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# Care Act 2014

## 2014 CHAPTER 23

### PART 1

#### CARE AND SUPPORT

##### *Miscellaneous*

VALID FROM 01/04/2015

#### **73 Human Rights Act 1998: provision of regulated care or support etc a public function**

- (1) This section applies where—
- (a) in England, a registered care provider provides care and support to an adult or support to a carer, in the course of providing—
    - (i) personal care in a place where the adult receiving the personal care is living when the personal care is provided, or
    - (ii) residential accommodation together with nursing or personal care;
  - (b) in Wales, a person registered under Part 2 of the Care Standards Act 2000 provides care and support to an adult, or support to a carer, in the course of providing—
    - (i) personal care in a place where the adult receiving the personal care is living when the personal care is provided, or
    - (ii) residential accommodation together with nursing or personal care;
  - (c) in Scotland, a person provides advice, guidance or assistance to an adult or support to a carer, in the course of providing a care service which is registered under section 59 of the Public Services Reform (Scotland) Act 2010 and which consists of the provision of—
    - (i) personal care in a place where the adult receiving the personal care is living when the personal care is provided, or
    - (ii) residential accommodation together with nursing or personal care;

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- (d) in Northern Ireland, a person registered under Part 3 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 provides advice, guidance or assistance to an adult or services to a carer, in the course of providing—
- (i) personal care in a place where the adult receiving the personal care is living when the personal care is provided, or
  - (ii) residential accommodation together with nursing or personal care.

In this section “the care or support” means the care and support, support, advice, guidance, assistance or services provided as mentioned above, and “the provider” means the person who provides the care or support.

- (2) The provider is to be taken for the purposes of section 6(3)(b) of the Human Rights Act 1998 (acts of public authorities) to be exercising a function of a public nature in providing the care or support, if the requirements of subsection (3) are met.
- (3) The requirements are that—
- (a) the care or support is arranged by an authority listed in column 1 of the Table below, or paid for (directly or indirectly, and in whole or in part) by such an authority, and
  - (b) the authority arranges or pays for the care or support under a provision listed in the corresponding entry in column 2 of the Table.

TABLE

<i>Authority</i>	<i>Provisions imposing duty or conferring power to meet needs</i>
Local authority in England	Sections 2, 18, 19, 20, 38 and 48 of this Act.
Local authority in Wales	Part 4 and section 189 of the Social Services and Well-being (Wales) Act 2014. Section 50 of this Act.
Local authority in Scotland	Sections 12, 13A, 13B and 14 of the Social Work (Scotland) Act 1968. Section 3 of the Social Care (Self-directed Support) (Scotland) Act 2013.
Health and Social Care trust	Article 15 of the Health and Personal Social Services (Northern Ireland) Order 1972. Section 51 of this Act.
Authority (within the meaning of section 10 of the Carers and Direct Payments Act (Northern Ireland) 2002)	Section 2 of the Carers and Direct Payments Act (Northern Ireland) 2002.

- (4) In this section—
- “local authority in England” means a local authority for the purposes of this Part;

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“local authority in Wales” means a local authority for the purposes of the Social Services and Well-being (Wales) Act 2014;

“local authority in Scotland” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994;

“nursing care”, for England, Wales and Northern Ireland, has the same meaning as in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010, as amended from time to time;

“personal care”—

(a) for England, Wales and Northern Ireland, has the same meaning as in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010, as amended from time to time;

(b) for Scotland, has the same meaning as in Part 5 of the Public Services Reform (Scotland) Act 2010, as amended from time to time.

## 74 Discharge of hospital patients with care and support needs

Schedule 3 (which includes provision about the discharge of hospital patients with care and support needs) has effect.

### Commencement Information

II S. 74 in force at 1.10.2014 for specified purposes by [S.I. 2014/2473](#), [art. 2\(1\)\(y\)](#)

## 75 After-care under the Mental Health Act 1983

(1) In section 117 of the Mental Health Act 1983 (after-care), in subsection (2), after “to provide” insert “ or arrange for the provision of”.

(2) In subsection (2D) of that section, for the words from “as if” to the end substitute “ as if the words “provide or” were omitted. ”

(3) In subsection (3) of that section, after “means the local social services authority” insert “—

(a) if, immediately before being detained, the person concerned was ordinarily resident in England, for the area in England in which he was ordinarily resident;

(b) if, immediately before being detained, the person concerned was ordinarily resident in Wales, for the area in Wales in which he was ordinarily resident; or

(c) in any other case”.

