

SOCIAL SERVICES ACT 2011

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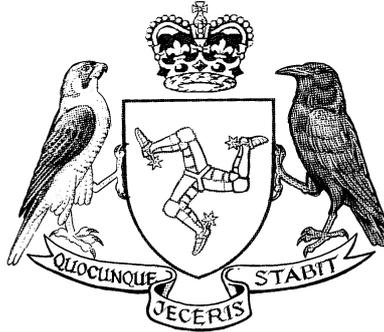
SCHEDULES —

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Isle of Man } Signed in Tynwald: 12th July 2011
 in Wit } Received Royal Assent: 12th December 2011
 Announced to Tynwald: 13th December 2011

AN ACT

to make further provision for social care services and provision for carer support; and for connected purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows: —

PART 1

GENERAL

1. (1) The Department of Social Care shall continue to have the functions in relation to social care services and carer support provided for by this Act. Functions of Department

(2) In furtherance of these functions the Department shall —

- (a) develop policies and procedures to safeguard and promote the welfare of persons who need such services or support and to protect the welfare of persons who need such services; and
- (b) implement those policies and procedures or secure their implementation by such other bodies or agencies as the Department considers appropriate.

(3) These functions are additional to the functions of the Department under the Mental Health Act 1998 and the Children and Young Persons Act 2001. [c. 3]
[c.20]

(4) In exercising its functions under this Act the Department shall have regard to the level of funding available to it for the purposes of carrying out those functions.

Arrangements
for provision
of social care
services and
carer support

2001/14/31

2. (1) Arrangements by the Department for the provision of social care services and carer support under this Act may involve all or any of the following —

- (a) the provision of social care services and carer support by the Department itself;
- (b) the appointment of persons for service with the Department;
- (c) the employment or engagement of other persons to provide social care services or carer support;
- (d) arrangements with other persons for the provision by them of social care services or carer support.

(2) Arrangements under subsection (1)(d) may include contributions to voluntary organisations.

(3) The Department shall not appoint, engage or employ any person to provide social care services or carer support unless it is satisfied that the person is suitably qualified and a fit and proper person to provide such services or support.

Arrangements
with UK
bodies for
provision of
advice and
assistance

3. (1) The Department may make arrangements with any body in the United Kingdom having the general function of encouraging improvement in the provision of social services by local authorities for the body to give the Department advice and assistance with respect to the provision of services or support to persons that is provided under this or any other enactment.

(2) The terms and conditions of arrangements under this section may include provision with respect to the making of payments to the body in respect of its costs in performing or providing any functions, services or facilities under the arrangements.

Research

4. The Department may undertake research, or assist any person to undertake research, into any matters relating to social care services and carer support.

Information
1981/36/1

5. (1) The Department shall, for the purposes of the discharge of its functions under this Act —

- (a) gather information concerning persons in the Island who are in need of social care services or carer support;
- (b) compile and maintain registers of persons in need of social care services or carer support in such form it considers appropriate;
- (c) publish at such times and in such manner as it considers appropriate, general information about —
 - (i) the criteria for eligibility for social care services and carer support under section 6 and in respect of any assessment under Part 2 or Part 3;
 - (ii) access to social care services and carer support; and
 - (iii) the social care services and carer support provided or secured by the Department under this Act.

(2) The Department shall ensure wherever possible that any person who uses any social care services or carer support is informed —

- (a) about that service or support;
- (b) of any other social care services and carer support that may be provided by the Department; and
- (c) of any similar services which may be provided by any other persons.

6. (1) A person is eligible to receive social care services or carer support if the person —

Eligibility
for social care
services and
carer support

- (a) was born in the Island;
- (b) has been ordinarily resident in the Island throughout the 5 years immediately preceding his or her application for such services or support; or
- (c) demonstrates his or her ability to pay the Department the full cost of any charges for those services prescribed under section 15(1),

and satisfies such further conditions as may be prescribed by regulations.

(2) However, in any case where the Department considers that a person is in grave need of social care services or carer support

and has no reasonable means of obtaining them other than from the Department, the Department may treat the person as eligible for such services.

PART 2

SOCIAL CARE SERVICES

Assessment
of need for
social care
services

P1990/19/47

7. (1) If it appears to the Department that the eligible person may be in need of social care services, the Department shall carry out an assessment of those needs in such manner as it considers appropriate and decide accordingly whether that person is in such need.

(2) As part of its assessment under subsection (1) the Department shall, with a view to knowing the level of care that any carer of the eligible person is capable of providing —

- (a) consult that carer; and
- (b) if the carer consents, carry out an assessment under section 11.

(3) If at any time during the assessment under subsection (1), it appears to the Department that there may be a need for the provision of any other services that fall within the functions of any other Department or Statutory Board, the Department shall—

- (a) notify that Department or Statutory Board and invite it to assist, to such extent as is reasonable in the circumstances, in the making of the assessment; and
- (b) in making its decision under subsection (1) take into account any services which are likely to be made available by that Department or Statutory Board.

(4) But the Department may temporarily provide or secure the provision of social care services for any eligible person without carrying out an assessment in accordance with this section, if it considers that the condition of that person is such that those services are required as a matter of urgency, in which case it shall carry out the assessment as soon as practicable.

