

# SCHEDULES

## SCHEDULE 12

### LOCAL AUTHORITY CARE AND SUPPORT

#### PART 1

##### POWERS AND DUTIES OF LOCAL AUTHORITIES IN ENGLAND

###### *Introductory*

- 1 (1) In this Part of this Schedule “CA 2014” means the Care Act 2014.
- (2) Expressions used in this Part of this Schedule and in Part 1 of CA 2014 have the same meaning in this Part of this Schedule as in Part 1 of that Act.

###### *Assessing needs for care and support*

- 2 (1) A local authority does not have to comply with any duties imposed by the following provisions—
  - (a) section 9 of CA 2014 (assessment of an adult’s needs for care and support);
  - (b) section 10 of that Act (assessment of a carer’s needs for support);
  - (c) any regulations made under section 12(1) or (2) of that Act (further provision about assessments under section 9 or 10);
  - (d) section 12(3) and (4) of that Act (duties to give written records of assessments);(and accordingly section 11 of that Act (refusal of assessment) does not apply).
- (2) A local authority does not have to comply with any duties imposed by section 13 of CA 2014 (determination of whether needs meet the eligibility criteria) or any regulations made under that section.
- (3) A local authority does not have to comply with any duties imposed by the following provisions—
  - (a) sections 58 and 59 of CA 2014 (assessment of a child’s needs for care and support);
  - (b) sections 60 and 61 of that Act (assessment of a child’s carer’s needs for support);
  - (c) sections 63 and 64 of that Act (assessment of a young carer’s needs for support);
  - (d) any regulations made under section 65(1) of that Act (further provision about assessments under sections 58 to 64).
- (4) Nothing in this paragraph prevents a local authority from carrying out any assessment, or making any determination, it considers appropriate for the purposes

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of exercising its functions under section 18, 19, 20 or 62 of CA 2014 (as modified by paragraphs 4 to 6 and 9 of this Schedule).

*Assessment of financial resources*

- 3 (1) A local authority does not have to comply with any duties imposed by section 17 of CA 2014 (assessment of financial resources).

This is subject to sub-paragraph (2).

- (2) A local authority may not make a charge under section 14 of CA 2014 for meeting any needs under section 18, 19, 20 or 62 of that Act during a period for which paragraph 4, 5, 6 or (as the case may be) 9 of this Schedule has effect without having carried out an assessment under section 17 of that Act.
- (3) The requirement under sub-paragraph (2) to carry out an assessment under section 17 of CA 2014 applies whether or not the authority has made a determination under section 13(1) of that Act.

*Duties and powers to meet needs for care and support*

- 4 Section 18 of CA 2014 (duty to meet needs for care and support) has effect as if for subsection (1) there were substituted—

“(1) A local authority must meet an adult’s needs for care and support if—

- (a) the adult is ordinarily resident in the authority’s area or is present in its area but of no settled residence,
- (b) the authority considers that it is necessary to meet those needs for the purpose of avoiding a breach of the adult’s Convention rights, and
- (c) there is no charge under section 14 for meeting the needs or, in so far as there is, condition 1, 2 or 3 is met.

In this subsection “Convention rights” has the same meaning as in the Human Rights Act 1998.”

- 5 Section 19 of CA 2014 (power to meet needs for care and support) has effect as if there were omitted—

- (a) the reference in subsection (1) to having carried out a needs assessment and a financial assessment;
- (b) the reference in subsection (2) to having made a determination under section 13(1) of that Act, and the words “which meet the eligibility criteria”;
- (c) the reference in subsection (3) to having not yet carried out a needs assessment or made a determination under section 13(1) of that Act.

- 6 In section 20 of CA 2014 (duty and power to meet a carer’s needs for support), subsection (1) has effect as if—

- (a) the words “, having made a determination under section 13(1),” and “which meet the eligibility criteria” were omitted;
- (b) after paragraph (a) there were inserted—
  - “(aa) the authority considers that it is necessary to meet those needs for the purpose of avoiding a breach of the carer’s Convention rights,”;
- (c) at the end there were inserted—

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“In this subsection “Convention rights” has the same meaning as in the Human Rights Act 1998.”

