



Health and Social Care Act 2001

2001 CHAPTER 15

PART 4

SOCIAL CARE

Nursing care

49 Exclusion of nursing care from community care services

- (1) Nothing in the enactments relating to the provision of community care services shall authorise or require a local authority, in or in connection with the provision of any such services, to—
- (a) provide for any person, or
 - (b) arrange for any person to be provided with,
- nursing care by a registered nurse.
- (2) In this section “nursing care by a registered nurse” means any services provided by a registered nurse and involving—
- (a) the provision of care, or
 - (b) the planning, supervision or delegation of the provision of care,
- other than any services which, having regard to their nature and the circumstances in which they are provided, do not need to be provided by a registered nurse.

Preserved rights

50 Preserved rights: transfer to local authorities of responsibilities as to accommodation

- (1) The following provisions, namely—
- (a) section 26A of the National Assistance Act 1948 (c. 29) (which prevents local authorities in England or Wales providing residential accommodation for persons who were in such accommodation on 31st March 1993), and

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- (b) section 86A of the Social Work (Scotland) Act 1968 (c. 49) (which makes corresponding provision for Scotland), shall cease to have effect on the appointed day.
- (2) For the purposes of this section a “qualifying person” is—
- (a) (in relation to any time before the appointed day) a person to whom section 26A(1) or section 86A(1) applies; or
 - (b) (in relation to any later time) a person to whom either of those sections applied immediately before that day.
- (3) Where a qualifying person is immediately before the appointed day ordinarily resident in relevant premises in the area of a local authority (“the responsible authority”), that authority shall secure that—
- (a) as from that day, or
 - (b) as soon thereafter as is reasonably practicable,
- the person is provided with such community care services with respect to his accommodation as appear to the authority to be appropriate having regard to his needs as assessed under section 47(1)(a) of the 1990 Act (assessment of needs for community care services in England or Wales) or section 12A(1)(a) of the 1968 Act (corresponding provision for Scotland).
- (4) Each local authority shall accordingly—
- (a) use their best endeavours to identify every person ordinarily resident in relevant premises in their area who is a qualifying person; and
 - (b) carry out such a programme of assessments under section 47(1)(a) or 12A(1)
 - (a) in respect of persons so identified as appears to the authority to be required for the purpose of enabling them to discharge their duty under subsection (3) in relation to such persons.
- (5) Where a person—
- (a) is a qualifying person immediately before the appointed day, and
 - (b) is provided by the responsible authority with any community care services with respect to his accommodation in accordance with subsection (3),
- his existing arrangements shall, by virtue of this subsection, terminate on the date as from which he is provided with those services.
- (6) Where any such person is not provided with any such services as from the appointed day, any liability of his to make any payment under his existing arrangements in respect of any period (or part of a period) falling within the period beginning with the appointed day and ending with—
- (a) the date as from which he is provided with any such services, or
 - (b) the date on which he notifies (or is in accordance with regulations to be treated as notifying) the responsible authority that he does not wish to be provided with any such services,
- shall instead be a liability of the responsible authority.
- (7) However, the responsible authority may, in respect of any payment made by them in pursuance of subsection (6), recover from the person such amount (if any) as may be prescribed; and any such amount shall be so recoverable in accordance with section 56 of the 1948 Act as if it were an amount due to the authority under that Act.

- (8) The provisions of subsections (3) to (7) do not apply, to such extent as may be prescribed, in relation to any person falling within any prescribed description of persons.
- (9) Regulations may also—
- (a) prescribe the circumstances in which persons are to be treated as ordinarily resident in any premises for the purposes of this section;
 - (b) for the purpose of prescribing any such amount as is mentioned in subsection (7), provide for any provision made by or under section 22 or 26 of the 1948 Act to apply with or without modifications.
- (10) In this section—
- “the appointed day” means the day appointed under section 70 for the coming into force of subsection (1);
 - “existing arrangements”, in relation to a person, means the arrangements for the provision of accommodation in the relevant premises mentioned in subsection (3), together with any arrangements for the provision of any services or facilities in connection with that accommodation;
 - “prescribed” means prescribed by regulations;
 - “relevant premises”—
 - (a) in relation to England or Wales, has the same meaning as in section 26A of the 1948 Act;
 - (b) in relation to Scotland, has the same meaning as in section 86A of the 1968 Act.
 - “the responsible authority” shall be construed in accordance with subsection (3).

