioner for Older People in Wales**

- (1) This section applies where it appears to the Commissioner that a case which he is—
  - (a) examining in accordance with regulations made under section 74, or
  - (b) considering whether to examine in accordance with such regulations,relates to or raises a matter which could be the subject of an examination by the Commissioner for Older People in Wales (the ‘connected matter’).
- (2) Where the Commissioner considers it appropriate, he must inform the Commissioner for Older People in Wales about the connected matter.
- (3) Where the Commissioner considers that the case also relates to or raises a matter which he is entitled to examine himself (‘the children matter’), he must also if he considers it appropriate—
  - (a) inform the Commissioner for Older People in Wales about the Commissioner’s proposals for the examination of the case; and
  - (b) consult the Commissioner for Older People in Wales about those proposals.
- (4) Where the Commissioner and the Commissioner for Older People in Wales consider that they are entitled to examine, respectively, the children matter and the connected matter they may—
  - (a) co-operate with each other in the separate examination of each of those matters;
  - (b) act together in the examination of those matters; and

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- (c) prepare and publish a joint report containing their respective conclusions in relation to the matters they have each examined.
- (5) Where the Commissioner considers—
- (a) that the case is not one which relates to or raises a matter that he is entitled to examine himself, and
  - (b) that it is appropriate to do so,
- he must inform the person whose case it is, or another person interested in it that he thinks fit, about how to secure the referral to the Commissioner for Older People in Wales of the connected matter.]

#### Textual Amendments

**F92** S. 75ZA inserted (14.10.2006 for W.) by [Commissioner for Older People \(Wales\) Act 2006 \(c. 30\)](#), ss. 22, 23, [Sch. 4 para. 1\(2\)](#); S.I. 2006/2699, [art. 2](#)

#### [<sup>F93</sup>75A Additional power of consideration and representation

- (1) The Commissioner may consider, and make representations to the Assembly about, any matter affecting the rights or welfare of children in Wales.
- (2) The function of the Commissioner under subsection (1) is exercisable only where he does not have power to consider and make representations about the matter in question by virtue of any other provision of this Act or any other enactment.]

#### Textual Amendments

**F93** S. 75A inserted (26.8.2001 for W.) by [2001 c. 18, s. 5\(1\)](#); S.I. 2001/2783, [art. 2\(2\)\(e\)](#)

#### Commencement Information

**I71** S. 75A in force for W. at 26.8.2001 by S.I. 2001/2782, [art. 2\(1\)\(2\)\(f\)](#)

## 76 Further functions.

- (1) Regulations may confer power on the Commissioner to assist a child to whom this Part applies—
  - (a) in making a complaint or representation to or in respect of a provider of regulated children’s services in Wales; or
  - [<sup>F94</sup>(aa) in making a complaint or representation to or in respect of a person mentioned in Schedule 2B or section 73(2B);]
  - (b) in any prescribed proceedings,

and in this subsection “proceedings” includes a procedure of any kind and any prospective proceedings.
- [<sup>F95</sup>(1A) The proceedings which may be prescribed by virtue of subsection (1)(b) are proceedings relating to—
  - (a) the exercise or proposed exercise of a function as mentioned in section 72B(1);
  - (b) the provision of services as mentioned in section 78(1)(b) or (c).]
- (2) For the purposes of subsection (1), assistance includes—



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- (a) financial assistance; and
  - (b) arranging for representation, or the giving of advice or assistance, by any person,
- and the regulations may provide for assistance to be given on conditions, including (in the case of financial assistance) conditions requiring repayment in circumstances specified in the regulations.
- (3) The Commissioner may, in connection with his functions under this Part, give advice and information to any person.
  - (4) Regulations may, in connection with the Commissioner’s functions under this Part, confer further functions on him.
  - (5) The regulations may, in particular,
    - [<sup>F96</sup>(a)] include provision about the making of reports on any matter connected with any of his functions;
    - [<sup>F97</sup>(b)] provide that the Commissioner may make a joint report with the Commissioner for Older People in Wales where they have discharged their respective functions under this Act and the Commissioner for Older People (Wales) Act 2006 in relation to the same matters.]
- [<sup>F98</sup>(5A) The references in subsections (4) and (5) to functions of the Commissioner do not include a reference to his power to consider and make representations by virtue of section 75A(1).]
- (6) Apart from identifying any person investigated, a report by the Commissioner shall not—
    - (a) mention the name of any person; or
    - (b) include any particulars which, in the opinion of the Commissioner, are likely to identify any person and can be omitted without impairing the effectiveness of the report,unless, after taking account of the public interest (as well as the interests of any person who made a complaint and other persons), the Commissioner considers it necessary for the report to mention his name or include such particulars.
  - (7) For the purposes of the law of defamation, the publication of any matter by the Commissioner in a report is absolutely privileged.
  - [<sup>F99</sup>(8) The Commissioner or a person authorised by him may for the purposes of any function of the Commissioner under section 72B or 73 or subsection (4) of this section at any reasonable time—
    - (a) enter any premises, other than a private dwelling, for the purposes of interviewing any child accommodated or cared for there; and
    - (b) if the child consents, interview the child in private.]

#### Textual Amendments

**F94** S. 76(1)(aa) inserted (26.8.2001 for W.) by 2001 c. 18, s. 6(a); S.I. 2001/2783, art. 2(2)(g)

**F95** S. 76(1A) inserted (26.8.2001 for W.) by 2001 c. 18, s. 6(b); S.I. 2001/2783, art. 2(2)(g)

**F96** Words in s. 76(5) renumbered as s. 76(5)(a) (14.10.2006 for W.) by virtue of Commissioner for Older People (Wales) Act 2006 (c. 30), ss. 22, 23, Sch. 4 para. 1(3); S.I. 2006/2699, art. 2

**F97** S. 75(5)(b) inserted (14.10.2006 for W.) by Commissioner for Older People (Wales) Act 2006 (c. 30), ss. 22, 23, Sch. 4 para. 1(3); S.I. 2006/2699, art. 2

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- F98** S. 76(5A) inserted (26.8.2001 for W.) by 2001 c. 18, s. 6(c); S.I. 2001/2783, art. 2(2)(g)  
**F99** S. 76(8) inserted (1.4.2006 for W.) by Children Act 2004 (c. 31), ss. 61, 67; S.I. 2006/885, art. 2(2)

#### Commencement Information

- I72** S. 76 in force for W. at 26.8.2001 by S.I. 2001/2782, art. 2(1)(2)(g)

## 77 Restrictions.

- (1) This Part does not authorise the Commissioner to enquire into or report on any matter so far as it is the subject of legal proceedings before, or has been determined by, a court or tribunal.
- (2) This Part does not authorise the Commissioner to exercise any function which by virtue of an enactment is also exercisable by a prescribed person.

#### Commencement Information

- I73** S. 77 in force for W. at 26.8.2001 by S.I. 2001/2782, art. 2(1)(2)(h)

## 78 Interpretation.

- [<sup>F100</sup>(1) This Part applies to a child—
- (a) who is ordinarily resident in Wales;
  - (b) to or in respect of whom services are provided in Wales by, or on behalf of or under arrangements with, a person mentioned in Schedule 2B; or
  - (c) to or in respect of whom regulated children’s services in Wales are provided.
- (1A) Regulations may provide that, for the purposes of this Part of this Act, “child” includes a person aged 18 or over who falls within subsection (1B).
- (1B) A person falls within this subsection if he is a person to or in respect of whom services are provided in Wales by, or on behalf of or under arrangements with, a county council or county borough council in Wales by virtue of—
- (a) section 23C, 24, 24A or 24B of the Children Act 1989 (c. 41) (which provide for the continuing duties of such councils towards young persons); or
  - (b) regulations made under section 23D of that Act (which may provide for the appointment of personal advisers for certain young persons).]

(2) In this Part, “regulated children’s services in Wales” means any of the following services for the time being provided in respect of children—

    - (a) services of a description provided by or in Part II undertakings, so far as provided in Wales;
    - (b) services provided by local authorities in Wales in the exercise of relevant adoption functions or relevant fostering functions;
    - (c) services of a description provided by persons registered under Part XA of the 1989 Act, so far as provided in Wales;
    - (d) accommodation provided by schools or by an institution within the further education sector (as defined in section 91 of the <sup>M15</sup>Further and Higher Education Act 1992), so far as provided in Wales.

(3) For the purposes of this Part—

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- (a) in the case of the services mentioned in subsection (2)(a), the person who carries on the Part II undertaking is to be treated as the provider of the services;
  - (b) in the case of the services mentioned in subsection (2)(d), the relevant person (as defined in section 87 of the 1989 Act) is to be treated as the provider of the services.
- (4) For the purposes of this section, an establishment or agency, and an undertaking of any other description, is a Part II undertaking if the provider of the services in question is for the time being required to be registered under that Part.
- (5) Where the activities of an undertaking are carried on from two or more branches, each of those branches shall be treated as a separate undertaking for the purposes of this Part.
- [<sup>F101</sup>(6) Regulations may provide for the references to a child in subsection (1) to include references to a person (including a child) who was at any time (including a time before the commencement of this Part)—
- (a) a child ordinarily resident in Wales;
  - (b) a child to or in respect of whom services were provided in Wales by, or on behalf of or under arrangements with, a person mentioned in Schedule 2B; or
  - (c) a child to or in respect of whom regulated children’s services in Wales were provided.]
- (7) In this Part—  
“information” includes information recorded in any form;  
“regulations” means regulations made by the Assembly.
- (8) In this section, “relevant adoption functions” and “relevant fostering functions” have the same meanings as in Part III.

#### Textual Amendments

**F100** S. 78(1)(1A)(1B) substituted for s. 78(1) (26.8.2001 for W.) by 2001 c. 18, s. 1(2); S.I. 2001/2783, art. 2(2)(a)

**F101** S. 78(6) substituted (26.8.2001 for W.) by 2001 c. 18, s. 1(3); S.I. 2001/2783, art. 2(2)(a)

#### Commencement Information

**I74** S. 78 in force for W. at 26.8.2001 by S.I. 2001/2782, art. 2(1)(2)(i)

#### Marginal Citations

**M15** 1992 c. 13.

## PART VI

### CHILD MINDING AND DAY CARE

#### 79 Amendment of Children Act 1989.

- (1) After Part X of the 1989 Act (child minding and day care for young children) there shall be inserted—

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## “PART XA

### CHILD MINDING AND DAY CARE FOR CHILDREN IN ENGLAND AND WALES

#### *Introductory*

#### 79A **Child minders and day care providers.**

- (1) This section and section 79B apply for the purposes of this Part.
- (2) “Act as a child minder” means (subject to the following subsections) look after one or more children under the age of eight on domestic premises for reward; and “child minding” shall be interpreted accordingly.
- (3) A person who—
  - (a) is the parent, or a relative, of a child;
  - (b) has parental responsibility for a child;
  - (c) is a local authority foster parent in relation to a child;
  - (d) is a foster parent with whom a child has been placed by a voluntary organisation; or
  - (e) fosters a child privately,
 does not act as a child minder when looking after that child.
- (4) Where a person—
  - (a) looks after a child for the parents (“P1”), or
  - (b) in addition to that work, looks after another child for different parents (“P2”),
 and the work consists (in a case within paragraph (a)) of looking after the child wholly or mainly in P1’s home or (in a case within paragraph (b)) of looking after the children wholly or mainly in P1’s home or P2’s home or both, the work is not to be treated as child minding.
- (5) In subsection (4), “parent”, in relation to a child, includes—
  - (a) a person who is not a parent of the child but who has parental responsibility for the child;
  - (b) a person who is a relative of the child.
- (6) “Day care” means care provided at any time for children under the age of eight on premises other than domestic premises.
- (7) This Part does not apply in relation to a person who acts as a child minder, or provides day care on any premises, unless the period, or the total of the periods, in any day which he spends looking after children or (as the case may be) during which the children are looked after on the premises exceeds two hours.
- (8) In determining whether a person is required to register under this Part for child minding, any day on which he does not act as a child minder at any time between 2 am and 6 pm is to be disregarded.

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## 79B Other definitions, etc.

- (1) The registration authority in relation to England is Her Majesty’s Chief Inspector of Schools in England (referred to in this Part as the Chief Inspector) and references to the Chief Inspector’s area are references to England.
- (2) The registration authority in relation to Wales is the National Assembly for Wales (referred to in this Act as “the Assembly”).
- (3) A person is qualified for registration for child minding if—
  - (a) he, and every other person looking after children on any premises on which he is or is likely to be child minding, is suitable to look after children under the age of eight;
  - (b) every person living or employed on the premises in question is suitable to be in regular contact with children under the age of eight;
  - (c) the premises in question are suitable to be used for looking after children under the age of eight, having regard to their condition and the condition and appropriateness of any equipment on the premises and to any other factor connected with the situation, construction or size of the premises; and
  - (d) he is complying with regulations under section 79C and with any conditions imposed by the registration authority.
- (4) A person is qualified for registration for providing day care on particular premises if—
  - (a) every person looking after children on the premises is suitable to look after children under the age of eight;
  - (b) every person living or working on the premises is suitable to be in regular contact with children under the age of eight;
  - (c) the premises are suitable to be used for looking after children under the age of eight, having regard to their condition and the condition and appropriateness of any equipment on the premises and to any other factor connected with the situation, construction or size of the premises; and
  - (d) he is complying with regulations under section 79C and with any conditions imposed by the registration authority.
- (5) For the purposes of subsection (4)(b) a person is not treated as working on the premises in question if—
  - (a) none of his work is done in the part of the premises in which children are looked after; or
  - (b) he does not work on the premises at times when children are looked after there.
- (6) “Domestic premises” means any premises which are wholly or mainly used as a private dwelling and “premises” includes any area and any vehicle.
- (7) “Regulations” means—
  - (a) in relation to England, regulations made by the Secretary of State;
  - (b) in relation to Wales, regulations made by the Assembly.