(4) After that subsection insert—

“(4) Where there is a dispute about where a person was ordinarily resident for the purposes of subsection (3) above—

(a) if the dispute is between local social services authorities in England, section 40 of the Care Act 2014 applies to the dispute as it applies to a dispute about where a person was ordinarily resident for the purposes of Part 1 of that Act;

(b) if the dispute is between local social services authorities in Wales, section 195 of the Social Services and Well-being (Wales) Act 2014

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applies to the dispute as it applies to a dispute about where a person was ordinarily resident for the purposes of that Act;

- (c) if the dispute is between a local social services authority in England and a local social services authority in Wales, it is to be determined by the Secretary of State or the Welsh Ministers.

- (5) The Secretary of State and the Welsh Ministers shall make and publish arrangements for determining which of them is to determine a dispute under subsection (4)(c); and the arrangements may, in particular, provide for the dispute to be determined by whichever of them they agree is to do so.”

- (5) After subsection (5) insert—

“(6) In this section, “after-care services”, in relation to a person, means services which have both of the following purposes—

- (a) meeting a need arising from or related to the person's mental disorder; and  
(b) reducing the risk of a deterioration of the person's mental condition (and, accordingly, reducing the risk of the person requiring admission to a hospital again for treatment for mental disorder).”

- (6) After section 117 of that Act insert—

**“117A After-care: preference for particular accommodation**

- (1) The Secretary of State may by regulations provide that where—

- (a) the local social services authority under section 117 is, in discharging its duty under subsection (2) of that section, providing or arranging for the provision of accommodation for the person concerned;  
(b) the person concerned expresses a preference for particular accommodation; and  
(c) any prescribed conditions are met,

the local social services authority must provide or arrange for the provision of the person's preferred accommodation.

- (2) Regulations under this section may provide for the person concerned, or a person of a prescribed description, to pay for some or all of the additional cost in prescribed cases.

- (3) In subsection (2), “additional cost” means the cost of providing or arranging for the provision of the person's preferred accommodation less the amount that the local social services authority would expect to be the usual cost of providing or arranging for the provision of accommodation of that kind.

- (4) The power to make regulations under this section—

- (a) is exercisable only in relation to local social services authorities in England;  
(b) includes power to make different provision for different cases or areas.”

- (7) The ways in which a local authority may discharge its duty under section 117 of the Mental Health Act 1983 include by making direct payments; and for that purpose Part 1 of Schedule 4 (which includes modifications of the provisions of this Part relating to direct payments) has effect.

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(8) In section 53 of the Social Services and Well-being (Wales) Act 2014 (direct payments: further provision), at the end insert—

“(11) The ways in which a local authority may discharge its duty under section 117 of the Mental Health Act 1983 include by making direct payments; and for that purpose Schedule A1 (which includes modifications of sections 50 and 51 and this section) has effect.”

(9) Before Schedule 1 to that Act insert the Schedule A1 contained in Part 2 of Schedule 4 to this Act.

(10) In section 194 of that Act (ordinary residence), after subsection (4) insert—

“(4A) A person who is being provided with accommodation under section 117 of the Mental Health Act 1983 (after-care) is to be treated for the purposes of this Act as ordinarily resident in the area of the local authority, or the local authority in England, on which the duty to provide that person with services under that section is imposed.”

(11) In consequence of subsections (7) to (9), in subsection (2C) of section 117 of the Mental Health Act 1983—

(a) in paragraph (a), for “regulations under section 57 of the Health and Social Care Act 2001 or” substitute “—

(i) sections 31 to 33 of the Care Act 2014 (as applied by Schedule 4 to that Act),

(ii) sections 50, 51 and 53 of the Social Services and Well-being (Wales) Act 2014 (as applied by Schedule A1 to that Act), or

(iii) regulations under”,

(b) in paragraph (b), after “apart from” insert “ those sections (as so applied) or ”.

(12) In the case of a person who, immediately before the commencement of subsections (3) and (4), is being provided with after-care services under section 117 of the Mental Health Act 1983, the amendments made by those subsections do not apply while those services are continuing to be provided to that person.

