



Health and Care Act 2022

2022 CHAPTER 31

PART 6

MISCELLANEOUS

Social care

163 Regulation of local authority functions relating to adult social care

- (1) Chapter 3 of Part 1 of the Health and Social Care Act 2008 (quality of health and social care) is amended as follows.
- (2) In section 46 (reviews and performance assessments by the Care Quality Commission), in the heading, at the end insert “: registered service providers”.
- (3) After section 46 insert—

“46A Reviews and performance assessments: local authorities

- (1) The Commission must, in accordance with this section—
 - (a) conduct reviews of the exercise of regulated care functions by English local authorities,
 - (b) assess the performance of those authorities following each such review, and
 - (c) publish a report of its assessment.
- (2) In this section “regulated care functions” means such functions under Part 1 of the Care Act 2014 (functions relating to adult social care in England) as may be prescribed.
- (3) Regulations under subsection (2) may prescribe—
 - (a) all functions of English local authorities under Part 1 of the Care Act 2014 or some of their functions under that Part;
 - (b) the whole of a function or a particular aspect of it.

Status: This is the original version (as it was originally enacted).

- (4) The Secretary of State—
- (a) must set, and may from time to time revise, objectives and priorities for the Commission in relation to the assessment under this section of the performance of English local authorities, and
 - (b) must inform the Commission of the objectives and priorities.
- (5) The Commission—
- (a) must determine, and may from time to time revise, indicators of quality for the purposes of the assessment under this section of the performance of English local authorities, and
 - (b) must obtain the approval of the Secretary of State in relation to the indicators.
- (6) The Secretary of State may direct the Commission to revise the indicators under subsection (5).
- (7) Different objectives and priorities may be set, and different indicators of quality may be determined, for different cases.
- (8) The Commission—
- (a) must prepare, and may from time to time revise, a statement—
 - (i) setting out the frequency with which reviews under this section are to be conducted and the period to which they are to relate, and
 - (ii) describing the method that it proposes to use in assessing and evaluating the performance of a English local authority under this section, and
 - (b) must obtain the approval of the Secretary of State in relation to the statement.
- (9) The Secretary of State may direct the Commission to revise the statement under subsection (8).
- (10) The statement may—
- (a) make different provision about frequency and period of reviews for different cases, and
 - (b) describe different methods for different cases.
- (11) The Commission must publish—
- (a) the objectives and priorities under subsection (4),
 - (b) the indicators of quality under subsection (5), and
 - (c) the statement under subsection (8).
- (12) For the purposes of this section “English local authority” includes the Council of the Isles of Scilly only so far as references to a local authority in Part 1 of the Care Act 2014 include references to that Council as a result of an order under section 128(4) of that Act.”
- (4) In section 48 (special reviews and investigations)—
- (a) in subsection (2), after “section 46” insert “, 46A”;
 - (b) in subsection (3A), after “treated as a review” insert “or investigation”.

- (5) In section 50 (failings by English local authorities), in subsection (1), after “46” insert “, 46A”.
- (6) In section 60 (inspections)—
- (a) in subsection (1), after paragraph (c) (but before the “or” at the end) insert—
“(ca) the exercise of functions by an English local authority,”;
 - (b) after subsection (2) insert—
“(3) In this section “English local authority” has the same meaning as in section 46A (see subsection (12) of that section).”

164 Default powers of Secretary of State in relation to adult social care

- (1) In section 7D of the Local Authority Social Services Act 1970 (default powers of Secretary of State as respects social services functions of local authorities)—
- (a) in subsection (1), for the words from “imposed” to “2002” substitute “referred to in subsection (4)”;
 - (b) after subsection (3) insert—
“(4) Subsection (1) does not apply in relation to a duty imposed by or under—
 - (a) the Children Act 1989,
 - (b) section 1 or 2(4) of the Adoption (Intercountry Aspects) Act 1999,
 - (c) the Adoption and Children Act 2002, or
 - (d) Part 1 of the Care Act 2014.”
- (2) The Care Act 2014 is amended in accordance with subsections (3) and (4).
- (3) After section 72 insert—

