



Disabled Persons (Services, Consultation and Representation) Act 1986

1986 CHAPTER 33

PART I

REPRESENTATION AND ASSESSMENT

1 Appointment of authorised representatives of disabled persons

- (1) In this Act " authorised representative ", in relation to a disabled person, means a person for the time being appointed by or on behalf of that disabled person (in accordance with regulations made under this section) to act as his authorised representative for the purposes of this Act.
- (2) The Secretary of State may by regulations make provision with respect to the appointment of persons to act as the authorised representatives of disabled persons, including provision—
 - (a) for the manner in which the appointment of a person as an authorised representative is to be made ; and
 - (b) for any such appointment to be notified to the relevant local authority (as defined in the regulations) if made otherwise than by that authority.
- (3) Any such regulations—
 - (a) may provide for the parent or guardian of a disabled person under the age of 16 to appoint himself or some other person as the authorised representative of the disabled person (but shall not permit a person under that age himself to appoint a person as his authorised representative);
 - (b) may provide for the appointment of a person as the authorised representative of a disabled person who is a child in the care of a local authority to be made by that authority in such circumstances as may be specified in the regulations;
 - (c) may, in accordance with subsection (4), provide for the appointment of a person as the authorised representative of a disabled person to be made by, or under arrangements made by, a local authority in a case where the

disabled person appears to the authority to be unable to appoint a person as his authorised representative by reason of any mental or physical incapacity ;

- (d) may contain such incidental or supplementary provisions as the Secretary of State thinks fit.

(4) Regulations under paragraph (c) of subsection (3) may make provision—

- (a) for requiring a local authority, for the purpose of enabling them to determine whether a disabled person is unable to appoint a person as his authorised representative as mentioned in that paragraph, to obtain the opinion of a registered medical practitioner ;
- (b) for authorising a local authority, where they determine that a disabled person is so unable, either—
- (i) themselves to appoint a person as the disabled person's authorised representative, or
- (ii) to make with any voluntary organisation, person or persons approved by them for the purpose such arrangements as they think fit for such an appointment to be made by the organisation, person or persons concerned;
- (c) for requiring or authorising a local authority, before determining the question specified in paragraph (a), or (as the case may be) before making any appointment of an authorised representative, or any arrangements, in pursuance of paragraph (b), to consult any of the following, namely—
- (i) a person or persons appointed by them for the purpose, or
- (ii) a person or persons falling within any class or description specified in the regulations ;
- (d) for requiring a local authority, in such circumstances as may be specified in the regulations, to review the case of a disabled person whose authorised representative has been appointed in pursuance of paragraph (b) (whether by the local authority or under any arrangements made by them) for the purpose of determining whether he is still unable to appoint a person as his authorised representative as mentioned in subsection (3)(c).

(5) Subsections (2) to (4) shall apply, with any necessary modifications, in relation to the termination of the appointment of a person as an authorised representative as they apply in relation to the making of such an appointment.

(6) It is hereby declared that any person exercising under Part II of the 1983 Act or Part V of the 1984 Act—

- (a) the functions of the nearest relative of a disabled person, or
- (b) the functions of the guardian of a disabled person received into guardianship under that Part of that Act,

may, if appointed as such in accordance with this section, also act as that person's authorised representative.

2 Rights of authorised representatives of disabled persons

(1) A local authority shall permit the authorised representative of a disabled person, if so requested by the disabled person—

- (a) to act as the representative of the disabled person in connection with the provision by the authority of any services for him in the exercise of any of their functions under the welfare enactments, or

