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STATUTORY INSTRUMENTS

2014 No. XX

SOCIAL CARE, ENGLAND

**The Care and Support (Independent Advocacy Support) (No. 2)
Regulations 2014**

Made - - - - - *xxxx*

Laid before Parliament *xxxx*

Coming into force in accordance with regulation 1(1)

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 67(7) and 125(7) and (8) of the Care Act 2014(a).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Care and Support (Independent Advocacy Support) (No. 2) Regulations 2014 and come into force immediately after section 67(2) of the Care Act 2014 comes into force.

(2) In these Regulations—

“the Act” means the Care Act 2014;

“assessment or planning function” means a function, in the exercise of which a local authority(b) is required by a relevant provision to involve an individual;

“relevant provision” means a provision listed in section 67(3) of the Act.

Requirements for a person to be an independent advocate

2.—(1) A local authority must not make arrangements for a person to be an independent advocate(c) under section 67(2) of the Act unless the authority is satisfied that the person—

- (a) has appropriate experience;
- (b) has undertaken appropriate training;
- (c) is competent to represent and support the individual for the purpose of facilitating that individual’s involvement in any assessment and planning function;
- (d) has integrity and is of good character; and
- (e) has arrangements in place to receive appropriate supervision.

(a) 2014 c.23 (“the Act”). The powers to make regulations is exercisable by the Secretary of State - *see* section 125(1).

(b) *See* section 1(4) of the Act for the meaning of “local authority”; the definition is limited to local authorities in England.

(c) *See* section 67(2) of the Act for the meaning of “independent advocate”.

(2) A local authority must not make arrangements for a person to be an independent advocate under section 67(2) of the Act where that person is engaged in providing care or treatment in a professional capacity, or for remuneration—

- (a) for the individual to whom representation and support are to be made available; or
- (b) for—
 - (i) that individual's carer, where the individual is an adult with care and support needs; or
 - (ii) the adult in respect of whom that individual is providing care, where the individual is a carer.

(3) The requirements that must be met for a person to be independent for the purposes of section 67(2) of the Act are that—

- (a) the local authority is satisfied that the person demonstrates the ability to act independently of the local authority; and
- (b) the person is not employed by, or otherwise working for, the local authority.

(4) Before deciding whether a person has integrity and is of good character as mentioned in paragraph (1)(d), the local authority must obtain, in respect of that person, an enhanced criminal record certificate issued under section 113B of the Police Act 1997(a) which includes—

- (a) where the individual to whom representation and support are being made available is under 18 years of age, suitability information relating to children (within the meaning of section 113BA of that Act);
- (b) where the individual to whom representation and support are being made available is 18 years of age or older, suitability information relating to vulnerable adults (within the meaning of section 113BB of that Act).

(5) Where a local authority has made arrangements with any other person for that person to carry out the assessment or planning function on the local authority's behalf, the references in paragraph (3)(a) and (b) to a local authority include a reference to that other person.

Matters to which a local authority must have regard in deciding whether an individual would experience substantial difficulty of the kind mentioned in section 67(4) of the Act

3. In deciding whether an individual would experience substantial difficulty of the kind mentioned in section 67(4) of the Act (difficulty in understanding information etc.), a local authority must have regard to—

- (a) any health condition the individual has;
- (b) any learning difficulty the individual has;
- (c) any disability the individual has;
- (d) the degree of complexity of the individual's circumstances, whether in relation to the individual's needs for care and support or otherwise;
- (e) where the assessment or planning function is the carrying out of an assessment, whether the individual has previously refused an assessment(b); and
- (f) whether the individual is experiencing, or at risk of, abuse or neglect.

Circumstances in which the exception in section 67(5) of the Act does not apply

4.—(1) The exception in section 67(5) of the Act does not apply in the circumstances specified in paragraphs (2) and (3).

(a) c.50. Section 113B was inserted by the Serious Organised Crime and Police Act 2005 (c.15), section 163(2) and sections 113BA and 113BB were inserted by the Safeguarding Vulnerable Groups Act 2006 (c.47), section 63(1) and Schedule 9, paragraph 14(4).

(b) See sections 11, 28(7), 58(4), 60(3) and 63(4) of the Act.