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- (8) “Tribunal” means the Tribunal established by section 9 of the Protection of Children Act 1999.
- (9) Schedule 9A (which supplements the provisions of this Part) shall have effect.

### *Regulations*

#### **79C Regulations etc. governing child minders and day care providers.**

- (1) The Secretary of State may, after consulting the Chief Inspector and any other person he considers appropriate, make regulations governing the activities of registered persons who act as child minders, or provide day care, on premises in England.
- (2) The Assembly may make regulations governing the activities of registered persons who act as child minders, or provide day care, on premises in Wales.
- (3) The regulations under this section may deal with the following matters (among others)—
  - (a) the welfare and development of the children concerned;
  - (b) suitability to look after, or be in regular contact with, children under the age of eight;
  - (c) qualifications and training;
  - (d) the maximum number of children who may be looked after and the number of persons required to assist in looking after them;
  - (e) the maintenance, safety and suitability of premises and equipment;
  - (f) the keeping of records;
  - (g) the provision of information.
- (4) In relation to activities on premises in England, the power to make regulations under this section may be exercised so as to confer powers or impose duties on the Chief Inspector in the exercise of his functions under this Part.
- (5) In particular they may be exercised so as to require or authorise the Chief Inspector, in exercising those functions, to have regard to or meet factors, standards and other matters prescribed by or referred to in the regulations.
- (6) If the regulations require any person (other than the registration authority) to have regard to or meet factors, standards and other matters prescribed by or referred to in the regulations, they may also provide for any allegation that the person has failed to do so to be taken into account—
  - (a) by the registration authority in the exercise of its functions under this Part, or
  - (b) in any proceedings under this Part.
- (7) Regulations may provide—
  - (a) that a registered person who without reasonable excuse contravenes, or otherwise fails to comply with, any requirement of the regulations shall be guilty of an offence; and
  - (b) that a person guilty of the offence shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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## Registration

### 79D Requirement to register.

- (1) No person shall—
  - (a) act as a child minder in England unless he is registered under this Part for child minding by the Chief Inspector; or
  - (b) act as a child minder in Wales unless he is registered under this Part for child minding by the Assembly.
- (2) Where it appears to the registration authority that a person has contravened subsection (1), the authority may serve a notice (“an enforcement notice”) on him.
- (3) An enforcement notice shall have effect for a period of one year beginning with the date on which it is served.
- (4) If a person in respect of whom an enforcement notice has effect contravenes subsection (1) without reasonable excuse (whether the contravention occurs in England or Wales), he shall be guilty of an offence.
- (5) No person shall provide day care on any premises unless he is registered under this Part for providing day care on those premises by the registration authority.
- (6) If any person contravenes subsection (5) without reasonable excuse, he shall be guilty of an offence.
- (7) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### 79E Applications for registration.

- (1) A person who wishes to be registered under this Part shall make an application to the registration authority.
- (2) The application shall—
  - (a) give prescribed information about prescribed matters;
  - (b) give any other information which the registration authority reasonably requires the applicant to give.
- (3) Where a person provides, or proposes to provide, day care on different premises, he shall make a separate application in respect of each of them.
- (4) Where the registration authority has sent the applicant notice under section 79L(1) of its intention to refuse an application under this section, the application may not be withdrawn without the consent of the authority.
- (5) A person who, in an application under this section, knowingly makes a statement which is false or misleading in a material particular shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

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#### **79F Grant or refusal of registration.**

- (1) If, on an application by a person for registration for child minding—
  - (a) the registration authority is of the opinion that the applicant is, and will continue to be, qualified for registration for child minding (so far as the conditions of section 79B(3) are applicable); and
  - (b) the applicant pays the prescribed fee,the authority shall grant the application; otherwise, it shall refuse it.
- (2) If, on an application by any person for registration for providing day care on any premises—
  - (a) the registration authority is of the opinion that the applicant is, and will continue to be, qualified for registration for providing day care on those premises (so far as the conditions of section 79B(4) are applicable); and
  - (b) the applicant pays the prescribed fee,the authority shall grant the application; otherwise, it shall refuse it.
- (3) An application may, as well as being granted subject to any conditions the authority thinks necessary or expedient for the purpose of giving effect to regulations under section 79C, be granted subject to any other conditions the authority thinks fit to impose.
- (4) The registration authority may as it thinks fit vary or remove any condition to which the registration is subject or impose a new condition.
- (5) Any register kept by a registration authority of persons who act as child minders or provide day care shall be open to inspection by any person at all reasonable times.
- (6) A registered person who without reasonable excuse contravenes, or otherwise fails to comply with, any condition imposed on his registration shall be guilty of an offence.
- (7) A person guilty of an offence under subsection (6) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### **79G Cancellation of registration.**

- (1) The registration authority may cancel the registration of any person if—
  - (a) in the case of a person registered for child minding, the authority is of the opinion that the person has ceased or will cease to be qualified for registration for child minding;
  - (b) in the case of a person registered for providing day care on any premises, the authority is of the opinion that the person has ceased or will cease to be qualified for registration for providing day care on those premises,or if an annual fee which is due from the person has not been paid.
- (2) Where a requirement to make any changes or additions to any services, equipment or premises has been imposed on a registered person under



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section 79F(3), his registration shall not be cancelled on the ground of any defect or insufficiency in the services, equipment or premises if—

- (a) the time set for complying with the requirements has not expired; and
- (b) it is shown that the defect or insufficiency is due to the changes or additions not having been made.

(3) Any cancellation under this section must be in writing.

#### **79H Suspension of registration.**

- (1) Regulations may provide for the registration of any person for acting as a child minder or providing day care to be suspended for a prescribed period by the registration authority in prescribed circumstances.
- (2) Any regulations made under this section shall include provision conferring on the person concerned a right of appeal to the Tribunal against suspension.

#### **79J Resignation of registration.**

- (1) A person who is registered for acting as a child minder or providing day care may by notice in writing to the registration authority resign his registration.
- (2) But a person may not give a notice under subsection (1)—
  - (a) if the registration authority has sent him a notice under section 79L(1) of its intention to cancel the registration, unless the authority has decided not to take that step; or
  - (b) if the registration authority has sent him a notice under section 79L(5) of its decision to cancel the registration and the time within which an appeal may be brought has not expired or, if an appeal has been brought, it has not been determined.

#### **79K Protection of children in an emergency.**

- (1) If, in the case of any person registered for acting as a child minder or providing day care—
  - (a) the registration authority applies to a justice of the peace for an order—
    - (i) cancelling the registration;
    - (ii) varying or removing any condition to which the registration is subject; or
    - (iii) imposing a new condition; and
  - (b) it appears to the justice that a child who is being, or may be, looked after by that person, or (as the case may be) in accordance with the provision for day care made by that person, is suffering, or is likely to suffer, significant harm,the justice may make the order.
- (2) The cancellation, variation, removal or imposition shall have effect from the time when the order is made.
- (3) An application under subsection (1) may be made without notice.
- (4) An order under subsection (1) shall be made in writing.

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- (5) Where an order is made under this section, the registration authority shall serve on the registered person, as soon as is reasonably practicable after the making of the order—
  - (a) a copy of the order;
  - (b) a copy of any written statement of the authority’s reasons for making the application for the order which supported that application; and
  - (c) notice of any right of appeal conferred by section 79M.
- (6) Where an order has been so made, the registration authority shall, as soon as is reasonably practicable after the making of the order, notify the local authority in whose area the person concerned acts or acted as a child minder, or provides or provided day care, of the making of the order.

#### 79L Notice of intention to take steps.

- (1) Not less than 14 days before—
  - (a) refusing an application for registration;
  - (b) cancelling a registration;
  - (c) removing or varying any condition to which a registration is subject or imposing a new condition; or
  - (d) refusing to grant an application for the removal or variation of any condition to which a registration is subject,
 the registration authority shall send to the applicant, or (as the case may be) registered person, notice in writing of its intention to take the step in question.
- (2) Every such notice shall—
  - (a) give the authority’s reasons for proposing to take the step; and
  - (b) inform the person concerned of his rights under this section.
- (3) Where the recipient of such a notice informs the authority in writing of his desire to object to the step being taken, the authority shall afford him an opportunity to do so.
- (4) Any objection made under subsection (3) may be made orally or in writing, by the recipient of the notice or a representative.
- (5) If the authority, after giving the person concerned an opportunity to object to the step being taken, decides nevertheless to take it, it shall send him written notice of its decision.
- (6) A step of a kind mentioned in subsection (1)(b) or (c) shall not take effect until the expiry of the time within which an appeal may be brought under section 79M or, where such an appeal is brought, before its determination.
- (7) Subsection (6) does not prevent a step from taking effect before the expiry of the time within which an appeal may be brought under section 79M if the person concerned notifies the registration authority in writing that he does not intend to appeal.

#### 79M Appeals.

- (1) An appeal against—

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- (a) the taking of any step mentioned in section 79L(1); or
- (b) an order under section 79K,

shall lie to the Tribunal.

- (2) On an appeal, the Tribunal may—
  - (a) confirm the taking of the step or the making of the order or direct that it shall not have, or shall cease to have, effect; and
  - (b) impose, vary or cancel any condition.

#### *Inspection: England*

### **79N General functions of the Chief Inspector.**

- (1) The Chief Inspector has the general duty of keeping the Secretary of State informed about the quality and standards of child minding and day care provided by registered persons in England.
- (2) When asked to do so by the Secretary of State, the Chief Inspector shall give advice or information to the Secretary of State about such matters relating to the provision of child minding or day care by registered persons in England as may be specified in the Secretary of State's request.
- (3) The Chief Inspector may at any time give advice to the Secretary of State, either generally or in relation to provision by particular persons or on particular premises, on any matter connected with the provision of child minding or day care by registered persons in England.
- (4) The Chief Inspector may secure the provision of training for persons who provide or assist in providing child minding or day care, or intend to do so.
- (5) Regulations may confer further functions on the Chief Inspector relating to child minding and day care provided in England.
- (6) The annual reports of the Chief Inspector required by subsection (7)(a) of section 2 of the School Inspections Act 1996 to be made to the Secretary of State shall include an account of the exercise of the Chief Inspector's functions under this Part, and the power conferred by subsection (7)(b) of that section to make other reports to the Secretary of State includes a power to make reports with respect to matters which fall within the scope of his functions by virtue of this Part.

### **79P Early years child care inspectorate.**

- (1) The Chief Inspector shall establish and maintain a register of early years child care inspectors for England.
- (2) The register may be combined with the register maintained for England under paragraph 8(1) of Schedule 26 to the School Standards and Framework Act 1998 (register of nursery education inspectors).
- (3) Paragraphs 8(2) to (9), 9(1) to (4), 10 and 11 of that Schedule shall apply in relation to the register of early years child care inspectors as they apply in relation to the register maintained for England under paragraph 8(1) of that Schedule, but with the modifications set out in subsection (4).

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- (4) In the provisions concerned—
- (a) references to registered nursery education inspectors shall be read as references to registered early years child care inspectors;
  - (b) references to inspections under paragraph 6 of that Schedule shall be read as references to inspections under section 79Q (and references to the functions of a registered nursery education inspector under paragraph 6 shall be interpreted accordingly);
  - (c) references to the registration of a person under paragraph 6 of that Schedule shall be read as references to the registration of a person under subsection (1) (and references to applications made under paragraph 6 shall be interpreted accordingly); and
  - (d) in paragraph 10(2), for the words from “to a tribunal” to the end there shall be substituted “to the Tribunal established under section 9 of the Protection of Children Act 1999.”
- (5) Registered early years child care inspectors are referred to below in this Part as registered inspectors.

**79Q Inspection of provision of child minding and day care in England.**

- (1) The Chief Inspector may at any time require any registered person to provide him with any information connected with the person’s activities as a child minder, or provision of day care, which the Chief Inspector considers it necessary to have for the purposes of his functions under this Part.
- (2) The Chief Inspector shall secure that any child minding provided in England by a registered person is inspected by a registered inspector at prescribed intervals.
- (3) The Chief Inspector shall secure that any day care provided by a registered person on any premises in England is inspected by a registered inspector at prescribed intervals.
- (4) The Chief Inspector may comply with subsection (2) or (3) either by organising inspections or by making arrangements with others for them to organise inspections.
- (5) In prescribing the intervals mentioned in subsection (2) or (3) the Secretary of State may make provision as to the period within which the first inspection of child minding or day care provided by any person or at any premises is to take place.
- (6) A person conducting an inspection under this section shall report on the quality and standards of the child minding or day care provided.
- (7) The Chief Inspector may arrange for an inspection conducted by a registered inspector under this section to be monitored by another registered inspector.

**79R Reports of inspections.**

- (1) A person who has conducted an inspection under section 79Q shall report in writing on the matters inspected to the Chief Inspector within the prescribed period.

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- (2) The period mentioned in subsection (1) may, if the Chief Inspector considers it necessary, be extended by up to three months.
- (3) Once the report of an inspection has been made to the Chief Inspector under subsection (1) he—
  - (a) may send a copy of it to the Secretary of State, and shall do so without delay if the Secretary of State requests a copy;
  - (b) shall send a copy of it, or of such parts of it as he considers appropriate, to any prescribed authorities or persons; and
  - (c) may arrange for the report (or parts of it) to be further published in any manner he considers appropriate.
- (4) Subsections (2) to (4) of section 42A of the School Inspections Act 1996 shall apply in relation to the publication of any report under subsection (3) as they apply in relation to the publication of a report under any of the provisions mentioned in subsection (2) of section 42A.

*Inspection: Wales*

**79S General functions of the Assembly.**

- (1) The Assembly may secure the provision of training for persons who provide or assist in providing child minding or day care, or intend to do so.
- (2) In relation to child minding and day care provided in Wales, the Assembly shall have any additional function specified in regulations made by the Assembly; but the regulations may only specify a function corresponding to a function which, by virtue of section 79N(5), is exercisable by the Chief Inspector in relation to child minding and day care provided in England.

