

2015 No. 995

SOCIAL CARE, ENGLAND

The Care Act 2014 (Transitional Provision) Order 2015

Made - - - - - *26th March 2015*

Coming into force in accordance with article 1(1)

The Secretary of State makes this Order in exercise of the powers conferred by sections 124 and 125(7) of the Care Act 2014(a).

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Care Act 2014 (Transitional Provision) Order 2015 and comes into force on the day on which section 1 of the Act comes into force.

(2) In this Order—

“the Act” means the Care Act 2014;

“the 1948 Act” means the National Assistance Act 1948(b);

“the 1983 Act” means the Health and Social Services and Social Security Adjudications Act 1983(c);

“the 2001 Act” means the Health and Social Care Act 2001(d);

“the 2015 Order” means the Care Act 2014 and Children and Families Act 2014 (Consequential Amendments) Order 2015(e);

“relevant date” means, in relation to a person, the date on which Part 1 of the Act (care and support) applies to that person by virtue of article 2.

Transitional provision in respect of persons in receipt of services

2.—(1) Except as provided by this Order, Part 1 of the Act does not apply in the case of a person to whom, or in relation to whom, immediately before this Order comes into force, support or services are being provided, or payments towards the cost of support or services are being made.

(2) A local authority providing such support or services or making such payments must, before 1st April 2016, complete a review of that person’s case and from the time the local authority has completed that review, Part 1 of the Act will apply in respect of that person’s case.

(3) If a local authority fails to comply with paragraph (2), Part 1 of the Act applies in that person’s case with effect from 1st April 2016.

(4) In respect of a person to whom paragraph (3) applies, that person is to be treated as—

(a) 2014 c. 23.
(b) 1948 c. 29.
(c) 1983 c. 41.
(d) 2001 c. 15.
(e) S.I. 2015/914

- (a) having needs for care and support or support which meet the eligibility criteria under section 13(7) of the Act (the eligibility criteria);
- (b) being entitled to have those needs met under the Act; and
- (c) having complied with any requirements in or under the Act to enable the person to have those needs met,

until the local authority has completed a review in that person's case.

- (5) A local authority has completed a review in a person's case when—
- (a) they conclude that the person does not have needs for care and support or for support (as the case may be) in accordance with the Act;
 - (b) having concluded that the person has such needs and that they are going to meet some or all of them, they begin to do so; or
 - (c) having concluded that the person has such needs, they conclude that they are not going to meet any of those needs (whether because those needs do not meet the eligibility criteria or for some other reason).

Transitional provision in relation to enforcement of debts

3.—(1) Subject to paragraphs (3) and (4), a sum or charge to which paragraph (2) applies is recoverable under section 69 of the Act (recovery of charges, interest etc.) as if it were a sum due to the local authority in question under Part 1 of the Act.

(2) This paragraph applies to any sum or charge due under Part 3 of the 1948 Act (local authority services) or section 17 of the 1983 Act (charges for local authorities in England and Wales) to a local authority in England in respect of support or services (including a sum or charge which becomes due on or after the date on which this Order comes into force).

(3) Paragraph (1) does not apply to a sum or charge in respect of which proceedings for recovery have begun prior to this Order coming into force.

(4) A sum or charge is recoverable under paragraph (1) within the period within which it would, but for this article, have been recoverable under section 56 of the 1948 Act (legal proceedings) or, as the case may be, section 17 of the 1983 Act.

(5) Notwithstanding article 3(3) of the 2015 Order, neither section 56(1) of the 1948 Act nor section 17(4) of the 1983 Act apply in relation to a sum or charge which is recoverable under paragraph (1).

Transitional modifications in respect of deferred payments

4.—(1) Sections 34 and 35 (deferred payment agreements etc.) of the Act apply in the case of a person to whom, by virtue of article 2, Part 1 of the Act does not otherwise apply.

(2) Where sections 34 and 35 of the Act apply in a person's case by virtue of paragraph (1), the Care and Support (Deferred Payment) Regulations 2014(a) ("the regulations") apply with the following modifications—

- (a) regulation 3(1)(a) of the regulations (local authority permitted to enter into a deferred payment agreement) shall have effect as if after sub-paragraph (i)—
 - (i) "or" were omitted, and
 - (ii) the following sub-paragraph were inserted—
 - “(ia)are being met by the provision of accommodation under Part 3 of the National Assistance Act 1948; or”; and
- (b) regulations 5 (deferred amount and equity limit) and 6 (adults' contribution) of the regulations shall have effect as if any sums due to a local authority under section 22 of the 1948 Act (charges to be made for accommodation) or section 54 of the 2001 Act (funding

(a) S.I. 2014/2671.

by resident etc. of more expensive accommodation) were an amount due under section 14 (power of local authority to charge) or 30(2) of the Act (cases where adult expresses preference for particular accommodation), as the case may be.