“Default by local authority

72A Default power of Secretary of State

- (1) Where the Secretary of State is satisfied that a local authority is failing, or has failed, to discharge any of its functions under or by virtue of this Part to an acceptable standard, the Secretary of State may give to the local authority any directions that the Secretary of State considers appropriate for the purpose of addressing the failure.
- (2) The directions may include provision requiring the local authority—
- (a) to act in accordance with advice given by the Secretary of State or a person nominated by the Secretary of State,
 - (b) to collaborate with the Secretary of State or a person nominated by the Secretary of State in taking steps specified in the directions, or
 - (c) to provide the Secretary of State or a person nominated by the Secretary of State with information of a description specified in the directions, on request or otherwise.
- (3) If the Secretary of State considers it necessary for the purpose of addressing the failure, the directions may include provision—

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- (a) for specified functions of the local authority to be exercised by the Secretary of State or a person nominated by the Secretary of State for a period specified in the direction or for so long as the Secretary of State considers appropriate, and
 - (b) requiring the local authority to comply with any instructions of the Secretary of State or the nominee in relation to the exercise of the functions.
- (4) So far as is appropriate in consequence of directions given by virtue of subsection (3), a reference (however expressed) in an enactment, instrument or other document to a local authority is to be read as a reference to the person by whom the function is exercisable.
- (5) If directions given by virtue of subsection (3) expire or are revoked without being replaced then, so far as is appropriate in consequence of the expiry or revocation, a reference (however expressed) in an instrument or other document to the person by whom the function was exercisable is to be read as a reference to the local authority to whom the directions were given.
- (6) The Secretary of State may, for the purposes of cases in which directions are given under subsection (3)(a), make regulations disapplying or modifying an enactment which confers a function on the Secretary of State in respect of a function of a local authority.
- (7) Directions under this section may require the local authority to provide financial assistance to the Secretary of State, or a person nominated by the Secretary of State, for the purpose of meeting costs incurred by the Secretary of State or the nominee as a result of the directions.

72B Default power of Secretary of State: supplementary

- (1) Before giving directions under section 72A the Secretary of State must give the local authority concerned an opportunity to make representations about the proposed directions, except so far as the Secretary of State considers that it is impractical to do so for reasons of urgency.
 - (2) The power to give directions under section 72A includes a power to vary or revoke the directions by subsequent directions.
 - (3) Subsection (1) does not apply in relation to proposed directions varying previous directions if the Secretary of State does not consider the variations to be significant.
 - (4) Directions under section 72A must be in writing.
 - (5) The Secretary of State must publish—
 - (a) any directions given under section 72A, and
 - (b) the reasons for giving them.
 - (6) Directions under section 72A are enforceable, on the Secretary of State's application, by a mandatory order.”
- (4) In section 125(4) (regulations and orders subject to affirmative procedure), after paragraph (k) insert—

“(ka) regulations under section 72A(6) (modification of enactments where local authority functions are exercised by the Secretary of State or a nominee);”.

165 Care Quality Commission’s powers in relation to local authority failings

- (1) The Health and Social Care Act 2008 is amended as follows.
- (2) In section 48 (special reviews and investigations), in subsection (6) omit “or (3)”.
- (3) In section 50 (failings by English local authorities)—
 - (a) in subsection (2), in the words before paragraph (a), omit “subject to subsection (3)”;
 - (b) for subsections (3) and (4) substitute—

“(3A) Nothing in subsection (2) prevents a report published under section 46(1)(c), 46A(1)(c), 46B(1)(c) or 48(4) from specifying respects in which the Commission considers a local authority to be failing and making recommendations to the local authority for addressing the failure.”

