



# National Health Service and Community Care Act 1990

## 1990 CHAPTER 19

### PART III

#### COMMUNITY CARE: ENGLAND AND WALES

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

C1 Pt. III (ss. 42-50) applied (with modifications) (1.4.1993) by S.I. 1993/570, art. 2(2)(a)

#### *Provision of accommodation and welfare services*

#### **42 Provision of accommodation and welfare services: agency arrangements.**

(1) In section 21(1) of the <sup>M1</sup>National Assistance Act 1948 (duties of local authorities to provide accommodation for persons aged 18 or over who are in need of care and attention by reason of age, infirmity or other circumstances)—

- (a) in paragraph (a) for the word “infirmity” there shall be substituted “illness, disability”; and
- (b) at the end of that paragraph there shall be added “and
  - (aa) residential accommodation for expectant and nursing mothers who are in need of care and attention which is not otherwise available to them”.

<sup>F1</sup>(2) .....

(3) [<sup>F2</sup>In section 26 of that Act (arrangements for provision of accommodation in premises maintained by voluntary organisations etc.), at the end of subsection (2)] (under which the arrangements must provide for the local authority to make payments in respect of accommodation provided) there shall be added “and subject to subsection (3A) below the local authority shall recover from each person for whom accommodation is

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provided under the arrangements the amount of the refund which he is liable to make in accordance with the following provisions of this section”.

- (4) At the beginning of subsection (3) of that section (liability of persons for whom accommodation is provided to make refunds to the local authority) there shall be inserted “Subject to subsection (3A) below” and after that subsection there shall be inserted the following subsection—

“(3A) Where accommodation in any premises is provided for any person under arrangements made by virtue of this section and the local authority, the person concerned and the voluntary organisation or other person managing the premises (in this subsection referred to as “the provider”) agree that this subsection shall apply—

- (a) so long as the person concerned makes the payments for which he is liable under paragraph (b) below, he shall not be liable to make any refund under subsection (3) above and the local authority shall not be liable to make any payment under subsection (2) above in respect of the accommodation provided for him;
- (b) the person concerned shall be liable to pay to the provider such sums as he would otherwise (under subsection (3) above) be liable to pay by way of refund to the local authority; and
- (c) the local authority shall be liable to pay to the provider the difference between the sums paid by virtue of paragraph (b) above and the payments which, but for paragraph (a) above, the authority would be liable to pay under subsection (2) above.”

- (5) At the end of subsection (7) of that section (interpretation) there shall be added

““small home” means an establishment falling within section 1(4) of the Registered Homes Act 1984 and “exempt body” means an authority or body constituted by an Act of Parliament or incorporated by Royal Charter”.

- (6) In section 30(1) of that Act (under which a local authority may employ certain voluntary organisations as their agents for the provision of welfare services for disabled persons) for the words from “any voluntary organisation” onwards there shall be substituted “any voluntary organisation or any person carrying on, professionally or by way of trade or business, activities which consist of or include the provision of services for any of the persons to whom section 29 above applies, being an organisation or person appearing to the authority to be capable of providing the service to which the arrangements apply”.
- (7) In section 45(3) of the <sup>M2</sup>Health Services and Public Health Act 1968 (under which a local authority may employ certain voluntary organisations as their agents for promoting the welfare of old people) for the words from “any voluntary organisation” onwards there shall be substituted “any voluntary organisation or any person carrying on, professionally or by way of trade or business, activities which consist of or include the provision of services for old people, being an organisation or person appearing to the authority to be capable of promoting the welfare of old people”.

#### Textual Amendments

- F1** S. 42(2) repealed (1.4.1993) by [Community Care \(Residential Accommodation\) Act 1992 \(c. 49\)](#), s. 1(2)(a); S.I. 1992/2976, art.2.

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**F2** Words in s. 42(3) substituted (1.4.1993) by [Community Care \(Residential Accommodation\) Act 1992 \(c. 49\), s. 1\(2\)](#); [S.I. 1992/2976, art. 2](#).

