

Community Care (Delayed Discharges etc.) Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department of Health, will be published separately as Bill 4-EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Mr Secretary Milburn has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Community Care (Delayed Discharges etc.) Bill are compatible with the Convention rights.

Community Care (Delayed Discharges etc.) Bill

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Make provision requiring social services authorities to make payments in cases where the discharge of patients is delayed for reasons relating to the provision of community care services; and to enable the Secretary of State and the National Assembly for Wales to require certain community care services provided by social services authorities to be free of charge to persons receiving those services.

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:—

PART 1

DELAYED DISCHARGE PAYMENTS

Preliminary

1 Meaning of “NHS body” and “qualifying hospital patient”

In this Part—	5
“NHS body” means—	
(a) a National Health Service trust; or	
(b) a Primary Care Trust (in England) or a Local Health Board (in Wales); and	
“qualifying hospital patient” means a person being accommodated at—	10
(a) a health service hospital; or	
(b) an independent hospital in pursuance of arrangements made by an NHS body;	
who is receiving (or who has received or is expected to receive) care of a description prescribed in regulations.	15

*Determination of need for community care services on discharge***2 Notice of patient’s possible need for community care services**

- (1) This section applies where –
- (a) a person (“the patient”) is or is expected to become a qualifying hospital patient at a particular hospital; and 5
 - (b) the responsible NHS body considers that it is unlikely to be safe to discharge the patient from hospital unless one or more community care services are made available for him.
- (2) It is the duty of the responsible NHS body to give notice of the patient’s case for the purposes of this Part to the social services authority in whose area the patient is ordinarily resident when the notice is given. 10
- (3) That notice –
- (a) must state that it is given under this section; and
 - (b) if given before the day on which the patient is admitted to the hospital, must not be given earlier than the beginning of the period of eight days ending with the day on which he is expected to be admitted. 15
- (4) Regulations may prescribe –
- (a) the form and contents of notices under this section and the manner in which they are to be given;
 - (b) circumstances in which such notices may be withdrawn or in which they otherwise cease to have effect. 20
- (5) In this Part “the responsible NHS body”, in relation to a person who is or expected to become a qualifying hospital patient, means –
- (a) if the hospital concerned is a health service hospital, the NHS body managing the hospital; or 25
 - (b) if the hospital concerned is an independent hospital, the NHS body making the arrangements for the patient to be accommodated.
- (6) In this Part “the responsible authority”, in relation to a person whose case has been notified under this section, means (subject to any regulations under section 7) the social services authority to which the notice is given. 30

3 Duties arising where a notice under section 2 is given

- (1) The duties in this section apply where notice of a patient’s case has been given under section 2.
- (2) But those duties cease to have effect if the notice is withdrawn or otherwise ceases to have effect before they are complied with. 35
- (3) The responsible authority must –
- (a) carry out an assessment of the patient’s needs with a view to identifying any community care services that need to be made available in order for it to be safe to discharge him; and
 - (b) after consulting the responsible NHS body, decide which of those services (if any) the authority will make available for the patient. 40
- (4) The duties in subsection (3) apply whether or not the patient’s needs for community care services have previously been assessed.

- (5) If it appears to the responsible NHS body that the patient’s circumstances have changed after the decision required by subsection (3)(b), the NHS body may withdraw the notice and, if it considers it appropriate to do so, give a further notice under section 2.
- (6) The responsible NHS body must consult the responsible authority before deciding what services (if any) it will make available following discharge in order for it to be safe to discharge the patient. 5
- (7) The responsible NHS body must give the responsible authority notice of the day on which it proposes to discharge the patient.
- (8) Regulations may prescribe – 10
- (a) the time at which notices under subsection (7) are to be given;
 - (b) the form and contents of such notices and the manner in which they are to be given;
 - (c) circumstances in which such notices may be withdrawn or in which they otherwise cease to have effect. 15
- (9) Anything done under subsection (3) above is to be treated as done under section 47(1) of the National Health Service and Community Care Act 1990 (c. 19) (but without prejudice to anything to be done under that section in relation to any other community care services).