(13) In section 145 of the Mental Health Act 1983 (interpretation), for the definition of “local social services authority” substitute—

““local social services authority” means—

(a) an authority in England which is a local authority for the purposes of Part 1 of the Care Act 2014, or

(b) an authority in Wales which is a local authority for the purposes of the Social Services and Well-being (Wales) Act 2014.”

#### Commencement Information

**I2** S. 75(6) in force at 1.10.2014 for specified purposes by [S.I. 2014/2473](#), [art. 2\(1\)\(u\)](#)

**I3** S. 75(7) in force at 1.10.2014 for specified purposes by [S.I. 2014/2473](#), [art. 2\(1\)\(z\)](#)

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## 76 Prisoners and persons in approved premises etc.

- (1) In its application to an adult who is detained in prison, this Part has effect as if references to being ordinarily resident in an area were references to being detained in prison in that area.
- (2) In its application to an adult who is residing in approved premises, this Part has effect as if references to being ordinarily resident in an area were references to being resident in approved premises in that area.
- (3) In its application to an adult who is residing in any other premises because a requirement to do so has been imposed on the adult as a condition of the grant of bail in criminal proceedings, this Part has effect as if references to being ordinarily resident in an area were references to being resident in premises in that area for that reason.
- (4) The power under section 30 (preference for particular accommodation) may not be exercised in the case of an adult who is detained in prison or residing in approved premises except for the purpose of making provision with respect to accommodation for the adult—
  - (a) on his or her release from prison (including temporary release), or
  - (b) on ceasing to reside in approved premises.
- (5) Sections 31 to 33 (direct payments) do not apply in the case of an adult who, having been convicted of an offence, is—
  - (a) detained in prison, or
  - (b) residing in approved premises.
- (6) Sections 37 and 38 (continuity of care), in their application to an adult who is detained in prison or residing in approved premises, also apply where it is decided that the adult is to be detained in prison, or is to reside in approved premises, in the area of another local authority; and accordingly—
  - (a) references to the adult's intention to move are to be read as references to that decision, and
  - (b) references to carers are to be ignored.
- (7) Sections 42 and 47 (safeguarding: enquiry by local authority and protection of property) do not apply in the case of an adult who is—
  - (a) detained in prison, or
  - (b) residing in approved premises.
- (8) An SAB's objective under section 43(2) does not include helping and protecting adults who are detained in prison or residing in approved premises; but an SAB may nonetheless provide advice or assistance to any person for the purpose of helping and protecting such adults in its area in cases of the kind described in section 42(1) (adults with needs for care and support who are at risk of abuse or neglect).
- (9) Section 44 (safeguarding adults reviews) does not apply to any case involving an adult in so far as the case relates to any period during which the adult was—
  - (a) detained in prison, or
  - (b) residing in approved premises.

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- (10) Regulations under paragraph 1(1)(d) of Schedule 2 (membership of Safeguarding Adults Boards) may not specify the governor, director or controller of a prison or a prison officer or prisoner custody officer.
- (11) “Prison” has the same meaning as in the Prison Act 1952 (see section 53(1) of that Act); and—
  - (a) a reference to a prison includes a reference to a young offender institution, secure training centre or secure children's home,
  - (b) the reference in subsection (10) to the governor, director or controller of a prison includes a reference to the governor, director or controller of a young offender institution, to the governor, director or monitor of a secure training centre and to the manager of a secure children's home, and
  - (c) the reference in that subsection to a prison officer or prisoner custody officer includes a reference to a prison officer or prisoner custody officer at a young offender institution, to an officer or custody officer at a secure training centre and to a member of staff at a secure children's home.
- (12) “Approved premises” has the meaning given in section 13 of the Offender Management Act 2007.
- (13) “Bail in criminal proceedings” has the meaning given in section 1 of the Bail Act 1976.
- (14) For the purposes of this section—
  - (a) a person who is temporarily absent from prison is to be treated as detained in prison for the period of absence;
  - (b) a person who is temporarily absent from approved premises is to be treated as residing in approved premises for the period of absence;
  - (c) a person who is temporarily absent from other premises in which the person is required to reside as a condition of the grant of bail in criminal proceedings is to be treated as residing in the premises for the period of absence.

