



Health and Care Act 2022

2022 CHAPTER 31

PART 6

MISCELLANEOUS

Social care

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

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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—
 - (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.

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- (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);”.