- (2) The circumstances specified in this paragraph are that—
- (a) the exercise of the assessment or planning function in relation to the individual is likely to result in an NHS body making arrangements for the provision to that individual of accommodation in—
 - (i) a hospital for a period of 28 days or more; or
 - (ii) a care home for a period of 8 weeks or more; and
 - (b) the local authority is satisfied that it would be in the best interests of the individual to make arrangements in relation to that individual under section 67(2) of the Act.
- (3) The circumstances specified in this paragraph are that—
- (a) there is disagreement on a material issue between the local authority and the person referred to in section 67(5) of the Act in the case of the individual; and
 - (b) the local authority and that person agree that making arrangements under section 67(2) of the Act in relation to the individual would be in the best interests of that individual.
- (4) In this regulation—
- “care home” means a care home (within the meaning given in section 3 of the Care Standards Act 2000^(a)) in respect of a which a person is registered under the Health and Social Care Act 2008^(b) for the regulated activity of the provision of residential accommodation together with nursing or personal care;
- “hospital” means—
- (a) any institution for the reception and treatment of persons suffering from illness;
 - (b) any maternity home; or
 - (c) any institution for the reception and treatment of persons during convalescence or persons requiring medical rehabilitation;
- “the individual” refers to the individual in relation to whom the duty under section 67(2) of the Act would apply but for the exception in section 67(5) of the Act;
- “NHS body” means—
- (a) the National Health Service Commissioning Board^(c);
 - (b) a clinical commissioning group^(d); or
 - (c) a NHS trust or foundation trust.

Manner in which independent advocates are to carry out their functions

5.—(1) Independent advocates must perform their functions in the manner specified in this regulation.

(2) An independent advocate must determine in all the circumstances how best to represent and support the individual in question but at all times must act with a view to promoting the individual’s well-being^(e).

(3) In particular, an independent advocate must, to the extent that it is practicable and appropriate to do so—

- (a) meet the individual in private; and
- (b) provided that the condition in paragraph (4) is met, with a view to promoting the individual’s well-being, consult with—

(a) 2000 c.14.

(b) 2008 c.14.

(c) The National Health Service Commissioning Board is established by section 1H of the National Health Service Act 2006 (c.41). Section 1H was inserted by section 9(1) of the Health and Social Care Act 2012 (c.7).

(d) A clinical commissioning group is a body established under section 14D of the National Health Service Act 2006. Section 14D was inserted by section 25(1) of the Health and Social Care Act 2012.

(e) See section 1(2) of the Act for the meaning of “well-being”.

- (i) persons who are, or have been, engaged in providing care or treatment for the individual in a professional capacity or for remuneration; and
 - (ii) other persons who may be in a position to comment on the individual's wishes, beliefs or values, for example family members, carers or friends of the individual.
- (4) The condition referred to in paragraph (3)(b) is that—
- (a) the individual has capacity, or is competent, to consent to the independent advocate consulting with a person mentioned in that sub-paragraph, and does so consent; or
 - (b) the individual does not have capacity, or is not competent, so to consent but the independent advocate is satisfied that consulting with a person mentioned in that sub-paragraph would be in the individual's best interests.
- (5) In particular, an independent advocate must—
- (a) assist the individual in—
 - (i) understanding the function in the exercise of which the individual is involved;
 - (ii) communicating the individual's views, wishes or feelings;
 - (iii) understanding how the individual's care and support, or support, needs could be met by the local authority or otherwise;
 - (iv) making decisions in respect of care and support arrangements;
 - (v) challenging the local authority's decisions if the individual so wishes;
 - (b) so far as is practicable, ensure that the individual understands the local authority's duties under Part 1 of the Act and the individual's rights and obligations under that Part and any other rights and obligations of the individual which may be relevant to those obligations;
 - (c) make such representations as are necessary for the purpose of securing the individual's rights in relation to the exercise of the function; and
 - (d) where the independent advocate has concerns about the manner in which the assessment or planning function has been exercised or the outcomes arising from it, prepare a report for the local authority outlining those concerns.
- (6) In particular, an independent advocate may examine and take copies of any relevant records^(a) relating to the individual in circumstances where—
- (a) the individual has capacity, or is competent, to consent to the records being made available to the independent advocate and does so consent; or
 - (b) the individual does not have capacity, or is not competent, to consent to the records being made available to the independent advocate but the independent advocate considers it is in the best interests of the individual.
- (7) Where the individual does not have capacity, or is not competent, to communicate his or her views, wishes or feelings, the independent advocate must do so to the extent the independent advocate can ascertain them.
- (8) Where the individual does not have capacity, or is not competent, to challenge a decision made in the exercise of the assessment or planning function, the independent advocate must challenge the decision if the independent advocate considers the decision to be inconsistent with the authority's general duty under section 1 of the Act (duty to promote the individual's well-being).

