



# Welfare Reform Act 2009

## 2009 CHAPTER 24

### PART 2 **E+W+S**

#### DISABLED PEOPLE: RIGHT TO CONTROL PROVISION OF SERVICES

##### *Introductory*

#### **38 Purpose of Part 2 **E+W+S****

The purpose of this Part is to enable disabled people aged 18 or over to exercise greater choice in relation to, and greater control over, the way in which relevant services (as defined by section 39) are provided to or for them, in cases where the provision of the relevant services is a function of a relevant authority (as defined by section 40).

#### **39 Relevant services **E+W+S****

- (1) In this Part “relevant services” means services—
  - (a) which are provided to or for the benefit of a disabled person (“P”) (whether or not in connection with P’s disability), and
  - (b) which relate to one or more of the following matters.
- (2) Those matters are—
  - (a) the provision of further education for P;
  - (b) facilitating the undertaking by P of further education or higher education;
  - (c) the provision of training for P;
  - (d) securing employment for P;
  - (e) facilitating P’s continued employment;
  - (f) enabling P to live independently or more independently in P’s home;
  - (g) the provision of residential accommodation for P;
  - (h) enabling P to overcome barriers to participation in society.

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- (3) Relevant services also include the provision by or on behalf of a relevant authority to or for the benefit of a disabled person of grants or loans relating to one or more of the matters mentioned in subsection (2).
- (4) Relevant services do not include excluded services (provision as to direct payments relating to excluded services being made by other legislation).
- (5) Subsection (4) is subject to section 44(4) (which relates to pilot schemes) and to section 48 (which gives power to repeal the exclusion of community care services).
- (6) In relation to England and Wales, the following are excluded services—
- (a) community care services,
  - <sup>F1</sup>(b) .....
  - (c) services provided under section 17 of the Children Act 1989 (c. 41) (provision of services for children in need, their families and others) [<sup>F2</sup>or sections 37 to 39 of the Social Services and Well-being (Wales) Act 2014 (meeting care and support needs of children)] .
- (7) In relation to Scotland, the following are excluded services—
- (a) community care services, and
  - (b) services provided under section 22(1) of the Children (Scotland) Act 1995 (c. 36) (promotion of welfare of children in need).
- (8) In this section “further education” and “higher education”—
- (a) in relation to England and Wales, have the same meaning as in the Education Act 1996 (c. 56);
  - (b) in relation to Scotland, have the same meaning as in the Further and Higher Education (Scotland) Act 1992 (c. 37).

#### Textual Amendments

- F1** S. 39(6)(b) omitted (6.4.2016) by virtue of [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), regs. 2(1), **270(a)**
- F2** Words in s. 39(6)(c) inserted (6.4.2016) by [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), regs. 2(1), **270(b)**

#### 40 Relevant authority **E+W+S**

- (1) In this Part “relevant authority” means—
- (a) a Minister of the Crown or government department;
  - (b) the Scottish Ministers;
  - (c) the Welsh Ministers;
  - (d) a local authority;
  - (e) a person or body whose functions are exercised on behalf of the Crown;
  - (f) any other body which meets conditions A and B below.
- (2) Condition A is that the body is established by virtue of Her Majesty's prerogative or by an enactment or is established in any other way by a Minister of the Crown acting as such or by a government department.
- (3) Condition B is that the body's revenues derive wholly or mainly from public funds.

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- (4) In subsection (1)(d) “local authority” means—
- (a) a local authority within the meaning of the Local Government Act 1972 (c. 70),
  - (b) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39),
  - (c) the Greater London Authority,
  - (d) the Common Council of the City of London in its capacity as a local authority, or
  - (e) the Council of the Isles of Scilly.
- (5) In subsection (2) “Minister of the Crown” includes the Scottish Ministers and the Welsh Ministers.

*Power to make regulations*

**41 Power to make provision enabling exercise of greater choice and control** E+W  
+S

- (1) The appropriate authority (as defined by section 45) may by regulations made by statutory instrument make any provision that would in the opinion of the authority making the regulations serve the purpose of this Part.
- (2) Regulations under this section may, in particular, make provision for and in connection with requiring a relevant authority to take the following steps in relation to a disabled person (“P”) for whom it is obliged, or has decided, to provide, or arrange the provision of, relevant services—
- (a) to inform P of the right to control conferred by virtue of the regulations, of the value of the relevant services to which P is entitled and of the choices available to P by virtue of the regulations;
  - (b) to work with P to determine the outcomes to be achieved by the provision of the relevant services;
  - (c) to work with P to prepare a plan (a “support plan”) setting out how those outcomes will be achieved;
  - (d) to work with P to review and revise the support plan in prescribed circumstances;
  - (e) if P so requests, to make payments to P in respect of P securing the provision of an equivalent service;
  - (f) to the extent that P chooses to receive relevant services provided or arranged by the relevant authority, to provide, or arrange for them to be provided, in accordance with P’s support plan as far as it is reasonably practicable to do so.
- (3) Regulations under this section may also—
- (a) specify who is or is not to be treated as a disabled person for any purpose of the regulations;
  - (b) make provision about the circumstances in which a relevant authority is to be taken to have decided to provide a relevant service to a person;
  - (c) make provision as to matters to which a relevant authority must, or may, have regard when making a decision for the purposes of a provision of the regulations;

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- (d) make provision as to steps which a relevant authority must, or may, take before, or after, the relevant authority makes a decision for the purposes of a provision of the regulations (including provision requiring the relevant authority to review its decision).
- (4) Regulations under this section may enable or require the disclosure of information by one relevant authority to another for prescribed purposes of the regulations.
- (5) Regulations under this section may, for the purpose of this Part—
  - (a) vary the conditions attached to any power of a relevant authority to provide financial assistance to disabled people;
  - (b) vary the conditions attached to any power of a relevant authority to provide financial assistance to another relevant authority in connection with the provision of relevant services to disabled people by the other authority.
- (6) Regulations under this section may require a relevant authority exercising any function under the regulations to have regard to any guidance given from time to time by the appropriate authority.