Rights upon
assessment

1992/8/2

8. (1) Following an assessment under section 7 the Department shall supply the assessed person or his or her representative with a written statement —

- (a) specifying any needs of the assessed person which, in the opinion of the Department, call for it to provide or

secure the provision of social care services and (in the case of each such need) the arrangements that it proposes to make to meet that need; or

(b) stating that in its opinion the assessed person has no needs calling for the making of any such arrangements.

(2) The Department shall —

(a) give reasons for its decision; and

(b) give particulars of the right of the assessed person or his or her representative under subsection (3) to make representations with respect to the decision.

(3) If the assessed person or his or her representative is dissatisfied with any matter included in a statement under subsection (1), that person may, within such reasonable period as the Department may allow, make representations as to that matter to a person appointed by the Department for the purpose.

(4) Where any such representations have been made under subsection (3), the Department shall —

(a) consider (or reconsider, as the case may be) any need identified in the representation; and

(b) inform the assessed person or his or her representative in writing of its decision on that question and the reasons for its decision.

(5) References in this section to the representative of an assessed person are to any of the following —

(a) if the assessed person is a child in need under Part 3 of the Children and Young Persons Act 2001, any person with parental responsibility for the child (within the meaning of that Act); [c.20]

(b) if the assessed person is suffering from mental disorder, any person exercising the functions of guardian or nearest relative in relation to that person under the Mental Health Act 1998; [c.3]

(c) where paragraphs (a) and (b) do not apply, an individual appointed in writing by the assessed person for the purpose;

(d) where paragraphs (a) and (b) do not apply and no person is for the time being appointed under paragraph (c), a person appointed by the Department for the purpose.

Power to
provide social
care services
in the
community

[XVI p.362]

9. (1) The Department may meet the assessed needs of eligible persons by providing or securing the provision of social care services in the community.

(2) In addition to its powers under the Disabled Persons (Employment) Act 1946, the Department may —

- (a) provide or secure work experience or training to those people whose assessed needs would benefit from suitable work experience or training; and
- (b) pay the persons who are engaged in work experience or training as a result of those arrangements.

Power to
provide care
accommodation

10. (1) The Department may provide or secure the provision of accommodation in nursing homes and residential homes, both within the Island and in any other part of the British Islands or the Republic of Ireland, in order to meet the assessed needs of eligible persons.

(2) Terms and conditions of arrangements under subsection (1) in respect of care accommodation outside the Island may include making payments in respect of that accommodation.

(3) If, in the opinion of the Department, the circumstances are such that a person no longer requires care accommodation the Department may require the person to leave that accommodation.

[c.4]

(4) A person to whom section 150E of the Social Security Contributions and Benefits Act 1992 (an Act of Parliament having effect in the Island) (exclusion from benefits) applies may not be provided with care accommodation under subsection (1) if his or her need has arisen solely —

- (a) because he or she is destitute; or
- (b) because of the physical effects, or anticipated physical effects, of being destitute.

[c. 1]

(5) Where the Department secures care accommodation under this section, the person providing that accommodation is to be taken for the purposes of section 6(3)(b) of the Human Rights Act 2001 to be exercising functions of a public nature in doing so.

(6) In this section a person is “destitute” if he or she does not have and cannot obtain both adequate accommodation and food and other essential items.

PART 3

CARER SUPPORT

11. (1) Subject to section 13, if it appears to the Department that — Assessment of ability to provide care

- (a) a person provides, or intends to provide another person with a substantial amount of care on a regular basis; and
- (b) that other person is a person for whom the Department may provide or secure the provision of social care services in the community under section 9,

the Department shall carry out an assessment of the carer's ability to provide, or to continue to provide that care in such manner as it considers appropriate.

(2) An assessment under subsection (1) shall take into account whether the carer —

- (a) works or wishes to work; or
- (b) is undertaking, or wishes to undertake, education, training or any leisure activity.

(3) The carer has a right to a carer's assessment even if the person cared for has refused an assessment or the provision of social care services.

12. (1) Subject to section 13, if it appears to the Department that — Assessment of ability to provide care to a child in need

- (a) a person provides, or intends to provide, a child in need with a substantial amount of care on a regular basis; and
- (b) that child is a person for whom the Department may provide or secure the provision of social care services in the community under section 9 or shall provide or secure the provision of social care services for the purposes of Part 3 of the Children and Young Persons Act 2001,

[c.20]

the Department shall carry out an assessment of the carer's ability to provide, or to continue to provide that care in such manner as it considers appropriate.

(2) An assessment under subsection (1) shall take into account whether the carer —

- (a) works or wishes to work; or
- (b) is undertaking, or wishes to undertake, education, training or any leisure activity.

(3) The carer of a child in need has a right to a carer's assessment, even where the child in need has refused an assessment or the provision of social care services.

(4) In this section “child in need” has the meaning given to it in section 23 of the Children and Young Persons Act 2001.

Excluded
carers

13. Sections 11 and 12 do not apply if the person provides or will provide the care in question —

- (a) by virtue of a contract of employment or other contract with any person; or
- (b) as a volunteer for a voluntary organisation.