- 7 (1) For the purposes of sections 18(6) and 20(9) of CA 2014 (meaning of references to there being no charge for meeting needs), a local authority that decides not to carry out an assessment under section 17 of that Act as a result of paragraph 3(1) above is to be treated as having decided not to make a charge under section 14 of that Act (but see paragraph 10 below).
- (2) But the duty under section 18 or 20(1) of CA 2014 does not apply to a local authority if—
- (a) the authority notifies the relevant person that it may make a charge for meeting needs under that section, and
  - (b) the relevant person asks the authority not to meet those needs.
- (3) In sub-paragraph (2) “the relevant person” means—
- (a) the person who would be liable to pay any such charge, or
  - (b) in a case where—
    - (i) the authority would be meeting the needs of an adult under section 18 of CA 2014, and
    - (ii) the adult lacks capacity to arrange for the provision of care and support,a person who is authorised under the Mental Capacity Act 2005 to arrange for such provision or is otherwise in a position to do so on the adult’s behalf.
- 8 A local authority does not have to comply with any duties imposed by the following provisions—
- (a) any regulations made under section 30 of CA 2014 (cases where adult expresses preference for particular accommodation);
  - (b) section 47(2) of that Act (duty to prevent or mitigate loss or damage to property of adults being cared for away from home).
- 9 Section 62 of CA 2014 (power to meet child’s carer’s needs for support) has effect as if the reference in subsection (1) to having carried out a child’s carer’s assessment were omitted.

#### *Charging for meeting needs during emergency period*

- 10 (1) This paragraph applies where—
- (a) at any time during an emergency period, a local authority begins to meet needs under section 18, 19, 20 or 62 of CA 2014,
  - (b) at that time, the authority would have been entitled to make a charge under section 14 of that Act for meeting any of those needs, but
  - (c) the authority decided not to carry out an assessment under section 17 of that Act before beginning to meet those needs.

In this paragraph “emergency period”, in relation to section 18, 19, 20 or 62 of CA 2014, means a period for which paragraph 4, 5, 6 or (as the case may be) 9 of this Schedule has effect.

- (2) The local authority is not prevented by that decision from subsequently carrying out an assessment under section 17 of CA 2014 (whether during or after the emergency period) and deciding to make a charge for meeting those needs during that period;

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and nothing in that section is to be taken to prevent the authority from carrying out such an assessment, even though the authority has already begun to meet, or has met, those needs.

- (3) In so far as there is any charge for meeting any needs under section 18 or 19(2) of CA 2014 during the emergency period, the fact that condition 1, 2 or 3 in section 18 of that Act is not met at the time of the making of the charge does not affect anything already done under section 18 or (as the case may be) 19(2) of that Act.
- (4) In so far as there is any charge for meeting any needs under section 20(1) of CA 2014 during the emergency period, the fact that condition 1, 2, 3 or 4 in that section is not met at the time of the making of the charge does not affect anything already done under that section.

#### *Care and support plans etc*

- 11 A local authority does not have to comply with any duties imposed by the following provisions of CA 2014—
- (a) section 24 (duty to prepare care and support plan or support plan, etc);
  - (b) section 25 (duties relating to plans);
  - (c) section 27(1), (4), (4A) and (5) (duty to review plans, etc).

The reference in paragraph (c) to subsection (4A) of section 27 of CA 2014 is to the subsection treated as inserted by regulation 11 of the Care and Support (Children’s Carers) Regulations 2015 (S.I. 2015/305).

#### *Continuity of care and support when person moves*

- 12 A local authority does not have to comply with any duties imposed by the following provisions of CA 2014—
- (a) section 37 (duties of notification, assessment, etc when a person moves);
  - (b) section 38 (case where assessments not complete on day of move).
- 13 (1) This paragraph applies where—
- (a) paragraph 12 has had effect for any period (“the emergency period”), and
  - (b) the emergency period has ended.
- (2) Section 37 of CA 2014 has effect subject to the modifications in sub-paragraphs (3) to (5).
- (3) In subsections (1) and (2)—
- (a) any reference to notifying a local authority that an adult intends to move to the area of that authority includes, in the case of an adult who moved to the area of a local authority during the emergency period, a reference to notifying that authority that the adult has moved to that area, and
  - (b) where a local authority is notified that an adult has moved to the authority’s area by virtue of paragraph (a), the condition in subsection (1)(c) or (as the case may be) (2)(c) is to be disregarded (and accordingly the requirement imposed by subsection (4)(b) does not apply).
- (4) In subsection (3)—
- (a) the reference to notifying a local authority that an adult intends to move out of accommodation but to remain in the authority’s area includes, in the case of an adult who moved out of accommodation in the area of a local authority

