

Protection of Care Recipients and Carers Bill [HL]

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by Lord Hunt of Kings Heath, have been ordered to be published as HL Bill 78—EN.

Protection of Care Recipients and Carers Bill [HL]

[AS INTRODUCED]

CONTENTS

- 1 Right to care support
- 2 Duty of facilitating support to care home residents
- 3 Prevention of potentially retaliatory care home evictions
- 4 Decisions concerning the future provision of cardiopulmonary resuscitation
- 5 Application of UK human rights to care settings
- 6 Fundamental Standards for care and treatment: well-being of carers
- 7 Fundamental Standards for care and treatment: support, emergencies, nutrition, complaints
- 8 Extent, commencement and short title

[AS INTRODUCED]

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Make provision for the protection of care recipients, their carers and for connected purposes.

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

1 Right to care support

- (1) A person (“P”) aged 18 or over who is registered with a general practitioner has a right to nominate Care Supporters, and may have up to two nominated Care Supporters at any given time.
- (2) The right in subsection (1) applies regardless of whether P has or anticipates a need for care at the time a nomination is made. 5
- (3) If P lacks capacity in relation to a decision as to whether to have a Care Supporter under subsection (1), or a decision as to whom to nominate as their Care Supporter or Supporters, those decisions may be made at any time on P's behalf— 10
 - (a) in P's best interests and subject to all relevant principles and duties under the 2005 Act;
 - (b) without discrimination on grounds of any protected characteristics under section 4 of the Equality Act 2010 (the protected characteristics); and 15
 - (c) in consultation with anyone engaged in caring for P or interested in P's welfare.
- (4) Responsibility for any decision under subsection (3) is to be determined in accordance with the following priority order— 20
 - (a) a relevant person's representative in relation to P under Schedule A1 of the 2005 Act;
 - (b) an appropriate person in relation to P under Schedule AA1 of the 2005 Act;
 - (c) a donee of a Lasting Power of Attorney in relation to P's personal welfare which includes authority to make the decision; 25
 - (d) any deputy appointed by the court under Part 1 of the 2005 Act in relation to matters concerning P's personal welfare;

- (e) any other person or persons who may be specified in regulations under subsection (7), subject to any further priority order specified for that purpose in the regulations.
- (5) P's general practitioner has a duty to ensure that details of any Care Supporter nominated by or on behalf of P are included in P's health record, and are kept up to date. 5
- (6) If at any time P is receiving health or social care or other services in connection with a regulated activity, P has a right to unrestricted, face-to-face, physical contact in private with any Care Supporter nominated for P subject only to limitations which meet the conditions in subsection (10). 10
- (7) The Secretary of State may, by regulations made by statutory instrument, specify further requirements or conditions in relation to subsections (1), (3), (4) and (5).
- (8) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament. 15
- (9) Regulations under section 20 of the Health and Social Care Act 2008 (regulation of regulated activities) must provide that any person registered as a service provider in respect of a regulated activity is required to facilitate the contact of service users with Care Supporters required by subsection (4), and is required to ensure that— 20
- (a) any limitations imposed on contact between a service user and a nominated Care Supporter meet the conditions in subsection (10);
 - (b) any Care Supporter for a service user is informed and consulted about, and is enabled to support the service user for all the purposes of, all assessments of the needs and preferences of, and all decisions relating to the health, welfare or social care of, the service user; and 25
 - (c) the duty under subsection (3) is adhered to.
- (10) The conditions in this subsection are that the limitations—
- (a) are necessary to protect a person or persons from a known and immediate risk of harm, and are proportionate to that risk; 30
 - (b) are less restrictive than any other possible limitations satisfying the condition in paragraph (a);
 - (c) are based on an individual assessment, which must be kept under review, of the service user's needs and preferences; and
 - (d) wherever possible, provide for alternative means of contact with the Care Supporter concerned or, failing that, contact with a suitable alternative person, in either case so as to minimise the effect of the limitations on the service user. 35
- (11) Regulations referred to in subsection (9) must specify that, subject to any exceptions or conditions the Secretary of State may consider appropriate, failure by a person registered as a service provider to comply with the requirements in subsection (9) is an offence. 40
- (12) Regulations referred to in subsection (9) must specify that, if the service user is 16 or over and lacks capacity in relation to a matter to which this section

applies, the requirements of this section are subject to any duty on the registered person under the 2005 Act in relation to those matters.