Power to
provide carer
support

14. (1) The Department shall consider the carer's assessment and decide —

P2000/16/2

- (a) whether the carer has needs in relation to the care which the carer provides or intends to provide;
- (b) if so, whether those needs could be satisfied (wholly or partly) by support which the Department may provide or secure;
- (c) if they could be so satisfied, whether it is appropriate to provide or secure the provision of carer support which will meet the assessed needs of the carer; and
- (d) whether the support will help the carer care for the person cared for.

(2) Carer support may take the form of a service delivered to the person cared for if —

- (a) it is support which would consist of social care services if it were provided to that person instead of to the carer; and
- (b) the carer and the person cared for both agree it may be so delivered.

PART 4

FINANCIAL PROVISIONS

15. (1) Regulations may prescribe charges for the provision of social care services or carer support and the extent to which an eligible person's resources may be disregarded when calculating payment for those services.

Charges for the provision of social care services or carer support

(2) The Department may —

(a) charge interest at the prescribed rate on any unpaid charges;

(b) in lieu of payment of charges, accept a charge over some or all of the eligible person's assets as security for the payment of actual or contingent charges payable under this section, and interest at such rate as the Treasury may by order prescribe.

(3) Where an eligible person satisfies the Department, in accordance with regulations made under this section, that he or she is unable to pay for social care services or carer support at the prescribed rate, the Department shall assess the person's ability to pay and determine at what lower rate liability to pay for the social care services or carer support shall arise.

(4) But the liability under subsection (3) shall not be reduced below such sum per week as may be prescribed by the Department.

(5) In assessing for the purposes of subsection (3) a person's ability to pay for care accommodation, the Department shall assume that the person will need for personal requirements such sum per week as may be prescribed or such other sum as in special circumstances the Department may consider appropriate.

(6) Where the whole or part of a liability arising under this section is taken into account by the Department in awarding benefit under section 124 (income support) of the Social Security Contributions and Benefits Act 1992 (as that Act of Parliament has effect in the Island), the Department may, instead of issuing the whole amount of the benefit to the person entitled to it, retain in or towards the satisfaction of the liability so much of it as relates to that liability. [c.4]

(7) Charges due otherwise than to the Department in pursuance of regulations under this section shall be payable by the Department if the person to whom the charges are due complies with such conditions as to records, certificates or otherwise as the Department may determine.

Financial
assessment
2001/14/36

16. (1) Where regulations under this Part provide for the making of any charge or payment, or the calculation of the amount of any charge or payment, according to the means of any person, the regulations may specify —

- (a) how such means are to be calculated; and
- (b) the extent to which the resources may be taken into account of another person who is liable under this Act to maintain the eligible person.

(2) Regulations under subsection (1) may in particular direct that a person's means shall be calculated —

- (a) by reference to any statutory provision, or to the person's being or having been entitled to benefits under any statutory provision, either —
 - (i) as it has effect when the regulations are made, or
 - (ii) as subsequently amended; or
- (b) by reference to a scale or index or to any other data, either —
 - (i) in the form current when the regulations are made, or
 - (ii) in any subsequent form attributable to amendment or revision taking effect after that time or to any other cause.

Investigation
of resources
1951/XVII
p.1008/26

17. The Department may investigate any question arising as to the means or other circumstances of a person applying for social care services or carer support or for whom such social care services or carer support are being provided, and may require the production of such documentary evidence of the person's means or circumstances as it may specify before such services or support are provided.

Recovery in
cases of
misrepresent-
ation or
non-disclosure

18. (1) If, whether fraudulently or otherwise, a person misrepresents or fails to disclose any material fact, and in consequence of the misrepresentation or failure —

- (a) the Department incurs any expenditure under this Act or Part 3 of the Children and Young Persons Act 2001; or
- (b) any sum recoverable under this Act by the Department is not recovered,

1951/XVII
p.1008/36
[c 20]

the Department may recover the expenditure or sum from the person.

19. (1) Subject to the following provisions of this section, where —

Disposal
of assets

P1983/41/21

- (a) a person takes up care accommodation;
- (b) that person knowingly and with the intention of avoiding charges for the accommodation —
 - (i) has transferred or caused to be transferred any asset to which this section applies to another person not more than 5 years before the date of residence in such accommodation; or
 - (ii) transfers or causes to be transferred any such asset to another person while residing in the accommodation; and
- (c) either —
 - (i) the consideration for the transfer is less than the value of the asset; or
 - (ii) there is no consideration for the transfer,

the person to whom the asset is transferred by the person taking up the accommodation is liable to pay to the Department the difference between the amount assessed as due to be paid for the accommodation by the person taking it up and the amount which the Department receives from that person for it.

(2) This section applies to cash and any other asset which falls to be taken into account for the purpose of assessing under section 15 the ability to pay for the accommodation of the person taking it up.

(3) Subsection (1) has effect in relation to a transfer by a person who leaves care accommodation and subsequently resumes residence in such accommodation as if the period of 5 years mentioned in subsection (1)(b)(i) were a period of 5 years before the date on which residence was resumed in such accommodation.

(4) Where a person has transferred or has caused to be transferred an asset to which this section applies to more than one person, the liability of each of the persons to whom it was transferred shall be in proportion to the benefit accruing to that person from the transfer.

