

CARE ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Care and Support

Miscellaneous

Section 75 – After-care under the Mental Health Act 1983

446. *Section 75* clarifies the meaning of after-care and makes minor amendments to section 117 of the Mental Health Act 1983 (the 1983 Act). The changes remove anomalies in determining the responsible local authority in relation to the provision of after-care services under the 1983 Act to people who have been detained in hospital for treatment of mental disorder and the provision of care and support services to which the Act applies. This section also inserts new section 117A into the 1983 Act. This allows regulations to be made which enable a person to express a preference for particular accommodation to be provided under section 117. Schedule 4 makes a number of modifications to the application of certain provisions of the Act to enable direct payments to continue to be made in respect of section 117 services.
447. *Subsection (1)* of section 75 clarifies that local authorities may commission as well as provide section 117 services. Consequent upon the amendments made by subsection (1), *subsection (2)* preserves the effect of section 117(2D) that a clinical commissioning group is under a duty to commission rather than provide section 117 services.
448. *Subsections (3)* and *(4)* apply the ordinary residence rules to section 117 in order to avoid anomalies which can currently arise where one local authority is responsible for commissioning section 117 services whilst another commissions any other services a person may need. They apply consistent after-care ordinary residence rules in England and Wales, in particular, in relation to which health body and local authority are responsible for commissioning after-care services. One benefit of this will be to empower the Secretary of State to resolve disputes as to which authority is liable to commission section 117 services, which can currently only be resolved through the courts. The Secretary of State and the Welsh Ministers will publish arrangements for determining cross-border disputes.
449. *Subsection (5)* inserts a definition of “after-care services” for the purposes of section 117. It makes clear that section 117 services must meet a need arising from or related to the person’s mental disorder. Additionally, the purpose of these services must be to reduce the risk of deterioration in the person’s mental condition and, accordingly, to reduce the risk of the person’s re-admission to hospital for treatment for mental disorder.
450. The definition of after-care services is nevertheless broad. For example, after-care can encompass health, social care and employment services, supported accommodation and services to meet the person’s wider social, cultural and spiritual needs, if these services meet a need that arises directly from or is related to the particular patient’s mental disorder, and help to reduce the risk of a deterioration in the patient’s mental condition.

451. *Subsection (6)* inserts a new section 117A into the 1983 Act. This empowers the Secretary of State to make regulations to place a duty on a local authority to enable a person who qualifies for accommodation under section 117 to live in accommodation of their choice, provided that conditions specified in the regulations are met. This may involve the person themselves or another person paying some or all of the additional cost.
452. *Subsection (7)* provides that a local authority may exercise its duty under section 117 by making direct payments, and for that purpose Part 1 of Schedule 4 has effect.
453. As a consequence of the amendments to section 117 as it applies to Wales, *subsections (8), (9) and (10)* amend the Social Services and Well-being (Wales) Act 2014 (“the Wales Act”). Subsection (8) inserts a new section 53(11) in the Wales Act to provide that a local authority in Wales may discharge its duty under section 117 by making direct payments, and subsection (9) inserts a new Schedule A1 to the Wales Act for that purpose. Subsection (10) inserts a new section 194(4A) in the Wales Act to provide that an adult will be treated as ordinarily resident in the area of the local authority in England or Wales in which that person is being provided with accommodation under section 117 of the Mental Health Act 1983. *Subsection (11)* updates the references to legislation in section 117(2C) under which direct payments for mental health after-care services may be made.
454. *Subsection (12)* provides that the changes to the commissioning responsibility made by subsections (3) and (4) will not apply where a person is already in receipt of section 117 services when these changes come into force. The current authority will remain responsible for commissioning those services for as long as the person concerned continues to need them.