

2014 No. 2670

MENTAL HEALTH, ENGLAND

SOCIAL CARE, ENGLAND

**The Care and Support and After-care (Choice of
Accommodation) Regulations 2014**

Made - - - - - *22nd October 2014*

Laid before Parliament *30th October 2014*

Coming into force in accordance with regulation 1(2)

The Secretary of State makes these Regulations in exercise of the powers conferred by section 117A(1), (2) and (4) of the Mental Health Act 1983(a) and sections 30(1) and (2) and 125(7) and (8) of the Care Act 2014(b).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Care and Support and After-care (Choice of Accommodation) Regulations 2014.

(2) These Regulations come into force as follows—

- (a) for the purposes of a case to which regulation 4(1)(a) applies, immediately after section 75(6) of the Care Act 2014 comes fully into force(c); and
- (b) for all other purposes, immediately after section 30 of the Care Act 2014 comes fully into force(d).

(3) In these Regulations—

“the 1983 Act” means the Mental Health Act 1983;

“the Act” means the Care Act 2014;

“personal care” means—

- (a) physical assistance given to a person in connection with—
 - (i) eating or drinking (including the administration of parenteral nutrition),
 - (ii) toileting (including in relation to the process of menstruation),
 - (iii) washing or bathing,
 - (iv) dressing,

(a) 1983 c.20. Section 117A is inserted by section 75(6) of the Care Act 2014.

(b) 2014 c.23; *see* section 125(1) for the powers to make regulations.

(c) Section 75(6) was commenced for the purpose of making regulations by S.I. 2014/2473.

(d) Section 30 was commenced for the purpose of making regulations by S.I. 2014/2473.

- (v) oral care,
- (vi) the care of skin, hair and nails (with the exception of nail care provided by a chiropodist or podiatrist); or
- (b) the prompting, together with supervision, of a person in relation to the performance of any of the activities listed in paragraph (a), where that person is unable to make a decision for themselves in relation to performing the activity without such prompting or supervision;

“preferred accommodation” means the accommodation for which the person for whom it is to be provided expresses a preference in accordance with—

- (a) in a case to which regulation 4 applies, regulation 4(1)(b);
- (b) in any other case, regulation 2(1)(b).

Choice of accommodation

2.—(1) Where—

- (a) a local authority(a) is going to meet needs under sections 18 to 20 of the Act by providing or arranging for the provision of accommodation of a specified type in England;
- (b) the adult(b) for whom the accommodation is to be provided expresses a preference for particular accommodation (identifiable by reference to its address or provider) of a specified type; and
- (c) the conditions in regulation 3 are met,

the local authority must provide or arrange for the provision of the preferred accommodation in accordance with these Regulations.

(2) The specified types of accommodation are—

- (a) care home accommodation (see regulation 6);
- (b) shared lives scheme accommodation (see regulation 7); or
- (c) supported living accommodation (see regulation 8).

Conditions for provision of preferred accommodation

3.—(1) The following conditions must be met for the provision of preferred accommodation under regulation 2—

- (a) the care and support plan(c) for the adult specifies that the adult’s needs are going to be met by the provision of accommodation of a specified type;
- (b) the preferred accommodation is of the same type as that specified in the adult’s care and support plan;
- (c) the preferred accommodation is suitable to the adult’s needs;
- (d) the preferred accommodation is available; and
- (e) where the preferred accommodation is not provided by the local authority, the provider of the accommodation agrees to provide the accommodation to the adult on the local authority’s terms.

(2) If the cost to the local authority of providing or arranging for the provision of the preferred accommodation is greater than the amount specified in the adult’s personal budget(d) that relates to the provision of accommodation of that type, the additional cost condition in regulation 5 must also be met(e).

(a) See section 1(4) of the Act for the meaning of “local authority”; the definition is limited to local authorities in England.

(b) See section 2(8) of the Act for the meaning of “adult”.

(c) See section 25 of the Act for the meaning of “care and support plan”.