51 Preserved rights: disclosure of information

- (1) For the purposes of this section a “claimant” is—
- (a) (in relation to any time before the appointed day) a person who is ordinarily resident in relevant premises and has a preserved right by virtue of which enhanced payments are being made to or in respect of him by way of income support or jobseeker’s allowance, or
 - (b) (in relation to any later time) a person who fell within paragraph (a) immediately before that day.
- (2) Any information—
- (a) held by, or by a person providing services to, the Secretary of State about a claimant, and
 - (b) relating to income support or jobseeker’s allowance,
- may be supplied, for qualifying purposes, to the local authority in whose area the relevant premises referred to in subsection (1) are situated or to any person providing services to, or authorised to exercise functions of, the authority.
- (3) Where information relating to a claimant is supplied to any authority or person (“the recipient”) in accordance with subsection (2), the information may be supplied by the recipient, for qualifying purposes—
- (a) to any local authority appearing to the recipient to be providing the claimant with community care services with respect to his accommodation; or

- (b) to any person providing services to, or authorised to exercise functions of, any such local authority.
- (4) In subsections (2) and (3) “qualifying purposes”, in relation to information relating to a claimant, means—
- (a) purposes connected with the performance of functions under section 50 in relation to the claimant, or
 - (b) other purposes connected with the termination of his preserved right in consequence of section 52(1), or
 - (c) (in subsection (2)) any further supply of the information under subsection (3).
- (5) Where information relating to a particular person is supplied to any authority or person in accordance with subsection (2) or (3), section 123 of the Social Security Administration Act 1992 (c. 5) (unauthorised disclosure of information relating to particular persons) shall apply in relation to the disclosure of the information by—
- (a) the recipient of the information, or
 - (b) any officer or employee of the recipient,
- without lawful authority (within the meaning of that section) as it applies to any disclosure of information to which subsection (1) of that section applies.
- (6) In this section—
- “the appointed day”, “ordinarily resident” and “relevant premises” have the same meaning as they have for the purposes of section 50;
 - “preserved right” means a preserved right within the meaning of the Income Support (General) Regulations 1987 (S.I. 1987/1967).

52 Preserved rights: alignment of social security benefits

- (1) The Secretary of State shall so exercise his powers under—
- (a) section 135(1) of the Social Security Contributions and Benefits Act 1992 (c. 4) (applicable amount in relation to income-related benefits), and
 - (b) section 4(5) of the Jobseekers Act 1995 (c. 18) (amount payable by way of jobseeker’s allowance),
- as to secure that any special provision made in exercise of those powers as respects income support or jobseeker’s allowance payable to or in respect of persons who have preserved rights ceases to have effect on the appointed day.
- (2) In this section—
- “the appointed day” means the day appointed under section 70 for the coming into force of section 50(1);
 - “preserved rights” means preserved rights within the meaning of the Income Support (General) Regulations 1987.

Measures to increase availability of Part 3 accommodation

53 Disregarding of resources when determining need for residential accommodation

In section 21 of the 1948 Act (duties of local authorities to provide accommodation), for subsections (2A) and (2B) there shall be substituted—

“(2A) In determining for the purposes of paragraph (a) or (aa) of subsection (1) of this section whether care and attention are otherwise available to a person, a local authority shall disregard so much of the person’s resources as may be specified in, or determined in accordance with, regulations made by the Secretary of State for the purposes of this subsection.

(2B) In subsection (2A) of this section the reference to a person’s resources is a reference to his resources within the meaning of regulations made for the purposes of that subsection.”

54 Funding by resident etc. of more expensive accommodation

(1) Regulations may make provision for and in connection with the making, in respect of the provision of Part 3 accommodation, of additional payments—

- (a) by persons for whom such accommodation is provided (“residents”); or
- (b) by other persons (including persons liable to maintain residents by virtue of section 42 of the 1948 Act).

(2) In this section “additional payments”, in relation to a resident, means payments which—

- (a) are made for the purpose of meeting all or part of the difference between the actual cost of his Part 3 accommodation and the amount that the local authority providing it would usually expect to pay in order to provide Part 3 accommodation suitable for a person with the assessed needs of the resident; and
- (b) (in the case of additional payments by the resident) are made out of such of his resources as may be specified in, or determined in accordance with, regulations under subsection (1);

and for this purpose “resources” has the meaning given by such regulations.

(3) In this Part “Part 3 accommodation” means accommodation provided under sections 21 to 26 of the 1948 Act.

55 Power for local authorities to take charges on land instead of contributions

(1) Where a person (“the resident”)—

- (a) is availing himself of Part 3 accommodation provided by a local authority, or is proposing to do so, and
- (b) is liable, or would be liable, to pay for the accommodation (whether at the full standard rate determined in accordance with section 22(2) or 26(2) of the 1948 Act or at any lower rate),

the local authority may enter into a deferred payment agreement with the resident.

(2) The relevant authority may by directions require local authorities, where—

- (a) they provide or are to provide Part 3 accommodation for a person falling within subsection (1) (“the resident”), and
 - (b) any conditions specified in the directions are satisfied,
- to enter into a deferred payment agreement with the resident.