(5) A person's liability under this section shall not exceed the benefit accruing to him or her from the transfer.

(6) The value of any asset to which this section applies, other than cash, which has been transferred shall be taken to be the amount of the consideration which would have been realised for it, if it had been sold on the open market by a willing seller at the time of the transfer.

(7) For the purpose of calculating the value of an asset under subsection (6) there shall be deducted from the amount of the consideration —

- (a) the amount of any encumbrance on the asset; and
- (b) a reasonable amount in respect of the expenses of the sale.

Funding by
resident, etc.
of more
expensive
care
accommodation

P2001/15/54

20. (1) Additional payments may be made in respect of care accommodation provided or secured by the Department under section 10 —

- (a) by persons for whom such care accommodation is provided or secured (“residents”); or
- (b) by other persons (including persons liable under the Act to maintain a resident).

(2) In this section “additional payments”, in relation to a resident, means payments that —

- (a) are made for the purpose of meeting all or part of the difference between the actual cost of the resident's care accommodation and the amount that the Department would usually expect to pay in order to provide accommodation suitable for a person with the assessed needs of the resident; and
- (b) (in the case of additional payments by the resident) are made out of such of his or her resources as may be determined by the Department.

Deferred
payment
of care
accommodation
costs and
power to
charge land
in lieu of
contributions

P2001/15/55

21. (1) Where a person (“the resident”) —

- (a) occupies care accommodation provided under section 10, or is proposing to do so; and
- (b) is liable, or would be liable, to pay for the care accommodation (whether at the prescribed rate

determined in accordance with section 15(2) or at any lower rate),

the Department may enter into a deferred payment agreement with the resident.

(2) A “deferred payment agreement” is an agreement under which —

- (a) during the exempt period the resident is not required to make payment to the Department of any relevant contributions;
- (b) the total amount of the relevant contributions that would otherwise be due becomes payable to the Department on the day after the date on which the exempt period ends; and
- (c) the resident grants the Department a charge in its favour in respect of any land specified in the agreement in which the resident has a beneficial interest for the purpose of securing the payment to the Department of the total amount payable to it under paragraph (b).

(3) “The exempt period”, in relation to a deferred payment agreement, is the period beginning on the date on which the agreement takes effect and ending —

- (a) 56 days after the date of the resident’s death; or
- (b) in accordance with the agreement, on any earlier date which the resident has specified in a notice to the Department for the purposes of subsection (4)(b).

(4) The provisions of any deferred payment agreement and any such charge as is mentioned in subsection (2)(c) —

- (a) shall be determined by the Department; but
- (b) shall secure that the agreement and any such charge may be terminated by notice given to the Department by the resident on payment of the full amount which he or she is liable to pay as mentioned in subsection (2)(a) down to the date of the payment.

(5) Where a deferred payment agreement is in force in respect of the resident —

- (a) no interest shall accrue at any time on or before the date on which the exempt period ends in respect of any amount which the resident is liable to pay as mentioned in subsection (2)(a); but

- (b) as from the day after that date, any such amount shall bear interest at such reasonable rate as the Department, in consultation with the Treasury, may determine,

and accordingly any charge granted in pursuance of subsection (2)(c) shall secure payment to the Department of any interest falling due by virtue of paragraph (b).

(6) In this section “relevant contributions” means so much of the payments which the resident is liable to pay to the Department for care accommodation under section 15 (charges for provision of social care services or carer support) (including any payments which are additional payments for the purpose of section 20) (funding of more expensive accommodation) as may be specified, or determined in accordance with, regulations made for the purposes of this subsection.

(7) The Department may make regulations in respect of any of the provisions of this section and may specify forms for use with this section.

Recovery of charges

2001/14/33

22. (1) Any charge payable by virtue of this Act shall be recoverable as a simple contract debt.

(2) The Department may make regulations to provide for the recovery by the Department, or by any person by whom social care services or carer support are provided under this Act, of any prescribed charges from any other person who is liable under this Act to maintain the person.

(3) Despite subsection (1), regulations under subsection (2) may make provision for the appointment by the Department of a receiver of any property of a person to whom services are provided under this Act and for the powers and duties of such a receiver.

(4) The Department may determine not to recover charges from a person where, in its opinion, undue hardship would as a consequence be caused to the person.

Gifts and trusts

1951/XVII/
32A/32B

2001/14/37

23. (1) The Department may accept, hold and administer any property upon trust for purposes related to the provision of social care services or carer support and may act as sole trustee of any charity even if more than one trustee was either originally appointed or substituted and whether the trustees were appointed by the Court or otherwise.

(2) Schedule 1 has effect with respect to the powers of the Department in relation to —

- (a) trusts for purposes related to social care services or carer support; and
- (b) trusts for the provision of any services of a kind capable of being provided by the Department under this Act by voluntary organisations whose objects are or include the provision of any such services.

PART 5

MISCELLANEOUS PROVISIONS

24. If a person (“A”) —

- (a) persistently refuses or neglects to maintain a person who he or she is liable under this Act to maintain (“B”); and
- (b) as a consequence B is provided with social care services or carer support is provided or secured in respect of B,

Failure to maintain

1951/XVII
p.1008/42

A is guilty of an offence and liable on summary conviction to custody for a term not exceeding 3 months or a fine not exceeding £1,000, or to both.

