



Isle of Man

Ellan Vannin

AT 10 of 2013

REGULATION OF CARE ACT 2013



Isle of Man

Ellan Vannin

REGULATION OF CARE ACT 2013

Index

Section	Page
PART 1 – OPENING PROVISIONS	11
DIVISION 1 – INTRODUCTORY	11
1 Short title.....	11
2 Commencement.....	11
3 Purposes of Act.....	11
4 Achieving the purposes.....	12
DIVISION 2 – BASIC DEFINITIONS	12
SUBDIVISION 1 – SOCIAL CARE, CARE SERVICES AND THEIR CATEGORIES	12
5 “Social care”.....	12
6 “Care service” and “category” of care service.....	13
7 Agencies that are a care service.....	13
8 Establishments that are a care service.....	13
9 “Department care service”.....	14
10 “Independent care service”.....	14
11 “Non-NHS health care service”.....	14
12 “Child-related” care service.....	14
13 Who “carries on” a care service.....	15
14 Who “manages” a care service.....	15
15 Provision to put the term ‘care service’ in context in certain cases.....	15
SUBDIVISION 2 – BASIC DEFINITIONS FOR SOCIAL CARE AND CARE SERVICES	15
16 “Adult care home”.....	15
17 “Adult day care centre”.....	16
18 “Adult placement agency”.....	16
19 “Child care agency”.....	17
20 “Child day care centre”.....	17
21 “Childminding” and “childminder”.....	17
22 “Childrens home”.....	18

23	“Child (secure accommodation) establishment”	19
24	“Domiciliary care agency”	19
25	“Fostering agency”	19
26	“Independent clinic”	19
27	“Independent hospital”	19
28	“Independent medical agency”	20
29	“Nurses agency”	20
30	“Offender accommodation service”	20
31	“Residential family centre”	21
32	“Voluntary adoption agency”	21
DIVISION 3 – OTHER DEFINITIONS AND INTERPRETATION		21
33	Other provisions	21
PART 2 – DSC’S FUNCTIONS FOR ACT		22
34	General functions	22
35	Power to make minimum standards	22
36	Access to minimum standards	22
37	Effect of minimum standards	22
PART 3 – REGISTRATION OF INDEPENDENT CARE SERVICES		23
DIVISION 1 – GENERAL PROVISIONS		23
SUBDIVISION 1 – BASIC DEFINITIONS CONCERNING REGISTRATION		23
38	“Provider registration” and “registered provider”	23
39	“Manager registration” and “registered manager”	23
40	“Registered person”	23
41	Registration concerning children	23
42	General references to “registration”	23
SUBDIVISION 2 – DISQUALIFICATION FROM REGISTRATION		24
43	Types of disqualification	24
44	Total disqualification	25
45	Additional disqualifications for children	26
46	Additional specific disqualifications	27
47	Exemption from disqualification	28
48	Withdrawal of disqualification exemption	29
SUBDIVISION 3 – SUITABILITY FOR REGISTRATION		29
49	Who is a “suitable manager” or “suitable supervisor”	29
50	Criteria for suitability to manage or supervise	29
51	Who is “suitable for childminding”	30
DIVISION 2 – REQUIREMENT TO REGISTER INDEPENDENT CARE SERVICE		30
SUBDIVISION 1 – MAIN OFFENCE		30
52	Offence to carry on or manage without registration	30

SUBDIVISION 2 — EXEMPTIONS FROM REGISTRATION REQUIREMENT	31
53 Personal representatives	31
54 Child day care at certain establishments	31
55 Occasional child day care centres	31
DIVISION 3 — OBTAINING REGISTRATION	31
SUBDIVISION 1 — APPLICATIONS	31
56 Who can apply for registration	31
57 How to apply	32
SUBDIVISION 2 — DECIDING APPLICATION AND TAKING EFFECT OF REGISTRATION	33
58 Registration criteria	33
59 Deciding application	34
60 Power to impose registration conditions	34
61 Notice of decision	34
62 When registration takes effect	35
63 Registering successful applicant and any responsible person	35
64 Duration of registration	35
DIVISION 4 — MANDATORY CONDITIONS FOR REGISTRATION	35
65 Imposition of mandatory conditions	35
66 Supervision and management duties: general	36
67 Supervision and management duties: exception	36
68 Suitability and training conditions	37
69 Duty of care, competence and skill	37
70 Continuing suitability of premises and its equipment	37
71 Annual fees and costs under cost recovery notices	37
72 Inspections and related matters	38
73 Compliance with improvement notices	38
DIVISION 5 — CHANGING REGISTRATION ON THE REGISTERED PERSON'S INITIATIVE	38
SUBDIVISION 1 — AMENDMENTS	38
74 When registered person may apply to amend	38
75 How to apply	39
76 Deciding application	39
77 Notice and taking effect of decision	39
SUBDIVISION 2 — SURRENDERS BY REGISTERED MANAGERS OR CHILDMINDERS	40
78 Surrender by notice	40
SUBDIVISION 3 — SURRENDERS BY REGISTERED PROVIDERS OTHER THAN CHILDMINDERS	40
79 Application of Subdivision	40
80 Surrender only by application	40

81	Restriction on making surrender application.....	41
82	How to apply	41
83	Deciding application.....	41
84	Notice and taking effect of decision	41
DIVISION 6 — AMENDMENTS, SUSPENSIONS OR CANCELLATION BY DSC		41
85	Minor corrections	41
86	Amendments: general.....	41
87	Suspensions: general.....	42
88	Cancellation: general.....	42
89	Urgent amendment, suspension or cancellation.....	43
90	Effect of suspension or cancellation.....	44
91	Notice and taking effect of non-urgent decisions under Division	44
92	Recovery of DSC’s expenses in certain cases.....	45
DIVISION 7 — OTHER PROVISIONS FOR APPLICATIONS OR CHANGING REGISTRATION		45
SUBDIVISION 1 — COMMON PROVISIONS FOR APPLICATIONS		45
93	Noncompliant applications.....	45
94	Request to applicant about application.....	46
95	Refusing application for contravention of request notice	46
SUBDIVISION 2 — PROCEDURAL FAIRNESS REQUIREMENTS		46
96	Application of Subdivision	46
97	Notice of proposal.....	47
98	Duty to consider any written submissions	47
99	Withdrawal notice.....	48
DIVISION 8 — DEATH OF REGISTERED PROVIDER		48
100	Application of Division	48
101	Notification duties.....	48
102	Carrying on care service for limited period after sole provider’s death	48
DIVISION 9 — GENERAL REGISTRATION-RELATED OFFENCES		49
103	Making false statement in an application	49
104	Failure to display registration certificate	49
105	Contravening registration condition	49
106	Falsely describing scope of registration conditions.....	49
DIVISION 10 — THE REGISTER		50
107	Requirement to keep register.....	50
108	Access to register	50
DIVISION 11 — MISCELLANEOUS		50
109	Service of registered person at care service	50
110	DSC’s notification powers.....	51

PART 4 – MONITORING AND ENFORCEMENT	52
DIVISION 1 – MONITORING	52
SUBDIVISION 1 – INSPECTORS	52
111 Appointment and functions	52
112 Issue of identity card	52
113 Production or display of identity card.....	52
SUBDIVISION 2 – INSPECTORS’ ENTRY POWERS	53
114 General entry powers.....	53
115 Inspection of care premises under inspection guidelines	53
116 Care premises: other entries.....	54
117 Care premises: procedure for entry without consent or warrant	54
SUBDIVISION 3 – POWERS AFTER ENTRY	54
118 Application of Subdivision.....	54
119 Who has a “role” for the premises entered	54
120 General powers on entry	55
121 When service recipients can be medically examined	55
122 Power to require documents or information on entry	56
123 Offence: contravention of requirement to give reasonable help.....	56
SUBDIVISION 4 – OTHER PROVISIONS	56
124 Warrants.....	56
125 Offence: obstruction of inspector.....	57
126 Inspector may require production of information	57
127 Production of documents or information kept on computer	58
128 Offence: contravention of production requirement	58
129 Compliance with production requirement	58
130 Reports about inspections	58
131 Protection from defamation for reports.....	59
DIVISION 2 – NOTICE TO REGISTERED PROVIDER TO IMPROVE CARE SERVICE	59
132 Power to give improvement notice	59
133 Requirements for improvement notice.....	59
134 Compliance with improvement notice	60
DIVISION 3 – ENFORCING REQUIREMENTS OF REGISTERED PERSONS	60
135 Power to give notice requiring compliance	60
136 Requirements for compliance notice.....	60
137 Offence: contravention of compliance notice.....	61
DIVISION 4 – DISQUALIFYING UNREGISTERED CHILDMINDERS	61
138 Notice disqualifying for a year	61
PART 5 – SOCIAL CARE WORKERS	61
DIVISION 1 – DEFINITIONS	61

139	What is “social care work” and who is a “social care worker”	61
140	What is “social work” and who is a “social worker”	62
DIVISION 2 – OFFENCES		62
141	Offence: falsely using title ‘social worker’	62
142	Offences concerning social care worker registration	63
PART 6 – APPEALS		63
143	Establishment and jurisdiction of tribunal	63
144	Who comprises the tribunal.....	64
145	Right of appeal against decisions under Act.....	64
146	Tribunal’s powers on appeal	64
147	Further High Court appeal on question of law.....	64
PART 7 – GENERAL OFFENCES AND HUMAN RIGHTS ACT		
REMEDY		65
DIVISION 1 – DISQUALIFICATION OFFENCES		65
148	Involvement with care service if disqualified	65
149	Employing or engaging disqualified person.....	65
150	Registration requirement not relevant to Division 1 offences	66
DIVISION 2 – OTHER OFFENCES		66
151	False descriptions about registration or Department care services	66
152	Ill-treatment or neglect offence.....	66
153	Liability of officers of body corporate	67
DIVISION 3 – HUMAN RIGHTS ACT REMEDY		67
154	Human Rights Act 2001: certain persons perform a public function.....	67
PART 8 – PROCEEDINGS		68
DIVISION 1 – PROSECUTIONS		68
155	Attorney General’s consent required for certain prosecutions.....	68
156	Meaning of “maximum penalty” followed by a stated penalty etc	68
157	Time limit for summary proceedings.....	69
DIVISION 2 – EVIDENTIARY PROVISIONS		69
158	Appointment and authority.....	69
159	General evidentiary provisions	69
PART 9 – CLOSING PROVISIONS		70
DIVISION 1 – GENERAL		70
160	Forms.....	70
161	General regulation-making powers.....	70
162	Tynwald approval for regulations.....	71
163	Repeal of Acts	71
DIVISION 2 – SAVINGS AND TRANSITIONAL		71

SUBDIVISION 1 — PRELIMINARY	71
164 Definitions for Division	71
SUBDIVISION 2 — CONVERSIONS TO ACT FOR EXISTING REGULATED CARE SERVICES	72
165 Childrens homes under a repealed care law	72
166 Childminders under a repealed care law	73
167 Child day care centres under a repealed care law	73
168 Nursing and residential homes under a repealed care law	73
169 Mental nursing homes under a repealed care law	74
170 Nurses agencies under a repealed care law	75
171 Application of Act to converted registrations	75
172 Registers and registration certificates during registration grace period	76
SUBDIVISION 3 — OTHER CARE SERVICES DURING REGISTRATION GRACE PERIOD	76
173 Application of Subdivision.....	76
174 Offence: notification requirement for care service	76
175 Deferral of registration requirement if notice given	77
176 Requirements of provider and manager during the period	77
SUBDIVISION 4 — REGISTRATION APPLICATIONS DURING REGISTRATION GRACE PERIOD	77
177 Registration applications during the period.....	77
SUBDIVISION 5 — OTHER TRANSITIONAL PROVISIONS	78
178 Provisions for disqualification.....	78
179 Amendment of converted conditions	78
180 Existing applications, decisions and appeals.....	79
181 Existing inspectors and authorised persons become inspectors.....	79
182 References to repealed care law.....	80
183 Interim appeal rules	80
184 Existing unregistered social care workers.....	80
185 Transitional regulation-making power.....	81
SUBDIVISION 6 — EXPIRY	81
186 Expiry of parts of Division about registration grace period.....	81
PART 10 — AMENDMENTS OF LEGISLATION	81
DIVISION 1 — ADOPTION ACT	81
187 Act amended	81
188 Section 14 amended — adoption service.....	81
189 Section 22 amended — meaning of “protected child”	81
DIVISION 2 — CYPA 2001	82
190 Act amended	82
191 Long title amended.....	82
192 Section 24A inserted — fostering service	82

193	Section 26 amended – manner of accommodation	82
194	Section 47 inserted – warrants: emergency protection orders	82
195	Part 6 repealed – childrens homes	83
196	Part 7 amended – fostering, child-minding and day care	83
197	Sections 98 and 99 repealed – inspections and search warrants.....	84
198	Section 102 amended – interpretation: general	84
199	Schedules 6 and 7 repealed – registration: childrens homes and childminders	84
200	Schedule 11 amended – transitional provisions	84
DIVISION 3 – EDUCATION ACT		85
201	Act amended	85
202	Section 48 substituted – welfare of children.....	85
203	Section 58 amended – subordinate legislation	87
204	Section 59 amended – interpretation	87
DIVISION 4 – CONSEQUENTIAL AMENDMENTS, REPEALS AND REVOCATIONS		87
205	Amendments, repeals and revocations	87
DIVISION 5 – EXPIRY OF CERTAIN PROVISIONS		92
206	Expiry	92
SCHEDULE		93
DEFINITIONS		93

**Isle of Man***Ellan Vannin*

REGULATION OF CARE ACT 2013

Signed in Tynwald: 15 October 2013
Received Royal Assent: 15 October 2013
Announced to Tynwald: 15 October 2013

AN ACT to regulate care services and social care workers; to repeal certain Acts and provisions of certain Acts concerned with those matters; to amend the Children and Young Persons Act 2001 to provide for a Departmental fostering service; and for connected purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows: —

PART 1 — OPENING PROVISIONS

DIVISION 1 — INTRODUCTORY

1 Short title

The short title of this Act is the Regulation of Care Act 2013.

2 Commencement

The following commence on the day or days the Department of Social Care (“DSC”) by order appoints —

- (a) section 52 (offence to carry on or manage without registration);
- (b) Part 5 (social care workers); and
- (c) section 184 (existing unregistered social care workers).

3 Purposes of Act

The purposes of this Act are to do the following for social care and non-NHS health care services —

- (a) protect people who need them;

- (b) regulate how they are provided;
- (c) standardise how they are regulated; and
- (d) promote transparency.

4 Achieving the purposes

The purposes of this Act are achieved mainly by –

- (a) giving DSC regulatory and monitoring functions;
- (b) empowering DSC to make minimum standards for those who provide social care or non-NHS health care services;
- (c) requiring those (other than Departments) who carry on or manage care services to be registered (subject to some exemptions under Part 3, Division 2, Subdivision 2);
- (d) disqualifying certain types of person from registration and prohibiting them from being involved with, or employed or engaged at, care services;
- (e) subjecting care service carried on by a Department to the same inspection requirements and standards as those that apply to independent care services;
- (f) providing for the appointment of inspectors to help DSC perform its functions; and
- (g) requiring those who perform certain types of social care work to be registered as provided under Part 5.

DIVISION 2 – BASIC DEFINITIONS

SUBDIVISION 1 – SOCIAL CARE, CARE SERVICES AND THEIR CATEGORIES

5 “Social care”

- (1) “**Social care**” is the provision by a Department, or by a body corporate or individual as part of a business, of care to persons because of one or more of the following –
 - (a) their young age;
 - (b) abuse, neglect or risk of harm;
 - (c) past or present illness;
 - (d) past or present dependency on alcohol or a drug; or
 - (e) mental disorder, physical disability or infirmity.
- (2) “**Social care**” also includes childminding.
- (3) In this section, “care” means personal care, practical assistance or personal support.

6 “Care service” and “category” of care service

- (1) Each of the following is a “care service” —
 - (a) an agency that section 7 provides is a care service (an “agency care service”);
 - (b) an establishment that section 8 provides is a care service; and
 - (c) childminding.
- (2) Each of the agencies and establishments and childminding is a “category” of care service.
- (3) Regulations may provide for subcategories for a category of care service.

7 Agencies that are a care service

- (1) Each of the following (a “designated agency”) is a care service —
 - (a) an adult placement agency;
 - (b) a child care agency;
 - (c) a domiciliary care agency;
 - (d) a fostering agency;
 - (e) an independent medical agency;
 - (f) a nurses agency;
 - (g) a voluntary adoption agency; and
 - (h) an agency of another prescribed type.
- (2) Subsections (3) and (4) apply if a designated agency is carried on at 2 or more separate branches or other places (whatever called).
- (3) Each of the places is a separate care service.
- (4) However, if one of the places is a private dwelling —
 - (a) the dwelling, by itself, is not a separate care service;
 - (b) if there is only one other place, the dwelling and the other place together form only one care service; and
 - (c) if there are 2 or more other places, each of the other places and the dwelling together form one care service each.

8 Establishments that are a care service

Each of the following is a care service —

- (a) an adult care home;
- (b) an adult day care centre;
- (c) a child day care centre;
- (d) a childrens home;
- (e) a child (secure accommodation) establishment; and

- (f) an independent clinic;
- (g) an independent hospital;
- (h) an offender accommodation service;
- (i) a residential family centre; and
- (j) an establishment of another prescribed type.

9 “Department care service”

A “**Department care service**” is a care service carried on by DSC under the *Children and Young Persons Act 2001* (“**CYPA 2001**”), the *Social Services Act 2011* or another Act or a care service carried on by another Department.

10 “Independent care service”

- (1) An “**independent care service**” is a care service other than one carried on by a Department.
- (2) If a care service is carried on jointly by a Department and someone else, the service is still an independent care service, but only to the extent it is carried on by the other person.

11 “Non-NHS health care service”

A “**non-NHS health care service**” is a service provided by any of the following —

- (a) an independent clinic;
- (b) an independent hospital;
- (c) an independent medical agency; or
- (d) a nurses agency.

12 “Child-related” care service

Each of the following categories of care service, and each care service falling within each of them, is “**child-related**” —

- (a) a child care agency;
- (b) a child day care centre;
- (c) a childrens home;
- (d) childminding;
- (d) a child (secure accommodation) establishment;
- (e) a fostering agency;
- (f) a residential family centre; and
- (g) a voluntary adoption agency.

