

# Health and Social Care (Independent Living) Bill

## [HL]

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**B I L L**

TO

Impose duties upon certain persons and bodies in respect of disabled persons; to confer certain rights upon disabled persons for independent living; to amend the Mental Health Act 1983; to amend the Health and Social Care Act 2008; and for connected purposes.

**B**E 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**

INTRODUCTORY

**1 General principles**

- (1) The purpose of this Act is to ensure that disabled persons enjoy the same choice, freedom, dignity, control and substantive opportunities as persons who are not disabled at home, at work, and as members of the community, and consequently to ensure that families and carers of disabled persons enjoy greater health, wellbeing, equality and opportunities to participate in social and economic life. 5
- (2) The following principles apply for the purposes of this Act. 10
- (3) Disabled persons should be able to exercise choice, freedom and control and enjoy personal dignity and substantive opportunities to participate fully in work, family life, education, public, community and cultural life.
- (4) Disabled persons are the best judge of their own requirements and therefore any practical assistance and associated support allocated to disabled persons following assessment should be based on their own choices, lifestyle preferences and aspirations. 15
- (5) Any action taken or decision made under this Act in relation to a disabled person’s living arrangements and accommodation should ensure that each disabled person is empowered to determine his own living arrangements in relation to— 20

- 
- (a) the type of accommodation or setting in which he wishes to live; and  
(b) with whom he shares that accommodation or living space.
- (6) In all actions concerning disabled children the best interests of the child shall be the primary consideration.
- (7) Disabled children should be able to express their views freely in relation to all matters affecting them and the views and aspirations of the child shall be given due weight in accordance with his age and maturity. 5
- (8) Disabled children should be supported to express their views freely in relation to acts done or decisions made under this Act for or on their behalf, to participate actively in those decisions and to develop greater capacity to express their views and participate in decision-making. 10
- (9) Disabled adults should be enabled and empowered to make their own decisions, with whatever support they require to do so, and disabled adults who may lack or have reduced capacity to make certain decisions on their own should be supported to develop greater capacity to do so. 15
- (10) Disabled persons should not suffer detriment or be denied opportunities or benefits for reasons relating to their –
- (a) age;
  - (b) colour, race, nationality or ethnic or national origins;
  - (c) impairment or any aspect of their appearance or behaviour which might lead others to make unjustified assumptions about them; 20
  - (d) family status;
  - (e) gender reassignment;
  - (f) language;
  - (g) marital status; 25
  - (h) pregnancy;
  - (i) religion or belief;
  - (j) sex;
  - (k) sexual orientation;
- and steps taken under this Act should be taken with a view to correcting conditions of disadvantage and social exclusion for disabled persons which arise from discrimination on the grounds listed above which may require the taking of positive measures. 30
- (11) Any action taken or decision made under this Act, for or on behalf of a disabled person, should be done or made with due regard to the need to respect and promote his human rights and the principles set out in this Act. 35
- (12) Independent living support should be provided and arranged in such a way as to ensure that no disabled person has to rely on care and support provided by a child or young person such as may impair the health or wellbeing or educational and leisure opportunities of the child or young person. 40
- (13) Carers, including those with parental responsibility for disabled children, should not be subject to any arrangements or decisions which would unduly limit their substantive opportunities for independent living or damage their health and wellbeing, and disabled persons should not be subject to consequent undue dependence in relation to anything done under this Act. 45
- (14) All those with duties under this Act shall carry out those duties to the maximum extent of their available resources.

## 2 Relationship with the Disability Discrimination Act 1995

The provisions of this Act are without prejudice to the duties of public authorities under section 49A(1) of the Disability Discrimination Act 1995 (c. 50).

## 3 Interpretation

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In this Act –

“accessible information” means information in a range of formats and languages that disabled persons can access with ease including, but not limited to, information in large print, plain English, audio format, braille, easy read format (short easy-to-understand words, large print and pictures), information in such formats provided in a range of community languages other than English (including Welsh) and in versions suitable for children, and information in British Sign Language; 10

“appropriate authority” means – 15  
(a) in relation to England, the Secretary of State,  
(b) in relation to Wales, the Welsh Ministers;

“associated support” means any associated treatment, therapy, continuing health or personal care or skills training a disabled person requires to develop, increase or sustain their capacity for independent living; 20

“authorised representative” means a nominated supporter or an independent advocate;

“carer” means a person who provides some form of care and support to a disabled person and who is not paid for providing that care and support (nor provides the care and support as a volunteer placed into that role by a voluntary organisation); 25

“disabled child” means a disabled person who is under 18 years of age;

“disabled person” means a person of any age (unless specified otherwise) who – 30

(a) has a physical, neurological or sensory impairment, a learning disability, a mental health problem, an illness or health condition, or

(b) has had an illness or health condition, and who faces barriers to independent living, or any other class of person as may be prescribed by the Secretary of State; 35

“independent advocacy services” means services of support and representation which –

(a) are made available for the purpose of enabling disabled persons to say what they want, secure their rights and obtain services they need; 40

(b) provide a range of advocacy options including support from a specialist advocate (a paid advocate with specialist training and skills), a citizen advocate (a volunteer advocate who will support a disabled person to speak up for himself or speak up for and represent a disabled person’s interests), peer advocacy (an advocate who shares similar experiences to the disabled person he is working with) and self advocacy (a disabled person speaking up for and representing his own interests with support from a self advocacy group); 45  
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- (c) are provided by a person who is not a local authority or NHS body and who is otherwise free from conflicts of interest with those providing services to the disabled person; and
- (d) work in partnership with the disabled persons they support and further their interests; 5
- “independent advocate” means a person who –
- (a) enables disabled persons to say what they want, secure their rights and obtain services they need;
- (b) is either a specialist advocate or a citizen advocate provided or arranged by the responsible authorities in conjunction with their duties to secure independent advocacy services under this Act; 10
- (c) is not a local authority or NHS body and is otherwise free from conflicts of interest with those providing services to the disabled person; and 15
- (d) works in partnership with the disabled person concerned and furthers their interests;
- “independent living” means disabled persons enjoying the same choice, freedom, dignity, control and substantive opportunities as persons who are not disabled at home, at work, and as members of the community in order to improve outcomes for disabled persons in relation to – 20
- (a) their individual autonomy;
- (b) their confidence and security;
- (c) respect for and full enjoyment of their rights to privacy and family life; 25
- (d) their participation in education, life-long learning, training and recreation;
- (e) the contribution made by them to society, including their participation in voluntary work and employment; 30
- (f) their social and economic well-being;
- (g) their participation in community and public life; and
- (h) their physical and mental health and emotional well-being;
- “language” means communication in British Sign Language, appropriate community languages, Welsh and English; 35
- “local authority” means –
- (a) a county council in England;
- (b) a metropolitan district council in England;
- (c) a non-metropolitan district council in England for an area for which there is no county council; 40
- (d) a London borough council;
- (e) the Common Council of the City of London;
- (f) the Council of the Isles of Scilly;
- (g) a county council or county borough council in Wales;
- “nominated supporter” means a person who could be a family member or a friend, whom a disabled person has chosen to support him to say what he wants, secure his rights, assist him in obtaining services he needs and represent his interests, and may include more than one such person; 45
- “NHS body” means – 50

- (a) in relation to England, a Strategic Health Authority, a Special Health Authority, an NHS trust, an NHS foundation trust, a Primary Care Trust (including a Care Trust established under section 77 of the National Health Service Act 2006 (c. 41)),
  - (b) in relation to Wales, a Local Health Board or an NHS trust; 5
- “prescribed” means specified in, or determined in accordance with, regulations made by the appropriate authority or by the Secretary of State where so specified;
- “racial group” means any group of persons identified by reference to their colour, race, nationality or ethnic or national origins; 10
- “religion or belief” means any religion, religious belief or similar philosophical belief (including agnosticism, atheism and humanism);
- “sexual orientation” means an orientation towards –
- (a) persons of the same sex;
  - (b) persons of the opposite sex; 15
  - (c) persons of the same sex or the opposite sex;
- “undue dependence” means a disabled person being forced to rely on carers for basic support and assistance and consequently facing worse outcomes in relation to independent living than would otherwise be the case. 20