166 Cap on care costs for charging purposes

- (1) The Care Act 2014 is amended as follows.
- (2) In section 15 (cap on care costs), for subsections (2) and (3) substitute—

“(2) The reference to costs accrued in meeting the adult’s eligible needs is a reference—

 - (a) in relation to eligible needs met by a local authority, to any amount the local authority charged the adult under section 14(1)(a) or 48(5) for meeting those needs;
 - (b) in relation to eligible needs met by a person other than a local authority, to what the cost of meeting those eligible needs would have been to the local authority that was the responsible local authority when the needs were met.

(3) A reference in subsection (2)(b) to eligible needs does not include any eligible needs during a period when the adult had neither a personal budget nor an independent personal budget, other than eligible needs at any time after a local authority was required to carry out a needs assessment that resulted in the preparation of a personal budget or an independent personal budget for the adult.

(3A) For the purposes of this Part an adult’s needs are “eligible needs” if—

 - (a) the needs meet the eligibility criteria,
 - (b) the needs are not being met by a carer, and
 - (c) the adult is ordinarily resident or present in the area of a local authority.

(3B) In this Part, “the responsible local authority” means the local authority in whose area the adult is ordinarily resident or in whose area the adult is present (where the adult is of no settled residence).”

(3) In section 24 (the steps for the local authority to take), for subsection (3) substitute—

“(3) Where, following a determination under section 13(1), no local authority is going to meet any of an adult’s needs for care and support, the local authority that is for the time being the responsible local authority must prepare an independent personal budget for the adult (see section 28) if—

- (a) the adult has any eligible needs, and
- (b) the adult has at any time either—
 - (i) asked a local authority that was, at that time, the responsible local authority, to prepare an independent personal budget, or
 - (ii) had needs met by a local authority as mentioned in section 24(1).”

(4) In section 26 (personal budget), for subsections (1) and (2) substitute—

“(1) A personal budget is a statement which specifies, in respect of the adult’s needs which a local authority is required or decides to meet as mentioned in section 24(1)—

- (a) the current cost to the local authority of meeting those needs,
- (b) how much of that cost the adult will be required to pay under section 14(1)(a), and
- (c) the balance, if any, of the cost referred to in paragraph (a).

(2) If the needs referred to in section 26(1) include eligible needs, the personal budget must also specify—

- (a) the current cost to the local authority of meeting those eligible needs,
- (b) how much of that cost the adult will be required to pay under section 14(1)(a), and
- (c) where the amount referred to in paragraph (a) includes daily living costs, the amount attributable to those daily living costs.

(2A) If the adult has needs which a local authority is required or decides to meet as mentioned in section 24(1) and also has eligible needs which are not being met by any local authority, the personal budget must specify—

- (a) what the current cost would be to the responsible local authority of meeting those eligible needs, and
- (b) where the amount referred to in paragraph (a) includes daily living costs, the amount attributable to those daily living costs.”

(5) In section 28 (independent personal budget)—

(a) for subsection (1) substitute—

“(1) An independent personal budget is a statement which specifies what the current cost would be to the responsible local authority of meeting the adult’s eligible needs (but the independent personal budget need not specify the cost of meeting those needs at any time when the local authority required to prepare it has ceased to be the responsible local authority or at any time when the adult has needs which a local authority is required or decides to meet as mentioned in section 24(1)).”;

(b) omit subsection (3).

Status: This is the original version (as it was originally enacted).

- (6) In section 29 (care account), in subsection (1), in the words before paragraph (a), for the words from “the local authority” to “present” substitute “the responsible local authority”.
- (7) In section 31 (adults with capacity to request direct payments), in subsection (1), for paragraph (a) substitute—
 - “(a) a personal budget for an adult specifies an amount under section 26(1)(c) in respect of any needs, and”.
- (8) In section 32 (adults without capacity to request direct payments), in subsection (1), for paragraph (a) substitute—
 - “(a) a personal budget for an adult specifies an amount under section 26(1)(c) in respect of any needs, and”.
- (9) In section 37 (notification, assessment etc.), in subsection (15), omit paragraph (a).
- (10) In section 80 (Part 1: interpretation), in the table in subsection (1), at the appropriate places insert—

“Eligible needs	Section 15(3A)”
“The responsible local authority	Section 15(3B)”.