13 Who “carries on” a care service

- (1) A person “**carries on**” a care service if the person owns the business that provides the social care or non-NHS health care services provided at the care service.
- (2) However, if a care service is jointly carried on by a Department and someone else, only the other person carries on the service.
- (3) If, under section 61(8) (fostering limit) of CYPA 2001, a person is taken to be carrying on a childrens home under this Act, that person is taken to be carrying on the home mentioned in that subsection, as a care service.

14 Who “manages” a care service

A person “**manages**” a care service if the person is directly or indirectly responsible for the day-to-day operation of the social care or non-NHS health care services provided at the care service.

15 Provision to put the term ‘care service’ in context in certain cases

- (1) This section applies to a reference in a provision of this Act to a care service if the provision does not identify any particular care service.
- (2) If the provision is about an application that is for, or relates to, registration, the reference is to the independent care service, or proposed independent care service, the subject of the application.
- (3) If the provision is about a particular registration, the reference is to the independent care service the subject of the registration.

SUBDIVISION 2 — BASIC DEFINITIONS FOR SOCIAL CARE AND CARE SERVICES**16 “Adult care home”**

- (1) An establishment is an “**adult care home**” if, for adults, it provides accommodation and either or both of the following because of one or more relevant criteria under subsection (2) —
 - (a) nursing; or
 - (b) personal care or personal support, with or without practical assistance.
- (2) The relevant criteria are —
 - (a) abuse, neglect or risk of harm;
 - (b) past or present illness;
 - (c) past or present dependency on alcohol or a drug; or
 - (d) mental disorder, physical disability or infirmity.
- (3) Despite subsection (1), none of the following is an adult care home —

- (a) a hospital;
- (b) an independent clinic; or
- (c) an establishment prescribed not to be an adult care home.

17 “Adult day care centre”

- (1) An “**adult day care centre**” is an establishment that complies with the following criteria –
- (a) it is not a private dwelling;
 - (b) one or more of the following (“relevant services”) are provided at the establishment, for the benefit of adults –
 - (i) personal care or personal support, with or without practical assistance;
 - (ii) rehabilitation;
 - (iii) respite; or
 - (iv) therapeutic activities;
 - (c) relevant services are so provided because of one or more of the matters mentioned in section 16(2);
 - (d) relevant services so provided are available at the establishment for more than 4 hours a day; and
 - (e) all or some of the relevant services so provided are provided during daytime.
- (2) To avoid any doubt, for subsection (1)(e), relevant services are still provided during daytime even if they are not provided regularly or they only start or end during daytime.
- (3) Despite subsection (1), none of the following is an adult day care centre –
- (a) a hospital or independent clinic, to the extent the services are provided as part of medical treatment that persons are receiving there; or
 - (b) an establishment prescribed not to be an adult day care centre.

18 “Adult placement agency”

- (1) An “**adult placement agency**” is a business that provides a service that –
- (a) consists of, or includes, arranging for adults to be provided with both of the following, by placing them with a person or family –
 - (i) accommodation; and
 - (ii) personal care or personal support, with or without practical assistance; and

- (b) is provided because of the need or vulnerability of the adults.
- (2) However, a business is not an adult placement agency if the business is prescribed not to be an adult placement agency.

19 “Child care agency”

- (1) A “**child care agency**” is a business that —
 - (a) consists of, or includes, the service of supplying or introducing child-carers to others; and
 - (b) is not a nurses agency or domiciliary care agency.
- (2) However, a business is not a child care agency if the business is prescribed not to be a child care agency.
- (3) In this section, “child-carers” means people who look after children, wholly or mainly where they dwell or who take them to or from their dwellings, even if the looking after or taking is —
 - (a) not for reward; or
 - (b) only on an occasional basis.

20 “Child day care centre”

An establishment is a “**child day care centre**” if —

- (a) it provides day care for one or more children under 8 years old for more than 2 hours in the same day (“**child day care**”); and
- (b) it is not a private dwelling.

21 “Childminding” and “childminder”

- (1) Generally, “**childminding**” is the looking after of one or more children under 8 years old by a person —
 - (a) at a private dwelling;
 - (b) for reward; and
 - (c) for more than a total of 2 hours in the same day.
- (2) However, childminding does not include any of the following —
 - (a) a child being looked after by a responsible person for the child;
 - (b) a person who is employed to look after a child by a responsible person for the child; or
 - (c) a person who is so employed by 2 different employers looking after any or all of the children concerned wholly or mainly in the private dwelling of either of the person’s employers.
- (3) A “**childminder**” is someone who provides childminding.
- (4) In this section —

“relative”, of a child or children, means a person connected to the child or children by whole blood, half blood or by marriage, civil partnership or some affinity other than kinship; and

“responsible person”, for a child or children, means any of the following —

- (a) a relative of the child or children;
- (b) anyone else who, under section 2 of CYPA 2001, has parental responsibility for them;
- (c) their official foster parents under section 102 of CYPA 2001; or
- (d) anyone fostering them privately under section 57 of CYPA 2001.

22 “Childrens home”

(1) A “**childrens home**” is —

- (a) an establishment that provides social care and accommodation wholly or mainly for children; or
- (b) a place at which, under section 61(8) (fostering limit) of CYPA 2001, a person is taken to be carrying on a childrens home under this Act.

(2) However, other than as provided under subsection (1)(b), an establishment is not a childrens home merely because a child is cared for and accommodated there by someone who is a responsible person for the child as defined under section 21(4).

(3) Also, none of the following is a childrens home —

- (a) a hospital;
- (b) an independent clinic;
- (c) a residential family centre;
- (d) a school, other than an accommodation-providing school; or
- (e) an establishment prescribed not to be a childrens home.

(4) In this section —

“accommodation-providing school” means a school at which at any time accommodation is provided for children and —

- (a) in each year that fell within the 2 years ending at that time, the school provided child accommodation for more than 295 days; or
- (b) it is intended to provide child accommodation for more than 295 days in any year;

“proprietor”, for a school, see section 59(1) of the *Education Act 2001* (the “**education Act**”);

“provide child accommodation”, for a school, means to provide accommodation for at least one child either at the school or under arrangements made by its proprietor; and

“year” means any period of twelve months.

23 “Child (secure accommodation) establishment”

A “**child (secure accommodation) establishment**” is an establishment providing accommodation for children to restrict their liberty.

24 “Domiciliary care agency”

(1) A “**domiciliary care agency**” is a business that consists of, or includes, arranging for others to be provided with personal care or personal support, with or without practical assistance —

- (a) in their private dwellings; and
- (b) because of their mental disorder, physical disability, illness or infirmity.

(2) However, a business is not a domiciliary care agency if the business is prescribed not to be a domiciliary care agency.

25 “Fostering agency”

A “**fostering agency**” is an agency that, under section 23 of CYPA 2001, provides for children to be accommodated with other persons.

26 “Independent clinic”

(1) An “**independent clinic**” is an establishment at which a prescribed type of service is provided (whether or not any other type of service is also provided at the establishment).

(2) However, a type of service as follows cannot be prescribed under subsection (1) —

- (a) one provided in an independent hospital or NHS hospital; or
- (b) one provided by medical practitioners or health care professionals under the *National Health Service Act 2001* (the “**NHS Act**”).

(3) In this section, “health care professionals” means individuals with special education or training about the direct provision of patient care or services ancillary to health care.

27 “Independent hospital”

(1) An “**independent hospital**” is an establishment —

- (a) the main purpose of which is to provide medical treatment, psychiatric treatment or palliative care for mental disorder, physical disability, illness or infirmity;
 - (b) at which persons liable to be detained under the *Mental Health Act 1998* (the “**mental health Act**”) receive treatment or nursing, or both, other than persons absent under leave granted under section 17 of that Act; or
 - (c) at which another prescribed type of service is provided.
- (2) However, an establishment is not an independent hospital if the establishment is —
- (a) an NHS hospital; or
 - (b) prescribed not to be an independent hospital.

28 “Independent medical agency”

- (1) An “**independent medical agency**” is a business that consists of, or includes, the provision of services by medical practitioners.
- (2) However, none of the following is an independent medical agency —
- (a) an independent clinic;
 - (b) an independent hospital;
 - (c) a business mentioned in subsection (1) to the extent to which its services are provided under the NHS Act by medical practitioners; or
 - (d) an establishment prescribed not to be an independent medical agency.

29 “Nurses agency”

- (1) A “**nurses agency**” is an employment agency or employment business under section 12(1) of the *Employment Agencies Act 1975* that consists of, or includes, providing or supplying nurses or registered midwives.
- (2) However, an agency or business mentioned in subsection (1) is not a nurses agency if it is prescribed not to be a nurses agency.

30 “Offender accommodation service”

- (1) An “**offender accommodation service**” is an establishment at which a service is provided that consists of the giving of advice, guidance or help to persons who have been provided accommodation —
- (a) under section 29 (approved probation hostels) of the *Criminal Justice Act 1963*; or
 - (b) following release from custody.

- (2) However, an establishment is not an offender accommodation service if it is prescribed not to be an offender accommodation service.

31 “Residential family centre”

- (1) A “**residential family centre**” is an establishment at which —
 - (a) accommodation is provided for children and their parents;
 - (b) the parents’ capacity to respond to their children’s needs and to safeguard their welfare is monitored or assessed; and
 - (c) the parents are given advice, counselling or guidance.
- (2) However, an establishment is not a residential family centre if the establishment is prescribed not to be a residential family centre.
- (3) In this section, “parent” includes anyone who, under section 2 of CYPA 2001, has parental responsibility for the child.

32 “Voluntary adoption agency”

- A “**voluntary adoption agency**” is a body —
- (a) that, under the *Adoption Act 1984* (the “**adoption Act**”) is an approved adoption society; and
 - (b) whose activities are not carried on for profit.

DIVISION 3 — OTHER DEFINITIONS AND INTERPRETATION

33 Other provisions

- (1) The Schedule defines words used in this Act, other than for Part 9, Division 2 (savings and transitional).
- (2) In this Act, unless the context otherwise requires —
 - (a) a reference to a function includes a power;
 - (b) a reference to performing a function includes a reference to exercising a power;
 - (c) a reference to a person performing a function is a reference to the person’s functions under this Act;
 - (d) a provision about a person’s functions does not limit the person’s other functions; and
 - (e) a reference to DSC performing a function includes a reference to any inspector performing the function for DSC.
- (3) An example or note in or to a provision of this Act is part of this Act and part of the provision.
- (4) An example of the operation of a provision is not exhaustive and may extend, but does not limit, the provision’s meaning.

PART 2 – DSC’S FUNCTIONS FOR ACT

34 General functions

- (1) As well as its care service functions under the Acts mentioned in section 9, DSC has the functions of –
 - (a) regulating how independent care services are carried on;
 - (b) encouraging improvement in the quality of care services; and
 - (c) providing information to the public about care services.
- (2) DSC also has the function of monitoring (its “**monitoring function**”) –
 - (a) compliance with this Act by registered persons;
 - (b) whether social care or non-NHS health care services are being provided by anyone who is subject to the registration requirement but who is not registered; and
 - (c) Department care services.
- (3) DSC also has the function of promoting high standards for social care workers and their training.

35 Power to make minimum standards

- (1) DSC may make standards (the “**minimum standards**”) about the provision of social care or non-NHS health care services by independent care services.
- (2) The minimum standards are a public document but not a statutory document.
- (3) Before making the minimum standards, DSC must consult in a way it considers appropriate about the standards.

36 Access to minimum standards

DSC must make the minimum standards publicly available in the way it considers appropriate.

37 Effect of minimum standards

- (1) The minimum standards must be considered –
 - (a) by DSC when it –
 - (i) performs its functions under section 34; or
 - (ii) makes decisions under Part 3 and under Part 4, Divisions 2 (notice to registered provider to improve care service) and 3 (enforcing requirements of registered persons); or
 - (b) in appeals to the tribunal under Part 6; and
 - (c) in proceedings for registration-related offences and care offences.

- (2) A Department must consider the minimum standards in carrying on or managing a care service.
- (3) Subsections (1) and (2) only apply to the extent the minimum standards are relevant to the care service in question.

PART 3 — REGISTRATION OF INDEPENDENT CARE SERVICES

DIVISION 1 — GENERAL PROVISIONS

SUBDIVISION 1 — BASIC DEFINITIONS CONCERNING REGISTRATION

38 “Provider registration” and “registered provider”

- (1) “**Provider registration**” is registration under this Part as a person who carries on an independent care service.
- (2) A “**registered provider**” is someone who holds provider registration.

39 “Manager registration” and “registered manager”

- (1) “**Manager registration**” is registration under this Part as a person who manages an independent care service.
- (2) A “**registered manager**” is someone who holds manager registration.

40 “Registered person”

A “**registered person**” is someone who holds provider registration or manager registration.

41 Registration concerning children

- (1) “**Childminder registration**” is provider registration for childminding.
- (2) A “**registered childminder**” is a childminder who is a registered provider for childminding.
- (3) Registration is “**child-related**” if it is for a care service that is child-related.

42 General references to “registration”

- (1) If this Act refers to “**registration**” without referring to any particular type under this Subdivision, the reference is a reference to any provider registration or manager registration that has not been cancelled and is not suspended.

- (2) A reference to a person's registration includes a reference to the registration conditions and any details of the registration.

SUBDIVISION 2 – DISQUALIFICATION FROM REGISTRATION

43 Types of disqualification

- (1) A person is –
- (a) disqualified from any registration (“**totally disqualified**”) if a disqualifying circumstance under section 44 applies to the person;
 - (b) disqualified for any child-related registration (“**disqualified for children**”) if a disqualifying circumstance under section 45 applies to the person;
 - (c) disqualified from registration for a specific category of care service that is not child-related (“**specifically disqualified**”) if a disqualifying circumstance under section 46 applies to the person; or
 - (d) disqualified from provider registration other than childminder registration (“**disqualified because of insolvency**”) if –
 - (i) the person is, or has been, administered in insolvency; or
 - (ii) for a body corporate, a member or officer of the body is being administered in insolvency.
- (2) However, a person is not disqualified as mentioned in subsection (1) for a particular disqualification under subsection (1) if –
- (a) the person has been exempted from that disqualification under section 47 (a “**disqualification exemption**”); and
 - (b) the exemption has not been withdrawn under section 48.
- (3) In this section, “administered in insolvency”, for a person, means –
- (a) the person being the following under any British Islands legislation –
 - (i) for an individual, a bankrupt; or
 - (ii) for a body corporate, the subject of winding up or administration; or
 - (b) the person or the person's property being the subject of –
 - (i) the appointment (whether or not by a court) of a receiver, or a receiver and manager; or
 - (ii) a compromise or arrangement under any British Islands legislation with another person.

44 Total disqualification

- (1) For an individual, the disqualifying circumstances for total disqualification are any of the following—
 - (a) the individual has been convicted of, or cautioned for, a totally disqualifying offence;
 - (b) the individual is included in —
 - (i) the children’s barred list or the adults’ barred list under the Safeguarding Vulnerable Groups Act 2006 of Parliament; or
 - (ii) a list similar to either list kept under any other British Islands legislation;
 - (c) an order under the *Sex Offenders Act 2006* or any other similar British Islands legislation has been made against the individual; or
 - (d) another prescribed circumstance applies to the individual.
- (2) For a body corporate, the disqualifying circumstance is that a member or officer of the body is totally disqualified.
- (3) In this section —

“cautioned”, for an offence, means cautioned, reprimanded or warned under any British Islands legislation for an admission of the offence; and

“totally disqualifying offence” means any of the following —

 - (a) the ill-treatment or neglect offence;
 - (b) an offence against section 14A (ill-treatment of residents of nursing homes etc.) of the repealed *Nursing and Residential Homes Act 1988*;
 - (c) an offence against section 123 (ill-treatment of patients) of the mental health Act;
 - (d) an offence against sections 18 to 20, 23 to 27, 31, 33, 35 to 39, 41 to 47 or 49 to 60D of the *Criminal Code 1872*;
 - (e) an offence against sections 14 to 17 of the *Sexual Offences Act 1992*;
 - (f) an offence against, or an offence mentioned in, Schedules 1 to 4 to the *Criminal Justice Act 2001*;
 - (g) another offence involving injury or threat of injury to another person;
 - (h) an offence against a prescribed provision; or
 - (i) an offence committed outside the Island against any British Islands legislation that would have been an offence mentioned in paragraphs (a) to (h) had the act constituting the offence taken place on the Island.

45 Additional disqualifications for children

- (1) This section provides for the disqualifying circumstances for disqualification for children.
- (2) For an individual, the disqualifying circumstances are any of the following —
 - (a) the individual is a parent of a child who, at any time, has been the subject of a care order;
 - (b) any of the following has been made at any time for a child so as to remove the child from the individual's care or prevent the child from living with the individual —
 - (i) a care order;
 - (ii) a supervision order; or
 - (iii) an old removal order;
 - (c) the individual has been convicted of, or cautioned for, a disqualifying offence for children;
 - (d) the individual was involved with a child-related care service the registration for which has been cancelled;
 - (e) the individual has been refused any child-related registration;
 - (f) a prohibition under section 59 (restrictions on private fostering) of CYPA 2001 or a similar prohibition under another childrens law, has been imposed on the individual;
 - (g) under a childrens law —
 - (i) the individual has been disqualified or prohibited from private fostering; or
 - (ii) the individual's rights and powers for a child have been vested in someone else; or
 - (h) another prescribed circumstance applies to the individual.
- (3) It is also a disqualifying circumstance for an individual while the individual lives in —
 - (a) the same private dwelling as a person who is totally disqualified or disqualified for children; or
 - (b) any part of premises at which a person who is totally disqualified or disqualified for children is employed or engaged.

Note:

Part 7, Division 1 (disqualification offences) has defences concerning this head of disqualification. See section 148(3) (involvement with care service if disqualified) and 149(2) (employing or engaging disqualified person).

- (4) For a body corporate, the disqualifying circumstance is that a member or officer of the body is disqualified for children.
- (5) In this section —

“care order” means a care order under a childrens law or an order that, under CYPA 2001, has effect as a care order;

“child-related care service” includes a service (whatever called) carried on at any time anywhere in the British Islands outside the Island that would have been a child-related care service had it been carried on the Island;

“childrens law” means any of the following —

- (a) CYPA 2001;
- (b) the Social Work (Scotland) Act 1968, Foster Children (Scotland) Act 1984, Children Act 1989, Childcare Act 2006 or the Safeguarding Vulnerable Groups Act 2006, all of Parliament;
- (c) the Children (Scotland) Act 1995;
- (d) the Children (Northern Ireland) Order 1995;
- (e) any other British Islands legislation that corresponds, or is similar to, legislation mentioned in paragraphs (a) to (d); or
- (f) another prescribed law;

“disqualifying offence for children” means an offence —

- (a) against section 26(1)(b) or (c) of the adoption Act;
- (b) against section 42(13), 48(2) or 49(5) of CYPA 2001;
- (c) mentioned in Schedule 8 to CYPA 2001; or
- (d) committed outside the Island against any British Islands legislation that would have been an offence mentioned in paragraphs (a) to (c) had the act constituting the offence taken place on the Island;

“old removal order” means an order under section 30 of the repealed *Adoption Act 1953*, section 7 of the repealed *Child Life Protection Act 1959* or the repealed section 24 of the adoption Act;

“registration” includes registration (whatever called) for a child-related care service under other British Islands legislation or a repealed care law;

“repealed care law” includes a law repealed under a repealed care law; and

“supervision order” means a care order under a childrens law or an order that, under CYPA 2001, has effect as a supervision order.