25. (1) A person who, for the purpose of obtaining any social care services or carer support whether for himself or herself or someone else, or for the purpose of avoiding or reducing any liability under this Act or for any other purpose connected with this Act —

False representations for obtaining social care services or carer support

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p.1008/43

- (a) makes a statement or representation which that person knows to be false; or
- (b) produces or furnishes, or knowingly causes or knowingly allows to be produced or furnished, any documents or information which that person knows to be false in a material particular,

is guilty of an offence.

(2) If a person, without reasonable excuse —

- (a) fails to notify a change of circumstances which were taken into account in providing for that person or someone else or in connection with any other purpose connected with this Act; or
- (b) knowingly causes or knowingly allows another person to fail to notify, as soon as reasonably practicable, a

change of circumstances which were taken into account in providing for that person or someone else or in connection with any other purpose connected with this Act,

and the person knows that he or she or the other person, is required to notify the change of circumstances, he or she is guilty of an offence.

(3) A person guilty of an offence under this section is liable on summary conviction to custody for a term not exceeding 3 months or to a fine not exceeding £1,000, or to both.

(4) Despite any provision in any enactment, proceedings for an offence under this section may be begun at any time within 3 months from the date on which evidence sufficient in the opinion of the Department to justify a prosecution for the offence comes to the knowledge of the Department or within 12 months from the commission of the offence, whichever period is the longer.

(5) For the purposes of subsection (4), a certificate of the Department as to the date on which the evidence came to the knowledge of the Department shall be conclusive proof of that date.

(6) If an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in such a capacity, that person, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

(7) If the affairs of a body corporate are managed by its members, subsection (6) applies in relation to the acts and defaults of a member in connection with his or her functions of management as if that person were a director of the body corporate.

Complaints
about social
care functions

26. (1) A person aggrieved by a decision of the Department in relation to the provision or securing of the provision of social care services or carer support who has exhausted all internal complaints procedures established by the Department may complain to the Independent Review Body constituted under this section.

(2) The Independent Review Body shall be appointed by the Appointments Commission and shall consist of —

(a) a chairman with such qualifications or experience as the Appointments Commission considers appropriate;

(b) 2 other persons drawn from a panel of persons who have such experience in the fields of health or social services as the Appointments Commission considers appropriate.

(3) The Department, having consulted the Department of Health, shall make regulations providing for —

(a) such description of persons as are prescribed to be ineligible for appointment to the Independent Review Body;

(b) for the terms of appointment of the members of the Independent Review Body;

(c) for the procedure to be adopted by the Independent Review Body and by persons bringing complaints to it; and

(d) for the payment of expenses to members of the Independent Review Body.

27. (1) If a person —

(a) is admitted as a patient to any hospital, or

(b) is admitted to care accommodation provided under section 10,

Temporary
protection
of property
for persons
admitted
to hospital
or care
accommodation

1951/XVII/39

and it appears to the Department that there is a danger of loss of, or damage to, any movable property by reason of that person's temporary or permanent inability to protect or deal with the property, and that no other suitable arrangements have been or are being made for the purposes of this subsection, the Department shall take reasonable steps to prevent or mitigate the loss or damage.

(2) For the purpose of subsection (1), an authorised officer of the Department shall have the power at all reasonable times to enter any premises which immediately before the person was admitted or removed were that person's place of residence or usual place of residence, and to deal with any movable property (including household pets) in any way which is reasonably necessary to prevent or mitigate loss of, or damage to, the property.

(3) The Department may recover from a person admitted or removed in accordance with subsection (1), or from any person who for the purposes of this Act is liable to maintain that person, any reasonable expenses incurred by it under this section.

(4) A person who proposes to exercise any power of entry or inspection conferred by this section shall if so required produce some duly authenticated document showing the person's authority to exercise the power on behalf of the Department.

(5) Any person who obstructs the exercise of any power under this section shall be guilty of an offence and liable on summary conviction to a fine of £1,000.

Burial or
cremation
1951/XVII
p.1008/41

28. (1) The Department shall cause to be buried or cremated the body of any person who has died or been found dead in the Island, in any case where it appears to the Department that no other suitable arrangements for the disposal of the body have been or are being made.

(2) The Department may recover expenses incurred under subsection (1) from the estate of the deceased person or from any person who was liable under this Act to maintain the deceased.

(3) Nothing in this section shall affect any enactment regulating or authorising the burial, cremation or anatomical examination of the body of a deceased person; and the Department shall not cause a body to be cremated under this section where it has reason to believe that cremation would be contrary to the wishes of the deceased or his or her relatives.

Subordinate
legislation

29. Regulations shall not have effect unless they are approved by Tynwald.

Interpretation

30. (1) In this Act except where the context otherwise requires —

[c. 1]

“Appointments Commission” means the body established under section 1 of the Tribunals Act 2006.