## PART 2

### INDEPENDENT LIVING

#### CHAPTER 1

##### GENERAL DUTIES IN RELATION TO INDEPENDENT LIVING

- 4 National independent living implementation plan** 25
- (1) The appropriate authority shall prepare and implement a national independent living implementation plan (“the plan”) with a view to ensuring the effective and sustainable implementation of the provisions of this Part.
  - (2) The plan shall include the following –
    - (a) a national economic plan which – 30
      - (i) sets out the costs and benefits of implementation, and commits to the provision of such transitional or other funding as may be required, and
      - (ii) ensures that, as far as possible, consequential savings from any provision of this Act are utilised and reinvested in such a way as to support the effective implementation of other provisions of this Act; 35
    - (b) a national resource allocation framework to facilitate local implementation of individual budgets;
    - (c) a national workforce development plan that reviews the skills and numbers of skilled workers that are required to deliver effective, personalised support and associated support services to disabled persons, sets out measures to be taken to develop a suitably skilled and sufficient workforce and ensures workers receive fair pay, pensions, working conditions and training opportunities; 40 45

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- (d) a national support services development plan that sets out the gaps in the current provision of practical advice, advocacy, assistance and support in relation to independent living (including, in particular, that provided by organisations of disabled people) and associated support services and measures to address these gaps; and 5
- (e) any other measures which appear necessary to the achievement of independent living for disabled persons.
- (3) In preparing a plan under this section the appropriate authority shall consult and involve—
- (a) disabled persons and organisations representing disabled persons, including disabled persons from black and minority ethnic communities and organisations representing them; 10
- (b) older persons and organisations representing older persons;
- (c) parents of disabled children and organisations representing such persons; 15
- (d) carers and organisations representing carers;
- (e) representatives of local authorities and NHS bodies and the relevant partners referred to in section 8;
- (f) providers of independent living services, including those in the voluntary and private sectors; 20
- (g) relevant inspection and professional bodies; and
- (h) other persons appearing to them to have an interest.
- (4) The appropriate authority shall prepare and publish an annual report on the operation of this Act, which evaluates the progress made towards achieving independent living for disabled persons and improving the wellbeing of families and carers. 25
- (5) The appropriate authority shall—
- (a) in the case of the Secretary of State, lay a copy of the annual report before Parliament; and
- (b) in the case of the Welsh Ministers, lay a copy of the annual report before the National Assembly for Wales. 30
- 5 General duty of local authorities and NHS bodies**
- (1) It shall be the duty of each local authority and each NHS body in carrying out their functions to promote independent living for disabled persons.
- (2) In performing their duty under this section, each local authority and each NHS body shall have regard to any guidance given from time to time by the appropriate authority. 35
- 6 Further duties of local authorities**
- (1) For the purpose of their general duty under section 5(1), each local authority has the further duties imposed by subsections (2) and (3) below. 40
- (2) Each local authority shall make arrangements to secure, so far as reasonably practicable, the availability to disabled persons in their area of—
- (a) an appropriate and sufficient range of communication support services;



- (b) an appropriate and sufficient range of independent advocacy services for disabled persons;
    - (c) an appropriate and sufficient range of practical support services, aids, equipment and adaptations designed to meet all reasonable requirements related to independent living; 5
    - (d) an appropriate and sufficient range of support services to provide advice, information and practical assistance to disabled persons in relation to independent living, including assistance in managing an individual budget under sections 15 and 16;
    - (e) an appropriate and sufficient range of residential accommodation, a register thereof, and housing-related support and services; 10
    - (f) an appropriate and sufficient range of employment opportunities and services;
    - (g) an appropriate and sufficient range of services which enable disabled persons and their carers to take a break from their normal support arrangements and which are calculated to be of benefit to both the disabled person and the carer. 15
  - (3) Each local authority shall take all reasonable steps to encourage and facilitate the involvement in the making and implementation of arrangements under this section of – 20
    - (a) disabled persons including, in particular, disabled persons from black and minority ethnic communities;
    - (b) older persons;
    - (c) parents of disabled children;
    - (d) carers; 25
    - (e) organisations representing the persons referred to in paragraphs (a) to (d); and
    - (f) providers of independent living services in their area, including those in the voluntary and private sectors.
  - (4) For the purposes of this section, an “appropriate and sufficient” range of services means a quality and quantity of services which are adequate to meet the requirements of disabled persons of all ages and backgrounds in a particular local authority area. 30
  - (5) In carrying out its duties and making arrangements under this section and the rest of this Part, a local authority shall facilitate the provision by others (including, in particular, voluntary organisations) of services which the authority has a duty to provide or secure and may, wherever appropriate, employ as their agent any voluntary organisation or any person carrying on, professionally or by way of trade or business, activities which consist of or include the provision of services for any disabled persons, being an organisation or person appearing to them to be capable of providing the services which those authorities are under a duty to arrange or secure under this Part. 35 40
- 7 Further duties of NHS bodies**
- (1) For the purpose of their general duty under section 5(1), local NHS bodies have the further duties imposed by subsections (2) and (3) below. 45
  - (2) Local NHS bodies shall make arrangements to secure, so far as reasonably practicable, the availability to disabled persons in their area of an appropriate

and sufficient range of associated support services, including community-based mental health services, rehabilitation services and palliative care services.

- (3) In this section “appropriate and sufficient” has the same meaning as in section 6(4). 5
- (4) Local NHS bodies shall take all reasonable steps to encourage and facilitate the involvement in the making and implementation of arrangements under this section of—
- (a) disabled persons including disabled persons from black and minority ethnic communities; 10
  - (b) older persons;
  - (c) parents of disabled children;
  - (d) carers;
  - (e) organisations representing the persons referred to in paragraphs (a) to (d); and 15
  - (f) providers of associated support services in their area, including those in the voluntary and private sectors.

## 8 Co-operation to promote independent living

- (1) Each local authority (on the one hand) and NHS body (on the other) shall make arrangements to promote co-operation with one another and co-operation between themselves and— 20
- (a) each of their relevant partners; and
  - (b) such other persons or bodies as they consider appropriate, being persons or bodies of any nature who exercise functions or are engaged in activities in relation to disabled persons in the authority’s area. 25
- (2) The arrangements are to be made with a view to improving the extent to which disabled persons in their area enjoy independent living and in order to ensure the effective discharge by local authorities and NHS bodies of their duties under this Part.
- (3) For the purposes of this section, each of the following is a relevant partner of a local authority and NHS body in England— 30
- (a) where the local authority is a county council for an area for which there is also a district council, the district council;
  - (b) the police authority and the chief officer of police for a police area any part of which falls within the area of the local authority and NHS bodies; 35
  - (c) a local probation board for an area any part of which falls within the area of the local authority and NHS bodies;
  - (d) the Young People’s Learning Agency for England;
  - (e) the Chief Executive of Skills Funding; 40
  - (f) the Secretary of State in relation to his functions under section 2 of the Employment and Training Act 1973 (c. 50);
  - (g) such other person or body as may be prescribed.
- (4) For the purposes of this section, each of the following is a relevant partner of a local authority and NHS body in Wales— 45

- (a) the police authority and the chief officer of police for a police area any part of which falls within the area of the local authority and NHS bodies;
  - (b) a local probation board for an area any part of which falls within the area of the authority; 5
  - (c) the Secretary of State and the National Assembly for Wales in relation to their functions under section 2 of the Employment and Training Act 1973 (c. 50);
  - (d) such other person or body as may be prescribed.
- (5) The relevant partners of a local authority and NHS body shall co-operate with local authorities and NHS bodies in the making of arrangements under this section. 10
- (6) A local authority and NHS body, and such of their relevant partners as may be prescribed, shall for the purposes of arrangements under this Part—
  - (a) provide staff, goods, services, accommodation or other resources; and 15
  - (b) establish and maintain a pooled fund.
- (7) For the purposes of subsection (6), a pooled fund is a fund—
  - (a) which is made up of contributions by the local authority and NHS bodies and any relevant partner or partners as may be prescribed; and
  - (b) out of which payments may be made towards expenditure incurred in the discharge of functions of the local authority and NHS body or of functions of the relevant partner or partners. 20
- (8) A local authority and NHS body and each of their relevant partners shall in exercising their functions under this section have due regard to any guidance given to them for the purpose by the appropriate authority. 25
- (9) This section is without prejudice to the duties of local authorities and their partners under sections 10 and 25 of the Children Act 2004 (c. 31).