46 Additional specific disqualifications

- (1) This section provides for the disqualifying circumstances for specific disqualification for a category of care service.
- (2) It is a disqualifying circumstance for an individual for the category if any of the following apply for the individual —
 - (a) the individual was involved with a care service of the category the registration for which has been cancelled;

- (b) the individual has been refused registration for the category; or
 - (c) another prescribed circumstance applies to the individual.
- (3) Also, the recipient of a disqualification notice (unregistered childminder) is disqualified from childminding until the earlier of the following to happen —
- (a) the end of a year after the notice is given; or
 - (b) the notice is earlier withdrawn.
- (4) For a body corporate, the disqualifying circumstance is that a member or officer of the body is specifically disqualified for the category.
- (5) In this section —
- “care service” includes a care service (whatever called) carried on anywhere else in the British Islands;
- “registration” includes registration (whatever called) under other British Islands legislation or a repealed care law; and
- “repealed care law” includes a law repealed under a repealed care law.

47 Exemption from disqualification

- (1) A person who is disqualified as mentioned in section 43(1) may apply (an “exemption application”) to DSC for a disqualification exemption from that disqualification.
- (2) However, if the person has already made an exemption application that has been refused (the “earlier application”), the person cannot make an exemption application, unless —
- (a) more than a year has passed since the making of the earlier application; or
 - (b) DSC is satisfied there has been a relevant and material change in the person’s circumstances since that time.
- (3) An exemption application must be —
- (a) in the required form, if there is one; and
 - (b) disclose all disqualifying circumstances for which the applicant would, other than for the granting of the exemption, be disqualified as mentioned in subsection (1).
- (4) DSC must consider and decide each exemption application.
- (5) In deciding an exemption application DSC may consider any relevant registration criteria.
- (6) If DSC decides to refuse an exemption application, it must give the applicant an appeal notice about the decision.

48 Withdrawal of disqualification exemption

- (1) DSC may withdraw a disqualification exemption if it considers the withdrawal is necessary or desirable and it has complied with the procedural fairness requirements.
- (2) If DSC decides to withdraw a disqualification exemption, it must give the applicant an appeal notice about the decision.

SUBDIVISION 3 – SUITABILITY FOR REGISTRATION

49 Who is a “suitable manager” or “suitable supervisor”

- (1) A person is a “suitable manager” for a care service only if the person is suitable to manage it.
- (2) A person is a “suitable supervisor” for a care service only if the person is suitable to supervise its management.
- (3) For subsections (1) and (2), a person is taken not to be suitable for a care service if –
 - (a) the person is totally disqualified or is specifically disqualified for the care service’s category; or
 - (b) if the care service is child-related, the person is disqualified for children.

50 Criteria for suitability to manage or supervise

- (1) A person is suitable to manage, or supervise the management of, a care service only if –
 - (a) the person is physically and mentally fit enough, and has the skills and experience necessary, for the supervision or management; and
 - (b) the person has integrity and is of good character.
- (2) In considering whether a person has integrity and is of good character regard may be had to any or all of the following –
 - (a) whether the person has been previously convicted of an offence on information or of a care offence;
 - (b) any contravention by the person of an obligation under this Act or a corresponding law to this Act; or
 - (c) any other prescribed matter.
- (3) In deciding whether a person is suitable to supervise or manage a care service, regard must be had to its category and size.
- (4) In this section, “registration” includes registration (whatever called) or a licence under a corresponding law to this Act or a repealed care law.

51 Who is “suitable for childminding”

A person is “suitable for childminding” only if the person is —

- (a) not totally disqualified and not disqualified for children;
- (b) physically and mentally fit enough, and has the skills and experience necessary, for childminding; and
- (c) has integrity and is of good character, having regard to the matters mentioned in section 50(2).

DIVISION 2 — REQUIREMENT TO REGISTER INDEPENDENT CARE SERVICE

SUBDIVISION 1 — MAIN OFFENCE

52 Offence to carry on or manage without registration

- (1) A person must not —
 - (a) carry on an independent care service, unless the person is its registered provider and that registration is not suspended; or
 - (b) manage an independent care service, unless —
 - (i) generally, the person is its registered manager and that registration is not suspended; or
 - (ii) if the care service is childminding, the person is its registered provider and that registration is not suspended.
- (2) The Maximum penalty (summary) for subsection (1) is generally £20,000, but if the offence was committed in a circumstance of aggravation it is 6 months custody or a fine.

Note:

See also section 148 (involvement with care service if disqualified).

- (3) The prohibition under subsection (1) is the “**registration requirement**”.
- (4) The registration requirement is subject to Subdivision 2.
- (5) In this section —

“circumstance of aggravation”, for the commission of the offence, means —

- (a) the person was previously registered for the care service but that registration had ended before, or was suspended when, the offence was committed; or
- (b) the conviction is a second or subsequent conviction for an offence against the registration requirement and the earlier conviction, or one of the earlier convictions, was of an offence about —
 - (i) the care service; or
 - (ii) another independent care service of the same category;

“registered” includes registered or licensed under a repealed care law; and

“registration requirement” includes a requirement under a repealed care law to be registered or licensed.

SUBDIVISION 2 — EXEMPTIONS FROM REGISTRATION REQUIREMENT

53 Personal representatives

The registration requirement does not apply to a personal representative carrying on a care service under section 102 (carrying on care service for limited period after sole provider’s death).

54 Child day care at certain establishments

- (1) The registration requirement does not apply to a person carrying on or managing a business that provides child day care at —
 - (a) a childrens home, independent hospital or residential family centre for which there is provider registration;
 - (b) an NHS hospital; or
 - (c) a school.
- (2) In this section, “school” means an institution for providing primary education or secondary education, or both, being a school maintained by the Department of Education and Children or an independent school.

55 Occasional child day care centres

- (1) This section applies if a person who carries on or manages a child day care centre gives DSC a notice stating the centre will not be used for child day care for more than 5 days a year.
- (2) The registration requirement only applies to the person if the centre is used for child day care for more than 5 days in any 12 month period starting on —
 - (a) the day the centre is first used for child day care after the notice is given; or
 - (b) any anniversary of that day.

DIVISION 3 — OBTAINING REGISTRATION

SUBDIVISION 1 — APPLICATIONS

56 Who can apply for registration

- (1) Generally —
 - (a) anyone may apply for provider registration for a care service or proposed care service (a “**registration application**”); and

- (b) any individual can apply for manager registration for a care service or proposed care service (also a “**registration application**”).
- (2) The exceptions to subsection (1) are —
- (a) a person who is totally disqualified cannot apply for any registration;
 - (b) a person who is disqualified for children cannot apply for any child-related registration;
 - (c) a person who is specifically disqualified for a category of care service cannot apply for registration for any care service of that category;
 - (d) a person who is disqualified because of insolvency cannot apply for provider registration other than childminder registration;
 - (e) 2 or more people who carry on, or propose to carry on, a care service in partnership may apply for provider registration for the service only if all of the individual partners of the partnership jointly make the application;
 - (f) if a person wishes to apply for registration for more than one care service, the person may do so only by making separate registration applications for each of them;
 - (g) a person cannot make a registration application for a fostering agency or voluntary adoption agency carried on by an unincorporated body; and
 - (h) only an individual can apply to become a registered childminder.
- (3) An individual may apply for both provider registration and manager registration for the same care service.
- (4) An applicant for childminder registration need only apply for provider registration.

57 How to apply

- (1) A registration application must —
- (a) be made to DSC in the required form, if there is one;
 - (b) state the category and prescribed subcategory of registration sought;
 - (c) identify the care service and where it is, or is proposed to be, provided;
 - (d) give the prescribed information about, and be accompanied by the prescribed documents relating to, the prescribed matters; and
 - (e) be accompanied by the prescribed fee, if there is one.

- (2) If the application is for provider registration and the applicant is a body corporate —
 - (a) the body corporate must identify an individual (“the nominee”) whom it proposes as care service’s responsible person; and
 - (b) the application must include, or be accompanied by, the prescribed documents or information about the nominee.
- (3) The nominee —
 - (a) must be an officer of the applicant; and
 - (b) cannot be a person who is any of the following —
 - (i) totally disqualified or disqualified because of insolvency;
 - (ii) if the application is for provider registration for a child-related care service, disqualified for children; or
 - (iii) specifically disqualified for the care service’s category.

SUBDIVISION 2 — DECIDING APPLICATION AND TAKING EFFECT OF REGISTRATION

58 Registration criteria

- (1) This section provides for the “**registration criteria**”.
- (2) If an individual applies for provider registration, the applicant must be a suitable supervisor for the care service, unless —
 - (a) the applicant already holds manager registration for the care service; or
 - (b) DSC has decided to grant the applicant manager registration for the care service.
- (3) If a body corporate applies for provider registration, its nominee must be a suitable supervisor for the care service.
- (4) An applicant for manager registration must be a suitable manager for the care service.
- (5) The applicant must be able to comply with the mandatory conditions and comply with any other prescribed criteria.
- (6) Everyone looking after children under 8 years old at the care service must be suitable for childminding.
- (7) Anyone living, or likely to be employed or engaged, at the care service —
 - (a) must not be totally disqualified; and
 - (b) if the application is for registration for a child-related care service, must be suitable to be in regular contact with children under 8 years old.

- (8) A person is suitable for subsection (7)(b) only if the person is not disqualified for children and has integrity and is of good character.
- (9) The premises consisting of the care service, and equipment at it, must be suitable for the service, having regard to their condition, construction, situation and size.

59 Deciding application

- (1) DSC must consider and decide each registration application.
- (2) However —
 - (a) the obligation under subsection (1) to decide is subject to DSC's powers under Division 7, Subdivision 1 (common provisions for applications); and
 - (b) before making the decision DSC must comply with the requirements under Division 7, Subdivision 2 (the “**procedural fairness requirements**”).
- (3) DSC may grant a registration application only if satisfied —
 - (a) the registration criteria have been complied with;
 - (b) to the extent the registration criteria concern whether a person is a suitable supervisor, suitable manager or suitable for childminding, the person will continue to be so suitable; and
 - (c) the applicant will continue to comply with the other registration criteria to the extent they are relevant.

60 Power to impose registration conditions

- (1) If DSC decides to grant a registration application, it may, in addition to the mandatory conditions, impose registration conditions it considers appropriate.
- (2) Registration conditions decided under subsection (1) are “**decided conditions**”.
- (3) Before imposing decided conditions DSC must comply with the procedural fairness requirements.
- (4) However, subsection (3) does not apply for agreed conditions.

61 Notice of decision

- (1) If DSC decides to grant a registration application, it must give notice of the decision to —
 - (a) the applicant; and
 - (b) if the application is only for manager registration, the care service's registered provider.

- (2) The notice must state any decided conditions for the applicant's registration.
- (3) DSC must give the applicant an appeal notice about a decision —
 - (a) to impose decided conditions, other than agreed conditions; or
 - (b) to refuse a registration application.

62 When registration takes effect

- (1) A decision to grant a registration application takes effect —
 - (a) if there are no decided conditions other than agreed conditions, when the applicant is given notice of the decision to grant the relevant registration application; or
 - (b) if there are decided conditions that are not agreed conditions, on the earliest of the following to happen —
 - (i) the applicant gives DSC a notice agreeing to all of the decided conditions;
 - (ii) the period under the appeal rules to appeal (the “appeal period”) for the decision ends and the applicant has not filed an appeal; or
 - (iii) if the applicant has filed an appeal within the appeal period, when the appeal ends.
- (2) When the decision takes effect, any nominee becomes the care service's “**responsible person**”.

63 Registering successful applicant and any responsible person

When a decision to grant a registration application takes effect, DSC must —

- (a) record in the register details of the applicant's registration and, if the applicant is a body corporate, the care service's responsible person; and
- (b) give the applicant a registration certificate.

64 Duration of registration

Registration continues until it is surrendered, suspended or cancelled under this Part, or, if the sole registered person is an individual, the person dies.

DIVISION 4 — MANDATORY CONDITIONS FOR REGISTRATION

65 Imposition of mandatory conditions

As well as any decided conditions, a person's registration is subject to both of the following types of conditions (the “**mandatory conditions**”) to the extent they are relevant to that registration —

- (a) the conditions under this Division; and
- (b) any other prescribed conditions.

66 Supervision and management duties: general

- (1) This section does not apply for childminding.
- (2) A registered provider must —
 - (a) ensure the care service has a registered manager who continues to manage it; and
 - (b) if the registered provider is a body corporate —
 - (i) ensure the person recorded on the register as the care service’s responsible person continues to supervise its management (the “supervision condition”); and
 - (ii) if the responsible person dies or otherwise ceases to so supervise, make an amendment application under Division 5 as soon as practicable to replace the person with someone else (a “**responsible person change**”).
- (3) While a person continues to be a registered manager, the person must, unless DSC otherwise agrees, continue to manage the care service (the “management condition”).
- (4) To avoid any doubt, a contravention of the supervision condition or management condition does not affect a leave entitlement of the responsible person or registered manager or a right or remedy that person has against the registered provider or anyone else.

67 Supervision and management duties: exception

- (1) The supervision condition and the management condition under section 66 do not apply during any period of leave to which the responsible person or registered manager (the “controller”) is entitled if —
 - (a) the total leave the controller has taken in the last 12 months is no more than the maximum leave prescribed for the controller to take in any 12 month period; and
 - (b) the registered provider has made appropriate arrangements to ensure the care service is suitably supervised and managed in the controller’s absence.
- (2) To avoid any doubt, maximum leave may be prescribed even if it is less than a leave entitlement of the controller under the *Employment Act 2006*, any other relevant Act or a contract of employment.
- (3) Nothing in subsection (2) limits the scope of subsection (1).

68 Suitability and training conditions

- (1) A registered provider that is a body corporate must ensure the care service's responsible person —
 - (a) continues to be a suitable supervisor for the care service; and
 - (b) has appropriate training to continue to have the skills to supervise its management.
- (2) If a registered provider is an individual and someone else is the care service's registered manager, the registered provider must continue to be a suitable supervisor for the care service.
- (3) However, subsection (2) does not apply for childminding.
- (4) A registered manager must —
 - (a) continue to be a suitable manager for the care service;
 - (b) continue to have appropriate training to have the skills to continue to manage the care service; and
 - (c) ensure the competency, qualifications and training of the care service's workforce are appropriate.
- (5) A registered childminder must continue to be suitable for childminding.

69 Duty of care, competence and skill

- (1) A registered provider that is a body corporate must ensure the care service's responsible person supervises its management with sufficient care, competence and skill.
- (2) A registered manager must manage the care service with sufficient care, competence and skill.
- (3) A registered childminder must carry out childminding with sufficient care, competence and skill.

70 Continuing suitability of premises and its equipment

The premises consisting of a registered care service, and equipment at it, must continue to be suitable for the service, having regard to their condition, construction, situation and size.

71 Annual fees and costs under cost recovery notices

- (1) A registered person must pay DSC the prescribed annual fee at the prescribed times or intervals.
- (2) The recipient of a cost recovery notice must pay DSC the amount required to be paid under the notice within 14 days after the giving of the notice.

72 Inspections and related matters

- (1) A registered person must allow an inspector to enter and inspect the premises at which the care service is provided if the inspector —
 - (a) is entitled to enter the premises under section 115 (inspection of care premises under inspection guidelines) or 116 (care premises: other entries); and
 - (b) has complied with section 117 (social care and non-NHS health care premises: procedure for entry).
- (2) A registered provider must ensure sections 125 (offence: obstruction of inspector) and 128 (offence: contravention of production requirement) are not contravened in relation to the care service.
- (3) Subsection (2) applies whether or not anyone is charged or convicted in relation to any claimed contravention of section 125 or 128.

73 Compliance with improvement notices

The recipient of an improvement notice must not contravene the notice.

Note:

See also section 105 (contravening registration condition) and Part 4, Divisions 2 (notice to registered provider to improve care service) and 3 (enforcing requirements of registered persons).

DIVISION 5 – CHANGING REGISTRATION ON THE REGISTERED PERSON’S INITIATIVE

SUBDIVISION 1 – AMENDMENTS

74 When registered person may apply to amend

- (1) A registered person may apply to do any of the following (an “**amendment application**”) —
 - (a) amend any decided condition of the person’s registration;
 - (b) for a registered provider, make a responsible person change;
 - (c) amend the registration to reflect a change to the person’s name; or
 - (d) if the care service is an agency care service or childminding, the address of the premises at which the care service is carried on.
- (2) However, if there is a current cancellation notice for the person, the person cannot make an amendment application.
- (3) To avoid any doubt —
 - (a) a registered person cannot apply to substitute someone else as the registered person or amend a mandatory condition; and

- (b) a registered provider for an establishment care service cannot apply to amend the address of the premises at which the care service is carried on.
- (4) In this section, “establishment care service” means a care service under section 8.

75 How to apply

- (1) An amendment application must —
 - (a) be made to DSC in the required form, if there is one;
 - (b) state the amendment sought;
 - (c) give the prescribed information about prescribed matters; and
 - (d) be accompanied by the prescribed fee, if there is one.
- (2) Also, if the application is for a responsible person change, it must —
 - (a) nominate an officer of the applicant (the “**nominated replacement**”) to replace the current responsible person; and
 - (b) include, or be accompanied by, the prescribed documents or information about the prescribed matters for the nominated replacement.

76 Deciding application

- (1) DSC must consider and decide each amendment application.
- (2) However —
 - (a) the obligation under subsection (1) to decide is subject to DSC’s powers under Division 7, Subdivision 1 (common provisions for applications); and
 - (b) before making the decision DSC must comply with the procedural fairness requirements.
- (3) DSC may grant an amendment application only if satisfied —
 - (a) the applicant will continue to comply with the registration criteria, to the extent the criteria apply to the type of registration under Division 1, Subdivision 1 that the applicant seeks; and
 - (b) for a responsible person change, that the nominated replacement is, and will continue to be, a suitable supervisor for the care service.

