



# National Health Service and Community Care Act 1990

## 1990 CHAPTER 19

### PART III

#### COMMUNITY CARE: ENGLAND AND WALES

##### *Provision of accommodation and welfare services*

#### **42 Provision of accommodation and welfare services: agency arrangements**

- (1) In section 21(1) of the National Assistance Act 1948 (duties of local authorities to provide accommodation for persons aged 18 or over who are in need of care and attention by reason of age, infirmity or other circumstances)—
- (a) in paragraph (a) for the word “infirmity” there shall be substituted “illness, disability”; and
  - (b) at the end of that paragraph there shall be added “and
    - (aa) residential accommodation for expectant and nursing mothers who are in need of care and attention which is not otherwise available to them”.
- (2) For subsections (1) and (1A) of section 26 of that Act (arrangements for provision of accommodation in premises maintained by voluntary organisations, etc.) there shall be substituted—
- “(1) Subject to subsection (1A) of this section, arrangements under section 21 of this Act may include arrangements with any voluntary organisation or other person, being an organisation or person who—
- (a) manages a residential care home within the meaning of Part I of the Registered Homes Act 1984, and
  - (b) is registered under that Part in respect of the home or is not required to be so registered by virtue of the home being a small home or being managed or provided by an exempt body,

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for the provision of accommodation in that home.

(1A) Arrangements under section 21 of this Act for the provision of residential accommodation where nursing care is provided must be arrangements made with a voluntary organisation or other person, being an organisation or person managing premises—

- (a) in respect of which the organisation or other person is registered under Part II of the Registered Homes Act 1984, or
- (b) which do not fall within the definition of a nursing home in section 21 of that Act by reason only of being maintained or controlled by an exempt body,

for the provision of accommodation in those premises.

(1B) Subject to subsection (1C) below no such arrangements as mentioned in subsection (1A) of this section may be made by an authority for the accommodation of any person without the consent of such District Health Authority as may be determined in accordance with regulations.

(1C) Subsection (1B) above does not apply to the making by an authority of temporary arrangements for the accommodation of any person as a matter of urgency; but, as soon as practicable after any such temporary arrangements have been made, the authority shall seek the consent required by subsection (1B) above to the making of appropriate arrangements for the accommodation of the person concerned.

(1D) No arrangements may be made by virtue of this section with a person who has been convicted of an offence under any provision of the Registered Homes Act 1984 (or any enactment replaced by that Act) or regulations made under section 16 or section 26 of that Act (or under any corresponding provisions of any such enactment).”

(3) At the end of subsection (2) of that section (under which the arrangements must provide for the local authority to make payments in respect of accommodation provided) there shall be added “and subject to subsection (3A) below the local authority shall recover from each person for whom accommodation is provided under the arrangements the amount of the refund which he is liable to make in accordance with the following provisions of this section”.

(4) At the beginning of subsection (3) of that section (liability of persons for whom accommodation is provided to make refunds to the local authority) there shall be inserted “Subject to subsection (3A) below” and after that subsection there shall be inserted the following subsection—

“(3A) Where accommodation in any premises is provided for any person under arrangements made by virtue of this section and the local authority, the person concerned and the voluntary organisation or other person managing the premises (in this subsection referred to as “the provider”) agree that this subsection shall apply—

- (a) so long as the person concerned makes the payments for which he is liable under paragraph (b) below, he shall not be liable to make any refund under subsection (3) above and the local authority shall not be liable to make any payment under subsection (2) above in respect of the accommodation provided for him;

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- (b) the person concerned shall be liable to pay to the provider such sums as he would otherwise (under subsection (3) above) be liable to pay by way of refund to the local authority; and
  - (c) the local authority shall be liable to pay to the provider the difference between the sums paid by virtue of paragraph (b) above and the payments which, but for paragraph (a) above, the authority would be liable to pay under subsection (2) above.”
- (5) At the end of subsection (7) of that section (interpretation) there shall be added
- ““small home” means an establishment falling within section 1(4) of the Registered Homes Act 1984 and “exempt body” means an authority or body constituted by an Act of Parliament or incorporated by Royal Charter”.
- (6) In section 30(1) of that Act (under which a local authority may employ certain voluntary organisations as their agents for the provision of welfare services for disabled persons) for the words from “any voluntary organisation” onwards there shall be substituted “any voluntary organisation or any person carrying on, professionally or by way of trade or business, activities which consist of or include the provision of services for any of the persons to whom section 29 above applies, being an organisation or person appearing to the authority to be capable of providing the service to which the arrangements apply”.
- (7) In section 45(3) of the Health Services and Public Health Act 1968 (under which a local authority may employ certain voluntary organisations as their agents for promoting the welfare of old people) for the words from “any voluntary organisation” onwards there shall be substituted “any voluntary organisation or any person carrying on, professionally or by way of trade or business, activities which consist of or include the provision of services for old people, being an organisation or person appearing to the authority to be capable of promoting the welfare of old people”.