## 9 Independent living strategy

- (1) Arrangements made under section 8 shall include the preparation and implementation of a strategy (referred to in this section as an independent living strategy) for promoting independent living for disabled persons ordinarily resident in the responsible body's area. 30
- (2) An independent living strategy prepared under this section shall set out the gaps in the current provision of practical assistance and support in relation to independent living and associated support services for disabled persons and measures to address these gaps and may include such other measures as the responsible body sees fit. 35
- (3) An independent living strategy prepared under this section shall also include—
  - (a) specific measures to improve the transition between children's and adult services for disabled persons and to improve joint working between children's and adult services to support families affected by disability; 40
  - (b) specific measures to—
    - (i) prevent the occurrence of all forms of exploitation, violence and abuse against disabled persons (whether motivated by hostility 45

- towards disabled persons or a particular disability or otherwise);
- (ii) maintain systems (which involve disabled persons who have themselves experienced such abuse) to ensure instances of exploitation, violence and abuse (including those motivated by hostility towards disabled persons or a particular disability) are identified, investigated and, where appropriate, prosecuted; and 5
- (iii) ensure the victims of such exploitation, violence and abuse receive appropriate emotional, psychological and practical support; and 10
- (c) other measures designed to secure the full enjoyment of the rights set out in the United Nations Convention on the Rights of Persons with disabilities.
- (4) The responsible body may from time to time modify its independent living strategy. 15
- (5) In preparing or modifying its independent living strategy, the responsible body shall –
- (a) consult and involve the persons and organisations referred to in section 6(3) and 7(4); and 20
- (b) have regard to any guidance for the time being issued by the appropriate authority.
- (6) Before issuing any guidance under this section, the appropriate authority shall consult –
- (a) disabled persons, including disabled persons from black and minority ethnic communities; 25
- (b) older persons;
- (c) parents of disabled children;
- (d) carers;
- (e) organisations representing the persons referred to in paragraphs (a) to (d); and 30
- (f) providers of independent living services, including those in the voluntary and private sectors.
- (7) Guidance may, in particular, address the desirability and practicalities of developing and implementing the independent living strategy in conjunction with or as part of –
- (a) a local authority’s disability equality scheme prepared under section 49A(1) of the Disability Discrimination Act 1995 (c. 50);
- (b) a local authority’s community strategy prepared under the Local Government Act 2000 (c. 22); 40
- (c) a local authority and local health board in Wales’ health and well-being strategy prepared under section 24 of the National Health Service Reform and Health Care Professions Act 2002 (c. 17).

## 10 Duty to identify and maintain register of disabled persons

- (1) Each local authority and NHS body shall take all reasonably practicable steps to identify disabled persons ordinarily resident in their area and maintain a register of the numbers and any known requirements (including any unmet requirements) of disabled persons ordinarily resident in their area including a 45

record of any carers such persons may have and those who may require independent living support in the future.

- (2) Each local authority and NHS body shall have due regard to their register of disabled persons for the purpose of planning and commissioning independent living support under sections 5 to 8 and shall provide relevant information to the appropriate authority to assist it in the preparation and implementation of its national independent living implementation plan under section 4. 5
- (3) A disabled person has the right not to have his name included on the register of disabled persons and accordingly each local authority and NHS body shall inform disabled persons of this right and shall not include the name of any disabled person who expresses a wish not to be included. 10
- (4) For the avoidance of doubt, nothing in this section prejudices the right of disabled persons to an assessment or to the provision of practical assistance and support under this Part.
- (5) A local authority and NHS body's register of disabled persons shall indicate those persons who have been certified as blind or as partially sighted by a consultant ophthalmologist. 15
- (6) The appropriate authority shall by regulations make further provision in relation to the duty to identify and maintain a register of disabled persons under this section. 20
- (7) Regulations shall, in particular, make provision as to the steps the responsible bodies are required to take to—
  - (a) ensure all disabled persons, in particular those from black and minority ethnic communities and those with low-incidence impairments, are proactively identified; 25
  - (b) ensure future requirements for independent living support for disabled persons are identified.

## 11 Duty to enhance capacity among local service providers

- (1) It shall be the duty of each local authority and each NHS body to take all reasonably practicable steps—
  - (a) to support, build the capacity of and otherwise enhance the long-term sustainability of organisations of disabled people and other relevant organisations in their area which are capable of providing advice and assistance to disabled persons whether in connection with arrangements made under this Act or otherwise; 30
  - (b) to enable and support disabled persons and other relevant stakeholders to form support groups or service-user forums to provide feedback to the authorities on the quality and sufficiency of services or other arrangements made under this Part; 35
  - (c) to facilitate collaboration between local organisations mentioned in paragraphs (a) and (b); 40
  - (d) to ensure their commissioning policies and procedures offer local organisations of disabled people a fair opportunity to compete for contracts for services relating to independent living.
- (2) In exercising their duties under this section, each local authority and NHS body may make grants to any person and make any other arrangements which appear to them to be conducive to carrying out their duties. 45

- (3) In exercising their functions under this section, each local authority and NHS body shall, in particular, have due regard to –
- (a) the need to respect and promote diversity among disabled persons;
  - (b) the importance of promoting greater freedom, autonomy and involvement for disabled persons from black and ethnic minority communities, disabled women, older disabled people and disabled persons who are members of other groups which attract stigma or exclusion; and 5
  - (c) the importance of meeting the requirements of disabled persons of different ages. 10

## CHAPTER 2

### RIGHT TO INDEPENDENT LIVING

#### 12 Right to information, advice and assistance

- (1) Disabled persons and other relevant persons have the right to accessible information about – 15
- (a) their rights under this Act, including the practical assistance and support and associated support that may be provided to them under this Act;
  - (b) their entitlements to disability benefits and other benefits;
  - (c) their entitlements under other relevant enactments (for example the duties local education authorities have to meet special educational needs under Part IV of the Education Act 1996 (c. 56)); 20
  - (d) the services available to them from statutory, private and voluntary providers locally and nationally in relation to independent living; and
  - (e) how to recognise, report and challenge instances of harassment, exploitation, violence and abuse (including those motivated by hostility towards disabled persons or a particular disability); 25
- and accordingly it shall be the duty of each local authority and NHS body to take all reasonably practicable steps to ensure that such information is –
- (i) easily available and effectively publicised and disseminated to disabled persons and other relevant persons in their area; 30
  - (ii) provided to persons when they are diagnosed as having a particular impairment, illness or health condition or when an assessment of special educational needs takes place under Part IV of the Education Act 1996; 35
  - (iii) provided to disabled persons exercising their right to an assessment under this Act; and
  - (iv) included in the general information an authority may provide to the public on its website or at its premises.
- (2) Disabled persons and other relevant persons have the right to advice and assistance in relation to the matters specified in subsection (1) and accordingly it shall be the duty of each local authority and NHS body to take all reasonably practicable steps to ensure that such advice and assistance is provided or arranged. 40
- (3) Reasonable steps to be taken under subsection (2) shall include – 45

- (a) making arrangements to ensure that disabled persons are referred to sources of specialist advice and assistance (from statutory or voluntary bodies) wherever appropriate;
  - (b) providing key workers for disabled children and their families and disabled adults with complex requirements in relation to independent living in order to provide direct information, advice and assistance in receiving assistance under this and other relevant enactments and from other sources and to assist in co-ordinating complex support arrangements. 5
- (4) In carrying out their duties under this section each local authority and NHS body shall have due regard to the need to meet the information requirements of disabled children. 10
- (5) For the purposes of this section “relevant persons” means –
  - (a) carers of disabled persons;
  - (b) those with parental responsibility for disabled children; 15
  - (c) close relations of disabled persons including civil partners (as defined in section 1 of the Civil Partnership Act 2004 (c. 33));
  - (d) authorised representatives of disabled persons;
  - (e) the donee of a lasting power of attorney (as defined in section 9 of the Mental Capacity Act 2005 (c. 9)). 20

### 13 Right to independent advocacy

- (1) Disabled persons have the right to use independent advocacy services for the purpose of maintaining choice and control over their lives and consequently the appropriate authority shall arrange, to such extent as it considers necessary to meet all reasonable requirements, for the provision of independent advocacy services for disabled persons. 25
- (2) Without prejudice to the generality of subsection (1) or the provisions of sections 14, 19, 21 and 28, arrangements made under this section must, as a minimum, include meeting requirements for access to independent advocacy for disabled persons in the following circumstances – 30
  - (a) during transition to adulthood;
  - (b) when disabled adults are subject to safeguarding procedures;
  - (c) when the children of disabled parents are subject to safeguarding procedures;
  - (d) when entry to residential care is a possibility; 35
  - (e) when disabled persons are exercising their rights of appeal in relation to prescribed benefits decisions;
  - (f) when disabled persons are victims of exploitation, violence or abuse (whether motivated by hostility towards their disability or otherwise); 40
  - (g) when disabled persons are victims or alleged perpetrators of anti-social behaviour.