77 Notice and taking effect of decision

- (1) If DSC decides to grant all or part of an amendment application it must —
 - (a) give the applicant —

- (i) notice of the decision (the “amendment notice”); and
 - (ii) a new registration certificate that reflects the amendment; and
 - (b) if the applicant only holds manager registration for the care service, give its registered provider a copy of the amendment notice.
- (2) The amendment takes effect when the applicant is given the amendment notice.
 - (3) Any nominated replacement becomes the care service’s responsible person when the amendment takes effect.
 - (4) If DSC decides to refuse all or part of an amendment application, it must give the applicant an appeal notice about the decision.
 - (5) If the decision is a partial refusal, the appeal notice may accompany, or be included in, the amendment notice.

SUBDIVISION 2 – SURRENDERS BY REGISTERED MANAGERS OR CHILDMINDERS

78 Surrender by notice

- (1) A registered manager or registered childminder may, by notice to DSC (a “surrender notice”), surrender the person’s registration.
- (2) However, the manager or childminder cannot give a surrender notice if there is a current cancellation notice for the person.
- (3) A surrender notice takes effect when it is given.

SUBDIVISION 3 – SURRENDERS BY REGISTERED PROVIDERS OTHER THAN CHILDMINDERS

79 Application of Subdivision

This Subdivision applies to a registered provider other than a registered childminder.

80 Surrender only by application

The registered provider may surrender the provider’s registration only —

- (a) by making an application to DSC for approval of the surrender (a “**surrender application**”); and
- (b) if the approval is given and it has taken effect.

81 Restriction on making surrender application

The recipient of a current cancellation notice cannot make a surrender application for the registration the subject of the notice.

82 How to apply

A surrender application must —

- (a) be made to DSC in the required form, if there is one;
- (b) give the prescribed information about prescribed matters about the application or the registered provider; and
- (c) be accompanied by the prescribed fee, if there is one.

83 Deciding application

- (1) DSC must consider and decide each surrender application.
- (2) In deciding a surrender application DSC may consider whether or not it thinks appropriate arrangements need to be made for persons receiving social care or non-NHS health care services provided at the care service.

84 Notice and taking effect of decision

- (1) If DSC decides to grant a surrender application it must give the applicant notice of the decision.
- (2) The surrender takes effect when the applicant is given the notice.
- (3) If DSC decides to refuse a surrender application, it must give the applicant an appeal notice about the decision.

DIVISION 6 — AMENDMENTS, SUSPENSIONS OR CANCELLATION BY DSC**85 Minor corrections**

DSC may decide to amend a particular registration for a person to correct a clerical or formal error if —

- (a) the amendment does not adversely affect the interests of the person or anyone else; and
- (b) the person has been given notice of the amendment.

86 Amendments: general

DSC may decide to amend a particular registration for a person if DSC—

- (a) considers the amendment is necessary or desirable; and
- (b) has complied with the procedural fairness requirements or the person has agreed in writing to the amendment.

87 Suspensions: general

- (1) DSC may decide to suspend a particular registration for a person if —
 - (a) the care service is being, or has been, carried on in contravention of a relevant requirement; and
 - (b) DSC has complied with the procedural fairness requirements.
- (2) A suspension under subsection (1) may be extended or further extended.
- (3) In this section, “relevant requirement” means —
 - (a) a registration condition;
 - (b) a requirement under this Act relating the registration; or
 - (c) a requirement under another Act that DSC considers is relevant to the registration.

88 Cancellation: general

- (1) DSC may decide to cancel a particular registration for a person if it —
 - (a) considers the cancellation is necessary or desirable because of any ground mentioned in subsection (2); and
 - (b) has complied with the procedural fairness requirements.
- (2) The grounds are any of the following —
 - (a) the registration was obtained because of a materially false or misleading representation, made either orally or in writing;
 - (b) any ground on which DSC would be entitled to refuse a registration application for the care service;
 - (c) the person has not complied with section 71 (annual fees and costs under cost recovery notices);
 - (d) the person is the recipient of a compliance notice for the care service and the notice has been contravened;
 - (e) the person is totally disqualified;
 - (f) for provider registration other than childminder registration, the person is disqualified because of insolvency;
 - (g) if the care service is child-related, the person is disqualified for children;
 - (h) the person specifically disqualified for the care service’s category;
 - (i) if the care service has a responsible person, that person has been convicted of a care offence or is disqualified as mentioned in paragraphs (e) to (h);
 - (j) the person has been convicted of a care offence relating to the care service;
 - (k) the care service is being, or has been, carried on in contravention of a relevant requirement as defined under section 87(3);

- (l) DSC is of the opinion that the care service has not been carried on for a continuous period of 3 years or more; or
 - (m) any other prescribed ground.
- (3) Subsection (2)(d) applies whether or not a proceeding has been started for the noncompliance the subject of the compliance notice.

89 Urgent amendment, suspension or cancellation

- (1) DSC or an inspector (the “action-taker”) may do any of the following (the “action”) if the action-taker reasonably believes someone will, or may be, exposed to the risk mentioned in subsection (2) unless the action is taken immediately –
- (a) amend the decided conditions of a particular registration for a person, either permanently or for a stated period (an “**urgent amendment**”);
 - (b) suspend a particular registration for a person for a stated period (an “**urgent suspension**”); or
 - (c) cancel a particular registration for a person (an “**urgent cancellation**”).
- (2) The risk is –
- (a) for urgent amendment or suspension, a risk of harm; or
 - (b) for urgent cancellation, a serious risk to life, health or wellbeing.
- (3) The action takes effect when the action-taker gives the registered person notice of the action, either orally or in writing.
- (4) The procedural fairness requirements do not apply for taking the action or giving the notice.
- (5) The following apply if the notice is given orally –
- (a) for provider registration, the action-taker may give the notice to the registered provider by giving it orally to the care service’s responsible person; and
 - (b) the action-taker must also give it again in writing as soon as practicable after giving it orally.
- (6) Subsections (7) and (8) apply for a written notice of the action, given under subsection (3) or (5)(b).
- (7) The notice must –
- (a) state –
 - (i) the action taken;
 - (ii) the reasons for the action-taker’s belief; and
 - (iii) for an urgent suspension, the suspension period; and

- (b) include, or be accompanied by, an appeal notice about the decisions to take the action and, for an urgent suspension, to fix the suspension period.
- (8) If the registered person is a registered manager, the action-taker must give the care service's registered provider a copy of the notice.

90 Effect of suspension or cancellation

- (1) If a registration is suspended under this Division, it is ineffective while it is suspended.
- (2) If a registration is cancelled under this Division, it ends and ceases to have any further effect.
- (3) Subsections (1) and (2) are subject to section 146(2) (tribunal's powers on appeal).

91 Notice and taking effect of non-urgent decisions under Division

- (1) This section applies for a decision under this Division to do any the following about a particular registration for a person (the "action") —
 - (a) an amendment, other than a minor correction under section 85 or an urgent amendment;
 - (b) a suspension, other than an urgent suspension; or
 - (c) a cancellation, other than an urgent cancellation.
- (2) DSC must give notice of the decision (a "decision notice") to —
 - (a) the person; and
 - (b) if the person only holds manager registration for the care service, any registered provider for the service.
- (3) The decision notice must include, or be accompanied by, an appeal notice about the decision to take the action.
- (4) The action takes effect on the later of the following —
 - (a) the day the person is given the decision notice; or
 - (b) any day of effect stated in the decision notice.
- (5) However, suspension or cancellation because of the commission of a care offence —
 - (a) does not take effect until —
 - (i) the period to appeal against the conviction ends; and
 - (ii) if the appeal is made against the conviction, the appeal is finally ended; and
 - (b) has no effect if the conviction is quashed on appeal.

92 Recovery of DSC's expenses in certain cases

- (1) This section applies if —
 - (a) DSC has, under this Division, amended, suspended or cancelled (the “action”) a person’s registration and the action has taken effect; and
 - (b) it considers the action was taken because of the person’s noncompliance with this Act, a requirement under this Act for obtaining registration or a registration condition.
- (2) DSC may decide to give the person a notice (a “**cost recovery notice**”) requiring the person to pay DSC its stated reasonable expenses in performing its monitoring or other functions relating to the noncompliance and taking the action.
- (3) However, DSC may make the decision only if it has complied with the procedural fairness requirements.
- (4) The cost recovery notice must state the amount of the costs and include, or be accompanied by, an appeal notice about the decisions to give the notice and to fix the amount of the costs required to be paid.
- (5) If the person does not comply with a cost recovery notice, DSC may recover from the person the amount required to be paid under the notice summarily as a debt.
- (6) Subsection (5) applies even if the person has been given a compliance notice for the debt or the person’s registration has ended.
- (7) In this section, “expenses” includes expenses for services DSC provides for itself and an inspector’s or civil servant’s remuneration.

DIVISION 7 — OTHER PROVISIONS FOR APPLICATIONS OR CHANGING REGISTRATION

SUBDIVISION 1 — COMMON PROVISIONS FOR APPLICATIONS

93 Noncompliant applications

- (1) DSC must refuse to receive or do anything to decide a purported registration application or amendment application not made under the requirements under this Part for making the application.
- (2) However, DSC may receive and decide the application as if it did comply with the requirements if DSC is satisfied the application substantially complies with the requirements.
- (3) For subsection (1), if a required form requires any or all of the following, it is completed only if that requirement is (or are) complied with —
 - (a) that the form is to be signed;

- (b) that the form to be prepared in a particular way;

Examples:

On paper of a particular size or quality or in a particular electronic form.

- (c) that the form to be completed in a particular way;
- (d) that particular information to be included in the form, or a particular document to be attached to or given with it; or
- (e) that the form, information in the form, or a document attached to or given with it, is to be verified in a particular way.

Example:

By a statutory declaration.

- (4) However, subsection (3) only requires substantial, and not strict, compliance with the requirements.
- (5) In this section, “requirements”, under this Part, includes requirements under any required form about how it is to be properly completed.

94 Request to applicant about application

If DSC is deciding a registration application or amendment application, it may, by notice, require the applicant to do any or all of the following within a stated reasonable period —

- (a) complete or correct the application if it appears to DSC to be incorrect, incomplete or defective;
- (b) give DSC additional information about, or relevant to, the application; or
- (c) give DSC a statutory declaration verifying information included in the application or additional information required under paragraph (b).

95 Refusing application for contravention of request notice

DSC may refuse an application if —

- (a) a notice under section 94 has been given for the application;
- (b) the period stated in the notice for complying with it has ended; and
- (c) the request has not been complied with to DSC’s satisfaction.

SUBDIVISION 2 — PROCEDURAL FAIRNESS REQUIREMENTS

96 Application of Subdivision

This Subdivision applies if, under this Part, DSC must comply with this Subdivision before finally deciding to do any of the following (“DSC’s proposal”) —

- (a) refusing an application for a disqualification exemption;
- (b) withdrawing a disqualification exemption;
- (c) imposing registration conditions;
- (d) amending a person's registration, other than by urgent amendment;
- (e) suspending a registered person's registration, other than by urgent suspension;
- (f) cancelling a registered person's registration, other than by an urgent cancellation; or
- (g) giving a cost recovery notice.

97 Notice of proposal

- (1) DSC must give the following (an "**interested person**") a notice about DSC's proposal (the "**proposal notice**") —
 - (a) either —
 - (i) if the proposal is deciding registration conditions, the person who applied for the registration (the "applicant"); or
 - (ii) if the proposal concerns a registered person, that person; and
 - (b) if someone else is a registered person for the care service, the other person.
- (2) The proposal notice must state —
 - (a) the proposal;
 - (b) the reasons for the proposal; and
 - (c) that an interested person may, within 21 days after the proposal notice is given, (the "submission period") make written submissions to DSC about the proposal.
- (3) DSC cannot make the decision until the earlier of the following to happen —
 - (a) the submission period ends; or
 - (b) all interested persons have given DSC —
 - (i) written submissions about the proposal; or
 - (ii) a notice stating the person will not be giving any submissions.

98 Duty to consider any written submissions

In making the decision, DSC must consider any written submissions given to it within the submission period under section 97(2)(c).

99 Withdrawal notice

If DSC decides not to proceed with DSC's proposal, it must give each interested person a notice stating DSC has withdrawn the proposal.

DIVISION 8 – DEATH OF REGISTERED PROVIDER**100 Application of Division**

This Division applies if a registered provider (other than a registered childminder) for a care service is an individual and the individual dies.

101 Notification duties

- (1) As soon as practicable after the death, the following person must give DSC a notice of the death, unless the person has a reasonable excuse –
 - (a) the care service's surviving registered providers; or
 - (b) if the deceased was the care service's sole registered provider – the deceased's personal representative.

Maximum penalty (summary) – £ 2,500.

- (2) Also, the personal representative must, within 28 days after the death, give DSC a notice stating the personal representative's intentions for the future carrying on of the care service, unless the person has a reasonable excuse.

Maximum penalty (summary) – £ 2,500.

102 Carrying on care service for limited period after sole provider's death

- (1) This section applies only if the personal representative is not any of the following –
 - (a) totally disqualified;
 - (b) if the care service is child-related, disqualified for children;
 - (c) specifically disqualified for the care service's category; or
 - (d) disqualified because of insolvency.
- (2) If the deceased was the care service's sole registered provider, the deceased's personal representative may carry on the service without holding provider registration for –
 - (a) generally, 4 weeks from the deceased's death; or
 - (b) if DSC agrees in writing to a longer period (either before or after 4 weeks end), the longer period.
- (3) The longer period cannot be more than a year.
- (4) Subsections (5) and (6) apply while the personal representative carries on the care service under subsection (2).

- (5) The representative must comply with the registration conditions that applied to the deceased immediately before the death.

Maximum penalty (summary) — £ 5,000.

- (6) This Act applies to the representative, with necessary changes, as if the deceased had not died and as if the representative was the care service's registered provider.

DIVISION 9 — GENERAL REGISTRATION-RELATED OFFENCES

103 Making false statement in an application

A person must not, in a registration application or amendment application, knowingly make a statement that is materially false or misleading.

Maximum penalty (summary) — £5,000.

104 Failure to display registration certificate

- (1) A registered person must ensure the person's registration certificate is kept affixed in a conspicuous place at any place where the care service is carried on.

Maximum penalty (summary) —

- (a) for a first conviction, £500; or
- (b) for a second or subsequent conviction, £10 for each day after the first conviction.
- (2) However, unless the registration is childminder registration, subsection (1) does not apply to any part of the place that only consists of a private dwelling.

105 Contravening registration condition

A registered person must not, without a reasonable excuse, contravene a registration condition.

Maximum penalty (summary) — £20,000.

106 Falsely describing scope of registration conditions

- (1) A person must not, without a reasonable excuse, describe or hold out that an independent care service can provide a particular type of social care or non-NHS health care service if doing so would contravene a registration condition relating to the service.

Maximum penalty (summary) — £5,000.

- (2) To avoid any doubt, subsection (1) applies even if the person is not a registered person for the care service.

DIVISION 10 – THE REGISTER

107 Requirement to keep register

- (1) DSC must keep a register of details about registered persons and responsible persons for care services.
- (2) The details must include the prescribed information and may include any other information DSC considers appropriate.
- (3) DSC may keep the register in any form it considers appropriate, including in electronic form.
- (4) If, under this Part, there is a change to information kept in the register, DSC must amend the information to reflect the change.

108 Access to register

- (1) DSC must –
 - (a) keep the register open at its offices for inspection by the public during office hours on working days; and
 - (b) on payment of any fee decided by DSC –
 - (i) allow anyone to search or take an extract from the register; or
 - (ii) give anyone who asks for it a copy of all or part of the register.
- (2) The fee for a copy must be a reasonable, but no more than the actual, cost of providing the copy.
- (3) Subsection (1) does not apply to any part of the register the disclosure of which DSC considers would be detrimental to an individual's welfare (other than of a registered person or a responsible person for a care service).
- (4) An exclusion under subsection (3) may be for persons generally or for a particular person seeking access to the part excluded.

DIVISION 11 – MISCELLANEOUS

109 Service of registered person at care service

- (1) This section applies if this Act permits or requires DSC to give a registered person a notice or other document.
- (2) For section 41 of the *Interpretation Act 1976* (service of documents), the person's usual or last known place of abode or business is taken to be the address of the care service.

- (3) Subsection (2) applies despite any actual change of the person's address and even though DSC or any of its officers is aware, or might by enquiry become aware, of the change.

110 DSC's notification powers

- (1) This section applies if any circumstance as follows arises —
- (a) a decision to cancel or suspend a registration;
 - (b) a proceeding for a care offence or adoption society offence;
 - (c) a matter relating to social care or a non-NHS health care service that, in DSC's opinion, may be relevant to a statutory authority, relevant care recipient or a representative of a relevant care recipient (an "interested entity"); or
 - (d) another prescribed circumstance.
- (2) DSC may give any interested entity a notice it considers appropriate to inform the recipient of the circumstance.
- (3) For the giving of the notice, a statutory authority is taken to be a public authority under the *Electronic Transactions Act 2000*.
- (4) The subject information provisions and non-disclosure provisions under the *Data Protection Act 2002* do not apply to the giving of the notice.
- (5) In this section —

"relevant care recipient" means anyone receiving social care or a non-NHS health care service related to the circumstance;

"representative", of a relevant care recipient, means —

- (a) a person who, under section 8(5) (rights upon assessment) of the *Social Services Act 2011*, is a representative of the care recipient, as an assessed person; and
- (b) anyone else appointed in writing by the care recipient —
 - (i) as the care recipient's representative for this section; or
 - (ii) to be informed of matters relating to social care or non-NHS health care services provided to the care recipient; and

"statutory authority" means any of the following —

- (a) a Department;
- (b) a Statutory Board; or
- (c) an authority under a corresponding law to this Act performing functions similar to DSC's functions under this Act, *CYPA 2001* or the *Social Services Act 2011*.

PART 4 – MONITORING AND ENFORCEMENT

DIVISION 1 – MONITORING

SUBDIVISION 1 – INSPECTORS

111 Appointment and functions

- (1) DSC may, by notice, appoint appropriately qualified persons to –
 - (a) help DSC perform its monitoring function; or
 - (b) perform functions given to them under CYPA 2001, the education Act or another Act.
- (2) In considering whether a person is appropriately qualified, regard must be had to any designated registration requirements.
- (3) A person who holds appointment under subsection (1) is an “**inspector**”.
- (4) In this section, “designated registration requirements” means requirements under any law as follows that requires registration under it for a person to perform functions (whatever called) that are the same as, or similar to, the monitoring function –
 - (a) regulations under this Act; or
 - (b) any Parliamentary enactment to the extent it applies to England.