#### Commencement Information

**I1** S. 42 wholly in force at 1.4.1993; s. 42 not in force at Royal Assent see [s. 67\(2\)](#); [s. 42\(6\)\(7\)](#) in force at 1.4.1991 by [S.I. 1990/2218, art. 2](#); [s. 42\(1\)-\(5\)](#) in force at 1.4.1993 by [S.I. 1992/2975, art. 2\(2\)](#), [Sch.](#)

#### Marginal Citations

**M1** 1948 c. 29.

**M2** 1968 c. 46.

### 43 Exclusion of powers to provide accommodation in certain cases.

After section 26 of the <sup>M3</sup>National Assistance Act 1948 there shall be inserted—

#### “26A Exclusion of powers to provide accommodation under this Part in certain cases.

- (1) Subject to subsection (3) of this section, no accommodation may be provided under section 21 or 26 of this Act for any person who immediately before the date on which this section comes into force was ordinarily resident in relevant premises.
- (2) In subsection (1) “relevant premises” means—
  - (a) premises in respect of which any person is registered under the Registered Homes Act 1984;
  - (b) premises in respect of which such registration is not required by virtue of their being managed or provided by an exempt body;
  - (c) premises which do not fall within the definition of a nursing home in section 21 of that Act by reason only of their being maintained or controlled by an exempt body; and
  - (d) such other premises as the Secretary of State may by regulations prescribe;and in this subsection “exempt body” has the same meaning as in section 26 of this Act.
- (3) The Secretary of State may by regulations provide that, in such cases and subject to such conditions as may be prescribed, subsection (1) of this section shall not apply in relation to such classes of persons as may be prescribed in the regulations.
- (4) The Secretary of State shall by regulations prescribe the circumstances in which persons are to be treated as being ordinarily resident in any premises for the purposes of subsection (1) of this section.
- (5) This section does not affect the validity of any contract made before the date on which this section comes into force for the provision of accommodation on or after that date or anything done in pursuance of such a contract.”

#### Commencement Information

**I2** S. 43 wholly in force at 1.4.1993 see [s. 67\(2\)](#) and [S.I. 1992/2975, art. 2\(2\)](#), [Sch.](#)

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#### Marginal Citations

M3 1948 c. 29.

#### 44 Charges for accommodation provided by local authorities.

- (1) Section 22 of the <sup>M4</sup>National Assistance Act 1948 (charges for accommodation provided under Part III of that Act to be made at a standard rate fixed by the local authority subject to a minimum weekly rate prescribed under subsection (3)) shall have effect subject to the amendments specified in subsections (2) to (6) below.
- (2) In subsection (1) (which relates to a person's liability to pay for accommodation) for the words from the beginning to "the accommodation" there shall be substituted "Subject to section 26 of this Act, where a person is provided with accommodation under this Part of this Act the local authority providing the accommodation shall recover from him the amount of the payment which he is liable to make".
- (3) In subsection (2) (which requires the authority managing premises to fix the standard rate) after the word "payment" there shall be inserted "which a person is liable to make" and at the end of that subsection there shall be added the words "and that standard rate shall represent the full cost to the authority of providing that accommodation".
- (4) In subsection (3) (which makes provision for people who are unable to pay at the standard rate)—
  - (a) the words "(disregarding income support)", and
  - (b) the words from "Provided that" to the end of the subsection, shall be omitted.
- (5) After subsection (4) (under which the Secretary of State may prescribe the minimum sum assumed to be required for a resident's personal needs in determining the rate payable by him) there shall be inserted—
 

"(4A) Regulations made for the purposes of subsection (4) of this section may prescribe different sums for different circumstances."
- (6) In subsection (5A) (under which a local authority managing premises in which accommodation is provided for a person may limit the payments required from him for a certain period to the minimum rate prescribed under subsection (3)) for the words "the minimum weekly rate prescribed under subsection (3) above" there shall be substituted "such amount as appears to them reasonable for him to pay".
- (7) In section 29 of that Act (under subsection (4)(c) of which arrangements may be made for the provision of hostels where persons for whom welfare services are provided under that section may live) after subsection (4) there shall be inserted—
 

"(4A) Where accommodation in a hostel is provided under paragraph (c) of subsection (4) of this section—

  - (a) if the hostel is managed by a local authority, section 22 of this Act shall apply as it applies where accommodation is provided under section 21;
  - (b) if the accommodation is provided in a hostel managed by a person other than a local authority under arrangements made with that person, subsections (2) to (4A) of section 26 of this Act shall apply

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as they apply where accommodation is provided under arrangements made by virtue of that section; and

- (c) sections 32 and 43 of this Act shall apply as they apply where accommodation is provided under sections 21 to 26;

and in this subsection references to “accommodation” include references to board and other services, amenities and requisites provided in connection with the accommodation, except where in the opinion of the authority managing the premises or, in the case mentioned in paragraph (b) above, the authority making the arrangements their provision is unnecessary.”