(13) In this section—

“health record” has the meaning given in section 1 of the Access to Health Records Act 1990; 5

“health or social care” and “regulated activity” have the meanings given in sections 9 and 8 respectively of the Health and Social Care Act 2008;

“the 2005 Act” means the Mental Capacity Act 2005.

2 Duty of facilitating support to care home residents

After section 148 of the Health and Social Care Act 2008 insert— 10

“148A Duty of facilitating support to care home residents

(1) This section applies to a registered service provider (“S”) carrying on a regulated activity in a care home, where the regulated activity involves providing a service to a person (“P”).

(2) S must take such care as is in all the circumstances reasonable to ensure that any provider of care to P (“C”) is enabled to keep in touch with and provide appropriate care and support to P. 15

(3) For the purposes of subsection (2), appropriate care and support includes (but is not limited to) monitoring, promoting and safeguarding P’s health and well-being, including P’s physical and mental health, and P’s emotional, psychological and social well-being. 20

(4) In discharging the duty under subsection (2), S must have due regard to S’s obligations under the Fundamental Standards for care and treatment set out in regulations 8 to 20A of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014. 25

(5) Where breach by S of the duty under subsection (2) in relation to C is causing, has caused or presents a substantial risk of causing significant detriment to the health or well-being of P, civil proceedings may be brought by P, C, or P and C, subject to the defences and other incidents applying to actions for breach of statutory duty. 30

(6) In proceedings under subsection (5), the court may—

(a) grant an injunction to require the breach referred to in subsection (5) to be remedied, or any recurrence of the breach to be restrained, or both,

(b) award damages in respect of significant detriment to P’s health or well-being, loss or distress suffered by P, or loss or distress suffered by C, or a combination of those things, or both. 35

(7) In this section—

“care home” has the meaning given by section 8(3) of the Care Act 2014; 40

“provider of care” means any person (including, for example, a family member or friend) who provides ongoing emotional,

psychological, social or physical care or support to another person, whether that care or support is paid or unpaid;
 “registered service provider” means a person registered under Chapter 2 of this Act as a service provider;
 “regulated activity” has the meaning given by section 8 of this Act;
 “well-being” has the meaning given by section 1(2) of the Care Act 2014 (promoting individual well-being).”

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3 Prevention of potentially retaliatory care home evictions

- (1) This section applies where a person has raised a complaint or safeguarding concern in writing (“the complaint”) with—
- (a) a care home, or
 - (b) a local authority,
- regarding any aspect of the accommodation, care or support which is being or has been provided to a person (“P”) accommodated in a care home within the area of the local authority.
- (2) This section does not apply if a care home has proved to a court on a balance of probabilities that the complaint was vexatious.
- (3) Any notice to quit given to P is invalid where—
- (a) it is given within three months of the date of the complaint,
 - (b) enquiries have been undertaken by any local authority under section 42 of the Care Act 2014 (enquiry by local authority) which satisfy either of the conditions in subsection (4), and—
 - (i) those enquiries have not been completed, or
 - (ii) any actions identified as necessary by the local authority as a result of those enquiries have not been agreed in full with the relevant registered service provider, or
 - (c) enquiries are being carried out by a Safeguarding Adults Board under section 44 of the Care Act 2014 (safeguarding adults reviews) which satisfy either of the conditions in subsection (4).
- (4) The conditions referred to in subsections (3)(b) and (c) are that the enquiries concerned are—
- (a) wholly or partly as a result of the complaint, or
 - (b) relevant to matters raised in the complaint.
- (5) In this section—
- “care home” has the meaning given by section 8(3) of the Care Act;
 the “date of the complaint” shall be taken to be—
- (a) the date on which the complaint was sent by electronic means (for example, by e-mail or fax),
 - (b) a date two working days after the date on which the complaint was sent by post, or
 - (c) if both (a) and (b) above apply, the earlier of the two dates;
- “registered service provider” means—

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- (a) in England, a person registered under Chapter 2 of Part 1 of the Health and Social Care Act 2008 as a service provider, or
- (b) in Wales, a service provider of a care home service, within the meaning of Chapter 1 of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016.

