



# Coronavirus Act 2020

## 2020 CHAPTER 7

### PART 1

#### MAIN PROVISIONS

##### *NHS and local authority care and support*

#### **14 NHS Continuing Healthcare assessments: England**

- (1) A relevant body does not have to comply with—
  - (a) the duty imposed by regulation 21(2)(a) of the 2012 Regulations (assessment of eligibility for NHS Continuing Healthcare), or
  - (b) the duty imposed by regulation 21(12) of those Regulations (duty to have regard to National Framework), so far as relating to the duty referred to in paragraph (a).
- (2) Accordingly, regulation 28 of the 2012 Regulations (assessment of need for nursing care) applies only if a relevant body chooses to comply with the duty imposed by regulation 21(2)(a) of those Regulations.
- (3) If, despite subsection (1)(a), an assessment of eligibility for NHS Continuing Healthcare is nevertheless carried out as mentioned in regulation 21(2)(a) of the 2012 Regulations, the relevant body must comply with the duty imposed by regulation 21(3) of those Regulations (duty to ensure assessment is carried out before certain other steps are taken).
- (4) An NHS trust does not have to comply with—
  - (a) the duty imposed by direction 2(2) of the 2013 Directions (assessment of eligibility for NHS Continuing Healthcare), or
  - (b) the duty imposed by direction 2(10) of those Directions (duty to have regard to National Framework), so far as relating to the duty referred to in paragraph (a).
- (5) If, despite subsection (4)(a), an assessment of eligibility for NHS Continuing Healthcare is nevertheless carried out as mentioned in direction 2(2) of the 2013

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Directions, the NHS trust must take reasonable steps to ensure that it is carried out before the NHS trust gives notice as mentioned in direction 2(1) of those Directions.

- (6) Subsections (1) and (4) apply in relation to duties arising before the commencement day as they apply in relation to duties arising on or after that day.
- (7) In subsection (6) “the commencement day”, in relation to subsection (1) or (4), means—
- (a) the day on which that subsection comes into force, or
  - (b) where on any day the operation of the subsection is revived by regulations under section 88(3), that day.
- (8) Regulation 3 of the Care and Support (Discharge of Hospital Patients) Regulations 2014 (S.I. 2014/2823) (contents of assessment notice under paragraph 1(1) of Schedule 3 to the Care Act 2014) has effect as if paragraph (1)(f)(ii) were omitted.
- (9) In this section—
- “the 2012 Regulations” means the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 (S.I. 2012/2996);
- “the 2013 Directions” means the Delayed Discharges (Continuing Care) Directions 2013;
- “NHS trust” means a National Health Service trust in England established under section 25 of the National Health Service Act 2006;
- “relevant body” means—
- (a) a clinical commissioning group established under section 14D of that Act, or
  - (b) the National Health Service Commissioning Board.

## 15 Local authority care and support

Schedule 12 contains provision modifying the powers and duties of local authorities in England and Wales in relation to the provision of care and support.

### Commencement Information

**II** S. 15 in force at 31.3.2020 for E. by [S.I. 2020/388, reg. 2](#)

VALID FROM 05/04/2020

## 16 Duty of local authority to assess needs: Scotland

- (1) A local authority need not comply with a provision mentioned in subsection (2) to the extent that the authority considers that—
- (a) it would not be practical to comply with that provision, or
  - (b) to do so would cause unnecessary delay in providing community care services to any person.
- (2) The provisions are—
- (a) section 12A of the 1968 Act (duty of local authority to assess needs);

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- (b) section 1 of the 2013 Act (general principles regarding provision of social care), insofar as it relates to Part 2 of the 1968 Act.
- (3) A local authority need not comply with a provision mentioned in subsection (4) to the extent that it considers that—
  - (a) it would not be practical to comply with that provision, or
  - (b) to do so would cause unnecessary delay in providing support to any person under section 24 of the 2016 Act (duty to provide support).
- (4) The provisions are—
  - (a) section 6 of the 2016 Act (duty to prepare adult carer support plan);
  - (b) regulation 2(1) of the 2018 Regulations (identification of adult carer's outcomes and needs for support);
  - (c) section 12 of the 2016 Act (duty to prepare young carer statement);
  - (d) regulation 3(1) of the 2018 Regulations (identification of young carer's outcomes and needs for support);
  - (e) section 1 of the 2013 Act, insofar as it relates to Part 2 or 3 of the 2016 Act.
- (5) Subsection (6) applies where, in reliance on subsection (3), a local authority does not comply with regulation 2(1) or 3(1) of the 2018 Regulations in relation to a person.
- (6) Section 24 of the 2016 Act applies in relation to the person as if any reference in that section to a person's identified needs were a reference to the person's needs for support in order to enable the person to provide or continue to provide care for a cared-for person.
- (7) A local authority need not comply with a provision mentioned in subsection (8) to the extent that the authority considers that—
  - (a) it would not be practical to comply with that provision, or
  - (b) to do so would cause unnecessary delay in providing services to any child under section 22(1) of the 1995 Act (promotion of welfare of children in need).
- (8) The provisions are—
  - (a) section 23(3) of the 1995 Act (duty to assess needs of child affected by disability);
  - (b) section 1 of the 2013 Act, insofar as it relates to section 22 or 23 of the 1995 Act.
- (9) A local authority need not comply with section 29(5) of the 1995 Act (duty to assess needs of person who was looked after by the authority) to the extent that the authority considers that—
  - (a) it would not be practical to comply with that provision, or
  - (b) to do so would cause unnecessary delay in providing advice, guidance or assistance to any person under section 29(1) or (5A) of the 1995 Act (after care for person who was looked after by the authority).
- (10) Subsection (11) applies where, in reliance on subsection (9), a local authority does not carry out an assessment under section 29(5) of the 1995 Act in relation to a person who has made an application to the authority under section 29(2) of that Act.
- (11) Section 29(5A) of the 1995 Act applies in relation to the person as if the authority had carried out the assessment.