Local authority's dealings with the independent advocate

6.—(1) Where a local authority has arranged for an independent advocate under section 67(2) of the Act, it must, in exercising any assessment or planning function—

(a) See section 67(9) of the Act for the meaning of "relevant record".

- (a) take into account any representations the independent advocate makes on behalf of the individual in question in relation to its exercise of that function or the impact of such exercise on the individual; and
- (b) take reasonable steps to assist the independent advocate to represent and support the individual.

(2) A local authority must provide an independent advocate with a written response to any report prepared for the authority by the advocate under regulation 5(5)(d).

(3) A local authority may make reasonable requests for information in connection with the performance of an independent advocate’s functions and the independent advocate must comply with such requests.

Combined assessments

7.—(1) This regulation applies where—

- (a) a local authority combines an assessment of an individual under Part 1 of the Act with an assessment under that Part that relates to another individual; and
- (b) that authority is required to make arrangements under section 67(2) of the Act in respect of each of those individuals.

(2) Subject to paragraph (3), each of those individuals may be represented and supported by the same independent advocate in circumstances where the authority is satisfied that there would be no conflict of interest on a material issue—

- (a) between the individuals; or
- (b) between the independent advocate and either of the individuals.

(3) The local authority must ensure that each of those individuals is represented and supported by different independent advocates if so requested by—

- (a) either of those individuals; or
- (b) any independent advocate who has already begun to represent and support one of those individuals under arrangements made under section 67(2) of the Act.

Revocation of the Care and Support (Independent Advocacy Support) Regulations 2014

8. The Care and Support (Independent Advocacy Support) Regulations 2014 are revoked.

Signed by authority of the Secretary of State for Health.

Date

Name
Minister of State
Department of Health

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 67 of the Care Act 2014 (“the Act”) imposes a duty on local authorities to arrange for an independent advocate to be available to represent and support certain persons for the purpose of facilitating those persons’ involvement in the exercise of functions by local authorities. The persons in question are those whom the local authority considers would otherwise experience significant difficulty in doing certain things such as understanding information. These Regulations make provision in connection with the making of such arrangements.

Regulation 2 makes provision regarding the requirements that a person must meet in order to be an independent advocate.

Regulation 3 makes provision about matters to which a local authority must have regard when deciding whether a person would experience substantial difficulty in doing certain things as mentioned in section 67(4) of the Act.

Section 67(5) of the Act sets out circumstances in which the duty to make arrangements for an independent advocate under section 67(1) of the Act does not apply. Regulation 4(1) sets out circumstances in which the exception in section 67(5) of the Act does not apply (and hence the duty to make arrangements for an independent advocate does apply).

Regulation 5 makes provision about the manner in which independent advocates must perform their functions.

Regulation 6 makes provision about how a local authority is to work with an independent advocate.

Regulation 7 makes provision about circumstances in which if an assessment under Part 1 of the Act is combined with an assessment under that Part that relates to another person, each person may be represented and supported by the same independent advocate or must be represented and by supported different independent advocates.

Regulation 8 revokes the Care and Support (Independent Advocacy Support) Regulations 2014 which contained an error.

A separate impact assessment has not been prepared for these Regulations. These Regulations are part of a package of legislative measures and the relevant impact assessment can be requested via careactconsultation@dh.gsi.gov.uk or Department of Health, Richmond House, 79 Whitehall, London, SW1A 2NS and is available online at <http://www.gov.uk/government/organisations/department-of-health>.