(3) A “deferred payment agreement” is an agreement whereby—

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- (a) during the exempt period the resident will not be required to make payment to the authority of any relevant contributions in respect of periods (or parts of periods) falling within the exempt period, but
 - (b) the total amount of the relevant contributions shall become payable to the authority on the day after the date on which the exempt period ends, and
 - (c) the resident will grant the authority a charge in their favour in respect of any land specified in the agreement in which he has a beneficial interest (whether legal or equitable) for the purpose of securing the payment to the authority of the total amount payable to them as mentioned in paragraph (b).
- (4) “The exempt period”, in relation to a deferred payment agreement, is the period beginning with the time when the agreement takes effect and ending—
- (a) 56 days after the date of the resident’s death, or
 - (b) with any earlier date which, in accordance with the agreement, the resident has specified in a notice given by him to the authority for the purposes of subsection (5)(b).
- (5) The provisions of any deferred payment agreement and any such charge as is mentioned in subsection (3)(c)—
- (a) shall be determined by the authority in accordance with any directions given by the relevant authority; but
 - (b) shall secure that the agreement and any such charge may be terminated by notice given to the authority by the resident on payment of the full amount which he is liable to pay as mentioned in subsection (3)(a) down to the date of the payment.
- (6) Where a deferred payment agreement is in force in respect of the resident—
- (a) no interest shall accrue at any time on or before the date on which the exempt period ends in respect of any sum which he is liable to pay as mentioned in subsection (3)(a); but
 - (b) as from the day after that date, any such sum shall bear interest at such reasonable rate as the relevant authority may direct or, if no such directions are given, as the authority may determine;
- and accordingly any charge granted in pursuance of subsection (3)(c) shall secure payment to the authority of any interest falling due by virtue of paragraph (b) above.
- (7) Any reference in this section to relevant contributions is a reference to so much of the payments which the resident is liable to pay to an authority for Part 3 accommodation (including any payments which are additional payments for the purpose of section 54) as may be specified, or determined in accordance with, regulations made for the purposes of this subsection.
- (8) Any directions given by the relevant authority under this section shall be given to local authorities generally.

56 Cross-border placements

- (1) Regulations may make provision for and in connection with authorising a local authority to make arrangements under section 21 of the 1948 Act for a person to be provided with residential accommodation in Scotland, Northern Ireland, any of the Channel Islands or the Isle of Man.
- (2) Regulations under this section may, in particular, make provision—

- (a) specifying conditions which must be satisfied before a local authority make any arrangements in pursuance of the regulations in respect of a person;
- (b) for the application of provisions of the 1948 Act in relation to—
 - (i) any such arrangements, or
 - (ii) the person in respect of whom any such arrangements are made, with or without modifications.

Direct payments

57 Direct payments

- (1) Regulations may make provision for and in connection with requiring or authorising the responsible authority in the case of a person of a prescribed description who falls within subsection (2) to make, with that person's consent, such payments to him as they may determine in accordance with the regulations in respect of his securing the provision of the service mentioned in paragraph (a) or (b) of that subsection.
- (2) A person falls within this subsection if a local authority ("the responsible authority") have decided—
 - (a) under section 47 of the 1990 Act (assessment by local authorities of needs for community care services) that his needs call for the provision by them of a particular community care service (within the meaning of section 46 of that Act), or
 - (b) under section 2(1) of the Carers and Disabled Children Act 2000 (c. 16) (services for carers) to provide him with a particular service under that Act.
- (3) Regulations under this section may, in particular, make provision—
 - (a) specifying circumstances in which the responsible authority are not required or authorised to make any payments under the regulations to a person, whether those circumstances relate to the person in question or to the particular service mentioned in paragraph (a) or (b) of subsection (2);
 - (b) for any payments required or authorised by the regulations to be made to a person by the responsible authority ("direct payments") to be made to that person ("the payee") as gross payments or alternatively as net payments;
 - (c) for the responsible authority to make for the purposes of subsection (4) or (5) such determination as to—
 - (i) the payee's means, and
 - (ii) the amount (if any) which it would be reasonably practicable for him to pay to the authority by way of reimbursement or contribution, as may be prescribed;
 - (d) as to the conditions falling to be complied with by the payee which must or may be imposed by the responsible authority in relation to the direct payments (and any conditions which may not be so imposed);
 - (e) specifying circumstances in which the responsible authority—
 - (i) may or must terminate the making of direct payments,
 - (ii) may require repayment (whether by the payee or otherwise) of the whole or part of the direct payments;
 - (f) for any sum falling to be paid or repaid to the responsible authority by virtue of any condition or other requirement imposed in pursuance of the regulations to be recoverable as a debt due to the authority;