### 14 Right to self-directed assessment of requirements

- (1) Disabled persons have the right to a holistic assessment of their requirements concerning – 45

- 
- (a) the practical assistance and support they require to achieve independent living, and
- (b) any associated treatment, therapy, continuing health or personal care or skills training they require to develop, increase or sustain their capacity for independent living (“associated support services”), and accordingly it shall be the duty of each local authority and each relevant NHS body (the “responsible authorities”) to carry out such an assessment on receipt of a request by a disabled person or his authorised representative. 5
- (2) In carrying out an assessment under subsection (1) the responsible authorities shall ensure that the disabled person concerned is empowered to define his own requirements in relation to practical assistance and support for independent living and associated support services. 10
- (3) Disabled persons have the right to assistance by –
- (a) a nominated supporter or an independent advocate, or 15
- (b) a communication support worker,
- (or both), in order to express and define their requirements and accordingly it shall be the duty of the responsible authorities to make arrangements for this.
- (4) In exercising their duties under this section the responsible authorities shall ensure that those officers or staff of the authority participating in, or facilitating, the assessment have received training in and possess adequate and appropriate experience and expertise in relation to disability equality, racial equality, age equality, cultural and religious awareness and other equality matters referred to in section 1(10) including awareness of relevant impairments or health conditions. 20
- (5) In this section the duty to make an assessment of requirements shall, in the absence of specific arrangements to the contrary, be discharged by the local authority for the area in which the disabled person is ordinarily resident. 25
- (6) The appropriate authority may give directions as to when the duties under this section are to be discharged by an NHS body. 30
- (7) Where it appears to a local authority, an NHS body or any of the relevant partners mentioned in section 8 that a disabled person may benefit from an assessment under this section they shall inform the disabled person of his rights and shall refer the disabled person to the responsible authorities.
- (8) The appropriate authority shall by regulations make provision for assessments to be carried out within a specific period of time. 35
- (9) If, in the opinion of the responsible authorities, the circumstances of a disabled person are such that he requires arrangements to be made under section 15 as a matter of urgency then the authorities are not required to carry out a prior assessment of his requirements and shall make appropriate temporary arrangements for that person in order to meet his urgent requirements. 40
- (10) In this section a reference to an assessment of requirements includes any re-assessment or review of a disabled person’s requirements.

## **15 Duty to allocate an individual budget**

- (1) This section sets out the steps to be taken in relation to any disabled person following an assessment of his requirements under section 14. 45



- (2) The responsible authorities, having due regard to the results of that assessment and in accordance with regulations made under subsection (5), shall then decide whether the requirements of the disabled person call for the provision by them of resources for practical assistance and support and any associated services. 5
- (3) Where the responsible authorities are satisfied in the case of any disabled person that it is necessary in order to meet the requirements of that person for them to allocate resources in respect of, and otherwise make arrangements for, all or any of the following matters – 10
- (a) practical assistance and support for that person including, but not limited to –
- (i) the provision of communication aids and equipment;
  - (ii) the provision of other forms of assistive equipment and technology for daily living;
  - (iii) the provision of one-to-one support for communication, access to information and mobility; 15
  - (iv) the provision of practical assistance in the home (including assistance with personal care routines and help around the home);
  - (v) daily living skills and social skills training; 20
  - (vi) assistance with shopping, food preparation and meals;
  - (vii) assistance to take advantage of educational facilities and opportunities;
  - (viii) assistance to participate in family life and in relation to persons who have parental responsibility for a child, and assistance and support in caring for and bringing up that child; 25
  - (ix) assistance to develop and maintain social networks and relationships;
  - (x) assistance to participate in job search, employment, training, work experience and volunteering; 30
  - (xi) assistance to participate in inclusive play, recreational, sporting, religious or cultural activities;
  - (xii) facilities for, or assistance in, travelling to and from the home for the purpose of participating in any services or activities provided under arrangements made under this section or otherwise connected to independent living; 35
  - (xiii) the provision of assistance with works for adaptation in the home and assistance in maintaining adaptations;
  - (xiv) the provision of suitable residential accommodation;
  - (xv) support relating to housing provision; 40
  - (xvi) the provision of holidays and short-term breaks;
  - (xvii) the provision of, or assistance in obtaining, consumer communications apparatus and services such as a mobile or fixed-line telephone, a computer, a digital television receiver, a digital radio receiver, a broadband service or digital television service and any assistive equipment required in connection with this; 45
- (b) associated support services including, but not limited to –
- (i) the provision of mobility training, communication skills training, low vision training and equipment; 50

- 
- (ii) the provision of talking therapies, community services for the alleviation of mental health problems, including crisis services;
  - (iii) the provision of occupational therapy;
  - (iv) the provision of physiotherapy;
  - (v) the provision of speech and language therapy; 5
  - (vi) the provision of orthotic, prosthetic and wheelchair services;
  - (vii) continuing health care;
  - (viii) the provision of specialist community palliative care services;
- or any other matter which would enable the disabled person to enjoy independent living, then it shall be the specific duty of those authorities to allocate the necessary resources to support the disabled person and otherwise to make necessary arrangements. 10
- (4) Without prejudice to the generality of this section, where any disabled person requires adaptation to his home the responsible authorities shall allocate resources for, and otherwise make arrangements for, such adaptations (whether by means of assistance provided under Part 1 of the Housing Grants, Construction and Regeneration Act 1996 (c. 53) or otherwise). 15
- (5) The appropriate authority shall by regulations make provision –
- (a) specifying circumstances in which it will always be necessary for the responsible authorities to provide practical assistance and support and any associated support services of a particular kind to a disabled person; 20
  - (b) specifying the minimum outcomes the responsible authorities shall secure for all disabled persons in exercising their duties under this section and sections 16 and 17. 25
- (6) Without prejudice to the generality of subsection (5), minimum outcomes prescribed under that subsection shall include –
- (a) ensuring freedom from physical risk, inhuman or degrading treatment, abuse and exploitation;
  - (b) ensuring dignity within, and control over, a person’s personal living environment; 30
  - (c) the full enjoyment of the right to personal development and to establish and maintain family and other social relationships;
  - (d) support for participation in the life of the community;
  - (e) support to participate in essential social and economic activities; 35
  - (f) support to access an appropriate range of recreational and cultural activities.
- (7) Each disabled person to whom the responsible authorities have decided to allocate resources under subsection (3) shall be informed of his specific resource allocation (his “individual budget”). 40
- (8) Subject to the provisions of section 16, each disabled person (or, as the case may be, another qualifying person) has the right to specify whether he wishes to receive the individual budget to be allocated to him under subsection (3) –
- (a) in the form of a payment to him (a direct payment);
  - (b) in the form of a payment to any prescribed person or organisation for that person or organisation to manage on his behalf and in accordance with his wishes (an indirect payment); 45
  - (c) in the form of the provision of services by the local authority, local NHS bodies or other bodies; or

- (d) as a combination of paragraphs (a) or (b) and (c), and consequently it is the duty of the responsible authorities to inform disabled persons of this right and to comply with their decisions.
- (9) All arrangements to be made under this section shall be agreed with the disabled person (or his authorised representative) and written down in a contract (the individual budget payment contract) which shall also include – 5
- (a) information for the disabled person on his right to control and use the Individual Budget;
  - (b) details of how and when the authorities will make payments;
  - (c) rules concerning how the budget may be spent and what records a disabled person or his authorised representative is required to maintain; 10
  - (d) a copy of the disabled person’s support plan and details of how he can change it should his requirements change;
  - (e) provisions for reviewing the agreement, in particular against the outcomes set out in the support plan; 15
  - (f) details of how the disabled person or his authorised representative may complain about the operation of the agreement; and
  - (g) details of how the disabled person or his authorised representative can terminate the agreement. 20
- (10) An individual budget payment contract shall not specify any monitoring or record-keeping requirements which would be a burden to the disabled person.
- (11) Disabled persons have the right to –
- (a) assistance by a nominated supporter or an independent advocate;
  - (b) a communication support worker; 25
  - (c) other forms of information, advice and support,
- in order to make a decision under subsection (8), to enter into an agreement under subsection (9) and to formulate their own support plan setting out how they will use payments to meet their requirements and achieve desired outcomes, and accordingly it shall be the duty of the responsible authorities to make arrangements for this. 30
- (12) The disabled person shall be given a copy of his individual budget payment contract in a format and language which is accessible to him.
- (13) Disabled persons have the right to a review of their individual budget payment contract at appropriate intervals or when an urgent need arises and consequently it shall be the duty of the responsible authorities to make appropriate arrangements for this. 35
- (14) In relation to disabled persons with fluctuating conditions such as multiple sclerosis or certain mental health problems, it shall be the duty of the responsible authorities to put arrangements in place to accommodate and respond effectively to fluctuating requirements for assistance or services. 40
- (15) Where the responsible authorities make a decision that it is not necessary to allocate an individual budget or make arrangements to meet requirements identified under this section they shall –
- (a) give the disabled person reasons for the decision; 45
  - (b) make a record of which requirements are not being met and why;

