

## **Briefing Note:** **Health & Social Care Act 2008, Chapter 14**

Mike Hurst, 30<sup>th</sup> July 2008

Chapter 14 of the Health & Social Care Act 2008 was published on 22<sup>nd</sup> July 2008.

There are a number of important changes we all need to be aware of relevant to personal injury claimants.

The most important change is the change to the law, which will now allow a Deputy to accept a Direct Payment on behalf of the person who is incapacitated as defined by the **Mental Capacity Act 2005**.

This is dealt with in part 5, paragraph 146 “Direct Payments in lieu of Provision of Care Services” sub paragraph 6.

The section makes it clear that an officially appointed person or surrogate can accept a Direct Payment on behalf of someone who lacks capacity. This is a major clarification to the law, which up to date was dealt with in the Direct Payments Guidance on a somewhat obtuse basis.

At long last, section 147 of the same section also abolishes the liability of relatives to maintain a person in receipt of care.

It had always been the case that, theoretically at least, a spouse of a person receiving care could be found liable to meet care costs, although this provision was never actively enforced. Indeed, for the last five years, Government guidance to Local Authorities was not to enforce the relevant section of the **National Assistance Act 1948**, pending formal abolition.

I understand that the policy was changed primarily to reflect the changes in personal relationships in the UK, i.e. same sex partners living together, etc.

Paragraph 148 of the same section also clears up a number of issues regarding ordinary residence. In particular, it is now clear that a person who is in receipt of residential accommodation under the Act, shall be deemed to be ordinarily resident within the area, if any, in which he was resident before the NHS accommodation was provided for him, whether or not the client continues to be ordinarily resident in that area.

This statement also applies to section 117 of the **Mental Health Act 1983**. The Act also clarifies that any dispute will be settled by the Secretary of State or by Welsh Ministers, as appropriate.



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Alterations are also made in section 2 of the **Chronically Sick & Disabled Persons Act 1970**, dealing with the provision of welfare services. Any dispute has now been brought under the **National Assistance Act 1948**, section 32 (3) provisions, whereby any disputes between Local Authorities will be decided by the Secretary of State or Welsh Ministers.

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