

PERSONAL CARE AT HOME ACT 2010

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Personal Care at Home Act 2010 which received Royal Assent on 8 April 2010. They have been prepared by the Department of Health in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. Local authorities providing certain social care services have the power under section 17 of the Health and Social Services and Social Security Adjudications Act 1983 to recover such charges as they consider reasonable in respect of those services. Those services include personal care.
4. The Secretary of State has power under section 15 of the Community Care (Delayed Discharges etc.) Act 2003 (“the 2003 Act”) to make regulations requiring certain social care services to be provided by local authorities free of charge. However the regulations cannot require some of those services to be provided free for a period longer than six weeks. These services include personal care provided to a person in any place where that person is living.
5. The Act enables regulations to be made requiring personal care to be provided free to persons in their own homes for an indefinite period. It does this by amending the regulation-making power in the 2003 Act to restrict the six-week limitation to personal care provided to people living in certain types of accommodation.

Territorial application: Wales

6. The Act has the effect of broadening the regulation-making powers of Welsh Ministers under the 2003 Act. This is because under section 16 of the 2003 Act the Welsh Ministers have the same powers to make regulations as the Secretary of State does under section 15. As the Act is making provision for a matter within the competence of the National Assembly for Wales, a Legislative Consent Motion is being sought in the Assembly.

COMMENTARY ON SECTIONS

Section 1: Free provision of personal care at home

7. **Section 1** makes amendments to section 15 of the 2003 Act together with consequential amendments to other primary legislation.
8. **Subsection (2)** amends section 15(4)(b) of the 2003 Act to remove the six-week restriction on the free provision of personal care, except in so far as this relates to the

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provision of personal care to someone living in accommodation that an establishment provides together with personal care. This would cover, for example, care homes but not sheltered accommodation or extra care housing. Extra care housing is an arrangement whereby a person is provided with community care services in specialist accommodation designed for the needs of older people, which may often be found or arranged for them by the care provider. The accommodation and care provided in such accommodation are not provided together but under separate arrangements made by the individual.

9. *Subsection (3)* provides that the six-week limitation in section 15(4)(b) does not apply to the provision of personal care under an adult placement scheme. An adult placement scheme involves placing an adult in need (such as a disabled person) with a carer who might share their home with the person. It is similar to fostering and the purpose is to enable the person in need to live as independently as possible.
10. *Subsection (4)* provides that the regulations under section 15 can, in particular, impose on a local authority functions relating to eligibility for the free provision of personal care, and can refer to guidance under section 7 of the Local Authority Social Services Act 1970. The functions which could be imposed might, for example, include the setting of criteria for the free provision and the determination of eligibility by reference to those criteria and any criteria that the Secretary of State sets.
11. *Subsection (4)* also inserts new subsection (4C) into section 15 of the 2003 Act. The new provision will ensure that a local authority has the power to make a person's eligibility for free personal care conditional on the person undergoing a process designed to maximise the person's ability to live independently. This could include a short period of intensive and focussed support to maximise the person's independent living skills.
12. *Subsection (4)* also inserts a new subsection (4D). The effect of it is that a person is to be regarded for the purposes of section 15 as living at home if the place where the person lives is not accommodation provided under Part 3 of the 1948 Act or accommodation of the kind described in the amended subsection (4)(b) (a care home, for example).
13. *Subsection (5)* inserts new subsection (4E) into section 15 of the 2003 Act. This provides that section 21(5) of the National Assistance Act 1948 ("the 1948 Act") applies for the purposes of section 15 of the 2003 Act. Section 21(5) of the 1948 Act provides that references to accommodation provided under Part 3 of that Act include references to accommodation as well as board and other services, amenities and requisites provided in connection with the accommodation (except where in the opinion of the authority managing the premises their provision is unnecessary). As a result, references in section 15 to the provision of accommodation under Part 3 of the 1948 Act will include the provision of personal care.
14. *Subsection (6)* makes a consequential amendment to the Local Authority Social Services Act 1970 to include functions conferred on local authorities under sections 15 and 16 of the 2003 Act in the list of social services functions in Schedule 1 to that Act. Section 7 of that Act requires local authorities to act under the general guidance of the Secretary of State in the exercise of their social services functions.
15. *Subsections (7) and (8)* make consequential amendments to the 1948 Act and the Health and Social Services and Social Security Adjudications Act 1983.

Section 2: Extent and short title

16. **Section 2** makes provision as to the extent of the provisions of the Act. See paragraph 6 above for further information on the application of the Act to Wales.

COMMENCEMENT

17. The provisions of the Act will come into force by commencement order made under the affirmative resolution procedure.

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HANSARD REFERENCES

18. The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

HOUSE OF COMMONS

<i>Stage</i>	<i>Date</i>	<i>Hansard Reference</i>
Introduction	25 November 2009	Vol. 501 Col 559
Second Reading	14 December 2009	Vol. 502 Col 664
Committee, and Third Reading	12 January 2010	Vol. 503 Col 563
Consideration of Lords Amendments	30 March 2010	Vol. 508 Col 778

HOUSE OF LORDS

<i>Stage</i>	<i>Date</i>	<i>Hansard Reference</i>
Introduction	13 January 2010	Vol. 716 Col 509
Second Reading	1 February 2010	Vol. 717 Col 37
Committee – First Sitting	22 February 2010	Vol. 717 Col 887
Committee – Second Sitting	1 March 2010	Vol. 717 Col 1194
Report	17 March 2010	Vol. 718 Col 603
Third Reading	24 March 2010	Vol. 718 Col 958
Consideration of Commons Reasons	8 April 2010	Vol. 718 Col 1667

Royal Assent – 8 April 2010	House of Lords Hansard Vol. 718 Col 1738
	House of Commons Hansard Vol. 508 Col 1256