- 
- (c) take all reasonably practicable steps to mitigate any negative impacts of the determination upon the disabled person’s choice, freedom, dignity, control and substantive opportunities; and
  - (d) ensure that records of unmet requirements inform the development of an independent living strategy under section 9. 5
- (16) Before making any regulations under this section the appropriate authority shall consult and involve –
- (a) disabled persons and organisations of disabled persons, including disabled persons from black and minority ethnic communities and organisations representing them; 10
  - (b) older people and organisations representing older people;
  - (c) carers and organisations representing carers;
  - (d) local authorities;
  - (e) NHS bodies; and
  - (f) such other persons as may have an interest. 15
- 16 Further provisions relating to individual budgets**
- (1) The right in section 15 to choose to receive an individual budget in the form of direct and indirect payments applies to the following qualifying persons (“payees”) –
- (a) a person with parental responsibility for a disabled child; 20
  - (b) a disabled child aged 16 or 17 years;
  - (c) a disabled adult;
  - (d) the authorised representative of a disabled person.
- (2) Qualifying persons have the right to assistance and support in managing a payment and accordingly the responsible bodies shall make arrangements for such support. 25
- (3) For the avoidance of doubt, disabled persons who decide to allocate all or part of their individual budget to services provided or arranged for them by the responsible authorities have the right to support and services which conform with their choices and aspirations and accordingly it shall be the duty of the responsible bodies to take all reasonably practical steps to meet those choices and aspirations. 30
- (4) In relation to disabled persons with fluctuating or intermittent conditions such as multiple sclerosis or certain mental health problems, it shall be the duty of the responsible authorities to put arrangements in place to accommodate and respond effectively to fluctuating requirements for payments. 35
- (5) The appropriate authority may by regulations make provision –
- (a) as to the conditions falling to be complied with by the payees which shall or may be imposed by the responsible authorities in relation to direct or indirect payments (and any conditions which may not be so imposed); 40
  - (b) as to the circumstances in which the responsible authorities –
    - (i) may or shall terminate a direct or indirect payment;
    - (ii) may require repayment (whether by the payee or otherwise) of the whole or part of the direct or indirect payment. 45
- (6) The responsible authorities shall appoint an officer for the purposes of –

- (a) managing the system of individual budgets;
- (b) co-ordinating funding from relevant partners;
- (c) ensuring relevant staff receive effective training in the use of individual budgets, direct and indirect payments;
- (d) promoting individual budgets, direct and indirect payments to disabled persons. 5

## 17 Discharge from hospital

- (1) This section applies where a disabled person is accommodated at—
  - (a) an NHS hospital or an independent hospital in pursuance of arrangements made by an NHS body and is receiving (or has received or is expecting to receive) care of a prescribed description; and 10
  - (b) the responsible NHS body considers that it is unlikely to be safe to discharge the disabled person concerned unless arrangements for practical assistance and support for independent living and associated support services are made for him. 15
- (2) The responsible NHS body shall notify the local authority in whose area the disabled person concerned is ordinarily resident (or, if it appears to them that the disabled person has no settled residence, to the local authority area in whose area the hospital is situated) within a prescribed period of time.
- (3) Before notifying the responsible local authority the responsible NHS body shall consult the disabled person and inform him of his rights under this section. 20
- (4) The responsible NHS body and the responsible local authority shall—
  - (a) make arrangements for an assessment of the disabled person’s requirements under section 14; 25
  - (b) make a decision under section 15 as to the resources to be allocated and other arrangements to be made in respect of that person;
  - (c) agree a contract with the disabled person;
  - (d) make available the necessary resources (the “individual budget”) and other arrangements; 30in order to facilitate his discharge at a time when he agrees with them and which is calculated to secure his safety and wellbeing.
- (5) The responsible local authority shall also—
  - (a) carry out an assessment of the needs of any person who is a carer in respect of the disabled person with a view to identifying any services which— 35
    - (i) the authority may provide under section 2 of the Carers and Disabled Children Act 2000 (c. 16); and
    - (ii) need to be made available to the carer in order for it to be safe to discharge the disabled person; 40
  - (b) after consulting the responsible NHS body, decide which of those services (if any) the authority will make available to the carer.
- (6) The duties in subsection (5) only apply where a carer has asked the responsible authority to carry out an assessment under that subsection.
- (7) For the avoidance of doubt a disabled person to whom this section applies has the right to assistance by— 45

- 
- (a) a nominated supporter or an independent advocate; or  
 (b) a communication support worker (or both),  
 in relation to any assessment carried out and any arrangements made under this section, and accordingly it shall be the duty of the responsible bodies to make appropriate arrangements. 5
- (8) A disabled person to whom this section applies is entitled to a review of arrangements and a further assessment of his requirements within such reasonable period following his discharge from hospital as may be prescribed.
- 18 Authorised representative**
- (1) A disabled person is entitled to authorise his nominated supporter or a person acting as his independent advocate to be his representative in connection with any arrangements made for him under this Act. 10
- (2) The responsible authorities shall, if requested by the disabled person, permit the authorised representative of a disabled person –
- (a) to act as the representative of the disabled person in connection with the making of any arrangements for him under this Act, 15  
 (b) to accompany the disabled person to any meeting or interview held by or on behalf of the responsible authorities in connection with the provision of an individual budget for him, or  
 (c) to enter into an individual budget payment contract and manage such payments on the disabled person’s behalf. 20
- (3) For the purpose of assisting the authorised representative of a disabled person to do any of the things mentioned in subsection (2)(a) to (c) the responsible authorities shall, if requested by the disabled person –
- (a) supply to the authorised representative any information, and 25  
 (b) make available for his inspection any documents,  
 that the disabled person would be entitled to require the responsible authorities to supply to him or (as the case may be) to make available for his inspection.
- (4) Regulations made by the appropriate authority may make provision for the appointment of a person as the authorised representative of a disabled person to be made by, or under arrangements made by, the responsible authorities in a case where the disabled person appears to the responsible authorities to be unable to appoint a person as his authorised representative by reason of significant mental or physical incapacity and such a person will be the person who – 30
- (a) is deemed to be the most capable of acting in the best interests of the disabled person and supporting their human rights, and  
 (b) is willing to act in this capacity. 35
- (5) Regulations made by the appropriate authority may also make provision for such appointments to be made with the consent of – 40
- (a) a deputy appointed for the person by the Court of Protection under section 16(2)(b) of the Mental Capacity Act 2005 (c. 9), or  
 (b) a donee of a lasting power of attorney created by the person.

## 19 Disputes between carers and disabled persons

- (1) The responsible bodies shall make arrangements to meet all reasonable requirements for support (including provision of independent advocacy and communication support) for, and mediation between, a disabled person (on the one hand) and a carer who provides, or who intends to provide, the disabled person with a substantial and regular amount of care and support (on the other) in circumstances where both parties are in dispute over any arrangements to be made under sections 14 to 17 of this Act or under section 2(3) of the Carers and Disabled Children Act 2000 (c. 16). 5
- (2) Arrangements made under subsection (1) shall be made with a view to resolving any disputes in a way which safeguards the rights of the disabled person under this Act and the health and wellbeing of the carer concerned. 10
- (3) For the purposes of this section “mediation” means a process conducted confidentially in which a neutral person actively assists the parties in working towards a negotiated agreement of the conflict. 15

## 20 Prohibition on charging for independent living

- (1) Disabled persons shall not be liable to make any payments to the responsible authorities in respect of resources allocated, arrangements made or services provided under this Act.
- (2) The only exception to subsection (1) is that when a disabled adult has chosen to live in residential care accommodation and does not have continuing health care needs or a terminal illness, the disabled adult may be required to contribute such reasonable payments, as may be prescribed by regulations, towards board and lodging. 20
- (3) Regulations made under subsection (2) shall provide that— 25
- (a) any income (including any royalties) earned by a disabled person;
  - (b) any payments to a disabled person in respect of expenses incurred through voluntary work;
  - (c) any occupational pensions held by a disabled person;
  - (d) any disability benefits received by a disabled person; 30
  - (e) any savings of a prescribed amount held by a disabled person; and
  - (f) any payments made to a disabled person in consequence of any personal injury awards of certain damages (and any interest on damages for personal injury);
- shall not be taken into account in assessing the disabled person’s ability to pay a charge for board and lodging under subsection (2). 35
- (4) Regulations made under subsection (2) shall also provide that the responsible authorities shall offer disabled persons a deferred payment agreement where appropriate.