**79T Inspection: Wales.**

- (1) The Assembly may at any time require any registered person to provide it with any information connected with the person's activities as a child minder or provision of day care which the Assembly considers it necessary to have for the purposes of its functions under this Part.
- (2) The Assembly may by regulations make provision—
  - (a) for the inspection of the quality and standards of child minding provided in Wales by registered persons and of day care provided by registered persons on premises in Wales;
  - (b) for the publication of reports of the inspections in such manner as the Assembly considers appropriate.
- (3) The regulations may provide for the inspections to be organised by—
  - (a) the Assembly; or
  - (b) Her Majesty's Chief Inspector of Education and Training in Wales, or any other person, under arrangements made with the Assembly.
- (4) The regulations may provide for subsections (2) to (4) of section 42A of the School Inspections Act 1996 to apply with modifications in relation to the publication of reports under the regulations.

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### *Supplementary*

#### 79U **Rights of entry etc.**

- (1) An authorised inspector may at any reasonable time enter any premises in England or Wales on which child minding or day care is at any time provided.
- (2) Where an authorised inspector has reasonable cause to believe that a child is being looked after on any premises in contravention of this Part, he may enter those premises at any reasonable time.
- (3) An inspector entering premises under this section may—
  - (a) inspect the premises;
  - (b) inspect, and take copies of—
    - (i) any records kept by the person providing the child minding or day care; and
    - (ii) any other documents containing information relating to its provision;
  - (c) seize and remove any document or other material or thing found there which he has reasonable grounds to believe may be evidence of a failure to comply with any condition or requirement imposed by or under this Part;
  - (d) require any person to afford him such facilities and assistance with respect to matters within the person’s control as are necessary to enable him to exercise his powers under this section;
  - (e) take measurements and photographs or make recordings;
  - (f) inspect any children being looked after there, and the arrangements made for their welfare;
  - (g) interview in private the person providing the child minding or day care; and
  - (h) interview in private any person looking after children, or living or working, there who consents to be interviewed.
- (4) Section 42 of the School Inspections Act 1996 (inspection of computer records for purposes of Part I of that Act) shall apply for the purposes of subsection (3) as it applies for the purposes of Part I of that Act.
- (5) The registration authority may, in any case where it appears to the authority appropriate to do so, authorise a person who is not an authorised inspector to exercise any of the powers conferred by this section.
- (6) A person exercising any power conferred by this section shall, if so required, produce some duly authenticated document showing his authority to do so.
- (7) It shall be an offence wilfully to obstruct a person exercising any such power.
- (8) Any person guilty of an offence under subsection (7) shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (9) In this section—

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“authorised inspector” means a registered inspector or a person authorised by the Assembly or by any person with whom the Assembly has made arrangements under section 79T(3);

“documents” and “records” each include information recorded in any form.

#### **79V Function of local authorities.**

Each local authority shall, in accordance with regulations, secure the provision—

- (a) of information and advice about child minding and day care; and
- (b) of training for persons who provide or assist in providing child minding or day care.

#### *Checks on suitability of persons working with children over the age of seven*

#### **79W Requirement for certificate of suitability.**

- (1) This section applies to any person not required to register under this Part who looks after, or provides care for, children and meets the following conditions.

References in this section to children are to those under the age of 15 or (in the case of disabled children) 17.

- (2) The first condition is that the period, or the total of the periods, in any week which he spends looking after children or (as the case may be) during which the children are looked after exceeds five hours.
- (3) The second condition is that he would be required to register under this Part (or, as the case may be, this Part if it were subject to prescribed modifications) if the children were under the age of eight.
- (4) Regulations may require a person to whom this section applies to hold a certificate issued by the registration authority as to his suitability, and the suitability of each prescribed person, to look after children.
- (5) The regulations may make provision about—
  - (a) applications for certificates;
  - (b) the matters to be taken into account by the registration authority in determining whether to issue certificates;
  - (c) the information to be contained in certificates;
  - (d) the period of their validity.
- (6) The regulations may provide that a person to whom this section applies shall be guilty of an offence—
  - (a) if he does not hold a certificate as required by the regulations; or
  - (b) if, being a person who holds such a certificate, he fails to produce it when reasonably required to do so by a prescribed person.
- (7) The regulations may provide that a person who, for the purpose of obtaining such a certificate, knowingly makes a statement which is false or misleading in a material particular shall be guilty of an offence.

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- (8) The regulations may provide that a person guilty of an offence under the regulations shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

*Time limit for proceedings*

**79X Time limit for proceedings.**

Proceedings for an offence under this Part or regulations made under it may be brought within a period of six months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to his knowledge; but no such proceedings shall be brought by virtue of this section more than three years after the commission of the offence.”

- (2) Schedule 3 (which inserts a new Schedule 9A in the 1989 Act) shall have effect.
- (3) The appropriate Minister may by order make a scheme for the transfer to the new employer of any eligible employee.
- (4) In subsection (3)—
- “eligible employee” means a person who is employed under a contract of employment with an old employer on work which would have continued but for the provisions of this section;
- “new employer” means the registration authority (within the meaning of Part XA of the 1989 Act) and, in relation to Wales, includes Her Majesty’s Chief Inspector of Education and Training in Wales;
- “old employer” means a local authority.
- (5) Part X of, and Schedule 9 to, the 1989 Act shall cease to extend to England and Wales.

**Commencement Information**

**I75** S. 79 partly in force; s. 79 not in force at Royal Assent see s. 122; s. 79(1)(2) in force for E. for certain purposes at 16.3.2001, s. 79(3)(4) in force for E. at 16.3.2001 by S.I. 2001/1210, arts. 1(3), 2(a)-(c); s. 79(1)(2) in force for E. in so far as not already in force, s. 79(5) in force for E. at 2.7.2001 by S.I. 2001/2041, arts. 1(4), 2(1) (subject to art. 2(2)(3)) (with transitional, transitory and savings provisions in art. 3, Sch.); s. 79(1) in force for E. for certain purposes at 2.9.2002 by S.I. 2001/2041, arts. 1(4), 2(2) (with transitional, transitory and savings provisions in art. 3); s. 79(1)(2) in force for W. for certain purposes, s. 79(3)(4) in force for W. at 1.7.2001 by S.I. 2001/2190, art. 2, Sch. Table; s. 79(1) in force for E. for certain purposes at 1.4.2002 by S.I. 2002/839, arts. 1(2), 2; s. 79(1)(2)(5) in force for W. in so far as not already in force at 1.4.2002 by S.I. 2002/920, arts. 1(4), 3(3) (subject to art. 3(4)(5) and to transitional provisions in Schs. 1-3); s. 79(1) in force for E. for certain purposes at 2.9.2002 by S.I. 2002/2215, arts. 1(2), 2



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## PART VII

### PROTECTION OF CHILDREN AND VULNERABLE ADULTS

#### *Protection of vulnerable adults*

#### **80 Basic definitions.**

(1) Subsections (2) to (7) apply for the purposes of this Part.

(2) “Care worker” means—

- (a) an individual who is or has been employed in a position which is such as to enable him to have regular contact in the course of his duties with adults to whom accommodation is provided at a care home;
- (b) an individual who is or has been employed in a position which is such as to enable him to have regular contact in the course of his duties with adults to whom prescribed services are provided by an independent hospital, an independent clinic, an independent medical agency or a National Health Service body;
- (c) an individual who is or has been employed in a position which is concerned with the provision of personal care in their own homes for persons who by reason of illness, infirmity or disability are unable to provide it for themselves without assistance.

[<sup>F102</sup>(d) an individual who has entered into an agreement with a person within subsection 7(e) and is employed to provide support, care or accommodation to an adult (not being a relative of the individual) who is in need of it.]

(3) “Care position”, in relation to an individual, means a position such as is mentioned in [<sup>F103</sup>subsection (2)(a) to (d)].

(4) “Employment” has the same meaning as in the <sup>M16</sup>Protection of Children Act 1999 (referred to in this Act as “the 1999 Act”); and references to an individual being employed shall be construed accordingly.

[<sup>F104</sup>(4A) “Relative” in relation to an individual mentioned in subsections (2)(d) and (6)(d) means—

- (a) a spouse [<sup>F105</sup>or civil partner];
- (b) any parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece of the individual, or of his spouse [<sup>F105</sup>or civil partner];
- (c) the spouse [<sup>F105</sup>or civil partner] of any relative within subsection (b) of this definition,

and for the purpose of determining any such relationship a person’s step child shall be treated as his or her child, <sup>F106</sup>. . . references to “spouse” include a former spouse and a person who is living with the person as if they were husband and wife [<sup>F107</sup> and references to “civil partner” include a former civil partner and a person who is living with the person as if they were civil partners].]

(5) “Supply worker”—

- (a) in relation to an employment agency, means an individual supplied by the agency for employment in a care position or for whom the agency has found employment in a care position;

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- (b) in relation to an employment business, means an individual supplied by the business for employment in a care position.
- (6) “Vulnerable adult” means—
- (a) an adult to whom accommodation and nursing or personal care are provided in a care home;
  - (b) an adult to whom personal care is provided in their own home under arrangements made by a domiciliary care agency;<sup>F108</sup> . . .
  - (c) an adult to whom prescribed services are provided by an independent hospital, independent clinic, independent medical agency or National Health Service body;<sup>F109</sup> or
  - (d) an adult to whom support, care or accommodation is provided by an individual (not being a relative of that adult) under the terms of an agreement between that individual and a person within subsection (7)(e).]
- (7) The persons who provide care for vulnerable adults are—
- (a) any person who carries on a care home;
  - (b) any person who carries on a domiciliary care agency;
  - (c) any person who carries on an independent hospital, an independent clinic or an independent medical agency, which provides prescribed services;<sup>F110</sup> . . .
  - (d) a National Health Service body which provides prescribed services<sup>F111</sup>; and
  - (e) any person who carries on a scheme under which an individual agrees with that person to provide support, care or accommodation to an adult who is in need of it.]
- (8) Regulations for the purposes of this section or section 91, 93 or 103 may only be made by the Secretary of State; and before making any regulations for the purposes of this section or section 93 or 103 the Secretary of State shall consult the Assembly.

#### Textual Amendments

- F102** S. 80(2)(d) inserted (31.8.2004) by [The Care Standards Act 2000 \(Extension of Protection of Vulnerable Adults Scheme\) Regulations 2004 \(S.I. 2004/2070\)](#), **reg. 2(2)**
- F103** Words in s. 80(3) substituted (31.8.2004) by [The Care Standards Act 2000 \(Extension of Protection of Vulnerable Adults Scheme\) Regulations 2004 \(S.I. 2004/2070\)](#), **reg. 2(3)**
- F104** S. 80(4A) inserted (31.8.2004) by [The Care Standards Act 2000 \(Extension of Protection of Vulnerable Adults Scheme\) Regulations 2004 \(S.I. 2004/2070\)](#), **reg. 2(4)**
- F105** Words in s. 80(4A)(a)(b)(c) inserted (5.12.2005) by [The Civil Partnership \(Miscellaneous and Consequential Provisions\) Order 2005 \(S.I. 2005/3029\)](#), art. 1, **Sch. 1 para. 5(a)**
- F106** Word in s. 80(4A) omitted (5.12.2005) by virtue of [The Civil Partnership \(Miscellaneous and Consequential Provisions\) Order 2005 \(S.I. 2005/3029\)](#), art. 1, **Sch. 1 para. 5(b)**
- F107** Words in s. 80(4A) inserted (5.12.2005) by [The Civil Partnership \(Miscellaneous and Consequential Provisions\) Order 2005 \(S.I. 2005/3029\)](#), art. 1, **Sch. 1 para. 5(c)**
- F108** S. 80(6): word preceding para. (c) omitted (31.8.2004) by virtue of [The Care Standards Act 2000 \(Extension of Protection of Vulnerable Adults Scheme\) Regulations 2004 \(S.I. 2004/2070\)](#), **reg. 2(5)(a)**
- F109** S. 80(6)(d) and preceding word inserted (31.8.2004) by [The Care Standards Act 2000 \(Extension of Protection of Vulnerable Adults Scheme\) Regulations 2004 \(S.I. 2004/2070\)](#), **reg. 2(5)(b)**
- F110** S. 80(7): word preceding para. (d) omitted (31.8.2004) by virtue of [The Care Standards Act 2000 \(Extension of Protection of Vulnerable Adults Scheme\) Regulations 2004 \(S.I. 2004/2070\)](#), **reg. 2(6)(a)**

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**F111** S. 80(7)(e) and preceding word inserted (31.8.2004) by [The Care Standards Act 2000 \(Extension of Protection of Vulnerable Adults Scheme\) Regulations 2004 \(S.I. 2004/2070\)](#), [reg. 2\(6\)\(b\)](#)

#### Commencement Information

**I76** S. 80 partly in force; s. 80 not in force at Royal Assent see s. 122; s. 80(8) in force at 2.10.2000 for certain purposes by [S.I. 2000/2544, art. 2\(2\)\(a\)](#); s. 80 in force for certain purposes at 26.7.2004 by [S.I. 2004/1757, art. 2](#)

#### Marginal Citations

**M16** 1999 c. 14.

## 81 Duty of Secretary of State to keep list.

- (1) The Secretary of State shall keep a list of individuals who are considered unsuitable to work with vulnerable adults.
- (2) An individual shall not be included in the list except in accordance with this Part.
- (3) The Secretary of State may at any time remove an individual from the list if he is satisfied that the individual should not have been included in it.