## 77 Registers of sight-impaired adults, disabled adults, etc.

- (1) A local authority must establish and maintain a register of sight-impaired and severely sight-impaired adults who are ordinarily resident in its area.
- (2) Regulations may specify descriptions of persons who are, or are not, to be treated as being sight-impaired or severely sight-impaired for the purposes of this section.
- (3) A local authority may establish and maintain one or more registers of adults to whom subsection (4) applies, and who are ordinarily resident in the local authority's area, for the purposes in particular of—
  - (a) planning the provision by the authority of services to meet needs for care and support, and
  - (b) monitoring changes over time in the number of adults in the authority's area with needs for care and support and the types of needs they have.
- (4) This subsection applies to an adult who—
  - (a) has a disability,

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- (b) has a physical or mental impairment which is not a disability but which gives rise, or which the authority considers may in the future give rise, to needs for care and support, or
  - (c) comes within any other category of persons the authority considers appropriate to include in a register of persons who have, or the authority considers may in the future have, needs for care and support.
- (5) “Disability” has the meaning given by section 6 of the Equality Act 2010.

#### Commencement Information

**I4** S. 77(2) in force at 1.10.2014 for specified purposes by [S.I. 2014/2473](#), [art. 2\(1\)\(v\)](#)

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#### 78 Guidance, etc.

- (1) A local authority must act under the general guidance of the Secretary of State in the exercise of functions given to it by this Part or by regulations under this Part.
- (2) Before issuing any guidance for the purposes of subsection (1), the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (3) The Secretary of State must have regard to the general duty of local authorities under section 1(1) (promotion of individual well-being)—
  - (a) in issuing guidance for the purposes of subsection (1);
  - (b) in making regulations under this Part.

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#### 79 Delegation of local authority functions

- (1) A local authority may authorise a person to exercise on its behalf a function it has under—
  - (a) this Part or regulations under this Part (but see subsection (2)), or
  - (b) section 117 of the Mental Health Act 1983 (after-care services).
- (2) The references in subsection (1)(a) to this Part do not include a reference to—
  - (a) section 3 (promoting integration with health services etc.),
  - (b) sections 6 and 7 (co-operating),
  - (c) section 14 (charges),
  - (d) sections 42 to 47 (safeguarding adults at risk of abuse or neglect), or
  - (e) this section.
- (3) An authorisation under this section may authorise an employee of the authorised person to exercise the function to which the authorisation relates; and for that purpose, where the authorised person is a body corporate, “employee” includes a director or officer of the body.



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- (4) An authorisation under this section may authorise the exercise of the function to which it relates—
  - (a) either wholly or to the extent specified in the authorisation;
  - (b) either generally or in cases, circumstances or areas so specified;
  - (c) either unconditionally or subject to conditions so specified.
- (5) An authorisation under this section—
  - (a) is for the period specified in the authorisation;
  - (b) may be revoked by the local authority;
  - (c) does not prevent the local authority from exercising the function to which the authorisation relates.
- (6) Anything done or omitted to be done by or in relation to a person authorised under this section in, or in connection with, the exercise or purported exercise of the function to which the authorisation relates is to be treated for all purposes as done or omitted to be done by or in relation to the local authority.
- (7) But subsection (6) does not apply—
  - (a) for the purposes of the terms of any contract between the authorised person and the local authority which relate to the function, or
  - (b) for the purposes of any criminal proceedings brought in respect of anything done or omitted to be done by the authorised person.
- (8) Schedule 15 to the Deregulation and Contracting Out Act 1994 (which permits disclosure of information between local authorities and contractors where that is necessary for the exercise of the functions concerned, even if that would otherwise be unlawful) applies to an authorisation under this section as it applies to an authorisation by virtue of an order under section 70(2) of that Act.
- (9) The Secretary of State may by order—
  - (a) amend subsection (2) so as to add to or remove from the list a provision of this Part;
  - (b) amend subsection (1) so as to add to or remove from the list a provision relating to care and support for adults or support for carers;
  - (c) impose conditions or other restrictions on the exercise of the power under subsection (1), whether by amending this section or otherwise.
- (10) The provision which may be made in an order under subsection (9) in reliance on section 125(8) (supplementary etc. provision in orders under this Act) includes, in particular, provision as to the rights and obligations of local authorities and persons authorised under this section in light of the provision made by the order.
- (11) “Function” includes a power to do anything that is calculated to facilitate, or is conducive or incidental to, the exercise of a function.

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