Health and Social Care Act 2008

2008 CHAPTER 14

PART 5

MISCELLANEOUS

Social care

145   Human Rights Act 1998: provision of certain social care to be public function

(1) A person ("P") who provides accommodation, together with nursing or personal care, in a care home for an individual under arrangements made with P under the relevant statutory provisions is to be taken for the purposes of subsection (3)(b) of section 6 of the Human Rights Act 1998 (c. 42) (acts of public authorities) to be exercising a function of a public nature in doing so.

(2) The "relevant statutory provisions" are—

    (a)   in relation to England and Wales, sections 21(1)(a) and 26 of the National Assistance Act 1948 (c. 29),

    (b)   in relation to Scotland, section 12 or 13A of the Social Work (Scotland) Act 1968 (c. 49), and

    (c)   in relation to Northern Ireland, Articles 15 and 36 of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)).

(3) In subsection (1) "care home"—

    (a)   in relation to England and Wales, has the same meaning as in the Care Standards Act 2000 (c. 14), and

    (b)   in relation to Northern Ireland, means a residential care home as defined by Article 10 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 (S.I. 2003/431 (N.I. 9)) or a nursing home as defined by Article 11 of that Order.

(4) In relation to Scotland, the reference in subsection (1) to the provision of accommodation, together with nursing or personal care, in a care home is to be read as a reference to the provision of accommodation, together with nursing, personal care or

personal support, as a care home service as defined by section 2(3) of the Regulation of Care (Scotland) Act 2001 (asp 8).

(5) Subsection (1) does not apply to acts (within the meaning of section 6 of the Human Rights Act 1998 (c. 42)) taking place before the coming into force of this section.