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- (b) to accompany the disabled person (otherwise than as his representative) to any meeting or interview held by or on behalf of the authority in connection with the provision by them of any such services.
- (2) For the purpose of assisting the authorised representative of a disabled person to do any of the things mentioned in subsection (1)(a) and (b) a local authority shall, if so requested by the disabled person—
 - (a) supply to the authorised representative any information, and
 - (b) make available for his inspection any documents,that the disabled person would be entitled to require the authority to supply to him or (as the case may be) to make available for his inspection.
- (3) In relation to a disabled person whose authorised representative has been appointed by virtue of subsection (3) of section 1, subsections (1) and (2) above shall each have effect as follows—
 - (a) if the appointment was made by virtue of subsection (3)(a) of that section, the words " the parent or guardian of " shall be inserted after the words " if so requested by " ; and
 - (b) if the appointment was made by virtue of subsection (3)(b) or (c) of that section, the words " if so requested by the disabled person " shall be omitted.
- (4) A local authority shall not be required by virtue of subsection (1) or (2)—
 - (a) to permit an authorised representative to be present at any meeting or interview or part of a meeting or interview, or
 - (b) to supply any information to an authorised representative or to make any documents available for the inspection of an authorised representative,if the authority are satisfied that to do so would be likely to be harmful to the interests of the disabled person by whom or on whose behalf the representative has been appointed; and in determining that matter the authority shall have regard to any wishes expressed by the disabled person.
- (5) Where a disabled person is residing—
 - (a) in hospital accommodation provided by the Secretary of State under section 3(1)(a) of the 1977 Act or, in Scotland, in hospital accommodation (other than accommodation at a State hospital) provided by the Secretary of State under section 36(1)(a) of the 1978 Act, or
 - (b) in accommodation provided by a local authority under Part III of the 1948 Act or Schedule 8 to the 1977 Act or, in Scotland, under Part IV of the 1968 Act or section 7 of the 1984 Act, or
 - (c) in accommodation provided by a voluntary organisation in accordance with arrangements made by a local authority under section 26 of the 1948 Act or, in Scotland, provided by a voluntary organisation or other persons in accordance with arrangements made by a local authority under section 59(2)(c) of the 1968 Act, or
 - (d) in a residential care home within the meaning of Part I of the Registered Homes Act 1984 or, in Scotland, in an establishment (other than accommodation falling within paragraph (c) above) registered under section 61 of the 1968 Act, or
 - (e) at any place specified by a person having the guardianship of the disabled person under Part II of the 1983 Act or Part V of the 1984 Act,

the disabled person's authorised representative may at any reasonable time visit him there and interview him in private.

- (6) In paragraph (c) of subsection (5) "voluntary organisation" in relation to England and Wales includes a housing association within the meaning of the Housing Associations Act 1985.
- (7) The Secretary of State may, after consulting such bodies representing health authorities or local authorities as appear to him to be appropriate and such other bodies as appear to him to be concerned, provide by order for any of the preceding provisions of this section to have effect (with such modifications as may be prescribed by the order) in relation to—
- (a) the provision of services by health authorities in the exercise of such of their functions under the 1977 Act or the 1978 Act as may be prescribed by the order, or
 - (b) the provision of services by local authorities in the exercise of such of their functions as may be so prescribed.
- (8) An order under subsection (7) may provide for any provision of regulations made under section 1 to have effect for the purposes of the order with such modifications as may be prescribed by the order, and in that event the reference in subsection (1) of that section to regulations made under that section shall be read as a reference to any such regulations as they have effect in accordance with the order.
- (9) In subsection (7)—
- "health authority"—
 - (a) in relation to England and Wales, has the meaning given by section 128(1) of the 1977 Act, and
 - (b) in relation to Scotland, means a Health Board; and
 - "local authority"—
 - (a) in relation to England and Wales, has the meaning given by section 270(1) of the Local Government Act 1972; and
 - (b) in relation to Scotland, means a regional, islands or district council.

3 Assessment by local authorities of needs of disabled persons

- (1) Where—
- (a) on any assessment carried out by them in pursuance of any provision of this Act, or
 - (b) on any other occasion,
- it falls to a local authority to decide whether the needs of a disabled person call for the provision by the authority (in accordance with any of the welfare enactments) of any statutory services for that person, the authority shall afford an opportunity to the disabled person or his authorised representative to make, within such reasonable period as the authority may allow for the purpose, representations to an officer of the authority as to any needs of the disabled person calling for the provision by the authority (in accordance with any of those enactments) of any statutory services for him.
- (2) Where any such representations have been made to a local authority in accordance with subsection (1) or the period mentioned in that subsection has expired without any such representations being made, and the authority have reached a decision on the

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question referred to in that subsection (having taken into account any representations made as mentioned above), the authority shall, if so requested by the disabled person or his authorised representative, supply the person making the request with a written statement—