## 82 Persons who provide care for vulnerable adults: duty to refer.

- (1) A person who provides care for vulnerable adults (“the provider”) shall refer a care worker to the Secretary of State if there is fulfilled—
  - (a) any of the conditions mentioned in subsection (2); or
  - (b) the condition mentioned in subsection (3).
- (2) The conditions referred to in subsection (1)(a) are—
  - (a) that the provider has dismissed the worker on the grounds of misconduct (whether or not in the course of his employment) which harmed or placed at risk of harm a vulnerable adult;
  - (b) that the worker has resigned, retired or been made redundant in circumstances such that the provider would have dismissed him, or would have considered dismissing him, on such grounds if he had not resigned, retired or been made redundant;
  - (c) that the provider has, on such grounds, transferred the worker to a position which is not a care position;
  - (d) that the provider has, on such grounds, suspended the worker or provisionally transferred him to a position which is not a care position but has not yet decided whether to dismiss him or to confirm the transfer.
- (3) The condition referred to in subsection (1)(b) is that—
  - (a) in circumstances not falling within subsection (2), the provider has dismissed the worker, he has resigned or retired or the provider has transferred him to a position which is not a care position;
  - (b) information not available to the provider at the time of the dismissal, resignation, retirement or transfer has since become available; and
  - (c) the provider has formed the opinion that, if that information had been available at that time and if (where applicable) the worker had not resigned or retired, the provider would have dismissed him, or would have considered dismissing him, on such grounds as are mentioned in subsection (2)(a).

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- (4) If it appears from the information submitted with a reference under subsection (1) that it may be appropriate for the worker to be included in the list kept under section 81, the Secretary of State shall—
- (a) determine the reference in accordance with subsections (5) to (7); and
  - (b) pending that determination, provisionally include the worker in the list.
- (5) The Secretary of State shall—
- (a) invite observations from the worker on the information submitted with the reference and, if he thinks fit, on any observations submitted under paragraph (b); and
  - (b) invite observations from the provider on any observations on the information submitted with the reference and, if he thinks fit, on any other observations under paragraph (a).
- (6) Where—
- (a) the Secretary of State has considered the information submitted with the reference, any observations submitted to him and any other information which he considers relevant; and
  - (b) in the case of a reference under subsection (2)(d), the provider has dismissed the worker or, as the case may be, has confirmed his transfer on such grounds as are there mentioned,
- the Secretary of State shall confirm the worker's inclusion in the list if subsection (7) applies; otherwise he shall remove him from the list.
- (7) This subsection applies if the Secretary of State is of the opinion—
- (a) that the provider reasonably considered the worker to be guilty of misconduct (whether or not in the course of his employment) which harmed or placed at risk of harm a vulnerable adult; and
  - (b) that the worker is unsuitable to work with vulnerable adults.
- (8) The reference in subsection (6)(b) to the provider dismissing the worker on such grounds as are mentioned in subsection (2)(d) includes—
- (a) a reference to his resigning, retiring or being made redundant in circumstances such that the provider would have dismissed him, or would have considered dismissing him, on such grounds if he had not resigned, retired or been made redundant; and
  - (b) a reference to the provider transferring him, on such grounds, to a position which is not a care position.
- (9) This section does not apply where—
- (a) the provider carries on a domiciliary care agency, or an independent medical agency, which is or includes an employment agency or an employment business; and
  - (b) the worker in question is a supply worker in relation to him.
- (10) Nothing in this section shall require a person who provides care for vulnerable adults to refer a worker to the Secretary of State in any case where the dismissal, resignation, retirement, transfer or suspension took place or, as the case may be, the opinion was formed before the commencement of this section.

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**Modifications etc. (not altering text)**

**C34** S. 82(4)-(7) applied (with modifications) (26.7.2004) by 1999 c. 14, ss. 2C(1)(4)(5) (as inserted by 2000 c. 14, ss. 97(1), 122; S.I. 2004/1757, art. 2(b))

**83 Employment agencies and businesses: duty to refer.**

- (1) A person who carries on an employment agency or an employment business (“the provider”) shall refer a supply worker to the Secretary of State if there is fulfilled—
  - (a) in the case of an employment agency, any of the conditions mentioned in subsection (2); or
  - (b) in the case of an employment business, any of the conditions mentioned in subsection (3).
- (2) The conditions referred to in subsection (1)(a) are—
  - (a) that the provider has decided not to do any further business with the worker on grounds of misconduct (whether or not in the course of his employment) which harmed or placed at risk of harm a vulnerable adult;
  - (b) that the provider has decided on such grounds not to find the worker further employment, or supply him for further employment, in a care position.
- (3) The conditions mentioned in subsection (1)(b) are—
  - (a) that the provider has dismissed the worker on the grounds of misconduct (whether or not in the course of his employment) which harmed or placed at risk of harm a vulnerable adult;
  - (b) that the worker has resigned or retired in circumstances such that the provider would have dismissed him, or would have considered dismissing him, on such grounds if he had not resigned or retired;
  - (c) that the provider has, on such grounds, decided not to supply the worker for further employment in a care position.
- (4) If it appears from the information submitted with a reference under subsection (1) that it may be appropriate for the worker to be included in the list kept under section 81, the Secretary of State shall—
  - (a) determine the reference in accordance with subsections (5) to (7); and
  - (b) pending that determination, provisionally include the worker in the list.
- (5) The Secretary of State shall—
  - (a) invite observations from the worker on the information submitted with the reference and, if he thinks fit, on any observations submitted under paragraph (b); and
  - (b) invite observations from the provider on any observations on the information submitted with the reference and, if he thinks fit, on any other observations under paragraph (a).
- (6) Where the Secretary of State has considered the information submitted with the reference, any observations submitted to him and any other information which he considers relevant, the Secretary of State shall confirm the worker’s inclusion in the list if subsection (7) applies; otherwise he shall remove him from the list.
- (7) This subsection applies if the Secretary of State is of the opinion—

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- (a) that the provider reasonably considered the worker to be guilty of misconduct (whether or not in the course of his employment) which harmed or placed at risk of harm a vulnerable adult; and
  - (b) that the worker is unsuitable to work with vulnerable adults.
- (8) Nothing in this section shall require a person who provides care for vulnerable adults to refer a worker to the Secretary of State in any case where the dismissal, resignation or retirement took place or, as the case may be, the decision was made before the commencement of this section.

**Modifications etc. (not altering text)**

C35 S. 83(4)-(7) applied (with modifications) (26.7.2004) by 1999 c. 14, s. 2C(2)(4)(5) (as inserted by 2000 c. 14, ss. 97(1), 122; S.I. 2004/1757, art. 2(b))

**84 Power of registration authority to refer.**

- (1) The registration authority may refer a care worker to the Secretary of State if—
- (a) on the basis of evidence obtained by it in the exercise of its functions under Part II of this Act, the authority considers that the worker has been guilty of misconduct (whether or not in the course of his employment) which harmed or placed at risk of harm a vulnerable adult; and
  - (b) the worker has not been referred to the Secretary of State under section 82 or 83 in respect of the misconduct.
- (2) Section 82(4) to (7) shall apply in relation to a reference made by the registration authority under subsection (1) as it applies in relation to a reference made by a person under section 82(1).
- (3) The reference in subsection (1) to misconduct is to misconduct which occurred after the commencement of this section.

**85 Individuals named in the findings of certain inquiries.**

- (1) Subsection (2) applies where—
- (a) a relevant inquiry has been held;
  - (b) the report of the person who held the inquiry names an individual who is or has been employed in a care position; and
  - (c) it appears to the Secretary of State from the report—
    - (i) that the person who held the inquiry found that the individual was guilty of relevant misconduct; and
    - (ii) that the individual is unsuitable to work with vulnerable adults.
- (2) The Secretary of State—
- (a) may provisionally include the individual in the list kept under section 81; and
  - (b) if he does so, shall determine in accordance with subsections (3) to (5) whether the individual's inclusion in the list should be confirmed.
- (3) The Secretary of State shall—

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- (a) invite observations from the individual on the report, so far as relating to him, and, if the Secretary of State thinks fit, on any observations submitted under paragraph (b); and
  - (b) invite observations from the relevant employer on any observations on the report and, if the Secretary of State thinks fit, on any other observations under paragraph (a).
- (4) Where the Secretary of State has considered the report, any observations submitted to him and any other information which he considers relevant, he shall confirm that individual's inclusion in the list if subsection (5) applies; otherwise he shall remove him from the list.
- (5) This subsection applies if the Secretary of State is of the opinion—
- (a) that the person who held the inquiry reasonably considered the individual to be guilty of relevant misconduct; and
  - (b) that the individual is unsuitable to work with vulnerable adults.
- (6) In this section—
- “relevant employer” means the person who, at the time mentioned in the definition of “relevant misconduct” below, employed the individual in a care position;
- “relevant misconduct” means misconduct which harmed or placed at risk of harm a vulnerable adult and was committed (whether or not in the course of his employment) at a time when the individual was employed in a care position.
- (7) In this section “relevant inquiry” means any of the following—
- (a) an inquiry held [<sup>F112</sup>under the Inquiries Act 2005 or] under—
    - (i) section 10;
    - (ii) section 35 of the <sup>M17</sup>Government of Wales Act 1998;
    - (iii) section 81 of the 1989 Act;
    - (iv) section 84 of the <sup>M18</sup>National Health Service Act 1977;
    - (v) section 7C of the <sup>M19</sup>Local Authority Social Services Act 1970;
  - (b) an inquiry to which the <sup>M20</sup>Tribunals of Inquiry (Evidence) Act 1921 applies;
  - (c) any other inquiry or hearing designated for the purposes of this section by an order made by the Secretary of State.
- (8) Before making an order under subsection (7) the Secretary of State shall consult the Assembly.

#### Textual Amendments

**F112** Words in s. 85(7)(a) inserted (7.6.2005) by [Inquiries Act 2005 \(c. 12\)](#), ss. 48, 51, [Sch. 2 para. 19](#) (with ss. 44, 50); S.I. 2005/1432, [art. 2](#)

#### Modifications etc. (not altering text)

**C36** S. 85 applied (with modifications) (26.7.2004) by [1999 c. 14, s. 2C\(3\)\(4\)\(5\)](#) (as inserted by [2000 c. 14, ss. 97\(1\), 122](#); S.I. 2004/1757, [art. 2\(b\)](#))

#### Marginal Citations

**M17** 1998 c. 38.

**M18** 1977 c. 49.

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**M19** 1970 c. 42.

**M20** 1921 c. 7.

## **86 Appeals against inclusion in list.**

- (1) An individual who is included (otherwise than provisionally) in the list kept by the Secretary of State under section 81 may appeal to the Tribunal against—
  - (a) the decision to include him in the list; or
  - (b) with the leave of the Tribunal, any decision of the Secretary of State not to remove him from the list under section 81(3).
- (2) Subject to subsection (5), an individual who has been provisionally included for a period of more than nine months in the list kept by the Secretary of State under section 81 may, with the leave of the Tribunal, have the issue of his inclusion in the list determined by the Tribunal instead of by the Secretary of State.
- (3) If on an appeal or determination under this section the Tribunal is not satisfied of either of the following, namely—
  - (a) that the individual was guilty of misconduct (whether or not in the course of his duties) which harmed or placed at risk of harm a vulnerable adult; and
  - (b) that the individual is unsuitable to work with vulnerable adults,
 the Tribunal shall allow the appeal or determine the issue in the individual's favour and (in either case) direct his removal from the list; otherwise it shall dismiss the appeal or direct the individual's inclusion in the list.
- (4) Where an individual has been convicted of an offence involving misconduct (whether or not in the course of his employment) which harmed or placed at risk of harm a vulnerable adult, no finding of fact on which the conviction must be taken to have been based shall be challenged on an appeal or determination under this section.
- (5) Where the misconduct of which the individual is alleged to have been guilty is the subject of any civil or criminal proceedings, an application for leave under subsection (2) may not be made before the end of the period of six months immediately following the final determination of the proceedings.
- (6) For the purposes of subsection (5), proceedings are finally determined when—
  - (a) the proceedings are terminated without a decision being made;
  - (b) a decision is made against which no appeal lies;
  - (c) in a case where an appeal lies with leave against a decision, the time limited for applications for leave expires without leave being granted; or
  - (d) in a case where leave to appeal against a decision is granted or is not required, the time limited for appeal expires without an appeal being brought.

## **87 Applications for removal from list.**

- (1) Subject to section 88, an individual who is included in the list kept by the Secretary of State under section 81 may make an application to the Tribunal under this section.
- (2) On an application under this section the Tribunal shall determine whether or not the individual should continue to be included in the list.



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- (3) If the Tribunal is satisfied that the individual is no longer unsuitable to work with vulnerable adults it shall direct his removal from the list; otherwise it shall dismiss the application.

## **88 Conditions for application under section 87.**

- (1) An individual may only make an application under section 87 with the leave of the Tribunal.
- (2) An application for leave under this section may not be made unless the appropriate conditions are satisfied in the individual's case.
- (3) In the case of an individual who was a child when he was included (otherwise than provisionally) in the list, the appropriate conditions are satisfied if—
  - (a) he has been so included for a continuous period of at least five years; and
  - (b) in the period of five years ending with the time when he makes the application under this section, he has made no other such application.
- (4) In the case of any other individual, the appropriate conditions are satisfied if—
  - (a) he has been included (otherwise than provisionally) in the list for a continuous period of at least ten years; and
  - (b) in the period of ten years ending with the time when he makes the application under this section, he has made no other such application.
- (5) The Tribunal shall not grant an application under this section unless it considers—
  - (a) that the individual's circumstances have changed since he was included (otherwise than provisionally) in the list, or, as the case may be, since he last made an application under this section; and
  - (b) that the change is such that leave should be granted.

## **89 Effect of inclusion in list.**

- (1) Where a person who provides care to vulnerable adults proposes to offer an individual employment in a care position that person—
  - (a) shall ascertain whether the individual is included in the list kept under section 81; and
  - (b) if he is included in that list, shall not offer him employment in such a position.
- (2) Where a person who provides care to vulnerable adults discovers that an individual employed by him in a care position is included in that list, he shall cease to employ him in a care position.

