

CARE ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Care and Support

Appeals

Section 72 – Part 1 appeals

419. This section gives the Secretary of State the power to make regulations providing for a process through which appeals may be made against decisions taken by the local authority (in respect of individuals) under Part 1 of the Act.
420. *Subsection (1)* provides that the decisions covered by such an appeal system may include decisions taken under Part 1 prior to the coming into force of the first set of regulations under this section. It is the intention that regulations made under this section will come into force at the same time as the provisions relating to the funding cap, in April 2016. This means there will be a gap between the coming into force of the main provisions of Part 1 in April 2015 and the coming into force of regulations establishing a system under which decisions taken under Part 1 can be challenged. The regulations may therefore provide that such “pre-commencement” decisions may be challenged under the system set up by the regulations, once it is established.
421. The regulations may, in particular, make provision about the various matters set out in *subsection (2)* and expanded on in *subsections (3) to (6)*. These matters include provision about who may bring an appeal; the grounds upon which an appeal may be brought; how an appeal is to be dealt with; who may consider an appeal; the matters that must be taken into account in considering an appeal; the powers of the person or body deciding the appeal and the action the local authority must take as a result of an appeal decision. The regulations may also make provision around publicising the right to bring an appeal and the relevant procedures and about representation and support for someone who wants to bring an appeal. The regulations may also make provision around investigating the way the person or body deciding the appeal carries out that function.
422. *Subsection (7)* enables provision to be made concerning the interaction of the Part 1 appeal system with other appeal or complaint systems. This would enable matters raised in such other system to be treated as, or considered with, an appeal brought under the Part 1 appeals system or, conversely, a matter raised under the Part 1 appeals system to be taken into account in some other appeal or complaint system.
423. *Subsection (8)* provides that the regulations may confer a function on a person or a statutory body. If it is necessary, in order to do so, the regulations may amend, repeal or revoke an enactment or provide that an enactment applies with modifications. If the regulations amend or repeal an Act of Parliament, or apply an Act with modifications, section 125(4)(k) provides that the regulations would have to be made using the affirmative procedure. The first exercise of the powers in this section will require the use of the affirmative procedure.

These notes refer to the Care Act 2014 (c.23) which received Royal Assent on 14 May 2014

424. *Subsection (9)* provides that the regulations may make provision for interim care and support from the local authority for the person bringing the appeal pending their appeal being considered. The regulations may also provide for financial readjustments once the outcome of the appeal is known.