(d) See section 26 of the Act for the meaning of “personal budget”.

(e) See section 30(3) of the Act for the meaning of “additional cost”.

Application to after-care

4.—(1) Where—

- (a) a local authority is, in discharging its duty under section 117(2) of the 1983 Act, providing or arranging for the provision of accommodation in England for a person;
- (b) the person expresses a preference for particular accommodation (identifiable by reference to its address or provider); and
- (c) the conditions in paragraph (2) are met,

the local authority must provide or arrange for the provision of the preferred accommodation in accordance with these Regulations.

(2) The following conditions must be met for the provision of preferred accommodation under paragraph (1)—

- (a) the person must be aged 18 or over;
- (b) the accommodation which the local authority is providing or arranging must be of a specified type;
- (c) the preferred accommodation must be of the same type that the local authority has decided to provide or arrange;
- (d) the preferred accommodation must be suitable to meet the person's needs;
- (e) the preferred accommodation must be available;
- (f) where the preferred accommodation is not provided by the local authority, the provider of the accommodation must agree to provide the accommodation to the person on the local authority's terms; and
- (g) where the cost to the local authority of providing or arranging for the provision of the preferred accommodation is greater than the amount that the local authority would expect to be the usual cost of providing or arranging for the provision of accommodation of that kind, the additional cost conditions in paragraph (3) must also be met.

(3) The additional cost conditions referred to in paragraph (2)(g) are that—

- (a) the local authority is satisfied that the person for whom the accommodation is to be provided or another person ("the payer"), is willing and able to pay the additional cost of the preferred accommodation for the period during which the local authority expects to meet needs by providing or arranging for the provision of that accommodation; and
- (b) the payer enters into a written agreement with the authority in which the payer agrees to pay the additional cost.

(4) In a case to which paragraph (3) applies, the local authority must comply with the requirements of regulation 5(2), (3)(a) and (c) to (f), and (4).

(5) For the purposes of this regulation the additional cost that is to be met by the payer may be less than the full amount of the additional cost referred to in section 117A(3) of the 1983 Act, if the local authority agrees that a lesser amount should be paid.

(6) The specified types of accommodation are those referred to in regulation 2(2) but for the purposes of this regulation any reference to "an adult" in regulations 7 and 8 should be read as a reference to "a person".

The additional cost condition

5.—(1) The additional cost condition is met if—

- (a) the local authority is satisfied that—
 - (i) a person other than the adult, or
 - (ii) in a case to which paragraph (5) applies, the adult,

("the payer") is able and willing to pay the additional cost of the preferred accommodation for the period during which the local authority expects to meet the adult's needs by providing or arranging for the provision of that accommodation; and

- (b) the payer enters a written agreement with the local authority in which the payer agrees to pay the additional cost.

(2) The local authority must provide the payer with access to sufficient information and advice to enable the payer to understand the terms of the proposed written agreement before entering into it.

(3) The written agreement must include—

- (a) the additional cost;
- (b) the amount specified in the adult's personal budget in relation to the provision of accommodation;
- (c) the frequency of payments;
- (d) details of the person to whom the payments are to be made;
- (e) provision for review of the agreement;
- (f) provisions about the matters specified in paragraph (4).

(4) The specified matters are—

- (a) the consequences of ceasing to make payments;
- (b) the effect of increases in charges made by the provider of the preferred accommodation;
- (c) the effect of changes in the payer's financial circumstances.

(5) The local authority may not agree with the adult for whom the accommodation is to be provided for that adult to pay the additional cost unless—

- (a) paragraph 2 of Schedule 2 to the Care and Support (Charging and Assessment of Resources) Regulations 2014^(a) (the 12 week property disregard) applies to that adult; or
- (b) the adult and the local authority agree to enter into a deferred payment agreement in accordance with the Care and Support (Deferred Payment) Regulations 2014^(b) in respect of the additional cost.