For the purposes of this subsection an individual is not employed in a care position if he has been suspended or provisionally transferred to a position which is not a care position.

- (3) Where a person who provides care to vulnerable adults (“the provider”) proposes to offer employment in a care position to an individual who has been supplied by a person who carries on an employment agency or employment business, there is a sufficient compliance with subsection (1) if the provider—
  - (a) satisfies himself that, on a date within the last 12 months, the other person ascertained whether the individual was included in the list kept under section 81;

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- (b) obtains written confirmation of the facts as ascertained by that person; and
  - (c) if the individual was included in the list on that date, does not offer him employment in a care position.
- (4) It is immaterial for the purposes of subsection (1) or (3) whether the individual is already employed by the provider.
- (5) An individual who is included (otherwise than provisionally) in the list kept by the Secretary of State under section 81 shall be guilty of an offence if he knowingly applies for, offers to do, accepts or does any work in a care position.
- (6) It shall be a defence for an individual charged with an offence under subsection (5) to prove that he did not know, and could not reasonably be expected to know, that he was so included in that list.
- (7) An individual who is guilty of an offence under this section shall be liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum, or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding five years, or to a fine, or to both.

**90 Searches of list under Part V of Police Act 1997.**

F113 .....

**Textual Amendments**

**F113** S. 90 repealed (6.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. 174, 178, [Sch. 17 Pt. 2](#); [S.I. 2006/378](#), [art. 7](#)

**91 Access to list before commencement of section 90.**

- (1) In relation to any time before the commencement of section 90, any person seeking to ascertain whether a relevant individual is included in the list kept under section 81 shall be entitled to that information on making application for the purpose to the Secretary of State.
- (2) For the purposes of subsection (1) a relevant individual is—
- (a) an individual to whom the person proposes to offer employment in a care position;
  - (b) an individual for whom the person proposes to find employment, or whom he proposes to supply for employment, in a care position; or
  - (c) an individual of a prescribed description who does not fall within paragraph (a) or (b).

**92 Persons referred for inclusion in list under Protection of Children Act 1999.**

- (1) Section 2(4) to (7) of the 1999 Act (referrals for inclusion in list of individuals who are considered unsuitable to work with children) shall, in the case of any reference under section 2, 2A or 2D of that Act, apply in relation to the list kept under section 81 as they apply in relation to the list kept under section 1 of that Act, but as if the reference in subsection (7)(b) to children were a reference to vulnerable adults.

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- (2) Section 2B of the 1999 Act shall apply in relation to the list kept under section 81 as it applies in relation to the list kept under section 1 of that Act, but as if the references in subsections (1)(c)(ii) and (5)(b) to children were references to vulnerable adults.
- (3) But the Secretary of State may not by virtue of subsection (1) or (2) provisionally include an individual in the list kept under section 81, or confirm his inclusion in that list, unless he provisionally includes him in the list kept under section 1 of the 1999 Act or, as the case requires, confirms his inclusion in that list.
- (4) Where an individual has by virtue of subsection (1) or (2) been included in the list kept under section 81, section 86 shall apply to him as if the references in subsections (3)(a) and (4) to a vulnerable adult were references to a child.

### **93 Power to extend Part VII.**

- (1) The Secretary of State may by regulations—
  - (a) add to the list in section 80(7) any prescribed persons to whom subsection (2) applies;
  - (b) amend the definitions of “care worker”, “care position” and “vulnerable adult” accordingly.
- (2) This subsection applies to—
  - (a) local authorities providing services to adults in the exercise of their social services functions;
  - (b) persons who provide to adults services which are similar to services which—
    - (i) may or must be so provided by local authorities; or
    - (ii) may or must be provided by National Health Service bodies.
- (3) In its application by virtue of subsection (1), this Part shall have effect—
  - (a) if the regulations so provide, as if “may” were substituted for “ shall ” in sections 82(1) and 83(1), and section 89 were omitted;
  - (b) with such other modifications as may be specified in the regulations.

*The list kept under section 1 of the 1999 Act*

### **94 Employment agencies and businesses.**

- (1) In subsection (9) of section 2 of the 1999 Act (inclusion on reference to Secretary of State in list of individuals who are considered unsuitable to work with children)—
  - (a) for “This section” there shall be substituted “ Subsections (1) to (8) and (10) of this section ”; and
  - (b) for the words from “(a)” to “harm” there shall be substituted—
    - “(a) in subsection (1), for the words from “there is” to the end there were substituted the following paragraphs—
    - “( ) the organisation has decided not to do any further business with the individual on the grounds of misconduct (whether or not in the course of his employment) which harmed a child or placed a child at risk of harm; or

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- (b) the organisation has decided on such grounds not to find the individual further employment, or supply him for further employment, in a child care position; ””

(2) After subsection (9) of that section there shall be inserted—

“(9A) Subsections (1) to (8) and (10) of this section shall have effect in relation to an organisation which carries on an employment business as if—

- (a) in subsection (1)—
  - (i) for the words from “who” to “position” there were substituted the words “who has been supplied by the organisation for employment in a child care position”; and
  - (ii) paragraph (b) and the word “or” preceding it were omitted;
- (b) for subsection (2)(c) and (d) there were substituted the following paragraph—
- (c) “that the organisation has, on such grounds, decided not to supply the individual for further employment in a child care position.” and
- (c) subsections (3), (6)(b) and (8) were omitted.”

## 95 Inclusion in 1999 Act list on reference by certain authorities.

(1) After section 2 of the 1999 Act there is inserted—

### “2A Power of certain authorities to refer individuals for inclusion in list.

- (1) A person to whom this section applies may refer to the Secretary of State an individual who is or has been employed in a child care position if—
  - (a) on the basis of evidence obtained by him in the exercise of his functions under Part II of the Care Standards Act 2000 or Part XA of the Children Act 1989, the person considers that the individual has been guilty of misconduct (whether or not in the course of his employment) which harmed a child or placed a child at risk of harm; and
  - (b) the individual has not been referred to the Secretary of State under section 1 above in respect of the misconduct.
- (2) The persons to whom this section applies are—
  - (a) the National Care Standards Commission;
  - (b) the National Assembly for Wales; and
  - (c) Her Majesty’s Chief Inspector of Schools in England.
- (3) Section 2(4) to (7) above shall apply in relation to a reference made by a person under subsection (1) above as it applies in relation to a reference made by an organisation under section 2(1) above.
- (4) The reference in subsection (1) above to misconduct is to misconduct which occurred after the commencement of this section.”
- (2) In section 1(2)(a) of that Act (duty of Secretary of State to keep list), after “2” there is inserted “ or 2A ”.
- (3) For the sidenote to section 2 of that Act there is substituted “ Inclusion in list on reference following disciplinary action etc. ”.

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### Commencement Information

**I77** S. 95 wholly in force at 1.4.2002; s. 95 not in force at Royal Assent see s. 122; s. 95 in force for W. at 1.4.2002 by S.I. 2002/920, arts. 1(4), 3(3) (subject to art. 3(4)(5) and to transitional provisions in Schs. 1-3); s. 95 in force for E. at 1.4.2002 by S.I. 2002/1493, arts. 1(2), 3(2) (subject to transitional provisions in art. 4)

## 96 Inclusion in 1999 Act list of individuals named in findings of certain inquiries.

(1) After section 2A of the 1999 Act (inserted by section 95) there is inserted—

### “2B Individuals named in the findings of certain inquiries.

- (1) Subsection (2) applies where—
- a relevant inquiry has been held;
  - the report of the person who held the inquiry names an individual who is or has been employed in a child care position; and
  - it appears to the Secretary of State from the report—
    - that the person who held the inquiry found that the individual was guilty of relevant misconduct; and
    - that the individual is unsuitable to work with children.
- (2) The Secretary of State—
- may provisionally include the individual in the list kept under section 1 above; and
  - if he does so, shall determine in accordance with subsections (3) to (5) below whether the individual’s inclusion in the list should be confirmed.
- (3) The Secretary of State shall—
- invite observations from the individual on the report, so far as relating to him, and, if the Secretary of State thinks fit, on any observations submitted under paragraph (b) below; and
  - invite observations from the relevant employer on any observations on the report and, if the Secretary of State thinks fit, on any other observations under paragraph (a) above.
- (4) Where the Secretary of State has considered the report, any observations submitted to him and any other information which he considers relevant, he shall confirm that individual’s inclusion in the list if subsection (5) below applies; otherwise he shall remove him from the list.
- (5) This subsection applies if the Secretary of State is of the opinion—
- that the person who held the inquiry reasonably considered the individual to be guilty of relevant misconduct; and
  - that the individual is unsuitable to work with children.
- (6) In this section—
- “relevant employer” means the person who, at the time referred to in the definition of “relevant misconduct” below, employed the individual in a child care position;

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“relevant misconduct” means misconduct which harmed a child or placed a child at risk of harm and was committed (whether or not in the course of his employment) at a time when the individual was employed in a child care position.

- (7) In this section “relevant inquiry” means any of the following—
- (a) an inquiry held under—
    - (i) section 10 of the Care Standards Act 2000;
    - (ii) section 35 of the <sup>M21</sup>Government of Wales Act 1998;
    - (iii) section 81 of the <sup>M22</sup>Children Act 1989;
    - (iv) section 84 of the <sup>M23</sup>National Health Service Act 1977;
    - (v) section 7C of the <sup>M24</sup>Local Authority Social Services Act 1970;
  - (b) an inquiry to which the <sup>M25</sup>Tribunals of Inquiry (Evidence) Act 1921 applies;
  - (c) any other inquiry or hearing designated for the purposes of this section by an order made by the Secretary of State.
- (8) An order under subsection (7) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) Before making an order under subsection (7) above the Secretary of State shall consult the National Assembly for Wales.”
- (2) In section 1(2) of that Act (duty of Secretary of State to keep list), before the “or” preceding paragraph (b) there shall be inserted—
- “(aa) he has been included in the list under section 2B below;”.

#### Commencement Information

**I78** S. 96 wholly in force at 2.10.2000; s. 96 not in force at Royal Assent see s. 122; s. 96 in force at 15.9.2000 for certain purposes and at 2.10.2000 in so far as not already in force by S.I. 2000/2544, art. 2(1)(a)(2)(c)

#### Marginal Citations

**M21** 1998 c. 38.  
**M22** 1989 c. 41.  
**M23** 1977 c. 49.  
**M24** 1970 c. 42.  
**M25** 1921 c. 7.

## 97 Inclusion in 1999 Act list on reference under this Part.

- (1) After section 2B of the 1999 Act (inserted by section 95) there shall be inserted—

**“2C Inclusion in list on reference under Part VII of Care Standards Act 2000.**

- (1) Section 82(4) to (7) of the Care Standards Act 2000 (persons who provide care for vulnerable adults: duty to refer) shall, in the case of any reference under

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subsection (1) of that section or section 84 of that Act, apply in relation to the list kept under section 1 above as it applies in relation to the list kept under section 81 of that Act, but as if the reference in subsection (7)(b) to vulnerable adults were a reference to children.

(2) Section 83(4) to (7) of that Act (employment agencies and businesses: duty to refer) shall, in the case of any reference under subsection (1) of that section, apply in relation to the list kept under section 1 above as it applies in relation to the list kept under section 81 of that Act, but as if the reference in subsection (7)(b) to vulnerable adults were a reference to children.

(3) Section 85 of that Act (individuals named in the findings of certain inquiries) shall apply in relation to the list kept under section 1 above as it applies in relation to the list kept under section 81 of that Act, but as if the references in subsections (1)(c)(ii) and (5)(b) to vulnerable adults were references to children.

(4) But the Secretary of State may not by virtue of this section provisionally include an individual in the list kept under section 1 above, or confirm his inclusion in that list, unless he provisionally includes him in the list kept under section 81 of that Act or, as the case requires, confirms his inclusion in that list.

(5) Where an individual has by virtue of this section been included in the list kept under section 1 above, section 4 below shall apply to him as if the references in subsections (3)(a) and (4) to a child were references to a vulnerable adult.”

(2) In section 1(2)(a) of the 1999 Act (individuals who may be included on list), after “below” there shall be inserted “ or Part VII of the Care Standards Act 2000 ”.

## **98 Individuals providing care funded by direct payments.**

(1) After section 2C of the 1999 Act (inserted by section 97) there is inserted—

### **“2D Local authorities proposing to make direct payments in respect of services.**

(1) A local authority may refer a relevant individual to the Secretary of State where, as a result of enquiries made, or caused to be made, by it under section 47 of the <sup>M26</sup>Children Act 1989, the authority considers that the individual has been guilty of misconduct (whether or not in the course of his employment) which harmed a child or placed a child at risk of harm.

(2) Section 2(4) to (7) above shall apply in relation to a reference made by a local authority under subsection (1) above as it applies in relation to a reference made by an organisation under section 2(1) above.

(3) In this section—

“funded care” means care in respect of a person’s securing the provision of which the authority has made a payment under section 17A of the <sup>M27</sup>Children Act 1989 (direct payments);

“relevant individual” means an individual who is or has been employed to provide funded care to a child.

(4) The reference in subsection (1) above to misconduct is to misconduct which occurred after the commencement of this section.”

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- (2) In section 7 of that Act (effect of inclusion in certain statutory lists), after subsection (1) there shall be inserted—

“(1A) Where—

- (a) a person (“the recipient”) employs, or proposes to employ, an individual to provide care for a child; and
- (b) a local authority proposes to make a payment to the recipient under section 17A of the <sup>M28</sup>Children Act 1989 (direct payments) in respect of his securing the provision of the care,

the authority shall, if the recipient asks it to do so, ascertain whether the individual is included in any of the lists mentioned in subsection (1) above.”