112 Issue of identity card

- (1) DSC must give each inspector an identity card.
- (2) The identity card must –
 - (a) contain a recent photograph of the inspector;
 - (b) contain the signature of the individual who authorised the issue of the card;
 - (c) identify the person as an inspector for this Act;
 - (d) state an expiry date for the card.

113 Production or display of identity card

In exercising a power under this Division in relation to another person in that person’s presence, an inspector must –

- (a) produce the inspector’s identity card for the person’s inspection before exercising the power; or
- (b) have the identity card displayed so it is clearly visible to the person while exercising the power.

SUBDIVISION 2 – INSPECTORS’ ENTRY POWERS

114 General entry powers

An inspector may enter –

- (a) premises if its occupier consents to the entry or the entry is authorised under a warrant; and
- (b) land around a building or other structure to an extent that is reasonable to contact the occupier of the building or structure.

115 Inspection of care premises under inspection guidelines

- (1) DSC may make guidelines for inspectors to inspect any premises as follows (“**care premises**”) –
 - (a) premises at which there is a care service to which registration relates;
 - (b) premises at which social care or a non-NHS health care service is provided by anyone subject to the registration requirement; or
 - (c) premises at which a Department care service is carried on.
- (2) The guidelines may, but need not, provide for grounds on which an inspection is to take place and for the way in which it is to be conducted.
- (3) The guidelines do not take effect until they have been laid for information before Tynwald.
- (4) The guidelines are a public document but not a statutory document.
- (5) DSC must make the guidelines publicly available by –
 - (a) publishing them on the Government’s website or another appropriate website; or
 - (b) giving each registered provider a copy.
- (6) Subject to section 117, an inspector may enter care premises to carry out an inspection for the premises under the guidelines.
- (7) However, subsection (6) does not apply if –
 - (a) the care service is childminding;
 - (b) the premises is a private dwelling occupied by someone other than a childminder; and
 - (c) the occupier refuses consent to the entry.
- (8) Also, if the care service is one other than childminding, subsection (6) applies to a part of the premises that is a private dwelling only if the inspector reasonably suspects the part is used to provide social care or a non-NHS health care service.
- (9) In this section, “inspect” includes enter.

116 Care premises: other entries

- (1) This section applies to care premises and premises an inspector reasonably suspects are care premises.
- (2) Subject to section 117, an inspector may, at any reasonable time, enter the premises to inspect it if the inspector reasonably suspects the entry is necessary or expedient for the performance of DSC's monitoring function.
- (3) However, subsection (2) does not apply if, under section 115(7) or (8), an inspector cannot enter premises or a part of premises, as the case may be.

117 Care premises: procedure for entry without consent or warrant

- (1) Before entering premises under section 115 or 116, an inspector must make a reasonable attempt to –
 - (a) identify the inspector to any occupier of the premises who is present, in the way stated in section 113; and
 - (b) tell the occupier that the inspector may enter the premises without consent or a warrant.
- (2) However, for an entry under section 116, subsection (1) does not apply if the inspector reasonably believes immediate entry is needed to ensure the purpose of the entry is not frustrated.

SUBDIVISION 3 – POWERS AFTER ENTRY**118 Application of Subdivision**

This Subdivision applies if, under Subdivision 2 or a warrant, an inspector has entered particular premises.

119 Who has a “role” for the premises entered

A person has a “role” for the premises if any of the following apply for the person –

- (a) the person owns a business (a “care service owner”) that provides social care or a non-NHS health care service at or from the premises;
- (b) the person is the registered provider for a care service at the premises;
- (c) the person is the registered manager for an independent care service at the premises, or, if the care service has no registered manager, apparently managing it (a “manager”);
- (d) the person is a responsible person for a care service at the premises, or, if the care service has no responsible person, apparently supervising its management (a “supervisor”); or

- (e) the registration requirement applies to the premises and the person is authorised, employed or engaged by a care service or a manager or supervisor to perform work of any type at the premises.

120 General powers on entry

The inspector may do any or all of the following —

- (a) bring onto the premises the equipment and materials and a medical practitioner or nurse or anyone else the inspector reasonably requires to help the inspector perform the inspector's functions;
- (b) examine or search any part of the premises;
- (c) inspect, measure, test, photograph or film any part of the premises or anything at it;
- (d) inspect or copy a document at the premises —
 - (i) required to be kept under this Act; or
 - (ii) relating to anyone receiving social care or a non-NHS health care service, or who is being accommodated, at the premises (a “**service recipient**”); or
- (e) consider, for section 121, whether or not a service recipient at the premises appears to be receiving proper care.

121 When service recipients can be medically examined

- (1) A service recipient at the premises may be medically examined only if —
 - (a) the inspector reasonably believes the person is not receiving proper care; and
 - (b) subsections (2) to (4) have been complied with.
- (2) A medical practitioner or nurse helping the inspector must assess whether or not the service recipient has capacity to consent to the examination (“capacity”).
- (3) If the assessment is that the service recipient has capacity, the examination may proceed only if the recipient has consented to the examination.
- (4) If the assessment is that the service recipient does not have capacity, the examination may proceed only if, after complying with either of the following, the medical practitioner or nurse has formed the opinion that the examination is in the recipient's best interests —
 - (a) guidelines made by DSC about forming the opinion; or
 - (b) any requirements under an Act about forming the opinion.
- (5) The guidelines are a public document but not a statutory document.

122 Power to require documents or information on entry

- (1) The inspector may require (a “**production requirement**”) a person present who has a role for the premises to give the inspector any or all of the following that the person has, or has access to —
 - (a) a document mentioned in section 120(d); or
 - (b) information about the provision of social care or non-NHS health care services at the premises.
- (2) Before making the production requirement, the inspector must give the person an offence warning.

123 Offence: contravention of requirement to give reasonable help

- (1) The inspector may require a person who has a role for the premises to give the inspector reasonable help to perform the inspector’s functions.
- (2) Before making the requirement, the inspector must give the person an offence warning.
- (3) A person of whom a requirement under subsection (1) has been made must not contravene the requirement, unless the person has a reasonable excuse.

Maximum penalty for subsection (3) (summary) — £2,500.

SUBDIVISION 4 — OTHER PROVISIONS**124 Warrants**

- (1) An inspector may apply to the High Bailiff for a warrant authorising any constable to help the inspector, and anyone else helping the inspector (a “helper”), to enter premises or exercise other powers under this Division.
- (2) The application must be sworn and state —
 - (a) the power sought to be exercised;
 - (b) the premises for which the warrant is sought;
 - (c) if the power relates to a service recipient or person who has a role for the premises, the recipient or person; and
 - (d) the grounds on which the warrant is sought.
- (3) The High Bailiff may issue the warrant only if satisfied the inspector or a helper has been, or is likely to be, prevented from exercising the powers.
- (4) The warrant must state the matters mentioned in subsection (2)(a) and (b) and (c), if it applies.
- (5) Subject to subsections (6) to (9), the warrant authorises any constable to do any or all of the following, using necessary and reasonable force —
 - (a) enter the premises with the inspector and any helper;

- (b) seize a document or another thing (the “seized thing”) the inspector reasonably believes is, or may be, evidence of an offence against this Act, subject to subsections (6) to (9); or
 - (c) take any other action reasonably necessary to allow the powers to be exercised.
- (6) A thing cannot be seized under the warrant if it is a medical record or is needed for the day-to-day carrying on of a care service provided at the premises.
 - (7) The inspector must give a receipt for the seized thing to the person from whom it was seized.
 - (8) The receipt must generally describe the seized thing and its condition.
 - (9) If the seized thing is, in the inspector’s reasonable belief, not needed, or no longer needed, as evidence the inspector must take reasonable steps to return it to its owner.

125 Offence: obstruction of inspector

- (1) A person must not intentionally obstruct an inspector from exercising a power under this Division.

Maximum penalty (summary) — £5,000.

- (2) If the inspector considers a person is obstructing the inspector and the inspector decides to proceed with the exercise of the power, the inspector must give the person an offence warning.
- (3) In this section, “obstruct” includes assault, hinder, resist and attempt or threaten to assault, hinder or resist.

126 Inspector may require production of information

- (1) This section applies if an inspector reasonably believes DSC needs information to perform its monitoring function in relation to a particular registered person.
- (2) The inspector may require (also a “**production requirement**”) the registered person to give the following person within a stated reasonable period stated information the inspector reasonably believes is necessary to perform the monitoring function —
 - (a) to the extent the information consists of medical records, a stated medical practitioner or nurse; or
 - (b) otherwise, DSC.
- (3) The production requirement must include an offence warning.
- (4) In this section, “information” includes documents.

127 Production of documents or information kept on computer

- (1) This section applies if —
 - (a) a person keeps, or has access to, a document or information (“the material”) kept by way of a computer; and
 - (b) a production requirement is made of the person.
- (2) The person must produce a document reproducing the material in a form capable of being understood and that allows the inspector to take the reproduction away.

128 Offence: contravention of production requirement

A person of whom a production requirement has been made must not contravene the requirement, unless the person has a reasonable excuse.

Maximum penalty (summary) — £2,500.

129 Compliance with production requirement

- (1) It is not a defence to, or an excuse for, a proceeding for an offence against section 128 that complying with the production requirement contravened might tend to incriminate the defendant.
- (2) However, if the defendant is an individual, incriminating evidence is not admissible in evidence against the defendant in a civil or criminal proceeding, other than for the ill-treatment or neglect offence.
- (3) Subsection (2) does not apply to a proceeding for an offence for which the falsity or misleading nature of the document the subject of the requirement is relevant.
- (4) In this section, “incriminating evidence” means evidence directly or indirectly derived from a document produced or information it contains that might tend to incriminate the defendant.

130 Reports about inspections

- (1) If an inspector has, under this Division, inspected care premises, DSC must —
 - (a) prepare a report about the inspection;
 - (b) give each registered person for the care service a copy within one month; and
 - (c) after giving the report, make the report available for public inspection in the way DSC considers appropriate.
- (2) However, DSC need not comply with subsection (1)(c) for any part of the report the disclosure of which it considers would be detrimental to an individual’s welfare.

131 Protection from defamation for reports

- (1) For the law of defamation, absolute privilege attaches to the preparation, giving or making available of a report under section 130, unless the report is sworn to have been made with malice.
- (2) However, subsection (1) does not apply to an opinion in the report found not to have been based on appropriate evidence.
- (3) Subsection (1) does not affect any privilege available other than under that subsection.

DIVISION 2 – NOTICE TO REGISTERED PROVIDER TO IMPROVE CARE SERVICE

132 Power to give improvement notice

- (1) This section applies if an inspector reasonably believes an improvement needs to be made to a care service.
- (2) The inspector may give the care service's registered provider a notice (an "**improvement notice**") requiring the provider to make the improvement within a stated reasonable period.
- (3) The inspector must give a copy of the improvement notice to –
 - (a) if the registered provider is a body corporate, the care service's responsible person; and
 - (b) if someone other than the registered provider is the registered manager for the care service, the registered manager.

133 Requirements for improvement notice

- (1) An improvement notice must state all of the following –
 - (a) the registered provider's name;
 - (b) the care service;
 - (c) the improvement required to be made to the care service;
 - (d) the reason for requiring the improvement;
 - (e) the period (the "required period") within which the improvement must be made; and
 - (f) an explanation that, under section 73, compliance with the notice is a condition of the registered provider's registration.
- (2) An improvement notice may, but need not, state the steps the inspector recommends to make the improvement.
- (3) An improvement notice must include, or be accompanied by, an appeal notice about the decisions to take the action and to fix the required period.

134 Compliance with improvement notice

- (1) Subsections (2) and (3) apply if an improvement notice states the steps the inspector giving it recommends (“recommended steps”) to make the improvement required under the notice.
- (2) The registered provider is taken to have complied with the notice if all of the recommended steps are taken within the period stated in the notice for making the improvement.
- (3) Subsection (2) does not prevent the registered provider from making the improvement in another way with any inspector’s agreement.
- (4) If there are no recommended steps, the registered provider must decide all steps necessary to make the improvement and take those steps.

DIVISION 3 – ENFORCING REQUIREMENTS OF REGISTERED PERSONS

135 Power to give notice requiring compliance

- (1) This section applies if an inspector reasonably believes a registered person has committed, is committing or may commit an offence against this Act or adoption society offence.
- (2) The inspector may give the person a notice (a “**compliance notice**”) requiring the person to, within a stated reasonable period, take stated steps the inspector considers are necessary to remedy the commission of the offence or to prevent it from happening or happening again.

136 Requirements for compliance notice

- (1) A compliance notice must state all of the following –
 - (a) the registered person’s name;
 - (b) the care service;
 - (c) that the inspector giving it believes the person has committed, is committing, or may commit a stated offence against this Act or an adoption society offence;
 - (d) the act or omission constituting, or that may constitute, the offence;
 - (e) the steps the person must take to remedy the commission of the offence or prevent it from happening or happening again;
 - (f) the period (the “required period”) within which the steps must be taken; and
 - (g) an explanation that, under section 137, it is an offence to contravene the notice.

- (2) A compliance notice must include, or be accompanied by, an appeal notice about the decisions to take the action and to fix the required period.

137 Offence: contravention of compliance notice

The recipient of a compliance notice must not contravene the notice.

Maximum penalty (summary) — £20,000.

DIVISION 4 — DISQUALIFYING UNREGISTERED CHILDMINDERS

138 Notice disqualifying for a year

- (1) This section applies if an inspector reasonably believes a childminder who is not registered has contravened the registration requirement.
- (2) The inspector may give the person a notice (a “**disqualification notice (unregistered childminder)**”) stating —
 - (a) the contravention;
 - (b) that the person must immediately cease to carry out childminding;
 - (c) that, under section 46(3) (additional specific disqualifications), the person is disqualified from childminding until the earlier of the following to happen —
 - (i) the end a year after the notice is given; or
 - (ii) the notice is earlier withdrawn;
 - (d) that, under section 56(2)(c) (who can apply for registration), the recipient cannot apply for childminder registration while the disqualification is in force; and
 - (e) that if the person carries on childminding after the year ends, the person will still be committing an offence against the registration requirement, unless the person becomes a registered childminder before doing so.
- (3) A disqualification notice (unregistered childminder) must include, or be accompanied by, an appeal notice about the decision to give the disqualification notice.

PART 5 — SOCIAL CARE WORKERS

DIVISION 1 — DEFINITIONS

139 What is “social care work” and who is a “social care worker”

- (1) “**Social care work**” is any of the following —

- (a) performing social work;
 - (b) managing a care service;
 - (c) one person providing another person (a “recipient”) with relevant services under, or for the purposes of, either of the following because of the recipient’s mental disorder, physical disability, illness or infirmity –
 - (i) a contract of employment by a business carrying on a care service; or
 - (ii) an arrangement, contract, engagement or understanding between an agency care service and a recipient for the agency to supply relevant services to the recipient;
 - (d) participating in a prescribed course or a course for persons wishing to become social workers approved for that purpose under a UK care Act; or
 - (e) performing other work or services of a prescribed type.
- (2) A “**social care worker**” is a person who performs or participates in performing social care work.
- (3) In this section, “relevant services” means personal care or personal support, with or without practical assistance.

140 What is “social work” and who is a “social worker”

- (1) “**Social work**” is social work performed for a business that provides a social work service for education, health or social care, including one provided by a Department.
- (2) A “**social worker**” is a person who performs social work.

DIVISION 2 – OFFENCES

141 Offence: falsely using title ‘social worker’

- (1) A person other than a registered social worker must not, with intent to deceive, use the title ‘social worker’.

Maximum penalty (summary) – £5,000.

- (2) In this section –

“registered social worker” means a person registered under a UK care Act or regulations under section 161(2)(a) to perform work of any type (however described) that is social work; and

“use the title ‘social worker’” includes a person using a title or description under which the person implies or holds out that the person is a registered social worker.

142 Offences concerning social care worker registration

- (1) This section applies if –
 - (a) a provision of a law as follows (the “relevant law”) provide for persons performing a particular type work (whatever described) which work is a type of social care work (“designated work”) to be registered (the “relevant registration”)
 - (i) of any or all of the UK care Acts; or
 - (ii) regulations under section 161(2)(a); and
 - (b) more than 3 months have passed since the provision first commenced.

Note:

See the deferral of this section under section 184 (existing unregistered social care workers).

- (2) However, this section does not apply for a medical practitioner or nurse.
- (3) A person must not knowingly employ or engage, or continue to employ or engage, a person (the “worker”) to perform work (whatever called) that is designated work, unless the worker holds the relevant registration.

Maximum penalty (summary) – £5,000.

- (4) However, in a proceeding for an offence of continuing to employ or engage the worker in contravention of subsection (3), it is a defence for the defendant to prove –
 - (a) the worker held the relevant registration when the defendant originally employed or engaged the worker; and
 - (b) the defendant did not know, and could not have reasonably believed, that the worker had ceased to hold the relevant registration.
- (5) A person must not carry on a business involving the performance of designated work (whatever called) by the person, unless the person holds the relevant registration.

Maximum penalty (summary) – £5,000.

PART 6 – APPEALS**143 Establishment and jurisdiction of tribunal**

- (1) The Care Services Tribunal is established.
- (2) The tribunal has the jurisdiction given to it under this Act or another Act.

144 Who comprises the tribunal

The tribunal consists of —

- (a) a chairperson appointed under the *Tribunals Act 2006* (the “**tribunals Act**”); and
- (b) 2 members selected as provided under section 9(b) of the tribunals Act from a panel appointed under that Act.

145 Right of appeal against decisions under Act

The recipient of, or a person who is entitled under this Act to be given, an appeal notice about a decision may, under the appeal rules, appeal to the tribunal against the decision.

146 Tribunal’s powers on appeal

- (1) An appeal is to be —
 - (a) by way of rehearing anew; and
 - (b) decided under the appeal rules.
- (2) Unless the tribunal otherwise orders, an appeal does not operate to stay the effect of the original decision pending the deciding of the appeal.
- (3) In deciding an appeal, the tribunal must —
 - (a) confirm the decision appealed against (the “original decision”);
 - (b) set aside the original decision and substitute another decision; or
 - (c) set aside the original decision and return the issue to the person who made the original decision with directions the tribunal considers appropriate.
- (4) If the tribunal substitutes another decision, the substituted decision is for this Act (other than section 145) taken to be and to have always been the original decision.