- (g) displacing functions or obligations of the responsible authority with respect to the provision of the service mentioned in subsection (2)(a) or (b) only to such extent, and subject to such conditions, as may be prescribed;
 - (h) authorising direct payments to be made to any prescribed person on behalf of the payee.
- (4) For the purposes of subsection (3)(b) “gross payments” means payments—
- (a) which are made at such a rate as the authority estimate to be equivalent to the reasonable cost of securing the provision of the service concerned; but
 - (b) which may be made subject to the condition that the payee pays to the responsible authority, by way of reimbursement, an amount or amounts determined under the regulations.
- (5) For the purposes of subsection (3)(b) “net payments” means payments—
- (a) which are made on the basis that the payee will himself pay an amount or amounts determined under the regulations by way of contribution towards the cost of securing the provision of the service concerned; and
 - (b) which are accordingly made at such a rate below that mentioned in subsection (4)(a) as reflects any such contribution by the payee.
- (6) Regulations under this section shall provide that, where direct payments are made in respect of a service which, apart from the regulations, would be provided under section 117 of the Mental Health Act 1983 (c. 20) (after-care)—
- (a) the payments shall be made at the rate mentioned in subsection (4)(a); and
 - (b) subsection (4)(b) shall not apply.
- (7) Regulations made for the purposes of subsection (3)(a) may provide that direct payments shall not be made in respect of the provision of residential accommodation for any person for a period in excess of a prescribed period.
- (8) In this section “prescribed” means specified in or determined in accordance with regulations under this section.

58 Direct payments in respect of children

For section 17A of the Children Act 1989 (c. 41) there shall be substituted—

“17A Direct payments

- (1) The Secretary of State may by regulations make provision for and in connection with requiring or authorising the responsible authority in the case of a person of a prescribed description who falls within subsection (2) to make, with that person’s consent, such payments to him as they may determine in accordance with the regulations in respect of his securing the provision of the service mentioned in that subsection.
- (2) A person falls within this subsection if he is—
 - (a) a person with parental responsibility for a disabled child,
 - (b) a disabled person with parental responsibility for a child, or
 - (c) a disabled child aged 16 or 17,
 and a local authority (“the responsible authority”) have decided for the purposes of section 17 that the child’s needs (or, if he is such a disabled child, his needs)

call for the provision by them of a service in exercise of functions conferred on them under that section.

- (3) Subsections (3) to (5) and (7) of section 57 of the 2001 Act shall apply, with any necessary modifications, in relation to regulations under this section as they apply in relation to regulations under that section.
- (4) Regulations under this section shall provide that, where payments are made under the regulations to a person falling within subsection (5)—
- (a) the payments shall be made at the rate mentioned in subsection (4)(a) of section 57 of the 2001 Act (as applied by subsection (3)); and
 - (b) subsection (4)(b) of that section shall not apply.
- (5) A person falls within this subsection if he is—
- (a) a person falling within subsection (2)(a) or (b) and the child in question is aged 16 or 17, or
 - (b) a person who is in receipt of income support, working families' tax credit or disabled person's tax credit under Part 7 of the Social Security Contributions and Benefits Act 1992 (c. 4) or of an income-based jobseeker's allowance.
- (6) In this section—
- “the 2001 Act” means the Health and Social Care Act 2001;
 - “disabled” in relation to an adult has the same meaning as that given by section 17(11) in relation to a child;
 - “prescribed” means specified in or determined in accordance with regulations under this section (and has the same meaning in the provisions of the 2001 Act mentioned in subsection (3) as they apply by virtue of that subsection).”

Supplementary

59 Interpretation of Part 4

- (1) In this Part—
- “the 1948 Act” means the National Assistance Act 1948 (c. 29);
 - “the 1968 Act” means the Social Work (Scotland) Act 1968 (c. 49);
 - “community care services”—
 - (a) in relation to England or Wales, has the meaning given by section 46(3) of the 1990 Act (local authority plans for community care services);
 - (b) in relation to Scotland, has the same meaning as in the 1968 Act; - “local authority”—
 - (a) in relation to England or Wales, has the meaning given by section 46(3) of the 1990 Act;
 - (b) in relation to Scotland, has the same meaning as in the 1968 Act; - “Part 3 accommodation” means (in accordance with section 54(3)) accommodation provided under sections 21 to 26 of the 1948 Act.
- (2) In this Part any reference to Part 3 accommodation or to a local authority providing such accommodation shall be construed in accordance with section 21(5) or (6) of the 1948 Act, as the case may be.

Status: This is the original version (as it was originally enacted).

- (3) In this Part any reference (however expressed) to services provided by a local authority includes services which the authority arrange to provide, where they have power to do so.