- (3) After subsection (2) of that section there shall be inserted—

“(2A) Where a local authority is required under subsection (1A) above to ascertain whether an individual who has been supplied as mentioned in subsection (2) above is included in any of the lists there mentioned, there is sufficient compliance with subsection (1A) above if the authority—

- (a) satisfies itself that, on a date within the last 12 months, the organisation which supplied the individual ascertained whether he was included in any of those lists; and
- (b) obtains written confirmation of the facts as ascertained by the organisation.”

- (4) In section 1(2)(a) of that Act (duty of Secretary of State to keep list), after “or 2A” there is inserted “or 2D”.

#### Commencement Information

**I79** S. 98 wholly in force at 1.7.2001; s. 98 not in force at Royal Assent see s. 122; s. 98 in force for E. at 1.4.2001 by S.I. 2001/1193, arts. 1(3), 2(2); s. 98 in force for W. at 1.7.2001 by S.I. 2001/2354, art. 2

#### Marginal Citations

**M26** 1989 c. 41.  
**M27** 1989 c. 41.  
**M28** 1989 c. 41.

## 99 Transfer from Consultancy Service Index of individuals named in past inquiries.

- (1) Section 3 of the 1999 Act (inclusion in list on transfer from Consultancy Service Index) shall be amended as follows.

- (2) In subsection (1), for “This section” there shall be substituted “ Subsections (2) and (3) below ” and in paragraph (a), for “this section” there shall be substituted “ section 1 above ”.

- (3) After subsection (3) there shall be inserted—

“(4) Subsections (5) and (6) below apply where—

- (a) a relevant inquiry has been held;
- (b) the report of the person who held the inquiry names an individual who is or has been employed in a child care position;



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- (c) it appears to the Secretary of State from the report—
    - (i) that the person who held the inquiry found that the individual was guilty of relevant misconduct; and
    - (ii) that the individual is unsuitable to work with children; and
  - (d) the individual is included in the Consultancy Service Index (otherwise than provisionally) immediately before the commencement of section 1 above.
- (5) The Secretary of State shall—
- (a) invite observations from the individual on the report, so far as relating to him, and, if the Secretary of State thinks fit, on any observations submitted under paragraph (b) below; and
  - (b) invite observations from the relevant employer on any observations on the report and, if the Secretary of State thinks fit, on any other observations under paragraph (a) above.
- (6) The Secretary of State shall include the individual in the list kept by him under section 1 above if, after he has considered the report, any observations submitted to him and any other information which he considers relevant, he is of the opinion—
- (a) that the person who held the inquiry reasonably considered the individual to be guilty of relevant misconduct; and
  - (b) that the individual is unsuitable to work with children.
- (7) In this section—
- “relevant employer”, in relation to an individual named in the report of a relevant inquiry, means the person who, at the time referred to in the definition of “relevant misconduct” below, employed the individual in a child care position;
  - “relevant inquiry” has the same meaning as in section 2B above;
  - “relevant misconduct” means misconduct which harmed a child or placed a child at risk of harm and was committed (whether or not in the course of his employment) at a time when the individual was employed in a child care position.”

*Restrictions on working with children in independent schools*

**100 Additional ground of complaint.**

F114 .....

**Textual Amendments**

**F114** S. 100 repealed (1.9.2003 for E. and 1.1.2004 for W.) by [Education Act 2002 \(c. 32\)](#), ss. 215(2), 216, [Sch. 22 Pt. 3](#) (with s. 210(8), 214(4); [S.I. 2003/1667](#), [art. 4](#); [S.I. 2003/2961](#), [art. 6](#), [Sch. Pt. 3](#))

**101 Effect of inclusion in 1996 Act list.**

- (1) Section 7 of the 1999 Act (effect of inclusion in either list) shall be amended as follows.
- (2) For subsection (1) there shall be substituted—

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“(1) Where a child care organisation proposes to offer an individual employment in a child care position, the organisation—

- (a) shall ascertain whether the individual is included in—
  - (i) the list kept under section 1 above;
  - (ii) the list kept for the purposes of regulations made under section 218(6) of the 1988 Act (“the 1988 Act list”); or
  - (iii) any list kept by the Secretary of State or the National Assembly for Wales of persons disqualified under section 470 or 471 of the <sup>M29</sup>Education Act 1996 (“the 1996 Act list”); and
- (b) if he is included in any of those lists, shall not offer him employment in such a position.”

(3) In subsection (2)—

- (a) in paragraph (a), for the words from “the list” to the end there shall be substituted “any of the lists mentioned in subsection (1) above”; and
- (b) in paragraph (c), for “either list” there shall be substituted “any of those lists”.

(4) For subsection (4) there shall be substituted—

- “(4) In this section—
- (a) any reference to inclusion in the 1988 Act list is a reference to inclusion in that list on the grounds mentioned in section 218(6ZA) (c) of the 1988 Act; and
  - (b) any reference to inclusion in the 1996 Act list is a reference to inclusion in that list as a person disqualified on the grounds mentioned in section 469(1)(d)(i) of the <sup>M30</sup>Education Act 1996.”

#### Marginal Citations

**M29** 1996 c. 56.

**M30** 1996 c. 56.

## 102 Searches of 1996 Act list.

F115 .....

#### Textual Amendments

**F115** S. 102 repealed (6.4.2006) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), ss. 174, 178, [Sch. 17 Pt. 2](#); S.I. 2006/378, [art. 7](#)

### *General*

## 103 Temporary provision for access to lists.

- (1) Any person seeking to ascertain whether a relevant individual is included in—
- (a) the list kept under section 1 of the 1999 Act;

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- (b) the list kept for the purposes of regulations made under section 218(6) of the <sup>M31</sup>Education Reform Act 1988; or
- (c) any list kept by the Secretary of State or the Assembly of persons disqualified under section 470 or 471 of the <sup>M32</sup>Education Act 1996,

shall be entitled to that information on making, before the relevant commencement, an application for the purpose to the Secretary of State.

(2) In this section “relevant individual” means—

- (a) in relation to a person who carries on an employment agency, an individual with whom he proposes to do business or an individual of any other prescribed description;
- (b) in relation to any other person, an individual to whom he proposes to offer, or whom he proposes to supply for employment in, a child care position or an individual of any other prescribed description.

(3) The relevant commencement is—

- (a) for applications relating to the list mentioned in subsection (1)(a) or (b), the commencement of section 8 of the 1999 Act; and
- (b) for applications relating to the list mentioned in subsection (1)(c), the commencement of section 102.

(4) Paragraphs (b) and (c) of subsection (1) are without prejudice to any right conferred otherwise than by virtue of those provisions.

**Modifications etc. (not altering text)**

**C37** S. 103(2)(b) extended (9.10.2000) by S.I. 2000/2537, **reg. 2**

**Marginal Citations**

**M31** 1988 c. 40.

**M32** 1996 c. 56.

**104 Suitability to adopt a child: searches of lists.**

**F116**

**Textual Amendments**

**F116** S. 104 repealed (6.4.2006) by Serious Organised Crime and Police Act 2005 (c. 15), ss. 174, 178, **Sch. 17 Pt. 2**; S.I. 2006/378, **art. 7**

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## PART VIII

### MISCELLANEOUS

#### *Boarding schools and colleges*

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

- (1) Section 87 of the 1989 Act (welfare of children accommodated in independent schools) shall be amended in accordance with subsections (2) to (4).
- (2) For subsections (1) to (5) there shall be substituted—
  - “(1) Where a school or college provides accommodation for any child, it shall be the duty of the relevant person to safeguard and promote the child’s welfare.
  - (2) Subsection (1) does not apply in relation to a school or college which is a children’s home or care home.
  - (3) Where accommodation is provided for a child by any school or college the appropriate authority shall take such steps as are reasonably practicable to enable them to determine whether the child’s welfare is adequately safeguarded and promoted while he is accommodated by the school or college.
  - (4) Where the Commission are of the opinion that there has been a failure to comply with subsection (1) in relation to a child provided with accommodation by a school or college, they shall—
    - (a) in the case of a school other than an independent school or a special school, notify the local education authority for the area in which the school is situated;
    - (b) in the case of a special school which is maintained by a local education authority, notify that authority;
    - (c) in any other case, notify the Secretary of State.
  - (4A) Where the National Assembly for Wales are of the opinion that there has been a failure to comply with subsection (1) in relation to a child provided with accommodation by a school or college, they shall—
    - (a) in the case of a school other than an independent school or a special school, notify the local education authority for the area in which the school is situated;
    - (b) in the case of a special school which is maintained by a local education authority, notify that authority.
  - (5) Where accommodation is, or is to be, provided for a child by any school or college, a person authorised by the appropriate authority may, for the purpose of enabling that authority to discharge its duty under this section, enter at any time premises which are, or are to be, premises of the school or college.”
- (3) In subsection (6), for “entering an independent school in exercise of” there shall be substituted “exercising”.
- (4) For subsection (10) there shall be substituted—
 

“(10) In this section and sections 87A to 87D—

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“the 1992 Act” means the <sup>M33</sup>Further and Higher Education Act 1992;

“appropriate authority” means—

(a) in relation to England, the National Care Standards Commission;

(b) in relation to Wales, the National Assembly for Wales;

“college” means an institution within the further education sector as defined in section 91 of the 1992 Act;

“the Commission” means the National Care Standards Commission;

“further education corporation” has the same meaning as in the 1992 Act;

“local education authority” and “proprietor” have the same meanings as in the <sup>M34</sup>Education Act 1996

(11) In this section and sections 87A and 87D “relevant person” means—

(a) in relation to an independent school, the proprietor of the school;

(b) in relation to any other school, or an institution designated under section 28 of the 1992 Act, the governing body of the school or institution;

(c) in relation to an institution conducted by a further education corporation, the corporation.

(12) Where a person other than the proprietor of an independent school is responsible for conducting the school, references in this section to the relevant person include references to the person so responsible.”

(5) In section 62 of the 1989 Act (duties of local authorities in relation to children provided with accommodation by voluntary organisations), at the end there shall be inserted—

“(10) This section does not apply in relation to any voluntary organisation which is an institution within the further education sector, as defined in section 91 of the <sup>M35</sup>Further and Higher Education Act 1992, or a school.”

#### Commencement Information

**I80** S. 105 wholly in force; s. 105 not in force at Royal Assent see s. 122; s. 105(1)-(4) in force for E. for certain purposes at 20.11.2001 by S.I. 2001/3852, arts. 1(4), 3(2)(3)(a)(iii) (subject to transitional provisions in Sch. 1 and with transitional provisions in Sch. 2) (as amended by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 105 in force for E. in so far as not already in force at 1.4.2002 by S.I. 2001/3852, arts. 1(4), 3(2)(7)(h) (subject to transitional provisions in Sch. 1 and with transitional provisions in Sch. 2) (as amended by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 105 in force for W. at 1.2.2003 by S.I. 2003/152, art. 2(2)

#### Marginal Citations

**M33** 1992 c. 13.

**M34** 1996 c. 56.

**M35** 1992 c. 13.

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

- (1) For section 87A of the 1989 Act (suspension of duty under section 87(3)) there shall be substituted—

### “87A Suspension of duty under section 87(3).

- (1) The Secretary of State may appoint a person to be an inspector for the purposes of this section if—
- (a) that person already acts as an inspector for other purposes in relation to schools or colleges to which section 87(1) applies, and
  - (b) the Secretary of State is satisfied that the person is an appropriate person to determine whether the welfare of children provided with accommodation by such schools or colleges is adequately safeguarded and promoted while they are accommodated by them.
- (2) Where—
- (a) the relevant person enters into an agreement in writing with a person appointed under subsection (1),
  - (b) the agreement provides for the person so appointed to have in relation to the school or college the function of determining whether section 87(1) is being complied with, and
  - (c) the appropriate authority receive from the person mentioned in paragraph (b) (“the inspector”) notice in writing that the agreement has come into effect,
- the appropriate authority’s duty under section 87(3) in relation to the school or college shall be suspended.
- (3) Where the appropriate authority’s duty under section 87(3) in relation to any school or college is suspended under this section, it shall cease to be so suspended if the appropriate authority receive—
- (a) a notice under subsection (4) relating to the inspector, or
  - (b) a notice under subsection (5) relating to the relevant agreement.
- (4) The Secretary of State shall terminate a person’s appointment under subsection (1) if—
- (a) that person so requests, or
  - (b) the Secretary of State ceases, in relation to that person, to be satisfied that he is such a person as is mentioned in paragraph (b) of that subsection,
- and shall give notice of the termination of that person’s appointment to the appropriate authority.
- (5) Where—
- (a) the appropriate authority’s duty under section 87(3) in relation to any school or college is suspended under this section, and
  - (b) the relevant agreement ceases to have effect,
- the inspector shall give to the appropriate authority notice in writing of the fact that it has ceased to have effect.
- (6) In this section references to the relevant agreement, in relation to the suspension of the appropriate authority’s duty under section 87(3) as regards

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any school or college, are to the agreement by virtue of which the appropriate authority’s duty under that provision as regards that school or college is suspended.”

- (2) In section 87B of that Act (duties of inspectors under section 87A)—
- (a) in subsections (2) and (3), after “school”, in each place where it occurs, there shall be inserted “ or college ”;
  - (b) in subsection (2), for “to the Secretary of State” there shall be substituted—
    - “(a) in the case of a school other than an independent school or a special school, to the local education authority for the area in which the school is situated;
    - (b) in the case of a special school which is maintained by a local education authority, to that authority;
    - (c) in any other case, to the Secretary of State”;
- and
- (c) for subsection (4) there shall be substituted the following subsection—
    - “(4) In this section “substitution agreement” means an agreement by virtue of which the duty of the appropriate authority under section 87(3) in relation to a school or college is suspended.”