147 Further High Court appeal on question of law

A further appeal from a decision of the tribunal lies to the Staff of Government Division, under the rules of court, on a question of law.

PART 7 – GENERAL OFFENCES AND HUMAN RIGHTS ACT REMEDY

DIVISION 1 – DISQUALIFICATION OFFENCES

148 Involvement with care service if disqualified

- (1) A person who is totally disqualified must not be involved with any care service.
- (2) A person who is disqualified for children must not be involved with a child-related care service.
- (3) However, if the disqualification for children was because of section 45(3), it is a defence for the defendant to prove the defendant did not know, and could not have reasonably believed the disqualifying circumstance mentioned in section 45(3) applied to the defendant.
- (4) A person who is specifically disqualified for a category of care service must not be involved with a care service of that category.
- (5) A person who is disqualified because of insolvency must not carry on, or have a financial interest in, a business that carries on a care service other than childminding.
- (6) However, subsection (5) does not apply if the financial interest is only the holding of a listed share or security.
- (7) For subsections (1), (2), (4) and (5), the maximum penalties are –
 - (a) (on information) – 2 years' custody or a fine; or
 - (b) (summary) – 6 months custody or £20,000.

149 Employing or engaging disqualified person

- (1) A person who carries on or manages a care service must not employ or engage someone else at the service if –
 - (a) the other person is totally disqualified or is specifically disqualified for the care service's category; or
 - (b) if the care service is child-related, the other person is disqualified for children

Maximum penalty (on information) – 2 years' custody or a fine.

Maximum penalty (summary) – 6 months custody or £20,000.

- (2) However, it is a defence for the defendant to prove the defendant did not know, and could not have reasonably believed, the other person was so disqualified.

150 Registration requirement not relevant to Division 1 offences

This Division applies to a person whether or not the registration requirement applies to the defendant or, for section 149, the person employed or engaged.

DIVISION 2 – OTHER OFFENCES

151 False descriptions about registration or Department care services

- (1) A person must not, with intent to deceive, do anything mentioned in subsection (2) or (3) (a “prohibited action”).

Maximum penalty (summary) – £5,000.

- (2) It is a prohibited action to apply a name to a business or describe, or hold out, a business so as to show any of the following things about the business if the thing is incorrect –

- (a) it is registered; or
- (b) it is a Department care service.

- (3) It is a prohibited action to apply a name to premises or describe, or hold out, premises so as to show any of the following things about the premises if the thing is incorrect –

- (a) there is a registered provider or registered manager for a care service on the premises; or
- (b) a care service on the premises is a Department care service.

- (4) In this section –

“show”, for a matter mentioned in this section, includes doing anything that could be reasonably understood to show that matter; and

“business” means a business in, or being carried on in, the Island, and, for a body corporate, includes –

- (a) the name for which it is registered under incorporation legislation; and
- (b) any business name for which it is registered under the *Registration of Business Names Act 1918*.

152 Ill-treatment or neglect offence

- (1) A social care provider must not ill-treat or wilfully neglect a care recipient.

Maximum penalty (on information) – 2 years’ custody or a fine.

Maximum penalty (summary) – 6 months custody or £20,000.

- (2) The offence under subsection (1) is the “**ill-treatment or neglect offence**”.

- (3) In this section –

“care recipient” means a person who is receiving social care or non-NHS health services; and

“social care provider” means any of the following —

- (a) anyone who provides social care or non-NHS health services;
- (b) a registered provider or registered manager;
- (c) anyone else subject to the registration requirement;
- (d) a responsible person for a care service;
- (e) anyone supervising the management of an independent care service for a registered provider who is not its responsible person; or
- (f) a manager, officer or employee of, or a person engaged by, a person mentioned in paragraphs (b) to (e).

153 Liability of officers of body corporate

- (1) This section applies if —
 - (a) a registration-related offence or a care offence is committed by a body corporate; and
 - (b) it is proved an officer of the body authorised, permitted, participated in, or failed to take all reasonable steps to prevent, the commission of the offence.
- (2) The officer, as well as the body, commits the offence.

Maximum penalty (on information) or (summary), as the case may be — the maximum penalty for the offence by the body.

- (3) In this section, “officer”, of the body, means any or all of the following of or for the body —
 - (a) a director, manager or secretary or other similar officer;
 - (b) anyone purporting to act as its director, manager or secretary;
 - (c) if its affairs are being managed by its members, a member; or
 - (d) if it has a registered agent under incorporation legislation, the registered agent or anyone purporting to act as its registered agent.

DIVISION 3 — HUMAN RIGHTS ACT REMEDY

154 Human Rights Act 2001: certain persons perform a public function

- (1) This section applies to anyone who carries on an independent care service other than childminding.

- (2) For section 6(3)(b) (acts of public authorities) of the *Human Rights Act 2001*, the registered provider is taken to be exercising a function of a public nature in carrying on the care service.

PART 8 – PROCEEDINGS

DIVISION 1 – PROSECUTIONS

155 Attorney General’s consent required for certain prosecutions

- (1) A proceeding for a registration-related offence or care offence may be commenced only by, or with the consent of, the Attorney General.
- (2) A document signed by, or purporting to be signed by or for, the Attorney General consenting to the proceeding being commenced is evidence of that fact.

156 Meaning of “maximum penalty” followed by a stated penalty etc

- (1) This section defines the words “**maximum penalty**” if they –
- (a) are –
- (i) included in the text of a particular provision; or
- (ii) expressed in a way to indicate they apply to a particular provision; and
- (b) are followed by a stated penalty (including the words “a fine”).
- (2) The words mean that a contravention of the provision is an offence punishable by a penalty of no more than the one so stated.
- (3) If the penalty is a fine and no amount is stated for the fine, there is no limit on the amount of the fine that may be imposed.
- (4) If more than one penalty is stated and the penalties are joined by the word “and” or “or”, the word means that the penalties may be imposed cumulatively or alternatively.
- (5) The words “**(on information)**” appearing after “maximum penalty” mean the penalty refers to a conviction on information for the offence.
- (6) The words “**(summary)**” appearing after “maximum penalty” means the penalty refers to a summary conviction for the offence.
- (7) If the words “**(summary)**”, but not “**(on information)**”, appear in the provision, or vice versa, a proceeding for an offence against the provision is a summary offence or an offence triable only on information, as the case may be.

157 Time limit for summary proceedings

- (1) A proceeding for a summary offence against this Act, may be commenced only before the later of the following –
 - (a) 3 years after the commission of the offence; or
 - (b) 6 months after the prosecutor first had sufficient evidence of the offence.
- (2) For subsection (1)(b), a prosecutor’s certificate stating when the prosecutor first had the sufficient evidence is evidence of that fact.
- (3) Subsection (1) is an express contrary provision for section 75(1) (limitation of time) of the *Summary Jurisdiction Act 1989*.
- (4) In this section –

“prosecutor’s certificate” means a certificate signed, or purporting to be signed, by or for the prosecutor; and

“sufficient evidence”, of the offence, means evidence that, in the prosecutor’s opinion, is sufficient to justify the proceeding.

DIVISION 2 – EVIDENTIARY PROVISIONS

158 Appointment and authority

In a proceeding under or relating to this Act the following must be presumed, unless a party to the proceeding, by reasonable notice, requires proof of it –

- (a) a person’s appointment as an inspector; and
- (b) DSC’s or an inspector’s power to do anything under this Act.

159 General evidentiary provisions

- (1) This section applies to a proceeding under or relating to this Act.
- (2) A certificate signed, or purporting to be signed, by the relevant person stating any of the following matters is evidence of the matter –
 - (a) that a stated document of any of the following types is a document given, issued, kept or made under this Act or a UK care Act –
 - (i) an application;
 - (ii) an appointment, approval or decision;
 - (iii) a register;
 - (iv) a notice under the Act of the type stated;
 - (v) a requirement;
 - (vi) a report; or
 - (vii) another document.

- (b) that a stated document is a copy of, or an extract from or part of, a document mentioned in paragraph (a);
 - (c) that on a stated day, or during a stated period, a person was or was not —
 - (i) a registered provider, registered manager or a responsible person for a care service or registered to perform social work, or social work of a stated type;
 - (ii) totally disqualified, disqualified for children, specifically disqualified for a stated category of care service or disqualified because of insolvency; or
 - (iii) the subject of a disqualification exemption;
 - (d) that on a stated day a stated person was given a stated notice or that a requirement under the Act was made of the person; or
 - (e) that a stated amount is payable under the Act by a stated person and that amount has not been paid.
- (3) In this section, “relevant person” means —
- (a) for this Act, DSC’s Minister; or
 - (b) for a UK care Act, the person who may under that Act give a certificate under a provision of that Act that is the same as, or similar to, this section.

PART 9 — CLOSING PROVISIONS

DIVISION 1 — GENERAL

160 Forms

- (1) DSC may make forms for use under this Act.
- (2) A form made under subsection (1) is the “**required form**” for the use for which it is made.

161 General regulation-making powers

- (1) DSC may make regulations for the purposes of this Act.
- (2) Regulations may —
 - (a) provide for the registration of social care workers and for any type of matter relating to such registration that corresponds, or substantially corresponds, to a matter provided under Part 3 for the registration of independent care services;
 - (b) provide for consequential, incidental or supplemental matters DSC considers are necessary or convenient for the purposes;

- (c) apply, adopt or incorporate provisions of a UK care Act, with or without change and either as in operation at a particular time or as in operation from time to time;
 - (d) impose fees for this Act; and
 - (e) create offences for contraventions of the regulations and impose a maximum penalty (summary) of £5,000 or less for the offences.
- (3) Subsection (2) and other specific regulation-making powers under this Act do not limit the regulation-making power under subsection (1).

162 Tynwald approval for regulations

- (1) The negative Tynwald procedure applies to regulations.
- (2) In this section, “negative Tynwald procedure”, for regulations, means that —
 - (a) DSC must cause them to be laid before Tynwald as soon as practicable after they are made; and
 - (b) if Tynwald at the sitting at which the order is laid or at the next following sitting resolves that they be annulled, they cease to have effect.

163 Repeal of Acts

The *Nurses and Midwives Act 1947* and the *Nursing and Residential Homes Act 1988* are repealed.

DIVISION 2 – SAVINGS AND TRANSITIONAL

SUBDIVISION 1 – PRELIMINARY

164 Definitions for Division

In this Division —

“**care service notice**” see section 174(1);

“**converted registrant**” see section 171(1);

“**exempt care service**” means that, under Part 3, Division 2, Subdivision 2 (exemptions from registration requirement), the registration requirement does not apply to the person carrying the care service;

“**existing regulated care service**” means a care service (other than a Department care service or an exempt care service) that is childminding or an adult care home, childrens home, child day care centre or nurses agency that was required to be registered under a repealed care law;

“**manager**” see section 173(2);

“newly regulated care service” means —

- (a) a care service (other than a Department care service or an exempt care service) that is an adult placement agency, adult day care centre, child care agency, child (secure accommodation) establishment, domiciliary care agency, fostering agency, independent clinic, independent hospital, independent medical agency, offender accommodation service, voluntary adoption agency or residential family centre; and
- (b) a care service mentioned in the definition “existing regulated care service” (other than a Department care service or an exempt care service) that was, immediately before the enactment of this Act, not required to be registered under a repealed care law;

Example for paragraph (b):

A childrens home providing accommodation for 3 children or less at any one time. See repealed sections 50 and 51 of CYPA 2001.

“provider” see section 173(1);

“registered” includes licensed under a repealed care law;

“registration” includes a licence; and

“registration grace period”, for a care service, means the period that starts when section 52 (offence to carry on or manage without registration) commences and that ends —

- (a) for an existing regulated care service —
 - (i) generally, 6 months after that section commences; or
 - (ii) if, within the 6 months, a longer period is prescribed, when the longer period ends; or
- (b) for a newly regulated care service, on the day prescribed for the registration requirement to apply to that category of care service or to all newly regulated care services.

SUBDIVISION 2 — CONVERSIONS TO ACT FOR EXISTING REGULATED CARE SERVICES

165 Childrens homes under a repealed care law

- (1) This section applies if —
 - (a) immediately before this Act’s enactment, a childrens home was registered (the “old registration”) under a repealed care law as a childrens home; and
 - (b) the person recorded under the old registration as carrying on the childrens home (the “recorded person”) is not any of the following under this Act —
 - (i) totally disqualified;
 - (ii) disqualified for children; or

- (iii) disqualified because of insolvency.
- (2) On the enactment —
 - (a) the old registration becomes a provider registration under this Act for the childrens home; and
 - (b) the recorded person becomes the registered provider for the childrens home.
- (3) In this section, “childrens home” includes children’s home.

166 Childminders under a repealed care law

- (1) This section applies if —
 - (a) immediately before this Act’s enactment, a person was registered under a repealed care law as a person who acts as a childminder; and
 - (b) the person is not, under this Act, totally disqualified and is not disqualified for children.
- (2) On the enactment, the person becomes a registered childminder.
- (3) In this section, “childminder” includes child-minder.

167 Child day care centres under a repealed care law

- (1) This section applies if —
 - (a) immediately before this Act’s enactment, a person was registered under a repealed care law as a person who provides day care for children; and
 - (b) the person is not any of the following under this Act —
 - (i) totally disqualified;
 - (ii) disqualified for children; or
 - (iii) disqualified because of insolvency.
- (2) On the enactment —
 - (a) there is created a provider registration as a child day care centre for each premises for which the person was so registered; and
 - (b) the person becomes the registered provider for each of the provider registrations.

168 Nursing and residential homes under a repealed care law

- (1) This section applies if —
 - (a) immediately before this Act’s enactment, a care service was being carried on at premises registered under a repealed care law (the “old registration”) as a nursing home or residential care home; and

- (b) neither the recorded provider nor the recorded manager were any of the following —
 - (i) totally disqualified;
 - (ii) specifically disqualified for a care service of the category adult care home; or
 - (iii) disqualified because of insolvency.
- (2) On the enactment —
 - (a) the old registration becomes both provider registration and manager registration under this Act for the home as an adult care home;
 - (b) the recorded provider becomes the registered provider for the home; and
 - (c) the recorded manager becomes the registered manager for the home.
- (3) In this section —

“recorded manager” means the person recorded under the old registration as managing the home; and

“recorded provider” means the person recorded under the old registration as carrying on the home.

169 Mental nursing homes under a repealed care law

- (1) This section applies if —
 - (a) immediately before this Act’s enactment, a care service was being carried on at premises registered under a repealed care law (the “old registration”) as a mental nursing home; and
 - (b) neither the recorded provider nor the recorded manager were any of the following —
 - (i) totally disqualified;
 - (ii) specifically disqualified for a care service of the category adult care home or independent hospital; or
 - (iii) disqualified because of insolvency.
- (2) On the enactment —
 - (a) the old registration becomes both provider registration and manager registration under this Act for the home;
 - (b) the recorded provider becomes the registered provider for the home; and
 - (c) the recorded manager becomes the registered manager for the home.

- (3) The category of the provider registration is either an adult care home or an independent hospital, as chosen by the registered provider by notice (an “election notice”) to DSC.
- (4) However, the registered provider may give an election notice choosing the category of independent hospital only if, before giving the notice, DSC has agreed in writing that the registered provider complies with the registration criteria for that category.
- (5) An election notice may be given at any time before or after the enactment.
- (6) In this section —
“recorded manager” means the person recorded under the old registration as managing the home; and
“recorded provider” means the person recorded under the old registration as carrying on the home.

170 Nurses agencies under a repealed care law

- (1) This section applies if —
 - (a) immediately before this Act’s enactment, a person was registered under a repealed care law to carry on an agency for the supply of nurses; and
 - (b) the person is not any of the following —
 - (i) totally disqualified or disqualified for children;
 - (ii) specifically disqualified for a care service of the category nurses agency; or
 - (iii) disqualified because of insolvency.
- (2) On the enactment, the person becomes the registered provider for the agency as a nurses agency.

171 Application of Act to converted registrations

- (1) This section applies if, under this Subdivision, a person becomes a registered provider or registered manager (a “**converted registrant**”).
- (2) A converted registrant’s registration is subject to this Act, including the mandatory conditions.
- (3) However, if under the relevant repealed care law a manager was not required for the care service, until the end of the registration grace period for the care service, the care service need not have a registered manager or a responsible person.
- (4) Subject to section 179 (amendment of converted conditions), the conditions of the registration under the repealed care law for which the

person became a registered provider become decided conditions of the provider registration.

- (5) However, if any of the conditions conflict with a mandatory condition, the mandatory condition prevails to the extent of the inconsistency.

172 Registers and registration certificates during registration grace period

- (1) This section applies, despite the repeal of any repealed care law, until the end of the registration grace period for all newly regulated care services.
- (2) DSC may continue to keep registers under a repealed care law to record the registration under this Act of converted registrants.
- (3) In keeping the registers DSC may –
- (a) act as if the repealed care law continues to apply for the register; but
 - (b) change the register in any way it considers appropriate for this Act.
- (4) Until DSC gives a converted registrant a registration certificate under this Act for the provider registration, any certificate (whatever called) issued under a repealed care law continues in force for the registration under this Act.

SUBDIVISION 3 – OTHER CARE SERVICES DURING REGISTRATION GRACE PERIOD

173 Application of Subdivision

- (1) This Subdivision applies to a person (the “**provider**”) who –
- (a) from this Act’s enactment, carries on a care service; and
 - (b) is not a converted registrant for the care service.
- (2) This Subdivision also applies to a person (the “**manager**”) who –
- (a) from the enactment, manages a care service; and
 - (b) is not a converted registrant for the care service.

174 Offence: notification requirement for care service

- (1) The provider and the manager must, as soon as practicable after the registration grace period for the care service starts, give DSC a notice (a “**care service notice**”), in the required form if there is one, giving information about the provider or the manager, as the case may be, and the care service.

Maximum penalty (summary) – £5,000.

- (2) The provider may, in the same document, give a care service notice for the provider and the manager.

- (3) To avoid any doubt, this Act applies to the provider and the manager during the registration grace period for the care service whether or not that person has given a care service notice for the care service.

175 Deferral of registration requirement if notice given

- (1) This section applies only until the registration grace period for the care service ends.
- (2) If the provider or manager has given a care service notice for the care service, the registration requirement does not apply to that person in relation to the requirement for —
 - (a) if the notice was given by the provider, provider registration; or
 - (b) if the notice was given by or for the manager, manager registration.
- (3) However, section 34(2)(a) and (b) (general functions) and Part 4 (monitoring and enforcement) apply as if the provider and the manager were subject to the registration requirement for the care service.
- (4) This section ceases to apply to the provider or manager if that person becomes registered for the care service or is refused registration for the care service.