- (a) either specifying—
 - (i) any needs of the disabled person which in the opinion of the authority call for the provision by them of any statutory services, and
 - (ii) in the case of each such need, the statutory services that they propose to provide to meet that need,
or stating that, in their opinion, the disabled person has no needs calling for the provision by them of any such services ; and
 - (b) giving an explanation of their decision ; and
 - (c) containing particulars of the right of the disabled person or his authorised representative to make representations with respect to the statement under subsection (4).
- (3) Where the local authority do not propose to provide any statutory services to meet a particular need identified in any representations under subsection (1), any statement supplied under subsection (2) must state that fact together with the reasons why the authority do not propose to provide any such services.
- (4) If the disabled person or his authorised representative is dissatisfied with any matter included in the statement supplied under subsection (2), that person may, within such reasonable period as the authority may allow for the purpose, make representations to an officer of the authority with respect to that matter.
- (5) Where any such representations have been made to the authority in accordance with subsection (4), the authority shall—
- (a) consider (or, as the case may be, reconsider) whether any, and (if so) what, statutory services should be provided by them for the disabled person to meet any need identified in the representations ; and
 - (b) inform the disabled person or his authorised representative in writing of their decision on that question and their reasons for that decision.
- (6) Where—
- (a) the disabled person or his authorised representative is unable to communicate, or (as the case may be) be communicated with, orally or in writing (or in each of those ways) by reason of any mental or physical incapacity, or
 - (b) both of those persons are in that position (whether by reason of the same incapacity or not),
- the local authority shall provide such services as, in their opinion, are necessary to ensure that any such incapacity does not—
- (i) prevent the authority from discharging their functions under this section in relation to the disabled person, or
 - (ii) prevent the making of representations under this section by or on behalf of that person.
- (7) In determining whether they are required to provide any services under subsection (6) to meet any need of the disabled person or his authorised representative, and (if so) what those services should be, the local authority shall have regard to any views expressed by either of those persons as to the necessity for any such services or (as appropriate) to any views so expressed as to the services which should be so provided.

- (8) In this section "representations" means representations made orally or in writing (or both).

4 Services under s. 2 of the 1970 Act: duty to consider needs of disabled persons

When requested to do so by—

- (a) a disabled person,
- (b) his authorised representative, or
- (c) any person who provides care for him in the circumstances mentioned in section 8,

a local authority shall decide whether the needs of the disabled person call for the provision by the authority of any services in accordance with section 2(1) of the 1970 Act (provision of welfare services).

5 Disabled persons leaving special education

(1) Where—

- (a) a local education authority have made a statement under section 7 of the Education Act 1981 (statement of child's educational needs) in respect of a child under the age of 14, and
- (b) the statement is still maintained by the authority at whichever is the earlier of the following times, namely—
 - (i) the time when they institute the first annual review of the statement following the child's fourteenth birthday, and
 - (ii) any time falling after that birthday when they institute a re-assessment of his educational needs,

the authority shall at that time require the appropriate officer to give to the authority his opinion as to whether the child is or is not a disabled person.

(2) Where—

- (a) a local education authority make any such statement in respect of a child after he has attained the age of 14, or
- (b) a local education authority maintain any such statement in respect of a child in whose case the appropriate officer has, in pursuance of subsection (1), given his opinion that the child is not a disabled person, but the authority have become aware of a significant change in the mental or physical condition of the child giving them reason to believe that he may now be a disabled person,

the authority shall, at the time of making the statement or (as the case may be) of becoming aware of that change, require the appropriate officer to give to the authority his opinion as to whether the child is or is not a disabled person.

(3) Where an opinion has in pursuance of subsection (1) or (2) been given in the case of a child that he is a disabled person and it subsequently appears to the responsible authority—

- (a) that the child will cease to receive full-time education at school on a particular date and will not subsequently be receiving full-time education at a further education establishment, or
- (b) that the child will cease to receive full-time education at such an establishment on a particular date,

and (in either case) that he will be under the age of 19 on the relevant date, the authority shall give to the appropriate officer written notification for the purposes of subsection (5) of the date referred to in paragraph (a) or (b); and any such notification shall be given not later than the relevant date and not earlier than four months before that date.

In this subsection " the relevant date " means the date falling 8 months before the date referred to in paragraph (a) or (b) above.