#### Commencement Information

**I81** S. 106 partly in force; s. 106 not in force at Royal Assent see s. 122; s. 106 in force for E. in so far as not already in force at 1.4.2002 by S.I. 2001/3852, arts. 1(4), 3(2)(7)(h) (subject to transitional provisions in Sch. 1 and with transitional provisions in Sch. 2) (as amended by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 106 in force for W. at 1.2.2003 by S.I. 2003/152, art. 2(2)

## 107 Boarding schools: national minimum standards.

After section 87B of the 1989 Act there shall be inserted—

### “87C Boarding schools: national minimum standards.

- (1) The Secretary of State may prepare and publish statements of national minimum standards for safeguarding and promoting the welfare of children for whom accommodation is provided in a school or college.
- (2) The Secretary of State shall keep the standards set out in the statements under review and may publish amended statements whenever he considers it appropriate to do so.
- (3) Before issuing a statement, or an amended statement which in the opinion of the Secretary of State effects a substantial change in the standards, the Secretary of State shall consult any persons he considers appropriate.
- (4) The standards shall be taken into account—
  - (a) in the making by the appropriate authority of any determination under section 87(4) or (4A);

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- (b) in the making by a person appointed under section 87A(1) of any determination under section 87B(2); and
- (c) in any proceedings under any other enactment in which it is alleged that the person has failed to comply with section 87(1).”

#### Commencement Information

**I82** S. 107 wholly in force at 1.4.2002; s. 107 not in force at Royal Assent see s. 122; s. 107 in force for W. at 1.7.2001 by S.I. 2001/2190, art. 2, Sch. Table; s. 107 in force for E. for certain purposes at 20.11.2001 by S.I. 2001/3852, arts. 1(4), 3(2)(3)(d)(ii) (subject to transitional provisions in Sch. 1 and with transitional provisions in Sch. 2) (as amended by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 107 in force for E. in so far as not already in force at 1.4.2002 by S.I. 2001/3852, arts. 1(4), 3(2)(7)(h) (subject to transitional provisions in Sch. 1 and with transitional provisions in Sch. 2) (as amended by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210)

#### 108 Annual fee for boarding school inspections.

After section 87C of the 1989 Act (inserted by section 107) there shall be inserted—

##### “87D Annual fee for boarding school inspections.

- (1) Regulations under subsection (2) may be made in relation to any school or college in respect of which the appropriate authority is required to take steps under section 87(3).
- (2) The Secretary of State may by regulations require the relevant person to pay the appropriate authority an annual fee of such amount, and within such time, as the regulations may specify.
- (3) A fee payable by virtue of this section may, without prejudice to any other method of recovery, be recovered summarily as a civil debt.”

#### Commencement Information

**I83** S. 108 wholly in force at 1.4.2002; s. 108 not in force at Royal Assent see s. 122; s. 108 in force for W. at 1.7.2001 by S.I. 2001/2190, art. 2, Sch.; s. 108 in force for E. for certain purposes at 20.11.2001 by S.I. 2001/3852, arts. 1(4), 3(2)(3)(a)(iii) (subject to transitional provisions in Sch. 1 and with transitional provisions in Sch. 2) (as amended by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 108 in force for E. in so far as not already in force at 1.4.2002 by S.I. 2001/3852, arts. 1(4), 3(2)(7)(h) (subject to transitional provisions in Sch. 1 and with transitional provisions in Sch. 2) (as amended by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210)

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

- (1) Section 80 of the 1989 Act (inspection of children’s homes etc. by persons authorised by Secretary of State) shall be amended as follows.
- (2) In subsection (1), in paragraph (1), for “independent school” there shall be substituted “school or college”.
- (3) In subsection (5)—



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- (a) in paragraph (d), at the end there shall be inserted “ or governing body of any other school ”;
  - (b) after that paragraph there shall be inserted—
    - “(da) governing body of an institution designated under section 28 of the <sup>M36</sup>Further and Higher Education Act 1992;
    - (db) further education corporation;”
- and
- (c) after paragraph (i) there shall be inserted—
    - “(j) person carrying on a fostering agency.”
- (4) After subsection (12) there shall be inserted—
- “(13) In this section—
- “college” means an institution within the further education sector as defined in section 91 of the <sup>M37</sup>Further and Higher Education Act 1992;
  - “fostering agency” has the same meaning as in the Care Standards Act 2000;
  - “further education corporation” has the same meaning as in the <sup>M38</sup>Further and Higher Education Act 1992.”

#### Commencement Information

**I84** S. 109 partly in force; s. 109 not in force at Royal Assent see s. 122; s. 109 in force for E. in so far as not already in force at 1.4.2002 by S.I. 2001/3852, arts. 1(4), 3(2)(7)(h) (subject to transitional provisions in Sch. 1 and with transitional provisions in Sch. 2) (as amended by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210)

#### Marginal Citations

**M36** 1992 c. 13.

**M37** 1992 c. 13.

**M38** 1992 c. 13.

### Fostering

#### 110 Extension of Part IX to school children during holidays.

In paragraph 9(1) of Schedule 8 to the 1989 Act (extension of Part IX to certain school children during holidays), “which is not maintained by a local education authority” shall be omitted.

#### Commencement Information

**I85** S. 110 wholly in force at 1.4.2002; s. 110 not in force at Royal Assent see s. 122; s. 110 in force for E. in so far as not already in force at 1.4.2002 by S.I. 2001/3852, arts. 1(4), 3(2)(7)(h) (subject to transitional provisions in Sch. 1 and with transitional provisions in Sch. 2) (as amended by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 110 in force for W. at 1.4.2002 by S.I. 2002/920, arts. 1(4), 3(3) (subject to art. 3(4)(5) and to transitional provisions in Schs. 1-3)

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## *Employment agencies*

### 111 Nurses Agencies.

- (1) The <sup>M39</sup>Nurses Agencies Act 1957 shall cease to have effect.
- (2) In section 13 of the <sup>M40</sup>Employment Agencies Act 1973 (interpretation), for subsection (8) there shall be substituted—

“(8) This Act, in its application to Scotland, does not apply to—

- (a) any agency for the supply of nurses as defined in section 32 of the <sup>M41</sup>Nurses (Scotland) Act 1951 (but excluding any other business carried on in conjunction with such an agency);
- (b) the business carried on by any county or district nursing association or other similar organisation, being an association or organisation within paragraph (a) or (b) of that definition.”,

and paragraphs (b) and (c) of, and the proviso to, subsection (7) shall be omitted.

#### Commencement Information

**I86** S. 111 partly in force; s. 111 not in force at Royal Assent see s. 122; s. 111(1) in force for E. and s. 111(2) in force for E. for certain purposes at 1.4.2003 by S.I. 2001/3852, arts. 1(4), 3(2)(8)(b) (subject to transitional provisions in Sch. 1 and with transitional provisions in Sch. 2) (as amended by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 111(1) fully in force for W. and s. 111(2) in force for W. for certain purposes at 2.10.2003 by S.I. 2003/2528, art. 2(b)

#### Marginal Citations

**M39** 1957 c. 16.  
**M40** 1973 c. 35.  
**M41** 1951 c. 55.

## *Charges for local authority welfare services*

### 112 Charges for local authority welfare services.

In Schedule 1 to the <sup>M42</sup>Local Authority Social Services Act 1970 (enactments conferring functions assigned to social services committee), there shall be inserted at the appropriate place—

<p>“Health and Social Services and Social Security Adjudications Act 1983 (c. 41) Section 17, so far as relating to services provided under the enactments mentioned in subsection (2)(a) to (c)</p>	<p>Charges for local authority welfare services”.</p>
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#### Commencement Information

**I87** S. 112 wholly in force at 4.10.2001; s. 112 not in force at Royal Assent see s. 122; s. 112 in force for W. at 1.7.2001 by S.I. 2001/2190, art. 2, Sch. Table; s. 112 in force for E. at 4.10.2001 by S.I. 2001/3331, arts. 1(3), 2(a)

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### Marginal Citations

M42 1970 c. 42.

## 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 <sup>F117</sup> . . . 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 <sup>F117</sup> . . . 54(4) in relation to those functions.

[<sup>F118</sup>(1A) The powers conferred by this section are exercisable by the Secretary of State if he is satisfied that—

- (a) the CHAI or the CSCI has without reasonable excuse failed to discharge, or properly to discharge, any of its functions under this Act, or
- (b) in discharging any of its functions under this Act the CHAI or the CSCI has without reasonable excuse failed to comply with any directions given by him 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
- (b) make arrangements for any other person to discharge those functions on his behalf.

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#### Textual Amendments

- F117** Words in s. 113(1) repealed (1.4.2004) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\)](#), ss. 196, 199, [Sch. 14 Pt. 2](#); S.I. 2004/759, [art. 13](#)
- F118** S. 113(1A) inserted (20.11.2003 for certain purposes and 1.4.2004 otherwise) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\)](#), ss. 147, 199, [Sch. 9 para. 29](#); S.I. 2004/759, [art. 5\(2\)](#)

#### Commencement Information

- I88** S. 113 partly in force; s. 113 not in force at Royal Assent see s. 122; s. 113(2)-(4) in force for W. at 1.4.2001 for certain purposes by S.I. 2000/2992, [art. 2\(2\)](#), [Sch. 2](#); s. 113(1)(3)(4) in force for E. for certain purposes at 25.3.2002 by S.I. 2002/1245, [arts. 1\(3\)](#), [2\(1\)\(e\)](#)

### [<sup>F119</sup>113A Fees payable under Part 2

- (1) The CHAI and the CSCI may each from time to time make and publish provision determining the amount of any fee payable to it under Part 2.
- (2) Provision under subsection (1) may include provision—
  - (a) for different amounts to be payable in different cases, or classes of case;
  - (b) for different amounts to be payable by persons of different descriptions.
- (3) Before the CHAI or the CSCI makes any provision under subsection (1) it must consult such bodies as appear to it to be representative of the persons liable to pay the fee.
- (4) No provision may be made under subsection (1) without the consent of the Secretary of State.
- (5) If the Secretary of State considers it necessary or desirable to do so, he may by regulations make provision determining the amount of a fee payable to the CHAI or the CSCI under Part 2 instead of the amount for which provision is made under subsection (1).
- (6) Before making any regulations under subsection (5) in respect of fees payable to the CHAI or the CSCI, the Secretary of State shall consult that body and such other persons as appear to him to be appropriate.]

#### Textual Amendments

- F119** S. 113A inserted (20.11.2003 for certain purposes, 30.10.2005 for E. for certain further purposes, otherwise prosp.) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\)](#), [s. 105\(2\)](#), 199; S.I. 2005/2925, [arts. 2\(1\)](#), 3 (as amended by S.I. 2006/836, [art. 3](#)) (and see transitional provisions in S.I. 2006/1680, [art. 4](#))

### 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.

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- (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.

#### Commencement Information

**189** S. 114 wholly in force at 1.7.2001; s. 114 not in force at Royal Assent see s. 122; s. 114 in force for E. at 16.3.2001 by S.I. 2001/1210, arts. 1(3), 2(d); s. 114 in force for W. at 1.4.2001 for certain purposes by S.I. 2000/2992, art. 2(2), Sch. 2; s. 114 in force for W. at 1.7.2001 by S.I. 2001/2190, art. 2, Sch. Table

### 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.

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### Commencement Information

- 190** S. 115 wholly in force at 1.7.2001; s. 115 not in force at Royal Assent see s. 122; s. 115 in force for E. at 16.3.2001 by S.I. 2001/1210, arts. 1(3), 2(d); s. 115 in force for W. at 1.7.2001 by S.I. 2001/2190, art. 2, Sch. Table

## 116 Minor and consequential amendments.

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

### Commencement Information

- 191** S. 116 partly in force; s. 116 not in force at Royal Assent see s. 122; s. 116 in force for certain purposes at 2.10.2000 by S.I. 2000/2544, art. 2(2)(g) (with art. 3); s. 116 in force for E. for certain purposes at 1.1.2001 by S.I. 2000/2795, art. 2(2)(b) (with art. 3); s. 116 in force for W. for certain purposes at 28.2.2001 by S.I. 2001/139, arts. 1(3), 2(2)(b) (with transitional provisions in art. 3); s. 116 in force for W. for certain purposes at 1.7.2001 by S.I. 2001/2190, art. 2, Sch. Table; s. 116 in force for E. for certain purposes at 2.7.2001 by S.I. 2001/2041, arts. 1(4), 2(1)(d) (subject to art. 2(2)(3) and with transitional, transitory and savings provisions in art. 3, Sch.); s. 116 in force for E. for certain purposes at 1.4.2002 by S.I. 2001/3852, arts. 1(4), 3(2)(7)(i) (subject to transitional provisions in Sch. 1 and with transitional provisions in Sch. 2) (as amended by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 116 in force for E. for certain purposes at 1.4.2002 by S.I. 2001/4150, arts. 1(2), 3(2)(3)(a)(b) (subject to transitional provisions in art. 4 and in S.I. 2002/1493, art. 4) (as amended by S.I. 2002/1493, art. 6); s. 116 in force for W. for certain purposes at 1.4.2002 by S.I. 2002/920, arts. 1(4), 3(3) (subject to art. 3(4)-(10) and to transitional provisions in Schs. 1-3); s. 116 in force for E. for certain purposes at 1.4.2002 by S.I. 2002/1493, arts. 1(2), 3(2) (subject to transitional provisions in art. 4); s. 116 in force for W. for certain purposes at 30.1.2003 by S.I. 2003/152, art. 2(1); s. 116 in force for E. for certain purposes at 24.2.2003, 30.4.2003 and 1.6.2003 by S.I. 2003/365, art. 3(2)(5)(6) (subject to Sch.); s. 116 in force for W. for certain purposes at 5.3.2003 and 30.4.2003 by S.I. 2003/501, art. 2(1)(3)(a); s. 116 in force for E. for certain purposes at 7.3.2003 by S.I. 2003/933, art. 2(1)(c); s. 116 in force for certain purposes at 26.7.2004 by S.I. 2004/1757, art. 2(c)

## 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 <sup>M43</sup>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.