“assessed needs” means the social care services or carer support needs of a person which have been assessed under Part 2 or Part 3;

“assessment” means an assessment of a person's need for social care services or carer support under Part 2 or Part 3;

“care accommodation” means accommodation provided or secured by the Department under section 10(1);

“carer” means a person who is entitled to an assessment under section 11 or 12;

“carer's assessment” means an assessment of a carer's needs as carer under section 11 or 12;

“carer support” means the range of support which the Department may provide or secure the provision of under section 14;

“child” means a person under the age of 18;

“the Department” means the Department of Social Care;

“eligible person” means a person eligible for social care services or carer support under section 6;

“hospital” has the same meaning as in section 43 of the National Health Service Act 2001;

“prescribed” means prescribed by regulations made by the Department under this Act;

“social care services” means the care services which the Department may provide or secure the provision of under section 9 or 10;

“voluntary organisation” means a body the activities of which are carried on otherwise than for profit, but does not include any public or local authority.

(2) A person is liable under this Act to maintain another person if that person is —

- (a) the person’s spouse or civil partner or other person (whether of the same or opposite sex) with whom the person is in a marriage-like relationship; or
- (b) a person under the age of 18 years who has been treated by the person as a child of his or her family.

31. (1) The savings and transitional provisions in Schedule 2 shall have effect.

Savings,
transitional
provisions,
minor
amendments
and repeals

(2) The enactments in Schedule 3 are amended in accordance with that Schedule.

(3) The enactments in Schedule 4 are repealed in accordance with that Schedule.

32. (1) This Act may be cited as the Social Services Act 2011.

Short title and
commencement

(2) This Act (other than this section) shall come into operation on such day or days as the Department may by order appoint.

(3) An order under subsection (2) may make such transitional and saving provisions as the Department considers necessary or expedient.

Section 23(2)

SCHEDULE 1

TRUSTS AND VOLUNTARY ORGANISATIONS

2001/14/Sch 1

PART 1

TRUSTS FOR PURPOSES RELATED TO SOCIAL CARE ETC
AND SERVICES*Interpretation*

1. In this Part “social services trust” means any trust of property held for purposes relating to social care services or carer support.

Schemes

2. (1) The Department may make a scheme to do all or any of the following in relation to any social services trust —

- (a) to appoint trustees of the trust;
- (b) to amalgamate the trust with any other social services trust;
- (c) where the purposes of the trust are restricted to specific care accommodation, or to particular purposes relating to specific care accommodation, to extend those purposes to any care accommodation in the Island or to any purposes relating to specific care accommodation, as the case may be;
- (d) to make provision for the better administration of the trust;
- (e) to vest any property of the trust in the Department or in any body of trustees;
- (f) to authorise the disposal of any property of the trust, or of any interest in that property;
- (g) to authorise any part of the income of the trust to be added to the capital thereof, or the capital of the trust or any part of it to be applied as income;
- (h) subject to paragraph 3, to alter the purposes of the trust so as to allow the property of the trust or part of it to be applied *cy-près*;
- (i) to modify, amend or repeal any enactment so far as it relates to the trust.

(2) A scheme under this paragraph may make such incidental, consequential, transitional and supplementary provisions as appear to the Department to be necessary or expedient for the purposes of the scheme.

Occasions for applying property cy-près

3. (1) The purposes for which property may be applied may not be altered under paragraph 2(1)(h) unless it appears to the Department —

SCH. 1

- (a) that the original purposes of the gift were that the property should be wholly applied for purposes relating to social care services and carer support; and
- (b) sub-paragraph (2) applies.
- (2) This sub-paragraph applies where —
 - (a) the original purposes, in whole or in part —
 - (i) have been fulfilled, as far as may be, or
 - (ii) cannot be carried out, or not according to the directions given and to the spirit of the gift;
 - (b) the original purposes provide a use for part only of the property;
 - (c) the property and other property applicable for similar purposes can be more effectively used in conjunction, and to that end can suitably be made applicable to common purposes, having regard to the spirit of the gift;
 - (d) the original purposes were laid down by reference to an institution which then was but has since ceased to be used for the purposes of social services, or by reference to a class of persons or to an institution or area which has for any reason ceased to be suitable, having regard to the spirit of the gift, or to be practical in administering the trust; or
 - (e) the original purposes, in whole or in part, have since they were laid down —
 - (i) been adequately provided for by other means;
 - (ii) ceased for any reason to be in law charitable; or
 - (iii) ceased in any other way to provide a suitable and effective method of using the property, regard being had to the spirit of the gift.

[c.27]

(3) In relation to property the application of which is regulated by a statutory provision (including a provision repealed by the Charities Act 1986), references in this paragraph to the original purposes of a gift are to the purposes for which the property is for the time being applicable.

Consents and approvals

- 4.** (1) Before making a scheme under paragraph 2 the Department shall, if practicable, consult such persons as appear to it to be the trustees of any trust affected by the scheme.
- (2) A scheme under paragraph 2 shall not have effect —
 - (a) in any case, unless it is approved by the High Court; and
 - (b) where it makes any provision under paragraph 2(1)(i), unless it is approved by Tynwald.

(3) In the case of a scheme which does not affect a trust other than one — SCH. 1

- (a) the endowment of which does not include any land; and
- (b) the gross income of which in the last preceding accounting year was the prescribed amount or less,

the approval of the Attorney General shall be substituted for the approval of the High Court under sub-paragraph (2)(a).