- (4) If at any time it appears to a local education authority—
- (a) that a person has on a particular date ceased to receive full-time education as mentioned in paragraph (a) or (b) of subsection (3) or will cease to do so on a particular date falling less than 8 months after that time, and
 - (b) that no notification of that date has been given to the appropriate officer under that subsection with respect to that person, but
 - (c) that, had that or any other authority (as the responsible authority for the time being) been aware of his intentions 8 months or more before that date, they would have been required to give notification of that date under that subsection with respect to him,
- that authority shall, as soon as is reasonably practicable, give to the appropriate officer written notification for the purposes of subsection (5) of that date.
- (5) When the appropriate officer receives a notification given with respect to any person under subsection (3) or (4), he shall (subject to subsections (6) and (7)) make arrangements for the local authority of which he is an officer to carry out an assessment of the needs of that person with respect to the provision by that authority of any statutory services for that person in accordance with any of the welfare enactments, and any such assessment shall be carried out—
- (a) in the case of a notification under subsection (3), not later than the end of the period of 5 months beginning with the date of receipt of the notification, or
 - (b) in the case of a notification under subsection (4), before the date specified in the notification, if reasonably practicable, and in any event not later than the end of the period referred to in paragraph (a) above.
- (6) If—
- (a) a notification has been given to the appropriate officer with respect to any person under subsection (3) or (4), but
 - (b) it subsequently appears to a local education authority that that person will be receiving full-time education (whether at school or at a further education establishment) at a time later than the date specified in the notification,
- the authority shall give written notification of the relevant facts to that officer as soon as is reasonably practicable; and on receiving any such notification that officer shall cease to be required under subsection (5) to make arrangements for the assessment of the needs of the person in question (but without prejudice to the operation of that subsection in relation to any further notification given with respect to that person under subsection (3) or (4)).
- (7) Nothing in subsection (5) shall require the appropriate officer to make arrangements for the assessment of the needs of a person—
- (a) if, having attained the age of 16, he has requested that such arrangements should not be made under that subsection, or
 - (b) if, being under that age, his parent or guardian has made such a request.

(8) Regulations under paragraph 4 of Schedule 1 to the Education Act 1981 (assessments and statements of special educational needs) may, in relation to the transfer of statements made under section 7 of that Act, make such provision as appears to the Secretary of State to be necessary or expedient in connection with the preceding provisions of this section.

(9) In this section—

" the appropriate officer ", in relation to the child or person referred to in the provision of this section in question, means such officer as may be appointed for the purposes of this section by the local authority for the area in which that child or person is for the time being ordinarily resident;

" child " means a person of compulsory school age or a person who has attained that age but not the age of 19 and is registered as a pupil at a school or a further education establishment; and

" the responsible authority "—

(a) in relation to a child at school, means the local education authority who are responsible for the child for the purposes of the Education Act 1981;

(b) in relation to a child at a further education establishment, means the local education authority who were responsible for the child immediately before he ceased to receive full-time education at school;

in each case whether any such opinion as is mentioned in subsection (3) was given to that authority or not;

and other expressions used in this section and in the Education Act 1944 (and not defined in this Act) have the same meaning in this section as in that Act.

(10) This section applies to England and Wales only.

6 Review of expected leaving dates from full-time education of disabled persons

(1) A local education authority shall for the purposes of section 5 above keep under review the dates when the following children are expected to cease to receive full-time education at school or (as the case may be) at a further education establishment, namely—

(a) children for whom that authority are responsible for the purposes of the Education Act 1981 and in the case of each of whom an opinion has been given in pursuance of subsection (1) or (2) of section 5 above that he is a disabled person (whether it was given to that authority or not); and

(b) children at further education establishments for whom that authority were so responsible immediately before they ceased to receive full-time education at school and in the case of each of whom any such opinion has been given as mentioned in paragraph (a).

(2) Subsection (9) of section 5 shall have effect for the purposes of this section as it has effect for the purposes of that section.

7 Persons discharged from hospital

(1) When a person is to be discharged from a hospital after having received medical treatment for mental disorder as an in-patient for a continuous period of not less than 6 months ending with the date on which he is to be discharged, the managers of the hospital shall give written notification of that date—

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- (a) to the health authority in whose district or area it appears to the managers that that person is likely to reside after his discharge (unless the managers are that authority),
- (b) to the local authority in whose area it appears to them that that person is likely then to reside, and
- (c) in the case of a person under the relevant age on that date, to the appropriate officer or authority,

as soon as is reasonably practicable after that date is known to the managers.

(2) Where—

- (a) a person liable to be detained under the 1983 Act or the 1984 Act is discharged from a hospital in pursuance of an order for his immediate discharge made by a Mental Health Review Tribunal or, in Scotland, by the Mental Welfare Commission for Scotland or by the sheriff, and
- (b) he is so discharged after having received medical treatment for mental disorder as an in-patient for a continuous period of not less than 6 months ending with the date of his discharge,

the managers of the hospital shall give written notification of that person's discharge in accordance with paragraphs (a), (b), and (c) of subsection (1) above as soon as is reasonably practicable.