#### Commencement Information

**I3** S. 44 wholly in force at 1.4.1993 see s. 67(2) and S.I. 1992/2975, art. 2(2), Sch.

#### Marginal Citations

**M4** 1948 c. 29.

## 45 Recovery of charges due to local authorities for accommodation.

- (1) In section 21 of the <sup>M5</sup>Health and Social Services and Social Security Adjudication Act 1983 (recovery of sums due to local authority where persons in residential accommodation have disposed of assets) after subsection (3) there shall be inserted—

“(3A) If the Secretary of State so directs, subsection (1) above shall not apply in such cases as may be specified in the direction.”

- (2) In sections 22 and 23 of that Act (which make provision as to arrears of contributions charged on interests in land in England and Wales and in Scotland respectively) after subsection (2) there shall be inserted—

“(2A) In determining whether to exercise their power under subsection (1) above and in making any determination under subsection (2) above, the local authority shall comply with any directions given to them by the Secretary of State as to the exercise of those functions.”

- (3) In section 24 of that Act (interest on sums charged on or secured over interests in land) for subsection (2) there shall be substituted—

“(2) The rate of interest shall be such reasonable rate as the Secretary of State may direct or, if no such direction is given, as the local authority may determine.”

#### Commencement Information

**I4** S. 45 wholly in force at 12.4.1993 see s. 67(2) and S.I. 1992/2975, art. 2(3)(a).

#### Marginal Citations

**M5** 1983 c. 41.

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*General provisions concerning community care services*

**46 Local authority plans for community care services.**

(1) Each local authority—

- (a) shall, within such period after the day appointed for the coming into force of this section as the Secretary of State may direct, prepare and publish a plan for the provision of community care services in their area;
- (b) shall keep the plan prepared by them under paragraph (a) above and any further plans prepared by them under this section under review; and
- (c) shall, at such intervals as the Secretary of State may direct, prepare and publish modifications to the current plan, or if the case requires, a new plan.

(2) In carrying out any of their functions under paragraphs (a) to (c) of subsection (1) above, a local authority shall consult—

- (a) any District Health Authority the whole or any part of whose district lies within the area of the local authority;
- (b) any Family Health Services Authority the whole or any part of whose locality lies within the area of the local authority;
- (c) in so far as any proposed plan, review or modifications of a plan may affect or be affected by the provision or availability of housing and the local authority is not itself a local housing authority, within the meaning of the <sup>M6</sup>Housing Act 1985, every such local housing authority whose area is within the area of the local authority;
- (d) such voluntary organisations as appear to the authority to represent the interests of persons who use or are likely to use any community care services within the area of the authority or the interests of private carers who, within that area, provide care to persons for whom, in the exercise of their social services functions, the local authority have a power or a duty to provide a service.
- (e) such voluntary housing agencies and other bodies as appear to the local authority to provide housing or community care services in their area; and
- (f) such other persons as the Secretary of State may direct.

(3) In this section—

“local authority” means the council of a county, a metropolitan district or a London borough or the Common Council of the City of London;

“community care services” means services which a local authority may provide or arrange to be provided under any of the following provisions—

- (a) Part III of the <sup>M7</sup>National Assistance Act 1948;
- (b) section 45 of the <sup>M8</sup>Health Services and Public Health Act 1968;
- (c) section 21 of and Schedule 8 to the <sup>M9</sup>National Health Service Act 1977; and
- (d) section 117 of the <sup>M10</sup>Mental Health Act 1983; and

“private carer” means a person who is not employed to provide the care in question by any body in the exercise of its functions under any enactment.

**Commencement Information**

**I5** S. 46 wholly in force at 1.4.1991 see s. 67(2)(3) and S.I. 1990/2218, art. 2, Sch. .

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#### Marginal Citations

- M6 1985 c. 68.
- M7 1948 c. 29.
- M8 1968 c. 46.
- M9 1977 c. 49.
- M10 1983 c. 20.

#### 47 Assessment of needs for community care services.

- (1) Subject to subsections (5) and (6) below, where it appears to a local authority that any person for whom they may provide or arrange for the provision of community care services may be in need of any such services, the authority—
  - (a) shall carry out an assessment of his needs for those services; and
  - (b) having regard to the results of that assessment, shall then decide whether his needs call for the provision by them of any such services.
- (2) If at any time during the assessment of the needs of any person under subsection (1) (a) above it appears to a local authority that he is a disabled person, the authority—
  - (a) shall proceed to make such a decision as to the services he requires as is mentioned in section 4 of the <sup>M11</sup>Disabled Persons (Services, Consultation and Representation) Act 1986 without his requesting them to do so under that section; and
  - (b) shall inform him that they will be doing so and of his rights under that Act.
- (3) If at any time during the assessment of the needs of any person under subsection (1) (a) above, it appears to a local authority—
  - (a) that there may be a need for the provision to that person by such District Health Authority as may be determined in accordance with regulations of any services under the National Health Service Act 1977, or
  - (b) that there may be a need for the provision to him of any services which fall within the functions of a local housing authority (within the meaning of the <sup>M12</sup>Housing Act 1985) which is not the local authority carrying out the assessment,

