

SCHEDULE

Amendments in consequence of provisions of the Care Act 2014 and the Children and Families Act 2014

Children Act 1989 (c. 41)

46.—(1) Section 17A(1) is amended as follows.

(2) For subsections (3) and (3A) substitute—

“(3) Regulations under this section may, in particular, make provision—

- (a) specifying circumstances in which the responsible authority are not required or authorised to make any payments under the regulations to a person, whether those circumstances relate to the person in question or to the particular service mentioned in subsection (2);
- (b) for any payments required or authorised by the regulations to be made to a person by the responsible authority (“direct payments”) to be made to that person (“the payee”) as gross payments or alternatively as net payments;
- (c) for the responsible authority to make for the purposes of subsection (3A) or (3B) such determination as to—
 - (i) the payee’s means, and
 - (ii) the amount (if any) which it would be reasonably practicable for the payee to pay to the authority by way of reimbursement or contribution,as may be prescribed;
- (d) as to the conditions falling to be complied with by the payee which must or may be imposed by the responsible authority in relation to the direct payments (and any conditions which may not be so imposed);
- (e) specifying circumstances in which the responsible authority—
 - (i) may or must terminate the making of direct payments,
 - (ii) may require repayment (whether by the payee or otherwise) of the whole or part of the direct payments;
- (f) for any sum falling to be paid or repaid to the responsible authority by virtue of any condition or other requirement imposed in pursuance of the regulations to be recoverable as a debt due to the authority;
- (g) displacing functions or obligations of the responsible authority with respect to the provision of the service mentioned in subsection (2) only to such extent, and subject to such conditions, as may be prescribed;
- (h) authorising direct payments to be made to any prescribed person on behalf of the payee;
- (j) as to matters to which the responsible authority must, or may, have regard when making a decision for the purposes of a provision of the regulations;
- (k) as to steps which the responsible authority must, or may, take before, or after, the authority makes a decision for the purposes of a provision of the regulations;
- (l) specifying circumstances in which a person who has fallen within subsection (3D) but no longer does so (whether because of fluctuating capacity, or regaining

(1) Section 17A was substituted by the Health and Social Care Act 2001 (c. 15), section 58 and amended by the Health and Social Care Act 2008 (c. 14), Schedule 14, paragraph 1.

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or gaining of capacity) is to be treated, or may be treated, as falling within subsection (3D) for purposes of this section or for purposes of regulations under this section.

(3A) For the purposes of subsection (3)(b) “gross payments” means payments—

- (a) which are made at such a rate as the authority estimate to be equivalent to the reasonable cost of securing the provision of the service concerned; but
- (b) which may be made subject to the condition that the payee pays to the responsible authority, by way of reimbursement, an amount or amounts determined under the regulations.

(3B) For the purposes of subsection (3)(b) “net payments” means payments—

- (a) which are made on the basis that the payee will pay an amount or amounts determined under the regulations by way of contribution towards the cost of securing the provision of the service concerned; and
- (b) which are accordingly made at such a rate below that mentioned in subsection (3A)(a) as reflects any such contribution by the payee.

(3C) Regulations made for the purposes of subsection (3)(a) may provide that direct payments shall not be made in respect of the provision of residential accommodation for any person for a period in excess of a prescribed period.

(3D) A person falls within this subsection if the person lacks capacity, within the meaning of the Mental Capacity Act 2005, to consent to the making of direct payments.”

(3) In subsection (4)—

- (a) in paragraph (a), for the words from “(4)(a)” to the end substitute “(3A)(a)”;
- (b) in paragraph (b), for “(4)(b) of that section” substitute “(3A)(b)”.

(4) In subsection (6)—

- (a) omit the definition of “the 2001 Act”;
- (b) in the definition of “prescribed” omit the words from “(and has” to the end.