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4 Decisions concerning the future provision of cardiopulmonary resuscitation

(1) The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 are amended as follows.

(2) In regulation 22 (offences), after paragraph (1) insert—

“(1A) A registered person commits an offence if the registered person fails to comply with either of the requirements in paragraph (1B), and such failure results in—

- (a) avoidable harm (whether of a physical or psychological nature) to a service user, or
- (b) a service user being exposed to a significant risk of such harm occurring.

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(1B) The requirements referred to in paragraph (1A) are—

- (a) the requirement in regulation 9(3)(d), as read with regulations 8, 9(3)(a) to (c) and (f) to (h), or
- (b) a duty referred to in regulation 9(5) in relation to the requirement in sub-paragraph (a) above,

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in respect of any decision concerning the future provision of cardiopulmonary resuscitation.”

(3) In regulation 23 (offences: penalties), in paragraph (4), after “regulation”, in the third place it occurs, insert “22(1A) or regulation”.

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5 Application of UK human rights to care settings

In section 73 of the Care Act 2014 (Human Rights Act 1998: provision of regulated care or support etc in a public function)—

- (a) in subsection (2)—
 - (i) for “if” substitute “subject to”;
 - (ii) for “are met” substitute “where applicable”;
- (b) in the table in subsection (3), omit—
 - (i) the entry relating to England;
 - (ii) the entry relating to Wales.

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6 Fundamental Standards for care and treatment: well-being of carers

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In regulation 9 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (person-centred care)—

- (a) in paragraph (4), for “and (6)” substitute “to (7)”;

(b) after paragraph (6) insert –

“(7) Where care is being provided to a service user by a person (the “carer”) who is not employed by or on behalf of a registered person –

(a) the registered person must have regard to the health and well-being of the carer; 5

(b) the registered person must, wherever and to the extent that is reasonably practicable, provide opportunities for respite care for the service user, to enable the carer to take short breaks in order to safeguard and promote the carer’s well-being; 10

(c) for the purposes of the application of paragraphs (3)(a) to (g) to any best interests decision under section 4 of the 2005 Act (best interests), references to a “relevant person” in those paragraphs shall apply to the carer in the same way as to a relevant person.” 15

7 Fundamental Standards for care and treatment: support, emergencies, nutrition, complaints

(1) The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 are amended as follows. 20

(2) In regulation 9 (person-centred care), at the end of paragraph (3) insert –

“(j) enabling the service user to receive support from family, friends and carers, based on an individual assessment of the service user’s needs and preferences, and any associated risks.”

(3) In regulation 12 (safe care and treatment), after paragraph 2(h) insert – 25

“(ha) establishing systems and processes to deal with reasonably foreseeable emergencies which may affect the provision of services, in order to mitigate the resulting risks to service users;”.

(4) In regulation 14 (meeting nutritional and hydration needs), in paragraph (4)(a), for “receipt by a service user of” substitute “providing a service user with a choice of”. 30

(5) In regulation 16 (receiving and acting on complaints), after paragraph (2) insert –

“(2A) The registered person must ensure that all service users and relevant persons are aware of the complaints system required by paragraph (2), and are enabled and supported to any extent necessary in making complaints.” 35

8 Extent, commencement and short title

(1) This Act extends to England and Wales only. 40

- (2) This Act comes into force at the end of the period of two months beginning with the day on which it is passed.
- (3) This Act may be cited as the Protection of Care Recipients and Carers Act 2023.

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