

Social Care Portability Bill [HL]

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TO

Provide for the portability of care packages to promote independent living for disabled persons by local authorities in England and Wales; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Application of the duties

The duties under this Act apply where—

- (a) a person (P) is ordinarily resident in a local authority (“the first authority”);
- (b) pursuant to a determination of need by the first authority under social care enactments, P is in receipt of a care package (“the existing care package”); and 5
- (c) P wishes—
 - (i) to become ordinarily resident in another local authority (“the second authority”); and 10
 - (ii) to continue to receive a care package in the second authority.

2 First authority: duty to give notice

As soon as the first authority becomes aware that P has a firm intention of becoming ordinarily resident in the second authority, it must give notice to the second authority. 15

3 Second authority: duty to make provision

- (1) On receipt of a notice under section 2, the second authority must take steps to put in place a care package to meet P’s care needs (“the new care package”).
- (2) The new care package must be equivalent to the existing care package for the period prescribed by regulations under section 6. 20

4 First authority: duty to continue funding

- (1) Until the new care package is in place, the first authority must continue to fund the provision of a care package for P equivalent to the existing care package.
- (2) The first authority is entitled to reimbursement by the second authority for any expenditure it incurs under subsection (1).

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5 Co-operation between the authorities

- (1) The first authority and the second authority (together “the authorities”) must co-operate with one another to ensure that any arrangements under sections 3 and 4 (“the transitional arrangements”) are effective.
- (2) In particular, the authorities must ensure that the transitional arrangements –
 - (a) are made with the involvement and consent of P and any person with parental responsibility for P;
 - (b) comply with any regulations made under section 6; and
 - (c) accord with any guidance or directions issued by the Secretary of State or the Welsh Ministers under section 7 (local authorities to exercise social services functions under guidance of Secretary of State) or 7A (directions by the Secretary of State as to exercise of social services functions) of the Local Authority Social Services Act 1970 in relation to the portability of care packages.
- (3) In exercising their duties under this Act, the authorities must have regard to the following principles –
 - (a) the welfare of P is paramount;
 - (b) the transitional arrangements should be timely and seamless;
 - (c) P’s care needs should not be adversely affected by any dispute between the authorities or between one or both of the authorities and another party;
 - (d) the dignity, choice and control of P should be respected during the transitional arrangements.

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6 Regulations

- (1) The Secretary of State and the Welsh Ministers may make regulations in relation to the performance of the authorities’ duties.
- (2) Regulations under subsection (1) may, in particular –
 - (a) prescribe the form and content of a notice under section 2;
 - (b) prescribe the period by which the second authority is to have a new care package in place for P;
 - (c) prescribe the period for which the new care package is to be equivalent to the existing care package;
 - (d) prescribe the period for which the first authority is to retain funding responsibility for P’s care needs;
 - (e) prescribe the basis of reimbursement by the second authority of any expenditure by the first authority under section 4;
 - (f) provide for the payment of interest on any sums so reimbursed; and
 - (g) provide for the resolution of any dispute between the authorities as to their respective funding responsibilities, including responsibility for any new or changed social care needs that P may acquire.

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- (3) Regulations under subsection (1) are to be made by statutory instrument –
- (a) in relation to England, by the Secretary of State; and
 - (b) in relation to Wales, by the Welsh Ministers.
- (4) A statutory instrument containing regulations is subject to annulment in pursuance of a resolution of either House of Parliament or, in relation to Wales, the National Assembly of Wales. 5

7 Interpretation

In this Act –

“care package” means –

- (a) community care services for P within the meaning of section 46(3) (local authority plans for community care services) of the National Health Service and Community Care Act 1990; 10
- (b) care services for P under section 17 (provision of services for children in need, their families and others) of the Children Act 1989; 15
- (c) direct payments to P under section 57 (direct payments) of the Health and Social Care Act 2001;
- (d) direct payments to P, or a person with parental responsibility for P, under section 17A (direct payments) of the Children Act 1989; or 20
- (e) a combination of these;

“equivalent” means having the same outcome;

“local authority” means –

- (a) a unitary authority in England;
- (b) a county council in England; 25
- (c) a metropolitan district council in England;
- (d) a non-metropolitan district council in England for an area for which there is no county council;
- (e) a London borough council;
- (f) the Common Council of the City of London; 30
- (g) the Council of the Isles of Scilly;
- (h) a county council or county borough council in Wales;

“social care enactments” means –

- (a) section 2 (provision of welfare services) of the Chronically Sick and Disabled Persons Act 1970; 35
- (b) section 4 (services under section 2 of the 1970 Act: duty to consider needs of disabled persons) of the Disabled Persons (Services, Consultation and Representation) Act 1986;
- (c) section 17 (provision of services for children in need, their families and others) of the Children Act 1989; 40
- (d) section 47 (assessment of needs for community care services) of the National Health Service and Community Care Act 1990.

8 Extent

- (1) This Act extends only to England and Wales.

- (2) The Secretary of State may by order made by statutory instrument provide that this Act shall have effect in its application to the Isles of Scilly with such modifications as may be specified in the order.
- (3) The statutory instrument containing an order under subsection (2) is subject to annulment in pursuance of a resolution of either House of Parliament. 5

9 Commencement

- (1) This Act comes into force on such day as may be appointed by order made by statutory instrument.
- (2) An order under subsection (1) is to be made—
 - (a) in relation to England, by the Secretary of State; and 10
 - (b) in relation to Wales, by the Welsh Ministers.
- (3) An order under subsection (1) may include incidental, consequential, supplementary or transitional provision.

10 Short title

This Act may be cited as the Social Care Portability Act 2012. 15

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Baroness Campbell of Surbiton

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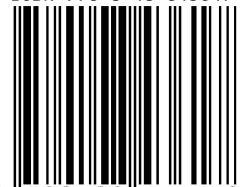
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