(4) In this paragraph “the prescribed amount” means £5,000 or such larger amount as may for the time being be specified in section 2(1)(b) of the Charities Act 1986 by virtue of an order under section 3(5) of that Act.

Registration of schemes

5. Every scheme under paragraph 2 shall be filed in the General Registry.

Exclusion etc. of certain trusts

6. Regulations may provide that paragraphs 2 to 5 shall not apply to any social services trust specified in the regulations, or shall apply to such a trust subject to such modifications as the regulations may specify.

PART 2

VOLUNTARY ORGANISATIONS AND TRUSTS FOR PROVIDING ANCILLARY SERVICES

Transfer of property to Department

7. (1) This paragraph applies to —
- (a) any voluntary organisation formed for the purpose of providing social care services to a person in need of social care services or to a person who is a carer in need of support in the provision of such services (in this Part referred to as “social services”); and
 - (b) any trust of property relating to any such organisation or to the provision of social services.
- (2) Despite anything contained in the constitution or rules of any such organisation, or in any trust deed or other instrument relating to any such trust, any property vested in the organisation, or held by any persons on trust for the organisation or social services, or for any specific purposes connected with the organisation or social services, may be transferred to the Department on such terms as may be agreed between the Department and the organisation or trustees, with a view to the property being used or held by the Department for purposes similar to the purposes for which it was previously used or held.

Schemes

8. (1) The Department may make a scheme to do all or any of the following in relation to organisations or trusts mentioned in paragraph 7(1) —

SCH. 1

- (a) to appoint trustees of such trusts;
- (b) to amalgamate or combine 2 or more of such organisations or trusts;
- (c) to alter the district of any such organisation or trust;
- (d) to extend or amend the objects of any such organisation or trust;
- (e) generally to secure and maintain the efficient administration of the funds of any such organisation or trust.

(2) A scheme under this paragraph in relation to a voluntary organisation, or to a trust of property relating to a voluntary organisation, shall not be made without the consent of every such organisation affected by it.

(3) A scheme under this paragraph may make such incidental, consequential, transitional and supplementary provisions as appear to the Department to be necessary or expedient for the purposes of the scheme.

(4) Paragraphs 4 and 5 apply to a scheme under this paragraph as they apply to a scheme under paragraph 2.

Section 31(1)

SCHEDULE 2

SAVINGS AND TRANSITIONAL PROVISIONS

1. If a person is ordinarily resident in the Island before section 6 comes into operation that section shall have effect in relation to that person as if for subsection (1)(b) there were substituted —

“(b) is ordinarily resident in the Island; or”.

2. Arrangements that are made before section 10(1) comes into operation for the provision of care accommodation in an establishment approved by the Department for the purposes of this paragraph are deemed to have been made by virtue of section 10(1).

3. Section 27 of the 1951 Act (welfare arrangements) shall continue to apply to the provision of arrangements and services after section 1 comes into operation where such arrangements or services were made or provided before the commencement of this Act.

4. Nothing in this Act has effect so as to restrict or reduce the range of welfare services available to disabled persons under section 27 of the 1951 Act after the repeal of that provision.

5. (1) An Endowment Committee constituted in accordance with the Third Schedule to the 1951 Act shall be treated as continuing in existence despite the repeal of that Schedule —

(a) until it has filed a statement under section 2 of the Charities Registration Act 1989; or [c.11]

(b) for the period of one year from the commencement of Schedule 4 of this Act,

whichever is the earlier.

(2) If an Endowment Committee has not filed a statement as mentioned in sub-paragraph (1)(a) within the period mentioned in sub-paragraph (1)(b) —

(a) it shall be treated as being dissolved; and

(b) its funds shall vest in the Department and shall be held on trust for purposes relating to social care services or carer support.

(3) If an Endowment Committee has filed a statement as mentioned in sub-paragraph (1)(a) within the period mentioned in sub-paragraph (1)(b), the Third Schedule to the 1951 Act shall continue to have effect as an instrument establishing or regulating that Committee, and may be varied or revoked by the High Court in the exercise of any of its powers under the Charities Act 1962 or of its inherent jurisdiction relating to charities. [XIX p.632]

SCH. 2

(4) However, the Department may, at any time within the period mentioned in sub-paragraph (1)(b), make a scheme in relation to an Endowment Committee as if it were a social services trust within the meaning of Schedule 1.

6. In this Schedule “the 1951 Act” means the National Assistance (Isle of Man) Act 1951.
[XVII p.1008]

Section 31(2)

SCHEDULE 3

AMENDMENT OF ENACTMENTS

Children and Young Persons Act 1966 (XX p.89)

1. In section 1(2)(a) for “the Acts relating to national assistance” substitute “any enactment relating to social security or social services”.

Income Tax Act 1970 (XXI p.260)

2. In section 35A(3) for “section 27 of the National Assistance (Isle of Man) Act 1951” substitute “section 5(1)(b) of the Social Services Act 2011”.

Jury Act 1980 (c. 9)

3. In Schedule 1 Part 1 in the first entry of Group G delete “in accordance with arrangements made under section 27 of the National Assistance (Isle of Man) Act 1951”.

Administration of Justice Act 1981 (c.8)

4. For Schedule 4, paragraph 1(b) substitute —

“(b) regulations made under section 22 of the Social Services Act 2011;”.