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- during the emergency period, a reference to notifying that authority that the adult has moved out of the accommodation but has remained in that area, and
- (b) where a local authority is notified that an adult has moved out of accommodation by virtue of paragraph (a), the condition in subsection (3)(c) is to be disregarded (and accordingly the requirement imposed by subsection (4)(b) does not apply).
- (5) In a case where subsection (4)(b) does not apply by virtue of sub-paragraph (3)(b) or (4)(b), subsection (5) has effect as if the reference to having received the notification under subsection (4)(b) were omitted.
- (6) The reference in section 38(1) of CA 2014 to the day of the intended move is, in the case of an adult who moved as mentioned in section 37(1)(b), (2)(b) or (3)(b) of that Act during the emergency period, to be read as a reference to the day on which that period ended.

#### *Discharge of hospital patients with care and support needs*

- 14 In Schedule 3 to CA 2014 (discharge of hospital patients with care and support needs), paragraph 3 has effect as if for sub-paragraph (1) there were substituted—
- “(1) The relevant authority, having received an assessment notice, must inform the NHS body responsible for the patient—
- (a) whether the patient has needs for care and support,
  - (b) (where applicable) whether a carer has needs for support,
  - (c) which (if any) of those needs the authority plans to meet, and
  - (d) how the authority plans to meet those needs.”

#### *Transition for children to adult care and support*

- 15 A local authority does not have to comply with any duties imposed by—
- (a) section 2A(2) to (4) or (6) of the Chronically Sick and Disabled Persons Act 1970 (welfare services: transition for children to adult care and support), or
  - (b) section 17ZH(2) to (4) or (6) of the Children Act 1989 (section 17 services: transition for children to adult care and support).

#### *Duties arising before commencement*

- 16 (1) A provision of this Part of this Schedule that provides that a local authority does not have to comply with a relevant duty, or modifies a relevant duty of a local authority, applies in relation to duties arising before the commencement day as it applies in relation to duties arising on or after that day.
- (2) In sub-paragraph (1)—
- “the commencement day”, in relation to a provision of this Part of this Schedule, means—
- (a) the day on which that provision comes into force, or
  - (b) where on any day the operation of the provision is revived by regulations under section 88(3), that day;
- “relevant duty” means a duty under—
- (a) Part 1 of CA 2014,

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(b) section 2A(2) to (4) or (6) of the Chronically Sick and Disabled Persons Act 1970, or

(c) section 17ZH(2) to (4) or (6) of the Children Act 1989.

*Period within which assessments may be carried out*

- 17 (1) Sub-paragraph (2) applies where—
- (a) any provision of paragraph 2 or 12 has had effect for any period, and
  - (b) that period has ended.
- (2) In determining for the purposes of any proceedings whether a local authority has complied with its duty to carry out a relevant assessment within a reasonable period, a court must take into account (among other things) the following factors—
- (a) the length of any period for which any provision of paragraph 2 or 12 had effect, and
  - (b) the number of relevant assessments which need to be carried out by the local authority following the end of any such period.
- (3) In this paragraph “relevant assessment” means—
- (a) a needs assessment under section 9 of CA 2014;
  - (b) a carer’s assessment under section 10 of that Act;
  - (c) a determination under section 13(1) of that Act;
  - (d) an assessment under section 37(6) of that Act;
  - (e) a child’s needs assessment under section 58 of that Act;
  - (f) a child’s carer’s assessment under section 60 of that Act;
  - (g) a young carer’s assessment under section 63 of that Act.

*Guidance*

- 18 (1) The Secretary of State may issue guidance about how local authorities are to exercise functions under any of the following enactments in consequence of the provision made by this Part of this Schedule—
- (a) Part 1 of CA 2014;
  - (b) section 2 of the Chronically Sick and Disabled Persons Act 1970;
  - (c) section 17 of the Children Act 1989.
- (2) A local authority must have regard to any guidance issued under this paragraph.
- (3) A local authority must comply with such guidance issued under this paragraph as the Secretary of State directs.
- (4) The Secretary of State—
- (a) may from time to time revise any guidance issued under this paragraph;
  - (b) may vary or revoke a direction made under sub-paragraph (3).
- (5) A local authority may disregard any guidance under section 7 of the Local Authority Social Services Act 1970 or section 78 of CA 2014, so far as it is inconsistent with guidance issued under this paragraph.