(3) Where—

- (a) a health authority receive a notification given with respect to a person under subsection (1) or (2), or
- (b) the managers of a hospital from which a person is to be, or is, discharged as mentioned in subsection (1) or (2) are the health authority referred to in subsection (1)(a),

that authority shall (subject to subsection (7)) make arrangements for an assessment of the needs of that person with respect to the provision of any services under the 1977 Act or 1978 Act which the Secretary of State is under a duty to provide; and in making any such arrangements a health authority falling within paragraph (a) above shall consult the managers of the hospital in question.

(4) Where a local authority receive a notification given with respect to a person under subsection (1) or (2), the authority shall (subject to subsection (7)) make arrangements for an assessment of the needs of that person with respect to the provision of any services under any of the welfare enactments.

(5) A health authority and a local authority who are by virtue of subsections (3) and (4) each required to make arrangements for an assessment of the needs of a particular person shall cooperate with each other in the making of those arrangements.

(6) Any assessment for which arrangements are required to be made by virtue of subsection (3) or (4) shall be carried out—

- (a) where the notification in question was given under subsection (1), not later than the date mentioned in that subsection, or
- (b) where the notification in question was given under subsection (2), as soon as is reasonably practicable after receipt of the notification.

(7) A health authority or a local authority shall not be required to make arrangements for an assessment of the needs of a person by virtue of subsection (3) or (4) if that person has requested them not to make any such arrangements.

- (8) Nothing in this section shall apply in relation to a person who is being discharged from a hospital for the purpose of being transferred to another hospital in which he will be an in-patient (whether or not he will be receiving medical treatment for mental disorder); but any reference in subsection (1) or (2) to a person's having received medical treatment for mental disorder as an in-patient for the period mentioned in that subsection is a reference to his having received such treatment for that period as an in-patient in one or more hospitals (any interruption of that period attributable to his being transferred between hospitals being disregarded).
- (9) In this section—
- " the appropriate officer or authority " means—
- (a) where the local authority referred to in subsection (1)(a) are a local education authority or, in Scotland, an education authority, such officer discharging functions of that authority in their capacity as a local education authority or (as the case may be) education authority as may be appointed by them for the purposes of this section ;
 - (b) where, in England and Wales, that local authority are not a local education authority, the Inner London Education Authority ;
- " health authority "—
- (a) in relation to England and Wales, means a District Health Authority, and
 - (b) in relation to Scotland, means a Health Board ;
- " the managers "—
- (a) in relation to—
 - (i) a health service hospital within the meaning of the 1977 Act (other than a special hospital),
 - (ii) a health service hospital within the meaning of the 1978 Act (other than a State hospital), or
 - (iii) any accommodation provided by a local authority and used as a hospital by or on behalf of the Secretary of State under the 1977 Act,
 means the District Health Authority or special health authority, or (as the case may be) the Health Board who are responsible for the administration of the hospital;
 - (b) in relation to a special hospital, means the Secretary of State;
 - (c) in relation to a State hospital, means a State Hospital Management Committee constituted by the Secretary of State to manage the hospital on his behalf or (where no such committee has been constituted) the Secretary of State ; and
 - (d) in relation to any other hospital, means the persons for the time being having the management of the hospital;
- " medical treatment "—
- (a) in relation to England and Wales, has the meaning given by section 145(1) of the 1983 Act; and
 - (b) in relation to Scotland, has the meaning given by section 125(1) of the 1984 Act; and
- " the relevant age "—
- (a) in relation to England and Wales, means the age of 19 ; and
 - (b) in relation to Scotland, means the age of 18.

8 Duty of local authority to take into account abilities of carer

(1) Where—

- (a) a disabled person is living at home and receiving a substantial amount of care on a regular basis from another person (who is not a person employed to provide such care by any body in the exercise of its functions under any enactment), and
- (b) it falls to a local authority to decide whether the disabled person's needs call for the provision by them of any services for him under any of the welfare enactments,

the local authority shall, in deciding that question, have regard to the ability of that other person to continue to provide such care on a regular basis.

- (2) Where that other person is unable to communicate, or (as the case may be) be communicated with, orally or in writing (or in each of those ways) by reason of any mental or physical incapacity, the local authority shall provide such services as, in their opinion, are necessary to ensure that any such incapacity does not prevent the authority from being properly informed as to the ability of that person to continue to provide care as mentioned in subsection (1).

- (3) Section 3(7) shall apply for the purposes of subsection (2) above as it applies for the purposes of section 3(6), but as if any reference to the disabled person or his authorised representative were a reference to the person mentioned in subsection (2).