Delayed discharge payments 20

4 Liability to make delayed discharge payments

- (1) This section applies where, in the case of a person who is a qualifying hospital patient –
- (a) notice of his case has been given under section 2 (and not withdrawn); and 25
 - (b) notice of the proposed discharge day has been given under section 3(7).
- (2) For the purposes of this section “the relevant day” is the later of –
- (a) the proposed discharge day notified under section 3(7); and
 - (b) the last day of the period prescribed by regulations as the minimum interval after a notice under section 2 is given. 30
- (3) The period prescribed under subsection (2)(b) must –
- (a) begin with the day after that on which the notice under section 2 is given; and
 - (b) be a period of at least two days.
- (4) *If by the end of the relevant day –* 35
- (a) *the responsible authority has not complied with its duties under section 3(3); or*
 - (b) *it has not been possible to discharge the patient because, and only because, the local authority has not made available for the patient a community care service which it decided under section 3(3)(b) to make available for him,* 40
- the responsible authority must make a payment of the amount prescribed in regulations for each day of the delayed discharge period.*
- (5) For this purpose “the delayed discharge period” is, subject to subsections (6) and (7), the period –

-
- (a) beginning with the day after the relevant day, and
 - (b) ending with the day on which the patient is discharged.
- (6) If on any day before that on which the patient is discharged the responsible authority gives notice to the responsible NHS body that –
- (a) it has complied with its duties under section 3(3), and 5
 - (b) every community care service that it decided under section 3(3)(b) to make available has been made available for the patient, the delayed discharge period ends with that day.
- (7) Regulations may –
- (a) require days after the relevant day not to be treated as days of the delayed discharge period; 10
 - (b) prescribe circumstances (other than those mentioned in subsections (5) and (6)) in which the delayed discharge period ends;
 - (c) make provision for determining the day on which a notice under section 2 or 3(7) is given (including provision prescribing circumstances in which a notice is to be treated for the purposes of this section as having been given on a day other than that on which it was in fact given); 15
 - (d) make provision for determining the day on which a patient is discharged (including provision prescribing circumstances in which a patient is to be treated for the purposes of this section as having been discharged on a day other than that on which he was in fact discharged). 20
- (8) Any payment which a social services authority is required to make under subsection (4) shall (subject to subsection (9)) be made to the responsible NHS body. 25
- (9) If the case is of a description prescribed in regulations the payment shall be made to the person prescribed in relation to cases of that description.

Disputes

- 5 Ordinary residence** 30
- (1) Any question arising under this Part as to the ordinary residence of a person who is or is expected to become a qualifying hospital patient shall be determined by the Secretary of State or by the Assembly.
 - (2) The Secretary of State and the Assembly must make and publish arrangements for determining which cases are to be dealt with by the Secretary of State and which are to be dealt with by the Assembly. 35
 - (3) Those arrangements may include provision for the Secretary of State and the Assembly to agree, in relation to any question that has arisen, which of them is to deal with the case.
- 6 Dispute resolution** 40
- (1) Regulations may require each Strategic Health Authority in England and each Local Health Board in Wales to establish and maintain a panel to assist in the resolution of disputes under this Part between two or more public authorities (other than disputes to which section 5 applies).

- (2) Regulations may make provision about the panels to be established by virtue of this section, including in particular provision about—
 - (a) the constitution of a panel in the case of any dispute referred to it;
 - (b) which disputes may be referred to a panel; and
 - (c) which panel may assist in the resolution of disputes involving bodies not all situated in the area of a Strategic Health Authority or a Local Health Board. 5
- (3) Regulations may prohibit a public authority from bringing legal proceedings against another public authority in relation to a dispute under this Part before such steps have been taken in relation to a panel established by virtue of this section as may be prescribed in the regulations. 10
- (4) For the purposes of this section “public authority” means an NHS body or a social services authority.