the local authority shall notify that District Health Authority or local housing authority and invite them to assist, to such extent as is reasonable in the circumstances, in the making of the assessment; and, in making their decision as to the provision of the services needed for the person in question, the local authority shall take into account any services which are likely to be made available for him by that District Health Authority or local housing authority.
- (4) The Secretary of State may give directions as to the manner in which an assessment under this section is to be carried out or the form it is to take but, subject to any such directions and to subsection (7) below, it shall be carried out in such manner and take such form as the local authority consider appropriate.
- (5) Nothing in this section shall prevent a local authority from temporarily providing or arranging for the provision of community care services for any person without carrying out a prior assessment of his needs in accordance with the preceding provisions of this section if, in the opinion of the authority, the condition of that person is such that he requires those services as a matter of urgency.

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- (6) If, by virtue of subsection (5) above, community care services have been provided temporarily for any person as a matter of urgency, then, as soon as practicable thereafter, an assessment of his needs shall be made in accordance with the preceding provisions of this section.
- (7) This section is without prejudice to section 3 of the <sup>M13</sup>Disabled Persons (Services, Consultation and Representation) Act 1986.
- (8) In this section—  
     “disabled person” has the same meaning as in that Act; and  
     “local authority” and “community care services” have the same meanings as in section 46 above.

#### Commencement Information

**I6** S. 47 wholly in force at 1.4.1993 see s. 67(2) and S.I. 1992/2975, art. 2(2), **Sch.**

#### Marginal Citations

**M11** 1986 c. 33.

**M12** 1985 c. 68.

**M13** 1986 c. 33.

## 48 Inspection of premises used for provision of community care services.

- (1) Any person authorised by the Secretary of State may at any reasonable time enter and inspect any premises (other than premises in respect of which any person is registered under the <sup>M14</sup>Registered Homes Act 1984) in which community care services are or are proposed to be provided by a local authority, whether directly or under arrangements made with another person.
- (2) Any person inspecting any premises under this section may—
- (a) make such examination into the state and management of the premises and the facilities and services provided therein as he thinks fit;
  - (b) inspect any records (in whatever form they are held) relating to the premises, or any person for whom community care services have been or are to be provided there; and
  - (c) require the owner of, or any person employed in, the premises to furnish him with such information as he may request.
- (3) Any person exercising the power to inspect records conferred by subsection (2)(b) above—
- (a) shall be entitled at any reasonable time to have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records in question; and
  - (b) may require—
    - (i) the person by whom or on whose behalf the computer is or has been so used; or
    - (ii) any person having charge of or otherwise concerned with the operation of the computer, apparatus or material,
 

to give him such reasonable assistance as he may require.



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- (4) Any person inspecting any premises under this section—
  - (a) may interview any person residing there in private—
    - (i) for the purpose of investigating any complaint as to those premises or the community care services provided there, or
    - (ii) if he has reason to believe that the community care services being provided there for that person are not satisfactory; and
  - (b) may examine any such person in private.
- (5) No person may—
  - (a) exercise the power conferred by subsection (2)(b) above so as to inspect medical records; or
  - (b) exercise the power conferred by subsection (4)(b) above, unless he is a registered medical practitioner and, in the case of the power conferred by subsection (2)(b) above, the records relate to medical treatment given at the premises in question.
- (6) Any person exercising the power of entry under subsection (1) above shall, if so required, produce some duly authenticated document showing his authority to do so.
- (7) Any person who intentionally obstructs another in the exercise of that power shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (8) In this section “local authority” and “community care services” have the same meanings as in section 46 above.

