

# CARE ACT 2014

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 1 – Care and Support

##### Miscellaneous

##### *Section 79 – Delegation of local authority functions*

475. This section provides a power for local authorities to authorise a third party to carry out certain care and support functions.
476. However, certain functions are excluded from this power. *Subsection (2)* sets out the functions which are excluded, and which therefore may not be delegated to a third party.
477. *Subsection (4)* provides that that the local authority may determine the extent to which it delegates the function in any particular case. For example, a local authority may delegate the carrying out of all needs assessments to a third party organisation, or it may choose to delegate assessments only for certain groups of people, but carry out other assessments itself. When delegating any function, the local authority may impose conditions on the way the third party may exercise the function.
478. *Subsection (5)* provides that any authorisation is only for the period specified in the authorisation and the local authority may revoke the authorisation at any time during that period. Delegating the function does not prevent the local authority from being able to carry out the function itself.
479. *Subsection (6)* makes clear that anything done (or failed to be done) by the third party in carrying out any function delegated to them is treated as done (or not done) by the local authority itself (though as *subsection (7)* makes clear this does not mean that the third party can avoid liability for any criminal actions nor for any disputes between it and the local authority arising out of any contractual relationship between them). This means that the delegation of any function does not absolve the local authority from ultimate responsibility for ensuring the function is carried out properly and in accordance with all relevant statutory obligations.
480. *Subsection (8)* makes provision permitting the disclosure of information between the local authority and anyone to whom it has delegated a function under this provision (even where such disclosure would otherwise be unlawful) where such disclosure is necessary for the exercise of that function. It does this by applying the provisions of Schedule 15 of the Deregulation and Contracting Out Act 1994 to any delegation made under this provision. Schedule 15 of the 1994 Act contains detailed provisions governing the disclosure of information in cases such as this (where a function is delegated to a third party). The effect is that the third party may be given information by the local authority where it is necessary for the exercise of the delegated function but the third party is then subject to the same kind of confidentiality requirements in respect of that information as was the local authority.

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

481. This section includes an order-making power to enable the Secretary of State to change the list of functions to which this power applies, and also to impose conditions and limitations on the exercising of the power.