#### **43 Exclusion of powers to provide accommodation in certain cases**

After section 26 of the National Assistance Act 1948 there shall be inserted—

##### **“26A Exclusion of powers to provide accommodation under this Part in certain cases**

- (1) Subject to subsection (3) of this section, no accommodation may be provided under section 21 or 26 of this Act for any person who immediately before the date on which this section comes into force was ordinarily resident in relevant premises.
- (2) In subsection (1) “relevant premises” means—
  - (a) premises in respect of which any person is registered under the Registered Homes Act 1984;
  - (b) premises in respect of which such registration is not required by virtue of their being managed or provided by an exempt body;
  - (c) premises which do not fall within the definition of a nursing home in section 21 of that Act by reason only of their being maintained or controlled by an exempt body; and

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(d) such other premises as the Secretary of State may by regulations prescribe;

and in this subsection “exempt body” has the same meaning as in section 26 of this Act.

(3) The Secretary of State may by regulations provide that, in such cases and subject to such conditions as may be prescribed, subsection (1) of this section shall not apply in relation to such classes of persons as may be prescribed in the regulations.

(4) The Secretary of State shall by regulations prescribe the circumstances in which persons are to be treated as being ordinarily resident in any premises for the purposes of subsection (1) of this section.

(5) This section does not affect the validity of any contract made before the date on which this section comes into force for the provision of accommodation on or after that date or anything done in pursuance of such a contract.”

#### **44 Charges for accommodation provided by local authorities**

(1) Section 22 of the National Assistance Act 1948 (charges for accommodation provided under Part III of that Act to be made at a standard rate fixed by the local authority subject to a minimum weekly rate prescribed under subsection (3)) shall have effect subject to the amendments specified in subsections (2) to (6) below.

(2) In subsection (1) (which relates to a person’s liability to pay for accommodation) for the words from the beginning to “the accommodation” there shall be substituted “Subject to section 26 of this Act, where a person is provided with accommodation under this Part of this Act the local authority providing the accommodation shall recover from him the amount of the payment which he is liable to make”.

(3) In subsection (2) (which requires the authority managing premises to fix the standard rate) after the word “payment” there shall be inserted “which a person is liable to make” and at the end of that subsection there shall be added the words “and that standard rate shall represent the full cost to the authority of providing that accommodation”.

(4) In subsection (3) (which makes provision for people who are unable to pay at the standard rate)—

(a) the words “(disregarding income support)”, and

(b) the words from “Provided that” to the end of the subsection, shall be omitted.

(5) After subsection (4) (under which the Secretary of State may prescribe the minimum sum assumed to be required for a resident’s personal needs in determining the rate payable by him) there shall be inserted—

“(4A) Regulations made for the purposes of subsection (4) of this section may prescribe different sums for different circumstances.”

(6) In subsection (5A) (under which a local authority managing premises in which accommodation is provided for a person may limit the payments required from him for a certain period to the minimum rate prescribed under subsection (3)) for the words “the minimum weekly rate prescribed under subsection (3) above” there shall be substituted “such amount as appears to them reasonable for him to pay”.

- (7) In section 29 of that Act (under subsection (4)(c) of which arrangements may be made for the provision of hostels where persons for whom welfare services are provided under that section may live) after subsection (4) there shall be inserted—

“(4A) Where accommodation in a hostel is provided under paragraph (c) of subsection (4) of this section—

- (a) if the hostel is managed by a local authority, section 22 of this Act shall apply as it applies where accommodation is provided under section 21;
- (b) if the accommodation is provided in a hostel managed by a person other than a local authority under arrangements made with that person, subsections (2) to (4A) of section 26 of this Act shall apply as they apply where accommodation is provided under arrangements made by virtue of that section; and
- (c) sections 32 and 43 of this Act shall apply as they apply where accommodation is provided under sections 21 to 26;

and in this subsection references to “accommodation” include references to board and other services, amenities and requisites provided in connection with the accommodation, except where in the opinion of the authority managing the premises or, in the case mentioned in paragraph (b) above, the authority making the arrangements their provision is unnecessary.”

#### **45 Recovery of charges due to local authorities for accommodation**

- (1) In section 21 of the Health and Social Services and Social Security Adjudication Act 1983 (recovery of sums due to local authority where persons in residential accommodation have disposed of assets) after subsection (3) there shall be inserted—

“(3A) If the Secretary of State so directs, subsection (1) above shall not apply in such cases as may be specified in the direction.”

- (2) In sections 22 and 23 of that Act (which make provision as to arrears of contributions charged on interests in land in England and Wales and in Scotland respectively) after subsection (2) there shall be inserted—

“(2A) In determining whether to exercise their power under subsection (1) above and in making any determination under subsection (2) above, the local authority shall comply with any directions given to them by the Secretary of State as to the exercise of those functions.”

- (3) In section 24 of that Act (interest on sums charged on or secured over interests in land) for subsection (2) there shall be substituted—

“(2) The rate of interest shall be such reasonable rate as the Secretary of State may direct or, if no such direction is given, as the local authority may determine.”