#### 42 **Provision that may be made about direct payments** E+W+S

- (1) In this section “direct payments regulations” means regulations under section 41 making provision by virtue of subsection (2)(e) of that section and “direct payments” means payments made by a relevant authority under the regulations.
- (2) Direct payments regulations relating to a relevant service (“the qualifying service”) of a relevant authority (“the providing authority”) may in particular—
  - (a) specify circumstances in which the providing authority is or is not required to comply with a request for direct payments to be made under the regulations, whether those circumstances relate to the disabled person or to the qualifying service;
  - (b) make provision about the manner in which a request for direct payments is to be made;
  - (c) make provision enabling a disabled person to require a providing authority to assess the amount of the payments to which the person would be entitled if the person were to request the authority to make them;
  - (d) enable a disabled person to require a providing authority to comply with a request to provide direct payments in place of the qualifying service (or its provision at certain times or in certain circumstances) while providing, or continuing to provide, other relevant services (or providing, or continuing to provide, the qualifying service at other times or in other circumstances);
  - (e) make provision displacing functions or obligations of the providing authority with respect to the provision of the qualifying service (whether arising under any enactment, under any trust or otherwise) to such extent and subject to such conditions as may be prescribed.
- (3) Direct payments regulations must include provision excluding any duty of a providing authority to comply with a request for direct payments, or a class of such requests, if compliance with the request, or with requests falling within that class, would in all the circumstances impose an unreasonable financial burden on the providing authority.
- (4) Direct payments regulations may—

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- (a) make provision for and in connection with requiring or authorising the providing authority to make direct payments to the disabled person or such other person as the authority may determine (“the payee”) in accordance with the regulations in respect of the person securing the provision of the equivalent service;
  - (b) make provision as to the conditions falling to be complied with by the payee in relation to the direct payments;
  - (c) prescribe circumstances in which the providing authority may or must terminate the making of direct payments;
  - (d) prescribe circumstances in which the providing authority may require repayment (whether by the payee or otherwise) of the whole or any part of the direct payments;
  - (e) make provision for any sum falling to be paid or repaid to the providing 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;
  - (f) prescribe circumstances in which any sum is to cease to be payable by virtue of paragraph (d);
  - (g) make provision authorising direct payments to be made to a prescribed person on behalf of the disabled person.
- (5) For the purposes of subsection (4)(b), the conditions that are to be taken to be conditions in relation to direct payments include, in particular, conditions relating to—
- (a) what is or is not to be regarded as an equivalent service,
  - (b) the securing of the provision of the equivalent service,
  - (c) the provider of the service,
  - (d) the person to whom the payments are made in respect of the provision of the service, or
  - (e) the provision of the service.

#### 43 Exercise of rights on behalf of persons who lack capacity **E+W+S**

- (1) Regulations under section 41 may make provision for and in connection with enabling any request or consent for the purposes of the regulations (including any request or consent relating to payments by virtue of subsection (2)(e) of that section) to be made or given on behalf of a disabled person who falls within subsection (2) by a person of a prescribed description.
- (2) A person falls within this subsection—
- (a) in relation to England and Wales, if the person lacks capacity, within the meaning of the Mental Capacity Act 2005 (c. 9), in relation to the decision concerned, and
  - (b) in relation to Scotland, if the person is incapable, within the meaning of the Adults with Incapacity (Scotland) Act 2000 (asp 4), in relation to that decision.

#### 44 Pilot schemes **E+W+S**

- (1) Regulations to which this subsection applies may be made so as to have effect for a specified period not exceeding 36 months.
- (2) Subsection (1) applies to regulations under section 41 that are made with a view to ascertaining—

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- (a) the extent to which their provisions contribute to achieving the purpose of this Part,
  - (b) the extent of any beneficial effects on the lives of the disabled people affected, and
  - (c) the extent of any financial burden imposed on the relevant authorities to which the regulations relate.
- (3) Regulations which, by virtue of subsection (1), are to have effect for a limited period are referred to in this section as a “pilot scheme”.
- (4) Subsections (6)(a) and (7)(a) of section 39 do not restrict the power to make a pilot scheme; and accordingly a pilot scheme may relate to community care services.
- (5) A pilot scheme may provide that its provisions are to apply only in relation to—
- (a) one or more specified areas;
  - (b) one or more specified classes of person;
  - (c) persons selected—
    - (i) by reference to prescribed criteria, or
    - (ii) on a sampling basis.
- (6) A pilot scheme may make consequential or transitional provision with respect to the cessation of the scheme on the expiry of the specified period.
- (7) A pilot scheme may be replaced by a further pilot scheme making the same or similar provision.
- (8) The appropriate authority which made a pilot scheme must prepare and publish a report on the operation of the scheme.

### *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 <sup>F3</sup>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

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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—
    - (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

- F3** 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—

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- (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.

#### 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).



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(7) The power to make an order under subsection (1) or (5) is exercisable by statutory instrument.

#### 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) [<sup>F4</sup>in relation to England, services under Part 1 of the Care Act 2014 or section 117 of the Mental Health Act 1983;
- (aa) [<sup>F5</sup>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 [<sup>F6</sup>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

- F4** 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)
- F5** 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**
- F6** 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](#)