## 21 Determination of living arrangements

- (1) In carrying out their functions under section 15 and in making any arrangements for residential accommodation for a disabled person the responsible authorities shall ensure that no disabled person is placed in a care establishment or other institutional setting unless each of the following conditions apply— 40
- 45

- 
- (a) the disabled person wishes to be admitted to such a setting;
  - (b) such arrangements best meet the requirements of the disabled person (as opposed to being expedient on financial grounds); and
  - (c) the proposed placement is not due to absence of accessible or supported (or both) housing options or alternative independent living services in the community. 5
- (2) Where a disabled person wishes to live in a care establishment or other institutional setting (and the conditions set out in subsection (1) are satisfied) he has the right to choose which particular care establishment he wishes to live in and accordingly it shall be the duty of the responsible authorities to make arrangements which conform with that choice, subject to such conditions as may be prescribed. 10
- (3) Where a disabled person resident in a care establishment expresses a wish to move out into an ordinary dwelling in the community (whether during the course of an assessment under section 14 or otherwise), it shall be the duty of the responsible bodies to take all practicable steps to make appropriate arrangements for this. 15
- (4) Disabled persons exercising their rights under subsection (3) have the right to assistance and support including independent advocacy and communication support and accordingly it shall be the duty of the responsible authorities to make arrangements for this. 20

## **22 Amendment of the Children Act 1989**

- (1) The Children Act 1989 (c. 41) is amended as follows.
- (2) In section 31(2) at end insert “; and
- (c) in the case of a child whose parents are disabled persons (within the meaning of the Health and Social Care (Independent Living) Act 2010), there are no arrangements which could be made under sections 14 to 16 of that Act which would result in the child no longer suffering, or being likely to suffer, significant harm.”. 25
- (3) In section 44(1) at end insert “; and
- (d) in the case of an application in respect of a child whose parents are disabled persons (within the meaning of the Health and Social Care (Independent Living) Act 2010), there are no arrangements which could be made under sections 14 to 16 of that Act which would result in the child no longer suffering, or being likely to suffer, significant harm.”. 30
- (4) In section 47(3) after paragraph (a) insert –
- “(aa) whether, in the case of a child whose parents are disabled persons (within the meaning of the Health and Social Care (Independent Living) Act 2010), there is a need to make arrangements for those parents under sections 14 to 16 of that Act which would avoid the need to make any application to the court;”. 40



### **23 Continuity of independent living support**

- (1) This section applies where a disabled person who is in receipt of an individual budget provided by the responsible authorities in the local area in which he is resident (“the original authority”) becomes or intends to become ordinarily resident in a different local authority area (“the new authority”). 5
- (2) It shall be the duty of the original authority to –
- (a) give notice to the new authority if it becomes aware that a disabled person to whom it provides an individual budget intends to become ordinarily resident in the new authority’s area; and
  - (b) co-operate with the new authority in making appropriate arrangements for such a person. 10
- (3) It shall be the duty of the new authority to provide the disabled person concerned with an individual budget that enables the person to secure –
- (a) services of an equivalent type and quantity to those provided by the original authority, or 15
  - (b) direct or indirect payments enabling an equivalent type and quantity of support to that provided by the original authority;
- in accordance with his wishes and for such transitional period as may be prescribed.
- (4) Arrangements made under subsections (2) and (3) shall – 20
- (a) be made with the involvement and consent of the disabled person concerned;
  - (b) include effective arrangements to meet any new or different needs of the person concerned; and
  - (c) be made in accordance with regulations made under this section. 25
- (5) Regulations under this section may, in particular –
- (a) prescribe the period or periods during which the original authority retains funding responsibility for a person’s independent living requirements;
  - (b) prescribe the period or periods during which the original and new authorities must resolve any disagreements concerning their respective funding responsibilities; 30
  - (c) prescribe the period or periods by which the new authority must assume funding responsibility for an individual’s independent living requirements; 35
  - (d) provide for re-imbursment by the new authority of expenditure made by the original authority whilst the authorities were resolving a disagreement as to their respective funding responsibilities; and
  - (e) provide for the payment of interest on any sums reimbursed.

### **24 Amendment of the Mental Health Act 1983** 40

- (1) The Mental Health Act 1983 (c. 20) is amended as follows.
- (2) In section 2 after subsection (2)(b) insert –
- “(c) there are no arrangements which could be made under sections 14 to 16 of the Health and Social Care (Independent Living) Act 2010 which would result in the patient’s mental disorder no longer warranting the detention of the patient; and 45

- (d) by reason of mental disorder the patient’s ability to make decisions about the provision of medical treatment is significantly impaired.”.
- (3) In section 3 after subsection (2)(d) insert –
- “(e) there are no arrangements which could be made under sections 14 to 16 of the Health and Social Care (Independent Living) Act 2010 which would enable the patient to receive medical treatment in the community; and
- (f) by reason of mental disorder the patient’s ability to make decisions about the provision of medical treatment is significantly impaired.”.
- (4) In section 4 after subsection (5) insert –
- “(6) An application for assessment shall not be made where arrangements could be made under sections 14 to 16 of the Health and Social Care (Independent Living) Act 2010 which would result in there being no urgent necessity for the patient to be admitted under section 2 and where, by reason of mental disorder, the patient’s ability to make decisions about the provision of medical treatment is significantly impaired.”.
- (5) In section 5 after subsection (7) insert –
- “(8) A patient may not be detained in hospital under this section if, by reason of mental disorder, the patient’s ability to make decisions about the provision of medical treatment is significantly impaired and there are arrangements which could be made under sections 14 to 16 of the Health and Social Care (Independent Living) Act 2010 which would enable the patient to remain in the community.”.
- (6) In section 20 after subsection (4)(d) insert –
- “(e) there are no arrangements which could be made under sections 14 to 16 of the Health and Social Care (Independent Living) Act 2010 which would result in the patient’s mental disorder no longer warranting the detention of the patient; and
- (f) by reason of mental disorder the patient’s ability to make decisions about the provision of medical treatment is significantly impaired.”.
- (7) In section 117 for subsection (2) substitute –
- “(2) It shall be the duty of the local health authority and the local authority to arrange an assessment of the requirements of a person to whom this section applies for practical assistance and support to achieve independent living and any associated support services and to make arrangements to meet those requirements in accordance with the provisions of sections 14 to 16 of the Health and Social Care (Independent Living) Act 2010.”.

## CHAPTER 3

### INSPECTION AND ENFORCEMENT

#### 25 Inspection

- (1) The Secretary of State may by regulations provide that –
  - (a) the Care Quality Commission, 5
  - (b) the Audit Commission,
  - (c) the Office for Standards in Education, and
  - (d) the Adult Learning Inspectorate,have such additional functions as may be prescribed in relation to the inspection of arrangements made under this Act in England. 10
- (2) Regulations made under subsection (1) may, in particular, make provision for the bodies mentioned in that subsection to co-operate with each other.
- (3) Before making any regulations under this section the Secretary of State shall consult and involve the bodies mentioned in subsection (1) and those mentioned in section 4(3)(a) to (f). 15
- (4) The Welsh Ministers may by regulations provide that –
  - (a) the Care and Social Services Inspectorate Wales,
  - (b) the Healthcare Inspectorate Wales, and
  - (c) the Wales Audit Office,have such additional functions as may be prescribed in relation to the inspection of arrangements made under this Act in Wales. 20
- (5) Regulations made under subsection (4) may, in particular, make provision for the bodies mentioned in that subsection to co-operate with each other.
- (6) Before making any regulations under this section the Welsh Ministers shall consult and involve the bodies mentioned in section 4(3)(a) to (f). 25

#### 26 Reviews and investigations by the Care Quality Commission

- (1) The Health and Social Care Act 2008 (c. 14) is amended as follows.
- (2) In section 50(2) after the words “social services functions” insert “and in particular its functions under the Health and Social Care (Independent Living) Act 2010”. 30

#### 27 Enforcement

- (1) The appropriate authority shall designate a public body to have the functions of investigating individual complaints in relation to a potential breach of a disabled person’s rights under this Act and taking appropriate enforcement action. 35
- (2) The appropriate authority may not designate a public body under subsection (1) unless they are satisfied that the body –
  - (a) has the protection and promotion of the rights of disabled persons as one of its purposes;
  - (b) is independent; and 40
  - (c) consents to the designation.

- (3) The designated public body may serve a notice on a local authority or NHS body –
- (a) requiring them to comply with a duty under this Act; or
  - (b) prohibiting them from carrying on an activity which in their opinion involves or will involve a contravention of a disabled person’s rights under this Act;
- in cases where it is satisfied that the local authority or NHS body concerned has failed, or is failing, to comply with a duty imposed on it by this Act.
- (4) Regulations made under this section may further provide for the designated public body to apply to a county court for an order requiring the local authority or NHS body concerned to comply with a notice issued under subsection (3) in circumstances where the designated body is satisfied that the local authority or NHS body concerned has failed to comply with such a notice issued under that subsection within a reasonable period of time.
- (5) Before making regulations under this section, the appropriate authority shall consult such persons and bodies as they consider appropriate.