Supplemental

7 Adjustments between social services authorities 15

- (1) Regulations may make provision as to the application of this Part in cases where, in relation to a qualifying hospital patient—
 - (a) it is uncertain (without a determination under section 5) where the patient is ordinarily resident; or
 - (b) it appears to the responsible authority for the time being that the patient is ordinarily resident in the area of another social services authority. 20
- (2) The regulations may, among other things, authorise or require a social services authority—
 - (a) to accept a notice given to it under section 2 notwithstanding that it may wish to dispute that it was the right authority to be notified; 25
 - (b) to become the responsible authority for a patient’s case in place of the social services authority previously responsible;
 - (c) to recover expenditure incurred as the responsible authority for a patient’s case in the performance of functions under this Part, or in the provision of community care services which are the subject of a decision under section 3(3)(b), from another social services authority. 30
- (3) The regulations may modify the effect of any provision of this Part as it applies in any cases falling within subsection (1).

8 Regulations 35

- (1) Any power to make regulations under this Part is, subject to subsection (2), exercisable by the appropriate Minister.
- (2) The power to make regulations under section 6(3) is exercisable by the Secretary of State.
- (3) Regulations under this Part may—
 - (a) make different provision for different cases and circumstances;
 - (b) make supplementary, consequential, incidental, transitional or saving provision. 40

- (4) Any power to make regulations under this Part is exercisable by statutory instrument subject, in the case of regulations made by the Secretary of State (or by the Secretary of State and the Assembly acting jointly), to annulment in pursuance of a resolution of either House of Parliament.

9 Interpretation

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In this Part—

“community care service” has the meaning given by section 46(3) of the National Health Service and Community Care Act 1990;

“health service hospital” has the same meaning as in the National Health Service Act 1977;

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“independent hospital” has the same meaning as in the Care Standards Act 2000;

“NHS body” has the meaning given by section 1;

“qualifying hospital patient” has the meaning given by section 1;

“the responsible authority” has the meaning given by section 2(6);

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“the responsible NHS body” has the meaning given by section 2(5);

“social services authority” means a local authority for the purposes of the Local Authority Social Services Act 1970.

10 Application of Local Authority Social Services Act 1970

In Schedule 1 to the Local Authority Social Services Act 1970 (social services functions to which that Act applies) at the appropriate place there is inserted—

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“Community Care (Delayed Discharges etc.) Act 2003

Part 1 Functions relating to hospital patients likely to need community care services to be made available in order to be discharged safely.”

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11 Power to extend the application of Part 1 to NHS patients in care homes

- (1) The appropriate Minister may by order provide for this Part to apply in relation to qualifying care home patients as it applies to qualifying hospital patients.

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- (2) An order under this section may—

(a) specify such modifications of this Part as appear to the appropriate Minister to be necessary for it to apply satisfactorily in relation to qualifying care home patients; and

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(b) make supplementary, consequential, incidental, transitional or saving provision.

- (3) In this section—

“care home” has the same meaning as in the Care Standards Act 2000 (c. 14); and

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“qualifying care home patient” means a person being accommodated at a care home, in pursuance of arrangements made by an NHS body, who is receiving (or who has received or is expecting to receive) care of a description prescribed in regulations.