(3) Notwithstanding paragraph (1), where a deferred payment agreement under section 55 of the 2001 Act (power for local authorities to take charges on land instead of contributions) is in force in respect of that person—

- (a) the regulations do not apply in respect of amounts due from that person to an authority under—
 - (i) section 14 of the Act; and
 - (ii) where that deferred payment agreement applies in respect of payments which are additional payments for the purpose of section 54 of the 2001 Act, section 30 of the Act; and
- (b) the deferred payment agreement under section 55 of the 2001 Act shall continue to apply on the terms and conditions which pertained to it immediately before the coming into force of the regulations, save that from the relevant date in relation to the person concerned, references in that agreement to—
 - (i) accommodation provided under Part 3 of the 1948 Act must be read as including accommodation provided by a local authority under section 18 or 19 (duty or power to meet needs for care and support) of the Act (including anything provided in connection with that accommodation), and
 - (ii) relevant contributions must be read as including the amount due from the person to the local authority under section 14 or, as the case may be, section 30 of the Act.

Transitional provision relating to ordinary residence disputes

5. Any question as to a person's ordinary residence arising under the 1948 Act and which is to be determined by the Secretary of State on or after this Order comes into force is to be determined in accordance with section 40 of the Act (disputes about ordinary residence or continuity of care).

Transitional provision relating to where a person's ordinary residence is

6.—(1) Any person who, immediately before the relevant date in relation to that person, is deemed to be ordinarily resident in a local authority's area by virtue of section 24(5) or (6) of the 1948 Act (authority liable for provision of accommodation) is, on that date, to be treated as ordinarily resident in that area for the purposes of Part 1 of the Act.

(2) Section 39 of the Act (where a person's ordinary residence is) does not have effect in relation to a person who, immediately before the relevant date in relation to that person, is being provided with—

- (a) non-hospital NHS accommodation (within the meaning of article 12 of the Health and Social Care Act 2008 (Commencement No. 15, Consequential Amendments and Transitional and Savings Provisions) Order 2010^(a)) which has been provided since immediately before 19th April 2010;
- (b) shared lives scheme accommodation (within the meaning of regulation 4 of the Care and Support (Ordinary Residence) (Specified Accommodation) Regulations 2014^(b)) ("the 2014 Regulations"); or
- (c) supported living accommodation (within the meaning of regulation 5 of the 2014 Regulations),

for as long as the provision of that accommodation continues.

(a) S.I. 2010/708.

(b) S.I. 2014/2828.

Transitional provision in relation to protecting property of persons admitted to hospitals etc.

7.—(1) Notwithstanding article 3(3) of the 2015 Order, any steps taken immediately before this Order comes into force by a local authority in England to prevent or mitigate the loss of, or damage to, property in accordance with section 48 of the 1948 Act (duty of Councils to provide temporary protection for property of persons admitted to hospitals etc.) are, on or after this Order comes into force, to be treated as taken in accordance with section 47 of the Act (protecting property of adults being cared for away from home).

(2) Any reasonable expenses incurred but not recovered before this Order comes into force by the local authority in England under section 48 of the 1948 Act may, on or after this Order comes into force, be recovered under section 47(7) of the Act.

Transitional provision in relation to sight registers

8. A person who is registered as blind or partially sighted in a register maintained by or on behalf of a local authority in England under section 29 of the 1948 Act (welfare services) immediately before this Order comes into force is to be treated on or after that date as being registered as, respectively, severely sight-impaired or sight-impaired in the register maintained by or on behalf of that local authority under section 77 of the Act (registers of sight-impaired adults, disabled adults, etc.).

Signed by the authority of the Secretary of State for Health.

George Freeman
Parliamentary Under-Secretary of State,
Department of Health

26th March 2015

EXPLANATORY NOTE

(This note is not part of the Order)

The Order makes transitional provision in relation to Part 1 of the Care Act 2014 (“the Act”) (care and support). Article 2 makes the general transitional provision as to when Part 1 of the Act applies to a person who has been in receipt of services immediately before the Order comes into force. The remaining articles make further transitional provision relating to debt recovery (article 3), deferred payments (article 4), ordinary residence (articles 5 and 6), protection of property of a person admitted to hospital etc. (article 7) and sight registers (article 8).

A full impact assessment has not been produced for this instrument as the Order itself has no impact on the private sector or civil society organisations. A full impact assessment has been produced in relation to the provisions of the Act and a copy can be requested via careactconsultation@dh.gsi.gov.uk or 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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