### Commencement Information

- 192** S. 117 partly in force; s. 117 not in force at Royal Assent see s. 122; s. 117(2) in force for certain purposes at 2.10.2000 by S.I. 2000/2544, art. 2(2)(h); s. 117(1) in force for W. for certain purposes at 1.7.2001 by S.I. 2001/2190, art. 2, Sch. Table; s. 117(1) in force for W. at 26.8.2001 by S.I. 2001/2782, art. 2(1)(l); s. 117(2) in force for E. for certain purposes at 4.10.2001 by S.I. 2001/3331, arts. 1(3), 2(b); s. 117 in force for E. for certain purposes at 1.4.2002 by S.I. 2001/3852, arts. 1(4), 3(2)(7)(j) (subject to transitional provisions in Sch. 1 and with transitional provisions in Sch. 2) (as amended

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by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 117 in force for E. for certain purposes at 1.4.2003 by S.I. 2001/3852, arts. 1(4), 3(2)(8)(c) (subject to transitional provisions in Sch. 1 and with transitional provisions in Sch. 2) (as amended by S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001); s. 117 in force for E. for certain purposes at 1.4.2002 and in force for E. for certain further purposes at 1.4.2003 by S.I. 2001/4150, arts. 1(2), 3(2)(3)(c)(4) (subject to transitional provisions in art. 4 and in S.I. 2002/1493, art. 4) (as amended by S.I. 2002/1493, 2002/1790, 2002/2001, 2002/3210); s. 117 in force for W. for certain purposes at 1.4.2002 by S.I. 2002/920, arts. 1(4), 3(3) (subject to art. 3(4)-(10) and to transitional provisions in Schs. 1-3); s. 117 in force for W. for certain purposes at 30.1.2003 by S.I. 2003/152, art. 2(1); s. 117(2) in force for W. for certain purposes at 30.4.2003 by S.I. 2003/501, art. 2(3); s. 117(2) in force for E. for certain purposes at 30.4.2003 and 1.6.2003 by S.I. 2003/365, art. 3(5)(6) (subject to Sch.); s. 117(2) in force for W. for certain purposes at 2.10.2003 by S.I. 2003/2528, art. 2

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#### Marginal Citations

M43 1978 c. 30.

## 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 [<sup>F120</sup>or an order] under the Part of this Act which relates to the Children’s Commissioner for Wales includes provision amending or repealing any enactment or instrument.

#### Textual Amendments

**F120** Words in s. 118(8) inserted (26.8.2001 for W.) by 2001 c. 18, s. 7; S.I. 2001/2783, art. 2(2)(h)

VALID FROM 21/07/2008

#### [<sup>F121</sup>118A] Regulations: Wales

- (1) This section has effect where a power to make regulations under this Act is conferred on the Welsh Ministers other than by or by virtue of the Government of Wales Act 2006.
- (2) Subsections (1) and (5) to (7) of section 118 apply to the exercise of that power as they apply to the exercise of a power conferred on the Welsh Ministers by or by virtue of that Act.
- (3) A statutory instrument containing regulations made in the exercise of that power is subject to annulment in pursuance of a resolution of the Assembly.]

#### Textual Amendments

**F121** S. 118A inserted (21.7.2008 for certain purposes and 1.4.2009 otherwise) by Health and Social Care Act 2008 (c. 14), ss. 95, 170(1)(b)(3), Sch. 5 para. 32; S.I. 2009/462, art. 2, Sch. 1 para. 35

### 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.



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## 120 Wales.

- (1) Section 84(1) of the <sup>M44</sup>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 <sup>M45</sup>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.

### Marginal Citations

**M44** 1998 c. 38.

**M45** S.I. 1999/672.

## 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 <sup>M46</sup>Employment Agencies Act 1973; but no business which is an employment business shall be taken to be an employment agency;
  - “enactment” includes an enactment comprised in subordinate legislation (within the meaning of the <sup>M47</sup>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” [<sup>F122</sup> means a health service hospital within the meaning given by the National Health Service Act 2006 or the National Health Service (Wales) Act 2006];
  - “illness” includes any injury;
  - “independent school” has the same meaning as in the <sup>M48</sup>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;

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“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, [<sup>F123</sup>an NHS foundation trust,]<sup>F124</sup>a Strategic Health Authority, a Health Authority, a Special Health Authority [<sup>F125</sup>, a Primary Care Trust or a Local Health Board];

“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 <sup>M49</sup>Education Act 1996;

“social services functions” means functions which are social services functions for the purposes of the <sup>M50</sup>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 [<sup>F126</sup>the Adoption and Children Act 2002].

(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

(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—

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- (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 <sup>M51</sup>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.

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<i>Expression</i>	<i>Provision of this Act</i>
1989 Act	<sup>M52</sup> Children Act 1989
1999 Act	<sup>M53</sup> Protection of Children Act 1999
[ <sup>F127</sup> Adoption support agency	Section 4]
Assembly	Section 5
Care home	Section 3
CCETSW	Section 70
[ <sup>F128</sup> CHAI	Section 5A]
Children’s home	Section 1
<sup>F129</sup>	<sup>F129</sup>
...	...
Commissioner	Section 72
Council, the English Council, the Welsh Council	Section 54

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[ <sup>F130</sup> CSCI	Section 5B]
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

### Textual Amendments

- F122** S. 121: words in definition of "health service hospital" substituted (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\), ss. 2, 8, Sch. 1 para. 200](#) (with Sch. 3 Pt. 1)
- F123** S. 121(1): words in definition of "National Health Service body" inserted (20.11.2003 for certain purposes and 1.4.2004 otherwise) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\), ss. 34, 199, Sch. 4 para. 112](#); S.I. 2004/759, [art. 2](#)
- F124** S. 121(1): words in definition of "National Health Service body" inserted (1.10.2002) by [The National Health Service Reform and Health Care Professions Act 2002 \(Supplementary, Consequential etc. Provisions\) Regulations 2002 \(S.I. 2002/2469\), reg. 4, Sch. 1 Pt. 1 para. 27](#)
- F125** S. 121(1): words in definition of "National Health Service body" substituted (10.10.2002 for W. and otherwise in force immediately before the National Health Service Act 2006 (which Act came into force on 1.3.2007 in accordance with s. 277(1) (subject to s. 277(2)-(5)) of that Act)) by [National Health Service Reform and Health Care Professions Act 2002 \(c. 17\), s. 6\(2\), Sch. 5 para. 46](#); S.I. 2002/2532, [arts. 1\(3\), 2, Sch.](#); S.I. 2006/1407, [arts. 1\(1\), 2, Sch. 1 Pt. 2 para. 12\(c\)](#)
- F126** S. 121(1): words in definition of "voluntary organisation" substituted (30.12.2005) by [Adoption and Children Act 2002 \(c. 38\), ss. 139, 148, Sch. 3 para. 116\(a\)](#) (with Sch. 4 paras. 6-8); S.I. 2005/2213, [art. 2](#)
- F127** S. 121(13): entry in Table inserted (30.12.2005) by [Adoption and Children Act 2002 \(c. 38\), ss. 139, 148, Sch. 3 para. 116\(b\)](#); S.I. 2005/2213, [art. 2](#)
- F128** S. 121(13): entry in Table inserted (20.11.2003 for certain purposes and 1.4.2004 otherwise) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\), ss. 147, 199, Sch. 9 para. 30](#); S.I. 2004/759, [art. 5\(2\)](#)
- F129** S. 121(13): entry in Table repealed (1.4.2004) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 14\), ss. 196, 199, Sch. 14 Pt.2](#); S.I. 2004/759, [art. 13](#)
- F130** S. 121(13): entry in Table inserted (20.11.2003 for certain purposes and 1.4.2004 otherwise) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\), ss. 147, 199, Sch. 9 para. 30](#); S.I. 2004/759, [art. 5\(2\)](#)

### Marginal Citations

- M46** 1973 c. 35.  
**M47** 1978 c. 30.  
**M48** 1996 c. 56.  
**M49** 1996 c. 56.  
**M50** 1970 c. 42.  
**M51** 1996 c. 18.  
**M52** 1989 c. 41.  
**M53** 1999 c. 14.

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## 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.

### Subordinate Legislation Made

- P1** S. 122 power partly exercised (14.9.2000): different dates appointed for specified provisions and purposes by [S.I. 2000/2544, art. 2](#)
- S. 122 power partly exercised (9.10.2000): different dates appointed (E.) for specified provisions and purposes by [S.I. 2000/2795, art. 2](#) (with [art. 3](#))
- S. 122 power partly exercised (7.11.2000): different dates appointed (W.) for specified provisions and purposes by [S.I. 2000/2992, art. 2\(2\), Sch. 2](#)
- S. 122 power partly exercised: different dates appointed (W.) for specified provisions by [S.I. 2001/139, arts. 1\(3\), 2](#) (with transitional provisions in [art. 3](#))
- S. 122 power partly exercised: different dates appointed (E.) for specified provisions by [S.I. 2001/290, arts. 1\(3\), 2](#) (with transitional provisions in [art. 3](#))
- S. 122 power partly exercised: 2.3.2001 appointed (E.) for specified provision by [S.I. 2001/731, art. 2](#)
- S. 122 power partly exercised: different dates appointed (E.) for specified provisions by [S.I. 2001/1193, arts. 1\(3\), 2](#)
- S. 122 power partly exercised: 16.3.2001 appointed (E.) for specified provision by [S.I. 2001/1210, arts. 1\(3\), 2](#)
- S. 122 power partly exercised: different dates appointed (E.) for specified provisions by [S.I. 2001/1536, arts. 1\(3\), 2](#)
- S. 122 power partly exercised: different dates appointed (E.) for specified provisions by [S.I. 2001/2041, arts. 1\(4\), 2](#) (with transitional, transitory and savings provisions in [art. 3, Sch.](#))
- S. 122 power partly exercised: 1.7.2001 appointed (W.) for specified provisions by [S.I. 2001/2190, art. 2, Sch. Table](#)
- S. 122 power partly exercised: 1.7.2001 appointed (W.) for specified provision by [S.I. 2001/2354, art. 2](#)
- S. 122 power partly exercised: different dates appointed (W.) for specified provision by [S.I. 2001/2504, art. 2](#) (with transitional provisions in [art. 3](#))
- S. 122 power partly exercised: different dates appointed (W) for specified provisions by [S.I. 2001/2538, art. 2](#)
- S. 122 power partly exercised: 26.8.2001 appointed (W.) for specified provisions by [S.I. 2001/2782, art. 2](#)
- S. 122 power partly exercised: 4.10.2001 appointed (E.) for specified provisions by [S.I. 2001/3331, arts. 1\(3\), 2](#)
- S. 122 power partly exercised: different dates appointed (E.) for specified provisions by [S.I. 2001/3852, arts. 1\(4\), 3](#) (subject to transitional provisions in [Sch. 1](#) and with transitional provisions in [Sch. 2](#)) (as amended by [S.I. 2001/4150, 2002/1493, 2002/1790, 2002/2001, 2002/3210, 2005/3397](#))
- S. 122 power partly exercised: different dates appointed (E.) for specified purposes by [S.I. 2001/4150, arts. 1\(2\), 3](#) (subject to transitional provisions in [art. 4](#) and in [S.I. 2002/1493, art. 4](#)) (as amended by [S.I. 2002/1493, 2002/1790, 2002/2001, 2002/3210](#))
- S. 122 power partly exercised: different dates appointed (E.W.) for specified provisions by [S.I. 2002/629](#)
- S. 122 power partly exercised: 1.4.2002 appointed (E.) for specified provision by [S.I. 2002/839](#)
- S. 122 power partly exercised: 1.4.2002 appointed (W.) for specified provisions by [S.I. 2002/920](#)
- S. 122 power partly exercised: 30.4.2002 appointed (W.) for specified provisions by [S.I. 2002/1175](#)
- S. 122 power partly exercised: different dates appointed (E.) for specified provisions by [S.I. 2002/1245](#)
- S. 122 power partly exercised: 1.4.2002 appointed (E.) for specified provisions by [S.I. 2002/1493](#)
- S. 122 power partly exercised: 31.5.2002 appointed (E.) for specified provisions by [S.I. 2002/1790](#)

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S. 122 power partly exercised: 29.7.2002 appointed (E.) for specified provisions by [S.I. 2002/2001](#)

S. 122 power partly exercised: 2.9.2002 appointed (E.) for specified provision by [S.I. 2002/2215](#)

S. 122 power partly exercised: 19.12.2002 appointed (E.) for specified provisions by S.I. {2002/3210}

S. 122 power partly exercised: different dates appointed (W.) for specified provisions and purposes by [S.I. 2003/152](#), [art. 2](#)

S. 122 power partly exercised: different dates appointed (E.) for specified provisions and purposes by [S.I. 2003/365](#), [art. 3](#)

S. 122 power partly exercised: different dates appointed (W.) for specified provisions and purposes by [S.I. 2003/501](#), [art. 2](#)

S. 122 power partly exercised: different dates appointed (W.) for specified provisions and purposes by [S.I. 2003/933](#), [art. 2](#)

S. 122 power partly exercised: 2.10.2003 appointed (W.) for specified provisions and purposes by [S.I. 2003/2528](#), [art. 2](#)

S. 122 power partly exercised: 1.3.2004 appointed (E.) for specified provisions and purposes by [S.I. 2004/484](#), [art. 2](#)

S. 122 power partly exercised: 1.4.2004 appointed (W.) for specified provisions and purposes by [S.I. 2004/1015](#), [art. 2](#)

S. 122 power partly exercised: 7.7.2004 appointed (W.) for specified provisions and purposes by [S.I. 2004/1730](#), [art. 2](#)

S. 122 power partly exercised: 26.7.2004 appointed for specified provisions and purposes by [S.I. 2004/1757](#), [art. 2](#)

S. 122 power partly exercised: different dates appointed for specified provisions and purposes by [S.I. 2005/375](#), [art. 2](#)

### 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.

**Status:**

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**Changes to legislation:**

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