(6) For the purposes of this regulation the additional cost that is to be met by the payer may be less than the full amount of the additional cost referred to in section 30(3) of the Act, if the local authority agrees that a lesser amount should be paid.

Care home accommodation

6. For the purposes of these Regulations, "care home accommodation" means accommodation in a care home within the meaning given by section 3 of the Care Standards Act 2000^(c).

Shared lives scheme accommodation

7. For the purposes of these Regulations, "shared lives scheme accommodation" means accommodation which is provided for an adult by a shared lives carer, and for this purpose—

"shared lives carer" means an individual who, under the terms of a shared lives agreement, provides, or intends to provide, personal care for adults together with, where necessary, accommodation in the individual's home;

"shared lives agreement" means an agreement entered into between a person carrying on a shared lives scheme and an individual for the provision, by that individual, of personal care to an adult together with, where necessary, accommodation in the individual's home; and

(a) S.I. 2014/2672.

(b) S.I. 2014/2671.

(c) 2000 c.14; section 3 was amended by the Health and Social Care Act 2008 (c.14), section 95 and paragraph 4 of Schedule 5.

“shared lives scheme” means a scheme carried on (whether or not for profit) by a local authority or other person for the purposes of—

- (a) recruiting and training shared lives carers;
- (b) making arrangements for the placing of adults with shared lives carers; and
- (c) supporting and monitoring placements.

Supported living etc

8.—(1) For the purposes of these Regulations, “supported living accommodation” means—

- (a) accommodation in premises which are specifically designed or adapted for occupation by adults with needs for care and support to enable them to live as independently as possible; and
- (b) accommodation which is provided—
 - (i) in premises which are intended for occupation by adults with needs for care and support (whether or not the premises are specifically designed or adapted for that purpose), and
 - (ii) in circumstances in which personal care is available if required.

(2) The accommodation referred to in paragraph (1)(a) does not include adapted premises where the adult had occupied those premises as their home before the adaptations were made.

(3) For the purposes of paragraph (1)(b)(ii) personal care may be provided by a person other than the person who provides the accommodation.

Refusal to provide preferred accommodation

9. A local authority must give the adult its written reasons for a refusal to provide or arrange for the provision of preferred accommodation.

Signed by authority of the Secretary of State for Health.

Norman Lamb
Minister of State
Department of Health

22nd October 2014

EXPLANATORY NOTE

(This note is not part of the Regulations)

Under Part 1 of the Care Act 2014 (“the Act”) a local authority may meet care and support needs by providing accommodation, for example in a care home. Regulations under section 30 of the Act may provide that where an adult’s needs are to be met by the provision of specified types of accommodation, and the adult has expressed a preference for particular accommodation of that type, the local authority must meet the adult’s preference, provided that specified conditions are met. These Regulations make such provision.

Regulations 2, 6, 7 and 8 of these Regulations specify the types of accommodation to which the obligation to meet the adult’s preference applies.

Regulation 3 specifies the conditions which must apply in order for the local authority to be required to meet the adult’s preference for accommodation.

Regulation 4 requires a local authority, which in discharging its duty to provide or arrange for the provision of mental health after-care under section 117 of the Mental Health Act 1983, is providing or arranging for the provision of a specified type of accommodation to an adult, to

provide or for arrange the provision of the adult's preferred accommodation of that type, if specified conditions are met.

Regulation 5 sets out the "additional cost condition". Where the cost of an adult's preferred accommodation is more than the amount specified for the accommodation in the adult's personal budget (under section 26 of the Act), the local authority is not required to provide that accommodation unless the additional cost condition is met.

Regulation 9 provides that a local authority must give written reasons for a refusal to provide preferred accommodation.

A separate impact assessment has not been prepared for these Regulations. These Regulations are part of a package of legislative measures and the relevant impact assessment can be requested via careactconsultation@dh.gsi.gov.uk or from the Department of Health, Richmond House, 79 Whitehall, London SW1A 2NS and is available online at <https://www.gov.uk/government/organisations/department-of-health>.

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