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- (12) Subsection (1), (3), (7) or (9) applies in relation to a duty arising before the commencement day as it applies in relation to a duty arising on or after that day.
- (13) In subsection (12), “the commencement day”, in relation to a subsection, means—
- (a) the day on which the subsection comes into force, or
  - (b) where on any day the operation of the subsection is revived by regulations under section 88(3), that day.
- (14) In this section and section 17—
- “1968 Act” means the Social Work (Scotland) Act 1968;
  - “1995 Act” means the Children (Scotland) Act 1995;
  - “2013 Act” means the Social Care (Self-directed Support) (Scotland) Act 2013 (asp 1);
  - “2016 Act” means the Carers (Scotland) Act 2016 (asp 9);
  - “2018 Regulations” means the Carers (Scotland) Act 2016 (Adult Carers and Young Carers: Identification of Outcomes and Needs for Support) Regulations 2018 (S.S.I. 2018/109);
  - “cared-for person” is to be construed in accordance with section 1(1) of the 2016 Act;
  - “community care services” has the meaning given by section 12A(8) of the 1968 Act;
  - “local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994.

VALID FROM 05/04/2020

## 17 Section 16: further provision

- (1) The Scottish Ministers may issue guidance to local authorities about the exercise of their functions under the following provisions in consequence of section 16—
- (a) Part 2 of the 1968 Act;
  - (b) sections 22, 23 and 29 of the 1995 Act;
  - (c) sections 25, 26 and 27 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13);
  - (d) section 1 of the 2013 Act;
  - (e) Parts 2 and 3 of the 2016 Act.
- (2) A local authority—
- (a) must have regard to any guidance issued under subsection (1);
  - (b) must comply with such guidance issued under subsection (1) as the Scottish Ministers direct;
  - (c) may disregard, so far as it is inconsistent with guidance issued under subsection (1)—
    - (i) any guidance issued under section 5(1) of the 1968 Act;
    - (ii) a code of practice published under section 274(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003.
- (3) The Scottish Ministers may—

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- (a) from time to time revise any guidance issued under subsection (1);
  - (b) vary or revoke a direction made under subsection (2)(b).
- (4) A local authority must not recover a charge under section 87 of the 1968 Act for—
- (a) community care services provided to a person if, in reliance on section 16(1), the authority did not—
    - (i) comply with section 12A of the 1968 Act before providing the services, or
    - (ii) comply with section 1 of the 2013 Act in relation to the services;
  - (b) services provided to a child under section 22(1) of the 1995 Act if, in reliance on section 16(7), the authority did not—
    - (i) where the services were provided following a request being made to the authority in relation to the child under section 23(3) of the 1995 Act, assess the child's needs for the services before providing them, or
    - (ii) comply with section 1 of the 2013 Act in relation to the services;
  - (c) advice, guidance or assistance provided to a person under section 29(1) or (5A) of the 1995 Act if, in reliance on section 16(9), the local authority did not carry out an assessment of the person's needs under section 29(5) of that Act before providing the advice, guidance or assistance.
- (5) For the purposes of subsection (4), a local authority did not—
- (a) comply with a provision if it only partially complied with the provision;
  - (b) carry out an assessment if it only partially carried out the assessment.
- (6) Nothing in subsection (4) prevents a local authority from recovering charges if—
- (a) the authority provides—
    - (i) services in the circumstances described in paragraph (a) or (b) of subsection (4), or
    - (ii) advice, guidance or assistance in the circumstances described in paragraph (c) of that subsection,
  - (b) the authority subsequently complies with the provisions mentioned in paragraph (a), (b) or (c) of that subsection (as the case may be) in relation to the services or the advice, guidance or assistance, and
  - (c) the charges relate only to the period after the authority so complies.
- (7) Subsection (8) applies where—
- (a) a local authority provides accommodation to a person under Part 2 of the 1968 Act in the circumstances described in paragraph (a) of subsection (4),
  - (b) the authority subsequently complies with the provisions mentioned in that paragraph in relation to the provision of the accommodation, and
  - (c) after it complies with those provisions, the authority continues to provide the accommodation to the person.
- (8) Despite subsections (4)(a) and (6), the authority may recover charges for the provision of the accommodation for any period—
- (a) before the authority complied with the provisions mentioned in subsection (4)(a), and
  - (b) during which the person was a permanent resident.

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- (9) For the purposes of subsection (8), a person is a permanent resident if the person is expected to be provided with accommodation by the authority for a period of more than 52 weeks.
- (10) Subsection (11) applies where—
- (a) any provision of section 16 has had effect for a period, and
  - (b) that period has ended.
- (11) In determining for the purposes of any proceedings whether a local authority has complied with any duty to carry out a relevant assessment within a reasonable period, a court must take into account (among other things) the following factors—
- (a) the length of any period for which any provision of section 16 had effect, and
  - (b) the number of relevant assessments which need to be carried out by the local authority following the end of any such period.
- (12) In subsection (11), “relevant assessment” means—
- (a) an assessment under—
    - (i) section 12A(1)(a) of the 1968 Act;
    - (ii) section 23(3) of the 1995 Act;
    - (iii) section 29(5) of the 1995 Act;
  - (b) the preparation of—
    - (i) an adult carer support plan under section 6 of the 2016 Act;
    - (ii) a young carer statement under section 12 of the 2016 Act.

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