#### Commencement Information

**I7** S. 48 wholly in force at 1.4.1991 see s. 67(2) and S.I. 1990/2218, art. 2, Sch. .

#### Marginal Citations

**M14** 1984 c. 23.

## 49 Transfer of staff from health service to local authorities.

- (1) In connection with arrangements relating to community care services made by virtue of this Part of this Act, the Secretary of State may make regulations with respect to the transfer to employment by a local authority of persons previously employed by a National Health Service body.
- (2) Regulations under this section may also make provision with respect to the return to employment by a National Health Service body of a person to whom the regulations previously applied on his transfer (whether from that or another National Health Service body) to employment by a local authority.
- (3) Without prejudice to the generality of subsections (1) and (2) above, regulations under this section may make provision with respect to—
  - (a) the terms on which a person is to be employed by a local authority or National Health Service body;
  - (b) the period and continuity of a person’s employment for the purposes of the <sup>M15</sup>Employment Protection (Consolidation) Act 1978;

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- (c) superannuation benefits; and
  - (d) the circumstances in which, if a person declines an offer of employment made with a view to such a transfer or return as is referred to in subsection (1) or subsection (2) above and then ceases to be employed by a National Health Service body or local authority, he is not to be regarded as entitled to benefits in connection with redundancy.
- (4) In this section—
- (a) “local authority” and “community care services” have the same meaning as in section 46 above; and
  - (b) “National Health Service body” means a Regional, District or Special Health Authority or a National Health Service trust.
- (5) Regulations under this section may make different provision with respect to different cases or descriptions of case, including different provision for different areas.

#### Commencement Information

**I8** S. 49 wholly in force at 10.12.1992 see s. 67(2) and S.I. 1992/2975, art. 2(1)(a).

#### Marginal Citations

**M15** 1978 c. 44.

## 50 Powers of the Secretary of State as respects social services functions of local authorities.

After section 7 of the <sup>M16</sup>Local Authority Social Services Act 1970 (local authorities to exercise social services functions under guidance of the Secretary of State) there shall be inserted the following sections—

### “7A Directions by the Secretary of State as to exercise of social services functions.

- (1) Without prejudice to section 7 of this Act, every local authority shall exercise their social services functions in accordance with such directions as may be given to them under this section by the Secretary of State.
- (2) Directions under this section—
  - (a) shall be given in writing; and
  - (b) may be given to a particular authority, or to authorities of a particular class, or to authorities generally.

### 7B Complaints procedure.

- (1) The Secretary of State may by order require local authorities to establish a procedure for considering any representations (including any complaints) which are made to them by a qualifying individual, or anyone acting on his behalf, in relation to the discharge of, or any failure to discharge, any of their social services functions in respect of that individual.
- (2) In relation to a particular local authority, an individual is a qualifying individual for the purposes of subsection (1) above if—

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- (a) the authority have a power or a duty to provide, or to secure the provision of, a service for him; and
  - (b) his need or possible need for such a service has (by whatever means) come to the attention of the authority.
- (3) A local authority shall comply with any directions given by the Secretary of State as to the procedure to be adopted in considering representations made as mentioned in subsection (1) above and as to the taking of such action as may be necessary in consequence of such representations.
- (4) Local authorities shall give such publicity to any procedure established pursuant to this section as they consider appropriate.

### **7C Inquiries.**

- (1) The Secretary of State may cause an inquiry to be held in any case where, whether on representations made to him or otherwise, he considers it advisable to do so in connection with the exercise by any local authority of any of their social services functions (except in so far as those functions relate to persons under the age of eighteen).
- (2) Subsections (2) to (5) of section 250 of the Local Government Act 1972 (powers in relation to local inquiries) shall apply in relation to an inquiry under this section as they apply in relation to an inquiry under that section.

### **7D Default powers of Secretary of State as respects social services functions of local authorities.**

- (1) If the Secretary of State is satisfied that any local authority have failed, without reasonable excuse, to comply with any of their duties which are social services functions (other than a duty imposed by or under the Children Act 1989), he may make an order declaring that authority to be in default with respect to the duty in question.
- (2) An order under subsection (1) may contain such directions for the purpose of ensuring that the duty is complied with within such period as may be specified in the order as appear to the Secretary of State to be necessary.
- (3) Any such direction shall, on the application of the Secretary of State, be enforceable by mandamus.

### **7E Grants to local authorities in respect of social services for the mentally ill.**

The Secretary of State may, with the approval of the Treasury, make grants out of money provided by Parliament towards any expenses of local authorities incurred— (a) in connection with the exercise of their social services functions in relation to persons suffering from mental illness; or (b) in making payments in accordance with directions given by the Secretary of State to voluntary organisations which provide care and services to persons who are, have been, or are likely to become dependant upon alcohol or drugs.”

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#### **Commencement Information**

**I9** S. 50 wholly in force at 1.4.1991 see s. 67(2) and S.I. 1990/2218, art. 2, **Sch.**

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#### **Marginal Citations**

**M16** 1970 c. 42.

**Status:**

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