



# National Health Service and Community Care Act 1990

## 1990 CHAPTER 19

### PART III

#### COMMUNITY CARE: ENGLAND AND WALES

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

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

- (1) In section 21(1) of the 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”.
- (2) For subsections (1) and (1A) of section 26 of that Act (arrangements for provision of accommodation in premises maintained by voluntary organisations, etc.) there shall be substituted—
- “(1) Subject to subsection (1A) of this section, arrangements under section 21 of this Act may include arrangements with any voluntary organisation or other person, being an organisation or person who—
- (a) manages a residential care home within the meaning of Part I of the Registered Homes Act 1984, and
  - (b) is registered under that Part in respect of the home or is not required to be so registered by virtue of the home being a small home or being managed or provided by an exempt body,

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for the provision of accommodation in that home.

(1A) Arrangements under section 21 of this Act for the provision of residential accommodation where nursing care is provided must be arrangements made with a voluntary organisation or other person, being an organisation or person managing premises—

- (a) in respect of which the organisation or other person is registered under Part II of the Registered Homes Act 1984, or
- (b) which do not fall within the definition of a nursing home in section 21 of that Act by reason only of being maintained or controlled by an exempt body,

for the provision of accommodation in those premises.

(1B) Subject to subsection (1C) below no such arrangements as mentioned in subsection (1A) of this section may be made by an authority for the accommodation of any person without the consent of such District Health Authority as may be determined in accordance with regulations.

(1C) Subsection (1B) above does not apply to the making by an authority of temporary arrangements for the accommodation of any person as a matter of urgency; but, as soon as practicable after any such temporary arrangements have been made, the authority shall seek the consent required by subsection (1B) above to the making of appropriate arrangements for the accommodation of the person concerned.

(1D) No arrangements may be made by virtue of this section with a person who has been convicted of an offence under any provision of the Registered Homes Act 1984 (or any enactment replaced by that Act) or regulations made under section 16 or section 26 of that Act (or under any corresponding provisions of any such enactment).”

(3) At the end of subsection (2) of that section (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 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;

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- (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 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”.