



Welfare Reform Act 2009

2009 CHAPTER 24

PART 2 **E+W+S**

DISABLED PEOPLE: RIGHT TO CONTROL PROVISION OF SERVICES

Supplementary

45 **The appropriate authority by which regulations under section 41 are made** **E+W+S**

- (1) Subsection (2) has effect to determine the appropriate authority by which regulations under section 41 may be made.
- (2) The Secretary of State is the appropriate authority, except that—
 - (a) in relation to provision that would be within the legislative competence of the Scottish Parliament if it were included in an Act of that Parliament, the Scottish Ministers are the appropriate authority,
 - (b) in relation to provision that would be within the legislative competence of the National Assembly for Wales if it were included in ^[F1]an Act of the Assembly], the Welsh Ministers are the appropriate authority,
 - (c) in relation to provision that does not fall within paragraph (b) and relates to relevant services in Wales with respect to which functions are exercisable—
 - (i) by a Minister of the Crown, and
 - (ii) by the Welsh Ministers, the First Minister or the Counsel General, the Secretary of State or the Welsh Ministers are the appropriate authority, and
 - (d) in relation to provision that does not fall within paragraph (b) or (c) and relates to relevant services in Wales with respect to which functions are exercisable by the Welsh Ministers, the First Minister or the Counsel General, the Welsh Ministers are the appropriate authority.
- (3) Any power of the Secretary of State to make regulations under section 41—
 - (a) is exercisable only with the consent of the Treasury; and
 - (b) does not include power to make provision—

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- (i) removing or modifying any function of the Welsh Ministers, the First Minister or the Counsel General, or
 - (ii) conferring or imposing any function on the Welsh Ministers, the First Minister or the Counsel General.
- (4) Any power of the Welsh Ministers to make regulations under section 41 by virtue of subsection (2)(c) or (d) does not include power to make provision—
- (a) removing or modifying any function of a Minister of the Crown, or
 - (b) conferring or imposing any function on a Minister of the Crown.
- (5) In this section—
- “the Assembly Act provisions” has the meaning given by section 103(8) of the Government of Wales Act 2006 (c. 32);
 - “the Counsel General” means the Counsel General to the Welsh Assembly Government;
 - “the First Minister” means the First Minister for Wales;
 - “Minister of the Crown” includes the Treasury.

Textual Amendments

- F1** Words in s. 45(2)(b) substituted (1.4.2018) by [Wales Act 2017 \(c. 4\), s. 71\(4\), Sch. 6 para. 82](#) (with [Sch. 7 paras. 1, 6](#)); [S.I. 2017/1179, reg. 3\(r\)](#)

46 Regulations under section 41: supplementary provisions E+W+S

- (1) Any power to make regulations under section 41 may be exercised—
- (a) in relation to all cases to which it extends,
 - (b) in relation to those cases subject to specified exceptions, or
 - (c) in relation to any specified cases or classes of case.
- (2) Any such power may be exercised so as to make, as respects the cases in relation to which it is exercised—
- (a) the full provision to which the power extends or any less provision (whether by way of exception or otherwise);
 - (b) the same provision for all cases in relation to which it is exercised, or different provision for different cases or different classes of case or different provision as respect the same case or class of case for different purposes;
 - (c) any such provision either unconditionally or subject to any specified condition.
- (3) Where any such power is expressed to be exercisable for alternative purposes, it may be exercised in relation to the same case for all or any of those purposes.
- (4) Any such power includes power—
- (a) to make such incidental, supplementary, consequential or saving provision as the authority making the regulations considers to be necessary or expedient;
 - (b) to provide for a person to exercise a discretion in dealing with any matter;
 - (c) to amend or repeal an enactment whenever passed or made.

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47 Consultation **E+W+S**

- (1) Before laying before Parliament (or the Scottish Parliament or the National Assembly for Wales) a draft of a statutory instrument containing regulations under section 41, the appropriate authority must—
 - (a) publish draft regulations in such manner as it thinks fit, and
 - (b) invite representations to be made to it about the draft, during a specified period of not less than 12 weeks, by persons appearing to it to be affected by the proposals.
- (2) In this section “the appropriate authority” is to be read in accordance with section 45(2).

