



# Care Act 2014

## 2014 CHAPTER 23

### PART 5

#### GENERAL

#### **123 Power to make consequential provision**

- (1) The Secretary of State may by order make provision in consequence of a provision of this Act.
- (2) An order under this section may amend, repeal, or revoke an enactment, or provide for an enactment to apply with specified modifications.
- (3) The power conferred by this section is not restricted by any other provision of this Act.
- (4) A saving or a transitional or transitory provision in an order under this section by virtue of section 125(8) may, in particular, modify the application of a provision made by the order pending the commencement of—
  - (a) another provision of the order,
  - (b) a provision of this Act, or
  - (c) any other enactment.
- (5) Before making an order under this section that contains provision which is within the legislative competence of a devolved legislature, the Secretary of State must consult the relevant devolved authority.
- (6) A reference to an enactment includes a reference to an enactment passed or made after the passing of this Act.

#### **124 Power to make transitional etc. provision**

- (1) The Secretary of State may by order make transitional, transitory or saving provision in connection with the commencement of a provision of this Act.

- (2) An order under this section may modify the application of a provision of this Act pending the commencement of—
- (a) another provision of this Act, or
  - (b) any other enactment (including one passed or made after the passing of this Act).

## **125 Regulations and orders**

- (1) A power to make regulations under this Act is exercisable by the Secretary of State.
- (2) Regulations and orders under this Act must be made by statutory instrument.
- (3) Subject to subsections (4) and (6), a statutory instrument containing regulations or an order under this Act is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) A statutory instrument which contains (whether alone or with other provision) any of the following may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament—
  - (a) regulations under section 13(7) (the eligibility criteria);
  - (b) regulations under section 15(4) (the cap on care costs) other than those made in discharge of the duty under section 16(1);
  - (c) the first regulations under section 15(8) (the amount attributable to an adult's daily living costs);
  - (d) regulations under section 22(2)(b) (services or facilities which a local authority may not provide or arrange);
  - (e) regulations under section 35(9) or 36(3) (deferred payment agreements and loans and alternative financial arrangements) which include provision that amends or repeals a provision of an Act of Parliament, or provides for a provision of an Act of Parliament to apply with modifications;
  - (f) the first regulations under section 52(12) (meaning of references to business failure);
  - (g) the first regulations under section 53(1) (criteria for application of market oversight regime);
  - (h) the first regulations under section 53(4) (disapplication of market oversight regime in particular cases);
  - (i) the first regulations under section 62(2) (exercise of power to meet child's carer's needs for support);
  - (j) the first regulations under section 72 (Part 1 appeals);
  - (k) subsequent regulations under that section which include provision that amends or repeals a provision of an Act of Parliament, or provides for a provision of an Act of Parliament to apply with modifications;
  - (l) an order under section 79(9) (delegation of local authority functions);
  - (m) regulations under section 92 (offence of supplying etc false or misleading information);
  - (n) an order under section 123 (consequential provision) which includes provision that amends or repeals a provision of an Act of Parliament, or provides for a provision of an Act of Parliament to apply with modifications;
  - (o) regulations under paragraph 18 of Schedule 7 (fees chargeable by the HRA).

- (5) Subsection (4) does not apply to a statutory instrument which contains regulations or an order within paragraph (e), (k) or (n) of that subsection, if the regulations or order are within the paragraph in question only because they include provision that applies an Act of Parliament with modifications for the purpose of making saving, transitional or transitory provision.
- (6) Subsection (3) does not apply to—
- (a) an order under section 96 (transfer order to new HEE);
  - (b) an order under section 109 (transfer order to new HRA);
  - (c) an order under section 124 (transitional etc. provision);
  - (d) an order under section 127 (commencement).
- (7) A power to make regulations or an order under this Act—
- (a) may be exercised for all cases to which the power applies, for those cases subject to specified exceptions, or for any specified cases or descriptions of case,
  - (b) may be exercised so as to make, for the cases for which it is exercised—
    - (i) the full provision to which the power applies or any less provision (whether by way of exception or otherwise);
    - (ii) the same provision for all cases for which the power is exercised, or different provision for different cases or different descriptions of case, or different provision as respects the same case or description of case for different purposes of this Act;
    - (iii) any such provision either unconditionally or subject to specified conditions, and
  - (c) may, in particular, make different provision for different areas.
- (8) A power to make regulations or an order under this Act (other than the power to make an order under section 124 or 127) includes —
- (a) power to make incidental, supplementary, consequential, saving, transitional or transitory provision, and
  - (b) power to provide for a person to exercise a discretion in dealing with a matter.
- (9) Before making regulations under section 52(12) (meaning of references to business failure), the Secretary of State must consult the Welsh Ministers and the Department for Health, Social Services and Public Safety in Northern Ireland.

## 126 General interpretation

In this Act—

“devolved authority” means the Scottish Ministers, the Welsh Ministers or the Department for Health, Social Services and Public Safety in Northern Ireland,

“devolved legislature” means the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly,

“enactment” includes—

- (a) an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978), and

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*Status: This is the original version (as it was originally enacted).*

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(b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament, an Act or Measure of the National Assembly for Wales or Northern Ireland legislation,

“financial year” means a period of 12 months ending with 31 March (but see also the definition of that expression in paragraph 3 of Schedule 2, paragraph 19 of Schedule 5 and paragraph 19 of Schedule 7), and

“the health service” means the comprehensive health service in England continued under section 1(1) of the National Health Service Act 2006.

## 127 Commencement

- (1) The provisions of Parts 1 to 4 come into force on such day as the Secretary of State may by order appoint.
- (2) The provisions of this Part come into force on the day on which this Act is passed.
- (3) Before making an order under this section bringing section 50 (provider failure: temporary duty on local authority in Wales in cross-border cases) or 75 (after-care under the Mental Health Act 1983) into force, the Secretary of State must obtain the consent of the Welsh Ministers.
- (4) Before making an order under this section bringing section 51 (provider failure: temporary duty on Health and Social Care trusts in cross-border cases) into force, the Secretary of State must obtain the consent of the Department for Health, Social Services and Public Safety in Northern Ireland.
- (5) Different days may be appointed under subsection (1) for different purposes (including different areas).

## 128 Extent and application

- (1) This Act extends to England and Wales only, subject to subsections (2) and (3).
- (2) Any amendment, repeal or revocation made by this Act has the same extent as the enactment being amended, repealed or revoked, other than the amendment made by section 66(3) which extends to England and Wales only.
- (3) The following also extend to Scotland and Northern Ireland—
  - (a) section 39(8) and Schedule 1 (cross-border placements);
  - (b) sections 49 to 52 (provider failure: temporary duty in relation to cross-border cases);
  - (c) section 73 (Human Rights Act 1998: provision of regulated care or support etc a public function);
  - (d) Chapter 2 of Part 3 (the HRA);
  - (e) section 118 (transfer orders), so far as relating to section 109 (the HRA);
  - (f) section 119 (Chapters 1 and 2 of Part 3: interpretation and supplementary provision);
  - (g) this Part;
  - (h) paragraph 17 of Schedule 5 (arrangements between HEE and devolved authorities) and section 96(2) so far as relating to that paragraph.

- (4) The Secretary of State may by order provide that specified provisions of this Act, in their application to the Isles of Scilly, have effect with such modifications as may be specified.

**129 Short title**

This Act may be cited as the Care Act 2014.