## **28 Advocacy for complaints**

- (1) Each disabled person who makes a complaint in relation to a local authority in respect of the discharge of its functions, or failure to discharge its functions, under this Act or the provision of services by a local authority or other persons pursuant to arrangements made by a local authority in the discharge of those functions has the right to independent advocacy and communication support to assist him in making and pursuing a complaint and accordingly the appropriate authority shall take all reasonably practicable steps to ensure such services are made available to such persons.
- (2) The authorised representative of a disabled person is entitled to act as the representative of the disabled person in connection with the making of any complaints under this section.

## **PART 3**

### HUMAN RIGHTS OBLIGATIONS OF REGULATED PROVIDERS 30

## **29 Application of the Human Rights Act 1998 to certain persons and bodies regulated by the Health and Social Care Act 2008**

- (1) This section applies to any service registered under section 10 of the Health and Social Care Act 2008 (c. 14).
- (2) Any such service provider is deemed to be a public authority in relation to the provision of health and social care services subject to the Health and Social Care Act 2008 for the purpose of section 6 of the Human Rights Act 1998 (c. 42).
- (3) Any service provider mentioned in subsection (1) shall provide persons to whom they provide accommodation or services with accessible information about the Human Rights Act 1998 including information on –
- (a) what their rights are under that Act, and
  - (b) how the service provider is implementing that Act and how it aims to guarantee and promote the human rights of persons to whom it provides accommodation or services.

### 30 Amendment of the Health and Social Care Act 2008

- (1) The Health and Social Care Act 2008 (c. 14) is amended as follows.
- (2) In section 20(2) after paragraph (b) insert –
  - “(c) securing freedom, choice, dignity, control and substantive opportunities for participating in and contributing to family life, society and community life for persons for whom any such service is provided”.
- (3) In section 20(3) after paragraph (b) insert –
  - “(ba) make provision requiring arrangements to be made by the person carrying on a regulated activity –
    - (i) to make an independent living agreement with each person to whom he provides a service;
    - (ii) to involve persons to whom they provide a service in decisions relating to the running of that service;
  - (bb) support persons to whom he provides a service to express their views in relation to matters referred to in sub-paragraphs (ba)(i) and (ii);”.
- (4) In section 44 at the appropriate place insert –

““independent living agreement” means a written document agreed between the person who carries on, or manages, a regulated activity and a person to whom he provides a regulated service which sets out what action the person who carries on, or manages, the regulated activity agrees to take to ensure that the person receiving the service –

  - (a) is afforded the greatest practical freedom, choice, dignity and control in relation to all aspects of daily life, and
  - (b) enjoys substantive opportunities to participate in and contribute to family life, society and community life, in ways which accord with his particular lifestyle preferences, aspirations and requirements;”.

## PART 4

### HOUSING AND PLANNING

### 31 Local Housing Allowance: payments for additional bedrooms for disabled persons

- (1) The Social Security Contributions and Benefits Act 1992 (c. 4) is amended as follows.
- (2) In section 130 after subsection (4A) insert –
  - “(4B) The eligible rent for a claimant who is a disabled person and who is eligible for housing benefit in the form of a rent allowance shall be calculated so as to include payments sufficient to cover the cost of an additional bedroom required for a reason relating to the claimant’s disability (including a bedroom required for a live-in carer or personal assistant, whether provided through a charity, voluntary organisation,

an individual budget allocated under the Health and Social Care (Independent Living) Act 2010 or otherwise).

- (4C) The eligible rent for a claimant who has a disabled child or whose household includes a disabled person shall be calculated so as to include payments sufficient to cover the cost of an additional bedroom required for a reason relating to that child or person’s disability (including a bedroom required for a live-in carer or personal assistant, whether provided through a charity, voluntary organisation, an individual budget allocated under the Health and Social Care (Independent Living) Act 2010 or otherwise).”.

### 32 Allocation of housing accommodation by local authorities

In section 167(2) of the Housing Act 1996 (c. 52) at end insert “and shall in particular be framed so as to secure that additional preference is given to people within paragraph (d) who cannot reasonably be expected to find settled accommodation for themselves in the foreseeable future or whose participation in everyday activities is prejudiced by their current accommodation or who are seeking to move out of residential care or living arrangements which are otherwise unsuitable.”.

### 33 Disability housing service

- (1) The Housing Act 1996 is amended as follows. 20
- (2) After section 167(2E) insert –
- “(2F) Subject to subsection (2), the scheme shall contain provision for the creation of a disability housing service consisting of –
- (a) a record of existing or planned accessible residential properties in the local authority area, whether purpose built or adapted, with details of the access features relating to each property and location details and other residential properties which would otherwise meet the particular requirements of disabled persons; 25
- (b) a record of disabled persons who require such properties; and
- (c) a service of matching disabled persons to properties to recorded. 30
- (2G) For the purposes of this section –
- “accessible residential properties” means dwellings, flats and houses in multiple occupation in England and Wales which provide a reasonable means of access in and around the property and ease of use for disabled persons or which may easily be adapted to provide such access and ease of use; 35
- “residential properties which would otherwise meet the particular requirements of disabled persons” means properties which would be suitable, either in terms of their size, particular features or location, for disabled persons who have disability-related requirements other than or in addition to access requirements. 40
- (2H) In performing their duties under this section, each local housing authority shall have regard to any guidance given from time to time by the appropriate authority.”. 45

**34 Amendment of the Local Government Act 2003**

After subsection (1) of section 87 of the Local Government Act 2003 (c. 26) insert—

“(1A) The appropriate person shall, in particular, impose requirements with respect to assessing and monitoring the current and future housing needs of disabled persons.” 5

**35 Amendment of the Building Act 1984**

After section 1A of the Building Act 1984 (c. 55) insert—

**“1B Design of new buildings**

- (1) In making building regulations the Secretary of State shall take steps to ensure that all new dwellings of whatever type or tenure meet minimum standards in relation to— 10
- (a) the provision of a reasonable means of access into and around the dwelling and ease of use, without modification, by the widest possible range of individuals (including disabled persons); 15
  - (b) future ease of adaptation to provide full access into and around the dwelling and ease of use for wheelchair users; and
  - (c) the capacity of the dwelling to meet the changing needs of any occupiers over their lifetime. 20
- (2) For the purposes of this section “disabled persons” has the same meaning as in the Health and Social Care (Independent Living) Act 2010.”

**36 Review of the Building Regulations 2000**

- (1) The Secretary of State shall carry out a review of the effectiveness of the current arrangements for building inspection under sections 47 to 53 of the Building Act 1984 with a view to improving levels of compliance with the Building Regulations 2000 (S.I. 2000/2531). 25
- (2) A review carried out under subsection (1) shall, in particular, consider what steps are necessary to improve compliance with Part M of Schedule 1 to the Building Regulations 2000 (access to and use of buildings). 30
- (3) The review shall be completed within nine months.
- (4) Unless he has already begun or completed a review under subsection (1), the Secretary of State shall begin to conduct a review immediately after the first anniversary of this Act. 35
- (5) In conducting a review under subsection (1) the Secretary of State shall consult such persons as he considers appropriate.
- (6) Following a review under subsection (1) the Secretary of State shall, not later than one year after the commencement of the review, lay before Parliament a report summarising the results of the review and setting out what action he proposes to take. 40

**37 Amendment of the Planning and Compulsory Purchase Act 2004**

After subsection (2A) of section 39 of the Planning and Compulsory Purchase Act 2004 (c. 5) insert –

- “(2B) For the avoidance of doubt “the achievement of sustainable development” mentioned in subsection (2) includes implementing policies which ensure that – 5
- (a) all new dwellings of whatever type or tenure meet minimum standards in relation to –
    - (i) the provision of a reasonable means of access into and around the dwelling and ease of use, without modification, by the widest range of individuals (including disabled persons); 10
    - (ii) future ease of adaptation to provide full access into and around the dwelling and ease of use for wheelchair users; and 15
    - (iii) the capacity of the dwelling to meet the changing needs of any occupiers over their lifetime; and
  - (b) an appropriate proportion of all new dwellings of whatever type and tenure are fully accessible to disabled persons who are wheelchair users or otherwise have severe mobility impairments. 20
- (2C) For the purposes of this section “disabled persons” has the same meaning as in the Health and Social Care (Independent Living) Act 2010.”