48 Power to repeal exclusion of community care services **E+W+S**

- (1) An order under this subsection may repeal section 39(6)(a).
- (2) The power to make an order under subsection (1) is exercisable—
 - (a) in relation to England, by the Secretary of State with the consent of the Treasury, and
 - (b) in relation to Wales, by the Welsh Ministers.
- (3) The power of the Secretary of State to make an order under subsection (1) is exercisable only if—
 - (a) the Secretary of State has previously made a pilot scheme that relates to community care services, and has in accordance with section 44(8) published a report on the operation of the pilot scheme, or
 - (b) the Secretary of State has previously given directions under a relevant enactment with a view to enabling disabled people to exercise (either in England generally or in a specified area or areas) greater choice in relation to, and greater control over, the way in which community care services are provided to or for them.
- (4) In subsection (3)—
 - (a) “pilot scheme” has the meaning given by section 44(3);
 - (b) “relevant enactment” means—
 - (i) section 7A of the Local Authority Social Services Act 1970 (directions by Secretary of State as to exercise of social services functions), or
 - (ii) section 47(4) of the National Health Service and Community Care Act 1990 (directions by Secretary of State in relation to assessment of needs for community care services).
- (5) The Scottish Ministers may by order repeal section 39(7)(a).
- (6) An order under subsection (1) or (5) may make any consequential modification of section 39(5) or 44(4).
- (7) The power to make an order under subsection (1) or (5) is exercisable by statutory instrument.

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49 Regulations and orders: control by Parliament or other legislature **E+W+S**

- (1) The Secretary of State may not make a statutory instrument containing regulations under section 41 or an order under section 48(1) unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (2) The Scottish Ministers may not make a statutory instrument containing regulations under section 41 or an order under section 48(5) unless a draft of the instrument has been laid before, and approved by a resolution of, the Scottish Parliament.
- (3) The Welsh Ministers may not make a statutory instrument containing regulations under section 41 or an order under section 48(1) unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.

50 Interpretation of Part 2 **E+W+S**

In this Part—

“community care services” means—

- (a) [^{F2}in relation to England, services under Part 1 of the Care Act 2014 or section 117 of the Mental Health Act 1983;
- (aa) [^{F3}in relation to Wales, services under Part 4 of the Social Services and Well-being (Wales) Act 2014 or section 117 of the Mental Health Act 1983;]
- (b) in relation to Scotland, community care services as defined by section [^{F4}12A(8)] of the Social Work (Scotland) Act 1968 (c. 49);

“employment” includes self-employment;

“enactment” means an enactment contained in, or in an instrument made under—

- (a) an Act of Parliament,
- (b) an Act of the Scottish Parliament, or
- (c) a Measure or Act of the National Assembly for Wales;

“prescribed” means specified in, or determined in accordance with, regulations under section 41;

“relevant authority” has the meaning given by section 40;

“relevant services” has the meaning given by section 39.]

Textual Amendments

- F2** Words in s. 50 substituted (1.4.2015) by [The Care Act 2014 and Children and Families Act 2014 \(Consequential Amendments\) Order 2015 \(S.I. 2015/914\)](#), art. 1(2), **Sch. para. 94** (with arts. 1(3), 3)
- F3** Words in s. 50 substituted (E.W) (6.4.2016) by [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), regs. 2(1), **271**
- F4** Word in s. 50 substituted (S.) (1.4.2015) by [The Public Bodies \(Joint Working\) \(Scotland\) Act 2014 \(Consequential Modifications and Saving\) Order 2015 \(S.S.I. 2015/157\)](#), art. 1(1), **sch. para. 9**

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 4 para. 9(3)(b) repealed by [2009 c. 24 Sch. 7 Pt. 1](#)