

# CARE ACT 2014

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 1 – Care and Support

##### Miscellaneous

##### *Schedule 3 – Discharge of hospital patients with care and support needs*

428. [Schedule 3](#) re-enacts the effect of the delayed discharges provisions of the Community Care (Delayed Discharges etc) Act 2003 (the 2003 Act) and relevant regulations, subject to simplification and amendments to fit the new NHS architecture. The Schedule deals with the planning of safe discharge of patients in England from NHS hospital care, or hospital care arranged for by the NHS, to local authority care and support to ensure that patients are not delayed in hospital despite being fit, safe and ready to be discharged.

##### **Cases where hospital patient is likely to have care and support needs after discharge**

429. [Paragraph 1](#) places responsibility on the NHS body to inform the relevant local authority of a patient's likely need for care and support. This is known as an 'assessment notice' and is necessary when the patient is unlikely to be safely discharged from hospital without arrangements for care and support being put into place first. The relevant local authority who the NHS body must notify is the one in which the patient is ordinarily resident or, if it is not possible to determine ordinary residence, the local authority area in which the hospital is situated.

430. The paragraph sets out a number of requirements for the assessment notice:

- The notice must state that it is given under this provision. This is so that the local authority is aware of the consequences that could flow from the assessment notice, such as the liability to pay the NHS body for the costs of delayed discharge arising under [paragraph 4](#) of this schedule.
- The notice should not be issued more than 7 days before the patient is expected to be admitted into hospital. This is so the notice is not provided too far in advance of admission to avoid the risk of wasting preliminary planning in the event the patient's condition changes.
- The responsible NHS body must consult with the patient and, where appropriate, the carer before issuing the assessment notification. This is to avoid unnecessary assessments where, for example, the patient wishes to make private arrangements for care and support.

431. These requirements replicate provisions set out in sections 2 and 3 of the 2003 Act and regulation 4(4) and (5) of the [Delayed Discharges \(England\) Regulations 2003 \(S.I. 2003/2277\)](#).

### **Assessment notice given by responsible NHS body to local authority**

432. *Paragraph 2* sets out the process that the responsible NHS body and relevant local authority must follow to ensure a patient with care and support needs can be safely discharged from hospital.
433. There are certain legal obligations that are activated by the discharge of the patient from NHS care. When such a decision has been made and the patient has (or may have) care and support needs, then a safe discharge cannot occur until the NHS and local authority are satisfied that, as sub-paragraph (1) sets out, the patient is ready for discharge and that it is safe for them to be discharged. The NHS body has to give the local authority notice of when it intends to discharge the patient. This is known as a discharge notice.
434. Sub-paragraph (3) provides that the discharge notice must specify whether or not the patient will receive any further health care services upon discharge, and if so, what those services will be.
435. Sub-paragraph (5) sets out the definition of the ‘relevant day’ until which a discharge notice remains in force. This is relevant to defining any delayed discharge period in the event that the local authority is held to be liable under paragraph 4 to pay the NHS body for the cost of accommodation or personal care caused by the delayed discharge from hospital. The ‘relevant day’ would either be the day specified in the discharge notice or the end of a period which regulations may set out.
436. This replicates the provisions set out in section 5 of the 2003 Act and regulation 5 of the [Delayed Discharges \(England\) Regulations 2003 \(S.I. 2003/2277\)](#).
437. *Paragraph 3* sets out the responsibilities of the local authority who received an assessment notice. The local authority must carry out an assessment of the patient’s need and, where applicable, the carer’s need, with a view to identifying the care and support that is necessary for them to be safely discharged. The local authority must inform the NHS of the outcome of the assessment.
438. This replicates the provisions in section 4 of the 2003 Act.

### **Cases where the discharge of the patient is delayed**

439. *Paragraph 4* sets out what is to happen if the discharge of the patient is delayed because the local authority has not carried out the relevant care and support assessments or put the required package of care and support in place.
440. Sub-paragraph (2) provides that the local authority is liable to make payments to the responsible NHS body for each day that a patient is unable to be discharged.
441. Regulations will be introduced to set out:
- how the delayed discharge period is to be calculated; and
  - the amount to be paid.
442. This section replicates provisions set out in sections 6 and 7 of the 2003 Act.

### **Delegation to management of independent hospital**

443. *Paragraph 5(1)* provides that an NHS body may make arrangements with others for the person to do anything which is required or authorised to be done by the NHS body under this Schedule. Sub-paragraphs (2) and (3) set out the effect of such an arrangement. This replicates sections 1(3), (4) and (5) of the 2003 Act.

### **Adjustments between local authorities**

444. *Paragraph 6* allows for regulations to be made to modify the provisions relating to delayed hospital discharges where it appears to the NHS body that the patient is

ordinarily resident in the area of another local authority. This might require the local authority to accept assessment notices even in cases where it may wish to dispute that it is the relevant local authority. The regulations may also enable the local authority to recover relevant expenditure that it incurs. This re-enacts section 10 of the 2003 Act.

**Meaning of “hospital patient”, “NHS hospital”, “NHS body”, etc.**

445. *Paragraph 7* sets out the meaning of a number of terms relating to the delayed discharges regime in Schedule 3.