- (4) The care prescribed under subsection (3) must be care which is prescribed under section 1 for the purposes of the definition of “qualifying hospital patient” (or which as nearly as possible corresponds to care that is so prescribed). 5
- (5) The power to make an order under this section is exercisable by statutory instrument subject, in the case of an order made by the Secretary of State (or by the Secretary of State and the Assembly acting jointly), to annulment in pursuance of a resolution of either House of Parliament. 10

PART 2

LOCAL AUTHORITY COMMUNITY CARE SERVICES

12 Free provision of certain community care services 15

- (1) *The Secretary of State may by regulations require that the provision of any qualifying service of a description prescribed in the regulations is to be free of charge to the person to whom it is provided.*
- (2) The regulations may (without prejudice to the generality of subsection (1))—
- (a) prescribe circumstances in which a qualifying service is to be provided free of charge; and
 - (b) limit the period for which a qualifying service is to be so provided. 20
- (3) In this section “qualifying service” means—
- (a) the provision of accommodation under Part 3 of the National Assistance Act 1948 (c. 29) in pursuance of arrangements made by a local authority in England; or
 - (b) any service which is provided to a person by, or in pursuance of arrangements made by, a local authority in England under any enactment mentioned in section 17(2)(a) to (c) of the Health and Social Services and Social Security Adjudications Act 1983 (c. 41) (charges for local authority services). 25
- (4) The regulations may not require that any accommodation of the kind referred to in subsection (3)(a) is to be free of charge for a period exceeding six weeks.
- (5) The regulations may—
- (a) make different provision for different descriptions of qualifying service; and
 - (b) make supplementary, consequential, incidental, transitional or saving provision. 35
- (6) The power of the Secretary of State to make regulations under this section is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament. 40
- (7) The Assembly may by regulations made by statutory instrument make provision in relation to local authorities in Wales corresponding to any regulations made by the Secretary of State under this section.

13 Consequential amendments

- (1) In section 22 of the National Assistance Act 1948 (c. 29) (charges for accommodation provided or arranged by local authority), after subsection (8) there is inserted –
- “(8A) This section shall have effect subject to any regulations under section 12 of the Community Care (Delayed Discharges etc.) Act 2003 (power to require certain community care services to be provided free of charge).” 5
- (2) In section 26 of that Act (provision of accommodation in premises maintained by voluntary organisations), after subsection (4) there is inserted –
- “(4AA) Subsections (2) to (4) shall have effect subject to any regulations under section 12 of the Community Care (Delayed Discharges etc.) Act 2003 (power to require certain community care services to be free of charge).” 10
- (3) In section 17 of the Health and Social Services and Social Security Adjudications Act 1983 (c. 41) (power to charge for certain local authority services), after subsection (4) there is inserted –
- “(5) This section has effect subject to any regulations under section 12 of the Community Care (Delayed Discharges etc.) Act 2003 (power to require certain community care services to be free of charge).” 15

PART 3

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SUPPLEMENTARY

14 Money

There shall be paid out of money provided by Parliament –

- (a) *any expenditure incurred by the Secretary of State by virtue of this Act; and*
- (b) *any increase attributable to this Act in the sums payable out of money so provided by virtue of any other Act.* 25

15 Meaning of “the appropriate Minister” and “the Assembly”

- (1) In this Act “the appropriate Minister” means –
- (a) in relation to England, the Secretary of State;
- (b) in relation to Wales, the Assembly; and 30
- (c) in relation to England and Wales, the Secretary of State and the Assembly acting jointly.
- (2) In this Act “the Assembly” means the National Assembly for Wales.

16 Short title, commencement and extent

- (1) This Act may be cited as the Community Care (Delayed Discharges etc.) Act 2003. 35
- (2) Part 1 shall come into force on such day as the appropriate Minister may by order made by statutory instrument appoint; and different days may be appointed for different purposes.
- (3) This Act extends to England and Wales only. 40

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To make provision requiring social services authorities to make payments in cases where the discharge of patients is delayed for reasons relating to the provision of community care services; and to enable the Secretary of State and the National Assembly for Wales to require certain community care services provided by social services authorities to be free of charge to persons receiving those services.

*Presented by Mr Secretary Milburn
supported by
The Prime Minister, Mr Secretary Prescott,
Mr Chancellor of the Exchequer,
Mr Secretary Smith, Secretary Peter Hain,
Mr Paul Boateng, Jacqui Smith.*

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