176 Requirements of provider and manager during the period

- (1) During the registration grace period for the care service, the provider and manager must comply with the mandatory conditions and the minimum standards to the extent they are relevant, as if that person were the following —
 - (a) for the provider, its registered provider; or
 - (b) for the manager, its registered manager.

Maximum penalty (summary) — £20,000.

- (2) To avoid any doubt, subsection (1) —
 - (a) applies to a person whether or not the person has given a service notice for the care service; and
 - (b) ceases to apply to a person if the person becomes registered for the care service.

SUBDIVISION 4 — REGISTRATION APPLICATIONS DURING REGISTRATION GRACE PERIOD

177 Registration applications during the period

- (1) This section applies if a person wishes to make a registration application during the registration grace period.

- (2) If there are no regulations about how to make a registration application of that type, the following apply for the application —
 - (a) the prescribed fee is the amount DSC considers is reasonable for the type; and
 - (b) the prescribed information, matters and documents (the “requirements”) are those DSC reasonably requires for the type.
- (3) In deciding the fee and the requirements, DSC may have regard to the things needed for any similar type of application under a UK care Act.
- (4) DSC may, but need not, start to decide the application, or defer considering it until the period ends.
- (5) To avoid any doubt, this section does not —
 - (a) permit a person to make a registration application that cannot be made under Part 3; or
 - (b) affect the operation of Part 7, Division 1 (disqualification offences).

SUBDIVISION 5 — OTHER TRANSITIONAL PROVISIONS

178 Provisions for disqualification

- (1) If, immediately before this Act’s enactment, DSC’s consent under CYPA 2001 was in force for a disqualification relating to a category of care service, on the enactment, it is taken to be a disqualification exemption under this Act for that category.
- (2) Subsection (3) applies to a proceeding for an offence against Part 7, Division 1 (disqualification offences) about anything done during the registration grace period concerning a care service.
- (3) It is a defence for the defendant to prove the circumstances constituting the disqualification in question under this Act did not amount to a disqualification under CYPA 2001.
- (4) In this section, “CYPA 2001” means that Act as in operation before the enactment.

179 Amendment of converted conditions

- (1) This section applies to any registration conditions under a repealed care law.

Note:

For when this happens, see section 171(4) (application of Act to converted registrations).

- (2) For section 86 (amendments: general), an amendment of the conditions is taken to be necessary or desirable if DSC wishes to —
 - (a) amend them to make them compatible with this Act; or

- (b) impose decided conditions to make the carrying on of the care service compatible with this Act.

180 Existing applications, decisions and appeals

- (1) The following apply if immediately before this Act's enactment, a registration application had been made but not decided under a repealed care law —
 - (a) on the enactment, the application is taken to be a registration application under this Act; and
 - (b) this Act (other than section 93 (noncompliant applications)) applies to the deciding of the application.
- (2) A decision made under a repealed care law about a converted registrant —
 - (a) continues in operation but as a corresponding decision of its type under this Act; and
 - (b) is taken to have been made under this Act when it was made under the repealed care law.
- (3) An appeal under the repealed care law against the decision started but not decided before the enactment may be continued and decided as if the repealed care law had not been repealed.
- (4) A decision on the appeal operates as if it has been made for a corresponding decision of its type under this Act.

181 Existing inspectors and authorised persons become inspectors

- (1) This section applies to a person if, immediately before this Act's enactment, the person was appointed or authorised (the "old authorisation") by DSC to perform inspections under a repealed care law.
- (2) On the enactment, the person becomes an inspector under this Act for the rest of the rest of the term of the old authorisation and subject to all of its conditions.
- (3) Subsection (4) applies if, immediately before the enactment —
 - (a) the person had been issued a card (whatever called) identifying the person as the person holding the old authorisation; and
 - (b) the card has not expired according to its terms.
- (4) The card is taken to be an identity card issued to the person as an inspector until the earlier of the following —
 - (a) the person is issued an identity card under this Act; or
 - (b) the card expires according to its terms.

182 References to repealed care law

A reference in an Act or a document —

- (a) to a repealed care law is taken to be a reference to this Act; and
- (b) to a provision of a repealed care law (“the former provision”) is taken to be a reference to the provision or provisions of this Act that correspond, or substantially correspond, to the former provision.

183 Interim appeal rules

- (1) This section applies only if no appeal rules have commenced on this Act’s enactment.
- (2) The version of the draft model rules electronically numbered 140508 and held by the Department of Home Affairs is taken to be the appeal rules (other than for this section) —
 - (a) as if the version had been approved by Tynwald as the appeal rules;
 - (b) as if a reference in the version —
 - (i) to an unidentified appeal were a reference to an appeal to the tribunal under this Act; and
 - (ii) to an unidentified tribunal were a reference to the tribunal; and
 - (c) with any other necessary changes.
- (3) A document purporting to be the version and bearing the Attorney General’s certification that it is the version is taken to be so.
- (4) The appeal rules, when they commence, may provide for any matter of a savings or transitional nature for an appeal made, but not decided, before they commence.
- (5) Subsection (4) does not limit what the appeal rules may provide for.
- (6) If appeal rules are made before the enactment, this section expires immediately after the enactment.
- (7) Otherwise, this section expires when the appeal rules commence.

184 Existing unregistered social care workers

- (1) This section applies if, immediately before section 142 (offences concerning social care worker registration) comes into operation, a person —
 - (a) was employing or engaging a person (the “worker”) to perform designated work as defined under section 142(1)(a); or
 - (b) was carrying on a business involving the performance of that type of work by the person.

- (2) Section 142 does not apply to the person for the performance of the work until 3 months after this Act's enactment.
- (3) Also, if, within the 3 months, the worker or the person applies for the relevant registration mentioned in section 142(1)(a), this section does not apply to the person until the application is finally decided or is withdrawn.

185 Transitional regulation-making power

Regulations may provide for a matter relating to any of the following about which DSC considers this Division does not make provision or sufficient provision –

- (a) the transition from a repealed care law to this Act; or
- (b) the coming under this Act of a newly regulated care service.

SUBDIVISION 6 – EXPIRY

186 Expiry of parts of Division about registration grace period

This Division (other than the Division heading and sections 178 to 185) expires on the day on which all newly regulated care services have been prescribed under paragraph (b) of the definition of “registration grace period” under section 164.

PART 10 – AMENDMENTS OF LEGISLATION

DIVISION 1 – ADOPTION ACT

187 Act amended

This Division amends the adoption Act.

188 Section 14 amended – adoption service

After section 14(1), insert –

- ▣(1A) The Department may comply with subsection (1) by providing the service itself or by securing someone else to provide it.
- (1B) However, the Department may secure an adoption society whose activities are not carried on for profit to provide the service only if the society is an incorporated body. ▣.

189 Section 22 amended – meaning of “protected child”

In section 22(2)(c), from “residential care” to “1988” substitute, ▣ childrens home under the *Regulation of Care Act 2013* ▣.

DIVISION 2 — CYPA 2001

190 Act amended

This Division amends CYPA 2001.

191 Long title amended

In the long title, for “children’s homes, fostering, child minding and day care”, substitute **22** fostering **22**.

192 Section 24A inserted — fostering service

After section 24, insert —

22 24A Fostering service

- (1) The Department must, for children in need of fostering —
 - (a) establish and maintain a service designed to meet their fostering needs; and
 - (b) provide appropriate assessments for them and placements for them to be fostered wherever possible.
- (2) The Department may comply with subsection (1) by providing the service itself or by securing a body corporate to provide it.
- (3) The Department must ensure no child is fostered under the service to someone who, under section 58 (disqualifications) is disqualified from fostering a child privately.
- (4) Part 7 (fostering) applies to fostering under the service as if a reference in that Part to privately fostering children included a reference to fostering under this section, and with any other necessary changes. **22**.

193 Section 26 amended — manner of accommodation

In section 26(1)(c), for “registered children’s home” substitute **22** childrens home for which there is provider registration under the *Regulation of Care Act 2013* (the “care Act”) **22**.

194 Section 47 inserted — warrants: emergency protection orders

After section 47 insert —

22 47A Warrants for emergency protection orders

- (1) A person authorised by the Department may apply to the High Bailiff for a warrant authorising any constable to help the person enter premises and exercise powers under an emergency protection order.

- (2) The application must be sworn and state —
 - (a) the powers sought to be exercised;
 - (b) the premises for which the warrant is sought;
 - (c) the name, or a description as clearly as possible, of the child for which the entry is sought; and
 - (d) the grounds on which the warrant is sought.
- (3) The High Bailiff may issue the warrant only if satisfied the person has been, or is likely to be, prevented from exercising the powers.
- (4) The warrant must state the matters mentioned in subsection (2)(a) to (c).
- (5) The warrant authorises any constable to do either or both of the following, using necessary and reasonable force —
 - (a) enter the premises with the person and any registered medical practitioner, registered nurse the person wants; and
 - (b) take any other action reasonably necessary to allow the powers to be exercised. **22**.

195 Part 6 repealed—childrens homes

Part 6 is repealed.

196 Part 7 amended—fostering, child-minding and day care

- (1) This section amends Part 7.
- (2) In the heading, “, child-minding and day care” is deleted.
- (3) The cross-heading “Fostering” immediately after the heading is deleted.
- (4) For section 57(5)(a) and (b) (private fostering) substitute —
 - 23**(a) a childrens home, residential family centre, child (secure accommodation) establishment or independent hospital under the care Act; **22**.
- (5) For section 58(1) to (3) (disqualifications), substitute —
 - 24**(1) A person is disqualified from fostering a child privately if —
 - (a) under the care Act, the person is totally disqualified or disqualified for children; or
 - (b) another prescribed circumstance applies to the person. **22**.
- (6) The words “by regulations” in section 58(4) are deleted.
- (7) In section 61(8), before paragraph (a), substitute **25** A person ceases to be fostering children and, for the care Act, is taken to be carrying on a

children's home at any place where the person cares for or accommodates those children, if — **22**.

- (8) For sections 63 to 68 and the cross-heading immediately before section 63, substitute —

63 Powers of care Act inspectors

- (1) An inspector under the care Act may, at any time, enter premises in which the inspector reasonably believes a privately fostered child is or will be living.
- (2) Part 4, Division 1 (monitoring), other than sections 130 (reports about inspections) and 131 (protection from defamation from reports), of the care Act applies for an inspector acting under subsection (1) —
- (a) as if the premises were premises at which there is a care service under the care Act;
- (b) as if a reference in the Division to the provision of social care or non-NHS health care services were a reference to privately fostering a child; and
- (c) with any other necessary changes. **22**.

197 Sections 98 and 99 repealed—inspections and search warrants

Sections 98 and 99 are repealed.

198 Section 102 amended—interpretation: general

Section 102(1) is amended as follows —

- (a) the definitions “children’s home”, “mental nursing home”, “nursing home” and “residential care home” are deleted;
- (b) insert alphabetically —
- 63** “care Act” has the meaning given under section 26(1)(c);
- “emergency protection order” has the meaning given under section 42(1); **22**; and
- (c) in the definition “official foster parent”, for “under section” substitute **63** by a service mentioned in section 24A or under section **22**.

199 Schedules 6 and 7 repealed—registration: children's homes and childminders

Schedules 6 and 7 are repealed.

200 Schedule 11 amended—transitional provisions

In Schedule 11, after paragraph 14, insert —

Amendments to Act under the Regulation of Care Act 2013

15. Section 61(8) as amended by the *Regulation of Care Act 2013* applies for a child fostered at any time, whether before or after that amendment commenced.

DIVISION 3 – EDUCATION ACT

201 Act amended

This Division amends the education Act.

202 Section 48 substituted – welfare of children

For section 48, substitute –

**PART 5A – WELFARE OF CHILDREN
ACCOMMODATED IN SCHOOLS OR COLLEGES**

48 Welfare duties

- (1) This section applies for any child who is accommodated at a school or college.
- (2) It is the duty of the following to safeguard and promote the child’s welfare (the “welfare duty”)–
 - (a) for an independent school –
 - (i) its proprietor; and
 - (ii) if a person other than its proprietor is responsible for conducting the school, that person; or
 - (b) for any other school or a college, its governing body.
- (3) However, the welfare duty does not apply if the school or college is an adult care home or childrens home under the *Regulation of Care Act 2013* (the “care Act”) for which there is provider registration under that Act.
- (4) The Department of Social Care (“DSC”) must take reasonably practicable steps to allow it to decide if the welfare duty is being complied with (“DSC’s function”).
- (5) If DSC considers the welfare duty has been contravened, it must notify the Department.

48A Functions of inspectors under care Act apply

- (1) An inspector under the care Act (a “care Act inspector”) may, at any time, enter premises that are, or are to be, premises of a school or college to help the performance of DSC’s function.

- (2) Part 4, Division 1 (monitoring) of the care Act applies for a care Act inspector acting under subsection (1) —
- (a) as if the premises were premises at which there is a care service under the care Act;
 - (b) as if a reference in the Division to the provision of social care were a reference to education provided at the school or college;
 - (c) as if a reference in the Division to the following were a reference to the persons with the welfare duty for the premises —
 - (i) a registered person for a care service; or
 - (ii) a person with a role for the premises; and
 - (d) with other necessary changes.
- (3) If DSC receives a report under section 130 of the care Act for the school or college, it must give the Department and the persons with the welfare duty for the school or college a copy.

48B Care Act inspector’s duty to notify the Department

- (1) If it appears to a care Act inspector performing functions under section 48A(1) that any of the following has happened, the inspector must give the Department notice of that fact —
- (a) there has been a contravention of the welfare duty; or
 - (b) a child accommodated at a school or college is suffering, or is likely to suffer, significant harm.
- (2) Subsection (1) is in addition to the inspector’s duties under the provisions of the care Act applied under section 48A(2).

48C Annual fee for DSC’s function

- (1) DSC may, by regulations, impose an annual fee for performing DSC’s function for schools or colleges, including for inspections by care Act inspectors.
- (2) The following person (the “responsible person”) must pay the annual fee at the time required under the regulations —
- (a) for an independent school —
 - (i) its proprietor; and
 - (ii) if a person other than its proprietor is responsible for conducting the school, that person; or
 - (b) for any other school or a college, its governing body.

- (3) If the responsible person does not pay the fee at the time required, DSC may recover from the person the amount of the annual fee summarily as a debt.
- (4) Subsection (3) does not affect any other method of recovery of the annual fee from the responsible person.

48D Accommodation in school or college: minimum standards by DSC

- (1) DSC may make standards (the “minimum standards”) to safeguard and promote the welfare of children accommodated in a school or college.
- (2) The minimum standards are a public document but not a statutory document.
- (3) Before making the minimum standards, DSC must consult in a way it considers appropriate about the standards.
- (4) DSC must make the minimum standards publicly available in the way it considers appropriate.
- (5) The Department must take the minimum standards into account in deciding whether or not the welfare duty has been contravened. **22**.

203 Section 58 amended – subordinate legislation

In section 58(1), after “under this Act,”, insert **23** regulations made by DSC under section 48C, **22**.

204 Section 59 amended – interpretation

In section 59(1), insert alphabetically –

- 23** “care Act” has the meaning given under section 48(3);
- “care Act inspector” has the meaning given under section 48A(1);
- “DSC” has the meaning given under section 48(4);
- “DSC’s function” has the meaning given under section 48(4);
- “welfare duty” has the meaning given under section 48(2). **22**.

DIVISION 4 – CONSEQUENTIAL AMENDMENTS, REPEALS AND REVOCATIONS

205 Amendments, repeals and revocations

- (1) Section 22 of the *Local Government Act 1946* is repealed.
- (2) Section 4 of the *Criminal Justice Act 1963* is amended by –

- (a) in subsection (2)(a), for “mental nursing home” substituting **63** an adult care home or independent hospital under the *Regulation of Care Act 2013* for which there is a registered provider under that Act; **62**; and
- (b) in subsection (8), the definition “mental nursing home” is deleted.
- (3) Section 39AA of the *Income Tax Act 1970* is amended by —
- (a) in subsection (1)(b), for “a home to which the *Nursing and Residential Homes Act 1988* applies” substituting **63** an adult care home under the *Regulation of Care Act 2013* **62**; and
- (b) deleting subsection (3).
- (4) In section 3 of the *Interpretation Act 1976*, insert alphabetically —
- 63** “**registered**”, for a nurse or midwife, means registered as mentioned in section 39A of the *National Health Service Act 2001*; **62**.
- (5) The *Public Health Act 1990* is amended as follows —
- (a) in section 20(1)(c), for “nursing home or mental nursing home” substitute **63** adult care home or independent hospital **62**;
- (b) in section 20(5), the definitions “nursing home” and “mental nursing home” are deleted;
- (c) in section 77(2)(a), for “nursing home” substitute **63** adult care home **62**; and
- (d) in section 95, insert alphabetically —
- 63** “**adult care home**” means an adult care home under the *Regulation of Care Act 2013*;
- “**independent hospital**” means an independent hospital under the *Regulation of Care Act 2013*; **62**.
- (6) In paragraph 3(2)(c) of Schedule 6 to the *Water Act 1991*, from “nursing home” to “1988” substitute **63** adult care home under the *Regulation of Care Act 2013* **62**.
- (7) In section 6(2)(c) of the *Sexual Offences Act 1992*, from “a residential care home” to “1988” substitute **63** an adult care home under the *Regulation of Care Act 2013* **62**.
- (8) The mental health Act is amended as follows —
- (a) for “a mental nursing home” in sections 12(3), 25(3), 26(3), 72(1), 117(a), and 129(1) (both mentions), substitute **63** an adult care home or independent hospital **62**;
- (b) for section 26(3)(b), substitute —
- 63** (b) an inspector under the *Regulation of Care Act 2013* (the “**care Act**”) (whether a registered medical practitioner or not); **62**;
- (c) in section 45(3), from “mental nursing home” to “1988” substitute **63** adult care home or independent hospital **62**;

- (d) in section 114(1), for “nursing home” (both mentions) substitute **“adult care home”**;
- (e) for “and mental nursing homes” in section 118(1)(a), substitute **“adult care homes and independent hospitals”**;
- (f) for “or mental nursing home” in sections, 118(1)(b)(i) (both mentions), 123(1), 127(1) (both mentions), 128(1), (2) and (4) and 129(1) (both mentions) substitute **“adult care home or independent hospital”**;
- (g) in section 131(6), for “mental nursing home or residential care home” substitute **“adult care home or independent hospital”**; and
- (h) section 138 is amended as follows –
- (i) for paragraph (c) of the definition “the managers” substitute –
- “(c) for an adult care home or independent hospital for which there is registration under the care Act, its registered manager under that Act (and section 45(3) applies for this definition);”**;
- (ii) the definition “mental nursing home” is deleted; and
- (iii) insert alphabetically –
- “adult care home”** means an adult care home under the care Act;
- “care Act”** has the meaning given under section 26(3)(b);
- “independent hospital”** means an independent hospital under the care Act;
- (9) The NHS Act is amended as follows –
- (a) in section 27(4), for “nursing home or mental nursing home” substitute **“adult care home or independent hospital”**; and
- (b) after the cross-heading “Regulation of medical professions” before section 40, insert –

39A Definitions for sections 39A to 39D

In this section and sections 39B to 39D –

“Nursing and Midwifery Council” means the Nursing and Midwifery Council constituted under article 3 of the UK order;

“register”, if used as a noun, means the register of qualified nurses and midwives established and maintained by the Nursing and Midwifery Council under article 5 of the UK order;

“registered”, for a nurse or midwife, means registered in the register by virtue of qualifications in nursing or midwifery, as the case may be;

“**registrar**” means the person appointed under article 4 of the UK Order;
and

“**UK order**” means the Nursing and Midwifery Order 2001¹ made under section 60 of the Health Act 1999 of Parliament.