**PART 5 25**

## GENERAL

**38 Regulations and orders**

- (1) Any power to make regulations or orders under this Act –
  - (a) is exercisable by statutory instrument;
  - (b) includes power to make supplementary, incidental, consequential, transitional or saving provision; 30
  - (c) includes power to make different provision for different cases.
- (2) Any statutory instrument containing regulations made by the Secretary of State under the definition of “disabled person” contained in section 3 of this Act may not be made unless a draft has been laid before, and approved by a resolution of, each House of Parliament. 35
- (3) A statutory instrument containing regulations or orders made by the Secretary of State under any other provision of this Act is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) A statutory instrument containing regulations or orders made by the Welsh Ministers under any provision of this Act is subject to annulment in pursuance of a resolution of the National Assembly for Wales. 40



**39 Minor and consequential amendments and repeals**

- (1) Schedule 1 (minor and consequential amendments) shall have effect.
- (2) The enactments specified in Schedule 2 to this Act are repealed to the extent shown in the second column of that Schedule.

**40 Commencement and extent**

5

- (1) Apart from this section, 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
  - (b) in relation to Wales, by the Welsh Ministers.
- (3) This Act extends to England and Wales only.
- (4) This Act applies in relation to the Isles of Scilly subject to such modifications as may be specified by order made by the Secretary of State.

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**41 Short title**

This Act may be cited as the Health and Social Care (Independent Living) Act 2010.

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## SCHEDULES

## SCHEDULE 1

Section 39(1)

## MINOR AND CONSEQUENTIAL AMENDMENTS

*National Assistance Act 1948 (c. 29)*

- 1 In section 21(1)(a) of the National Assistance Act 1948 leave out “by reason of age, illness, disability or any other circumstances”. 5

*Local Authority Social Services Act 1970 (c. 42)*

- 2 (1) The Local Authority Social Services Act 1970 is amended as follows.
- (2) In section 6(A1) after “social services functions” insert “including, in particular, their functions under the Independent Living (Disabled Persons) Act 2010”. 10
- (3) In Schedule 1 (functions which are social services functions), at the end insert—
- “Health and Social Care (Independent Living) Act 2010 sections 5 and 6 and 8 to 23”. 15

*Disabled Persons (Services, Consultation and Representation) Act 1986 (c. 33)*

- 3 (1) The Disabled Persons (Services, Consultation and Representation) Act 1986 is amended as follows.
- (2) In section 8(1) for “care” substitute “care and independent living support”.
- (3) In section 8(1)(b) for “any of the welfare enactments” substitute “the Health and Social Care (Independent Living) Act 2010”. 20

*Children Act 1989 (c. 41)*

- 4 (1) Section 17 of the Children Act 1989 (provision of services for children in need, their families and others) is amended as follows.
- (2) In subsection (2) at the beginning insert “Subject to subsection (11A) below,”. 25
- (3) In subsection (11) leave out from “if” to “; and” and insert “he—
- (a) has a physical, neurological or sensory impairment, a learning disability, a mental health problem, an illness or health condition, or
- (b) has had an illness or health condition, and 30
- faces barriers to independent living”.

(4) After subsection (11) insert –

- “(11A) A disabled child’s requirements for practical assistance and support for independent living and associated support shall be assessed and determined and arrangements shall be made under and in accordance with sections 14 to 16 of the Health and Social Care (Independent Living) Act 2010.”. 5

*Carers (Recognition and Services) Act 1995 (c. 12)*

- 5 (1) Section 1 of the Carers (Recognition and Services) Act 1995 is amended as follows.
- (2) In subsection (1)(a) for the words from “section” to “services” substitute “section 15 of the Health and Social Care (Independent Living) Act 2010 of the requirements of a disabled person (“the relevant person”) for practical assistance and support for independent living”. 10
- (3) For “care” substitute “care and independent living support”.
- (4) For “needs” substitute “requirements”. 15
- (5) For “provision of any services” substitute “provision of any practical assistance and support for independent living”.
- (6) In subsection (2)(a) for the words “Part III of the Children Act 1989 or section 2 of the Chronically Sick and Disabled Persons Act 1970” substitute “section 15 of the Health and Social Care (Independent Living) Act 2010”. 20
- (7) In subsection (6) omit the definition of “community care services”.
- (8) In subsection (6) for the words “to whom section 29 of the National Assistance Act 1948 applies” substitute “to whom the Health and Social Care (Independent Living) Act 2010 applies”.

*Carers and Disabled Children Act 2000 (c. 16)* 25

- 6 (1) The Carers and Disabled Children Act 2000 is amended as follows.
- (2) Wherever the word appears, for “care” substitute “care and independent living support”.
- (3) Wherever the words appear, for “cared for” substitute “cared for and supported”. 30
- (4) Wherever the words appear, for “community care services” substitute “practical assistance and support for independent living”.
- (5) Wherever the words appear, for “care for” substitute “care for and support”.
- (6) Wherever the word appears, for “caring” substitute “caring and providing independent living support”. 35
- (7) In section 4(3)(a) for “section 47 of the National Health Service and Community Care Act 1990” substitute “section 14 of the Health and Social Care (Independent Living) Act 2010”.
- (8) In section 6(1) for “section 17 of the Children Act 1989 (“the 1989 Act”)” substitute “sections 14 to 16 of the Health and Social Care (Independent Living) Act 2010”. 40

(9) In section 6(5) for “section 17 of the 1989 Act” substitute “sections 14 to 16 of the Health and Social Care (Independent Living) Act 2010”.

(10) In section 6A(3)(c) for “section 4(3) of the Community Care (Delayed Discharges etc.) Act 2003” substitute “section 17 of the Health and Social Care (Independent Living) Act 2010”.

5

*Carers (Equal Opportunities) Act 2004 (c. 15)*

7 (1) The Carers (Equal Opportunities) Act 2004 is amended as follows.

(2) Wherever the word appears, for “care” substitute “care and independent living support”.

(3) Wherever the words appear, for “care for” substitute “cared for and supported”.

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*National Health Service Act 2006 (c. 41)*

8 In section 254(1) of the National Health Service Act 2006, leave out paragraphs (b) and (c).

*National Health Service (Wales) Act 2006 (c. 42)*

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9 In section 192(1) of the National Health Service (Wales) Act 2006, leave out paragraphs (b) and (c).

*Safeguarding Vulnerable Groups Act 2006 (c. 47)*

10 (1) Section 30 of the Safeguarding Vulnerable Groups Act 2006 is amended as follows.

20

(2) In subsection (8) for “may” substitute “shall”.

(3) In subsection (8) for “section 57 of the Health and Social Care Act 2001 (c. 15)” substitute “section 15 of the Health and Social Care (Independent Living) Act 2010”.

(4) After subsection (8) insert—

25

“(9) The Secretary of State shall by regulations make provision requiring a local authority to make such information available to a person mentioned in subsection (8) free of charge.”

SCHEDULE 2

Section 39(2)

REPEALS

30

<i>Short title and chapter</i>	<i>Extent of repeal</i>
National Assistance Act 1948 (c. 29)	Sections 29 to 33.
Health Services and Public Health Act 1968 (c. 46)	Section 45.
Chronically Sick and Disabled Persons Act 1970 (c. 44)	Sections 1 and 2.

35

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Health and Social Services and Social Security Adjudications Act 1983 (c. 41)	Section 17. Section 21. Section 22. Section 24. In Schedule 9, Part II.	5
Disabled Persons (Services, Consultation and Representation) Act 1986 (c. 33)	Sections 1 to 4.	
Children Act 1989 (c. 41)	Section 17A. In Schedule 2, paragraph 2.	10
National Health Service and Community Care Act 1990 (c. 19)	Section 47.	
Health and Social Care Act 2001 (c. 15)	Section 57.	
Community Care (Delayed Discharges etc.) Act 2003 (c. 5)	The whole Act.	15
National Health Service Act 2006 (c. 41)	Section 254(1)(b) and (c). In Schedule 20, paragraph 2.	
National Health Service (Wales) Act 2006 (c. 42)	Section 192(1)(b) and (c). In Schedule 15, paragraph 2.	20
Health Act 2009 (c. 21)	Sections 11 to 13.	
Welfare Reform Act 2009 (c. 24)	Sections 38 to 50.	

# Health and Social Care (Independent Living) Bill

## [HL]

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# B I L L

To impose duties upon certain persons and bodies in respect of disabled persons; to confer certain rights upon disabled persons for independent living; to amend the Mental Health Act 1983; to amend the Health and Social Care Act 2008; and for connected purposes.

*Lord Ashley of Stoke*

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