39B Evidentiary provisions for the register

- (1) A copy of, or extract from, the register published under article 8(2) of the UK order is evidence of the matters contained in it.
- (2) A certificate purporting to be signed by the registrar certifying any of the following matters is evidence of the matter —
 - (a) that on a stated day, or during a stated period, a person was or was not —
 - (i) registered; or
 - (ii) registered in a stated category or in any category; or
 - (b) that a stated person has never been registered or never been registered in a stated category.
- (3) In this section, “category” means category of entry under the UK order.

39C Offences relating to the register

A person (the “first person”) who does any of the following commits an offence and is liable on summary conviction to a fine of no more than £5,000 —

- (a) with intent to deceive either expressly or by implication —
 - (i) falsely represents the first person is registered in the register or a particular part of it, is the subject of an entry in the register or has qualifications in nursing or midwifery; or
 - (ii) uses a title mentioned in article 6(2) of the UK Order to which the first person is not entitled;
- (b) causes or permits another person to make a representation about the other person that, if it were made by the other person with intent to deceive, would be an offence under paragraph (a); or
- (c) makes a representation to another person that —
 - (i) the first person knows is false; and
 - (ii) if it had been made by the other person with intent to deceive, would have been an offence by the other person under paragraph (a).

¹ SI 2002/253

39D Attendance by unqualified persons at childbirth

- (1) A person (other than a registered midwife or registered medical practitioner) who attends a woman in childbirth commits an offence and is liable on summary conviction to a fine of no more than £5,000.
- (2) Subsection (1) does not apply if –
- (a) the attention is given because of sudden or urgent necessity; or
- (b) the person is undergoing training as a medical practitioner or midwife and the attention is part of a course of practical instruction in midwifery recognised by the –
- (i) Nursing and Midwifery Council; or
- (ii) General Medical Council under the Medical Act 1983 of Parliament. **22**;
- (c) for the heading to section 40, substitute –
- 40 Order-making power to regulate 22**;
- (d) in section 40(1)(a), for “the *Nurses and Midwives Act 1947*” substitute **40** sections 39A to 39D **22**; and
- (e) in section 43 –
- (i) insert alphabetically –
- 40 “adult care home”** means an adult care home under the *Regulation of Care Act 2013*;
- “independent hospital”** means an independent hospital under the *Regulation of Care Act 2013*; **22**; and
- (ii) for paragraph (b) of the definition “hospital”, substitute –
- 40**(b) an adult care home for the reception of pregnant women or of women immediately after childbirth; or **22**;
- (iii) the definitions “maternity home”, “nursing home” and “mental nursing home” are deleted;
- (iv) in the definition “registered”, in paragraph (a), for “the *Nurses and Midwives Act 1947*” substitute **40** section 39A **22**.
- (10) In section 8(11)(b) of the *Video Recordings Act 1995*, for “within the meaning of section 11 of the *Nurses and Midwives Act 1947*” substitute **40** as a nurse or midwife **22**.
- (11) The Disqualification for Caring for Children Regulations 2002² are amended by omitting the following words from the following provisions –

² SD 876/02

- (a) “or registration under Part 7 of the Act” and “or for registration under section 64 of the Act (child-minding and day-care)) from regulation 2; and
 - (b) “and registration under section 64 of the Act” of the Schedule.
- (12) In Part 2 of Schedule 2 to the tribunals Act, insert numerically with the next available number after this section commences —
- █ [number to be inserted] The Care Services Tribunal established under the *Regulation of Care Act 2013*. █.
- (13) The Nursing and Midwifery Order 2002 and the Children’s Homes Regulations 2002 are revoked³.

DIVISION 5 — EXPIRY OF CERTAIN PROVISIONS

206 Expiry

- (1) The following provisions expire on the day after the promulgation of this Act —
- (a) section 163 (repeal of Acts); and
 - (b) this Part.
- (2) The expiry does not —
- (a) revive any enactment that the provisions amended or repealed as the enactment operated before this Act’s enactment;
 - (b) revive anything not in operation or not existing on this Act’s enactment; or
 - (c) affect the continuing operation of the amendment or repeal.
- (3)

³ SD 159/02 and SD 872/02

SCHEDULE

[section 33(1)]

DEFINITIONS

“**adoption Act**” see section 32(a).

“**adoption society offence**” means an offence against section 14(4) (adoption service) of the adoption Act.

“**adult**” means a person 18 years old or over.

“**adult care home**” see section 16.

“**adult day care centre**” see section 17.

“**adult placement agency**” see section 18.

“**agency care service**” see section 6(1)(a).

“**agreed condition**”, for a provision about a registration application or a registered person, means any decided condition to which the applicant or person has agreed in writing (in response to a notice under the procedural fairness requirements or otherwise).

“**amend**” —

1. To “**amend**” a person’s registration —
 - (a) includes —
 - (i) changing the care service’s responsible person; and
 - (ii) omitting any or all of the decided conditions of the registration and inserting new decided conditions; and
 - (iii) amending the registration to reflect a change to the person’s name; but
 - (b) does not include —
 - (i) substituting someone else for the person;
 - (ii) if the person is a body corporate, changing its status; or
 - (iii) amending a mandatory condition.
2. To “**amend**” decided conditions, includes to omit any or all of the conditions and to insert new decided conditions.

“**amendment application**” see section 74(1).

“**appeal notice**”, about a decision, means a notice stating —

- (a) the decision and the reasons for it;
- (b) that the recipient of the notice may appeal against the decision to the tribunal; and
- (c) how to appeal.

“**appeal rules**” means the rules under section 8 of the tribunals Act for appeals under this Act.

“**at**”, a care service, place or premises includes on or from or in the care service, place or premises.

“**body corporate**” means a body established or incorporated under incorporation legislation.

“**British Islands legislation**” means —

- (a) legislation made by Tynwald, Parliament or another legislature of the British Islands; and
- (b) an instrument of a legislative character made under legislation mentioned in paragraph (a).

“**business**” includes —

- (a) one carried on from a private dwelling, including, for example, childminding;
- (b) one not carried on for profit;
- (c) an occupation or profession (a “service”) carried on by someone who is self-employed to perform the service;
- (d) a service provided by a body corporate by way of any of its activities; and
- (e) a service provided by any of the following to perform any of its functions —
 - (i) a Department other than DSC;
 - (ii) a Statutory Board; or
 - (iii) a joint board under the *Local Government Act 1985*.

“**care offence**” means any of the following —

- (a) a registration-related offence;
- (b) an offence against Part 7, Division 1 (disqualification offences);
- (c) the ill-treatment or neglect offence;
- (d) an offence against CYPA 2001;
- (e) an offence against Part 9 of the mental health Act;
- (f) for a voluntary adoption agency, an adoption society offence;
- (g) an offence against a corresponding law to this Act if the offence is the same as, or similar to, an offence mentioned in paragraphs (a) to (c); or
- (h) an offence against a law outside the Island that corresponds, or is similar to, or provides for matters similar to the matters provided for under an Act or provision mentioned in paragraphs (d) to (f) if the offence is the same as, or similar to, an offence against the Act or provision.

- “**care premises**” see section 115(1).
- “**care service**” see section 6(1).
- “**carries on**”, for a care service, see section 13.
- “**category**”, of care service, see section 6(2).
- “**child**” means a person under 18 years old.
- “**child care agency**” see section 19.
- “**child day care**” see section 20(a).
- “**child day care centre**” see section 20.
- “**childminder**” see section 21(3).
- “**childminder registration**” see section 41(1).
- “**childminding**” see section 21.
- “**child-related**” for —
- (a) a care service or category of care service, see section 12; or
 - (b) registration, see section 41(3).
- “**childrens home**” see section 22.
- “**child (secure accommodation) establishment**” see section 23.
- “**commence**”, for a provision, means when it comes into operation.
- “**compliance notice**” see section 135(2).
- “**convicted**”, of an offence (the “relevant offence”), includes —
- (a) a guilty plea or a finding of guilt for the relevant offence;
 - (b) the making of an order under the *Criminal Justice Act 1963* placing a person on probation or discharging a person absolutely or conditionally for the relevant offence;
 - (c) a conviction for an offence against a corresponding law to this Act if the act that constituted the offence would, had it taken place on the Island, have constituted the offence in question or been similar to it; and
 - (d) a conviction for the relevant offence that has become spent under the *Rehabilitation of Offenders Act 2001*.
- “**cost recovery notice**” see section 92(2).
- “**corresponding law**”, to this Act, means —
- (a) a UK care Act; and
 - (b) another law outside the Island that corresponds, or is similar to, this Act or provides for matters similar to the matters provided for under this Act.

“**current cancellation notice**”, for a provision about registration, means a proposal notice to cancel the registration which proposal notice has not been withdrawn under section 99.

“**CYPA 2001**” see section 9.

“**decided conditions**”, for a provision about registration or a registration application, means —

- (a) generally, see section 60(2); or
- (b) if decided conditions decided under section 60 have, under Part 3, Division 3 (obtaining registration) or 5 (changing registration on the registered person’s initiative), been amended, those conditions as most recently amended.

“**disqualification exemption**” see section 43(2)(a).

“**disqualification notice (unregistered childminder)**” see section 138(2).

“**disqualified because of insolvency**” see section 43(1)(d).

“**disqualified for children**” see section 43(1)(b).

“**document**” includes a record.

“**DSC**” see section 2.

“**Department care service**” see section 9.

“**DSC’s proposal**” see section 96.

“**enactment**”, of this Act, means the day on which Royal Assent to it is announced as mentioned in section 10(1) of the *Interpretation Act 1976*.

“**domiciliary care agency**” see section 24.

“**education Act**” see section 22(4), definition “proprietor”.

“**engage**”, a person, means engaging the person other than under a contract of employment to perform work, whether or not for reward.

“**fostering agency**” see section 25.

“**hospital**” see section 43 of the NHS Act.

“**identity card**” means an identity card issued under section 112.

“**illness**” includes injury.

“**ill-treatment or neglect offence**” see section 152(2).

“**improvement notice**” see section 132(2).

“**incorporation legislation**” means any British Islands legislation under which entities are incorporated.

“**independent care service**” see section 10.

“**independent clinic**” see section 26.

“**independent hospital**” see section 27.

“**independent medical agency**” see section 28.

“**independent school**” see section 59(1) of the education Act.

“**inspector**” see section 111(3).

“**interested person**” see section 97(1).

“**involved with**”, a care service, means any of the following —

- (a) carrying on or managing the care service;
- (b) being concerned in its management; or
- (c) having a financial interest (other than the holding of a listed share or security) in the care service or the business carrying on a care service.

“**listed share or security**” means a share or security that is listed or admitted to trade on a securities market or investment exchange (or a similar body, whatever called) recognised under any British Islands legislation.

“**manager registration**” see section 39(1).

“**manages**”, a care service, see section 14.

“**mandatory conditions**” see section 65.

“**maximum penalty**” —

- (a) generally, see section 156(1); and
- (b) for —
 - (i) “**maximum penalty (on information)**”, see also section 156(5) and (7); or
 - (ii) “**maximum penalty (summary)**”, see also section 156(6) and (7).

“**medical**” includes surgical.

“**medical practitioner**” means a fully registered person under the *Medical Act 1985*.

“**member**”, for a provision about a body corporate, means a person who, under incorporation legislation, means —

- (a) a beneficiary or partner of the body; or
- (b) is a member, shareholder or the holder of securities in or of the body other than because of the holding of a listed share or security.

“**mental disorder**”, for a person, means that the person has mental illness, arrested or incomplete development of mind, psychopathic disorder, or another disorder or disability of mind.

“**mental health Act**” see section 27(1)(b).

“**minimum standards**” see section 35(1).

“**monitoring function**”, for DSC, see 34(2).

“**NHS Act**” see section 26(2)(b).

“**NHS hospital**” means a hospital provided under Part 3 (hospital and specialist services) of the NHS Act.

“**nominated replacement**” see section 75(2)(a).

“**nominee**”, for a provision about a registration application, see section 57(2)(a).

“**non-NHS health care service**” see section 11.

“**notice**” means a notice in writing.

“**nurse**” means a registered nurse.

“**nurses agency**” see section 29.

“**offence warning**” for —

- (a) a requirement under this Act, means a warning that it is an offence to contravene the requirement, unless the person of whom the requirement is made has a reasonable excuse; or
- (b) a person obstructing an inspector, means a warning that it is an offence to intentionally obstruct the inspector.

“**offender accommodation service**” see section 30.

“**officer**”, for a provision about a body corporate, means a director, secretary, manager, or other officer of the body, of whatever named called or, for a foundation under the *Foundations Act 2011*, a member of its council.

“**personal care**”, from one person to another, means —

- (a) helping the other person with their day-to-day bodily functions; and

Examples of day-to-day bodily functions:

Dressing, washing, bathing, shaving, hair care and grooming, toileting, getting in or out of bed, transferring to a commode or chair, eating, drinking, monitoring and self-medication.

- (b) giving the other person advice, encouragement, emotional and psychological support with those bodily functions.

“**personal representative**”, for a deceased person, means the deceased’s executor (original or by representation) or administrator for the time being.

“**personal support**” means counselling, emotional support or other help provided as part of a planned programme of care.

“**physical disability**”, for a person, means that —

- (a) the person’s sight, hearing or speech is substantially impaired; or
- (b) the person is physically substantially disabled or infirm by any illness, any impairment present since birth, or otherwise.

“**practical assistance**”, from one person to another, means performing domestic tasks for the other person or helping them with domestic tasks, but does not include a prescribed activity.

Examples of domestic tasks:

Cleaning, laundry, cooking, shopping services and collecting prescriptions.

“**prescribed**” means prescribed by regulations made by DSC.

“**private dwelling**” means premises, or any part of premises, used wholly or mainly usable as a place of residence.

“**procedural fairness requirements**” see section 59(2)(b).

“**production requirement**” see sections 122(1) and 126(2).

“**proposal notice**” see section 97(1).

“**provider registration**” see section 38(1).

“**reasonably believes**” means to believe on grounds that are reasonable in all the circumstances.

“**reasonably suspects**” means to suspect on grounds that are reasonable in all the circumstances.

“**recipient**”, for a provision about —

- (a) a notice, means the person to whom the notice has been given; or
- (b) a notice proposed to be given, means the person to whom the notice is proposed to be given.

“**register**”, when used a noun, means the register DSC keeps under section 107.

“**registered childminder**” see section 41(2).

“**registered manager**” see section 39(2).

“**registered person**” see section 40.

“**registered provider**” see section 38(2).

“**registration**”, without any reference to a particular type, see section 42(1).

“**registration application**” see section 56(1).

“**registration condition**”, for a provision about registration, means a decided condition (including an agreed condition) or a mandatory condition of the registration.

“**registration criteria**” see section 58(1).

“**registration requirement**” see section 52(3).

“**registration-related offence**” means an offence against any of the following —

- (a) Part 3 (registration of independent care services);
- (b) a provision of a regulation relating to registration;
- (c) section 137 (offence: contravention of compliance notice); or

- (d) section 151(1) (false descriptions about registration or Department care services) if the prohibited action constituting the offence relates to registration.

“**regulations**” means regulations made by DSC.

“**repealed care law**” means any of the following —

- (a) the repealed *Nurses and Midwives Act 1947*;
- (b) the repealed *Nursing and Residential Homes Act 1988*; or
- (c) any of the provisions of repealed Part 6 of, or Schedules 6 and 7 to, CYPA 2001.

“**required form**” see section 160(2).

“**residential family centre**” see section 31.

“**responsible person**”, for a care service —

- (a) generally, see section 62(2); or
- (b) if there has been a responsible person change for the care service, means the person who most recently became its responsible person under section 77(3).

“**responsible person change**” see section 66(2)(b)(ii).

“**role**”, for a premises entered by an inspector, see section 119.

“**school**” see section 59(1) of the education Act.

“**see**”, followed by a reference to, or to a provision of, an Act or law, when used to define a word, entity or matter, means the word, entity or matter has the same meaning as it has in, or assigned to it under, the provision, Act or law.

“**service recipient**” see section 120(d)(ii).

“**social care**” see section 5.

“**social care work**” see section 139(1).

“**social care worker**” see section 139(2).

“**social work**” see section 140(1).

“**social worker**” see section 140(2).

“**specifically disqualified**” see section 43(1)(c).

“**suitable for childminding**” see section 51.

“**suitable manager**”, for a care service, see section 49(1).

“**suitable supervisor**”, for a care service, see section 49(2).

“**surrender application**” see section 80(a).

“**totally disqualified**” see section 43(1)(a).

“**treatment**” includes diagnosis.

“**tribunal**” means the Care Services Tribunal established under section 143(1).

“**tribunals Act**” see section 144(b).

“**UK care Act**” means any of the following —

- (a) the Care Standards Act 2000 and the Health and Social Care Act 2008, both of Parliament;
- (b) the Health and Personal Social Services Act (Northern Ireland) 2001;
- (c) the Regulation of Care (Scotland) Act 2001; or
- (d) any other British Islands legislation that corresponds, or is similar to, an Act mentioned in paragraphs (a) to (c).

“**urgent amendment**” see section 89(1)(a).

“**urgent cancellation**” see section 89(1)(c).

“**urgent suspension**” see section 89(1)(b).

“**voluntary adoption agency**” see section 32.

“**withdraw**”, for a notice, includes repealing or revoking it.