Chronically Sick and Disabled Persons Act 1981 (c.36)

5. (1) In section 1 —
 - (a) in subsection (1) for “section 27 of the National Assistance (Isle of Man) Act 1951 (in this Act referred to as “the 1951 Act”)” substitute “section 2 of the Social Services Act 2011”;
 - (b) in subsection (2)(a) for “section 27 of the 1951 Act” substitute “section 2 of the Social Services Act 2011”.
- (2) In section 2 —
 - (a) in subsection (d) for “section 27 of the 1951 Act” substitute “section 2 of the Social Services Act 2011”;
 - (b) for the text following subsection (h) substitute —

“the Department shall (if in the circumstances it considers it reasonable) make those arrangements in the exercise of its functions under section 2 of the Social Services Act 2011.”.
- (3) In section 9 —
 - (a) for subsection (2)(a) substitute —

SCH. 3

“(a) a chairman and deputy chairman, each a member of Tynwald appointed by the Appointments Commission, subject to the approval of Tynwald;”;

(b) after subsection (2) insert —

“(2AA) The Advisory Council shall not transact any business unless there is present throughout its proceedings a quorum of at least 3 persons, one of whom shall be the chairman or deputy chairman.”.

(4) In section 16 omit the definition of “the 1951 Act” and in the appropriate place insert —

[c. 1]

““Appointments Commission” means the body established under section 1 of the Tribunals Act 2006.”

Ballacosnahan Homes Act 1987 (c.7)

6. For section 3 substitute —

“**3.** The Anne Thomas Trust is declared to be a social services trust within the meaning of paragraph 1 of Schedule 1 to the Social Services Act 2011.”.

Civil Service Act 1990 (c.8)

7. In Schedule 1, Part II, paragraph 1(d) —

(a) in paragraph (i) for “section 22(1)(a) of the National Assistance (Isle of Man) Act 1951” substitute “section 10(1) (care accommodation) of the Social Services Act 2011”;

(b) delete paragraph (ii).

Value Added Tax Act 1996 (c.1)

8. In section 33(3)(d), at the beginning add “an institution established for charitable purposes that was previously”.

Mental Health Act 1998 (c.3)

9. In section 131(6) (warrant to search for and remove patients) for “residential accommodation provided by the Department under Part III of the National Assistance (Isle of Man) Act 1951” substitute “care accommodation within the meaning of section 10(1) of the Social Services Act 2011”.

National Health Service Act 2001 (c.14)

10. For section 38 substitute —

“Complaints **38.** Regulations shall provide for —
procedure

- (a) the Independent Review Body constituted under section 26 of the Social Services Act 2011 to deal with complaints made by or on behalf of persons who are or have been provided with any services under Part 2 or Part 3; and
- (b) the steps to be taken by the Department for publicising how the complaint may be made to that Body.”

SCH. 3

Data Protection Act 2002 (c.2)

- 11.** (1) In section 27 (regulatory activity) after subsection (4) add —

“(5) Personal data processed for the purpose of considering a complaint under section 26 of the Social Services Act 2011 are exempt from the subject information provisions in any case to the extent to which the application of those provisions to the data would be likely to prejudice the proper discharge of that function.”.

- (2) In section 62(1) (interpretation), in the definition of “accessible record” in the table of authorities in the second column relating to the Department of Social Care for “(a) the National Assistance (Isle of Man) Act 1951” substitute “(a) the Social Services Act 2011;”.

Section 31(3)

SCHEDULE 4

ENACTMENTS REPEALED

<i>Vol</i>	<i>Short title</i>	<i>Extent of repeal</i>
XVII p.1008	National Assistance (Isle of Man) Act 1951	The whole Act.
1970 XXI p.395	Isle of Man Board of Social Security Act 1970	The whole Act.
1975 c.17	Supplementary Benefit and National Assistance (Amendment) Act 1975	The whole Act.
1980 c.1	Governor's General Functions (Transfer) Act 1980	In Schedule 1, paragraphs 183 to 186 and the cross-heading.
1982 c.6	Statute Law Revision Act 1982	In Schedule 1, paragraph 17 and the cross-heading.
1983 c.10	Statute Law Revision Act 1983	Section 3.
1986 c.1	Fines Act 1986	In Schedule 2, paragraph 61 and the cross-heading.
1986 c.14	Health and Social Security Act 1986	In Schedule 2, paragraphs 22 to 24 and the cross-heading.
1989 c.6	Statute Law Revision Act 1989	In Schedule 1, paragraph 11 and the cross-heading.
1989 c.15	Summary Jurisdiction Act 1989	Section 48(1)(b).
1991 c.3	Family Law Act 1991	In Schedule 5, paragraph 1 and the cross-heading. In Schedule 6, the entry relating to the National Assistance (Isle of Man) Act 1951.
1992 c.11	Statute Law Revision Act 1992	Section 4.
1997 c.4	Statute Law Revision Act 1997	In Schedule 2, the entry relating to the National Assistance (Isle of Man) Act 1951.
2001 c.14	National Health Service Act 2001	Section 24. In Schedule 4, paragraph 3 and the cross-heading.

2001 c.20	Children and Young Persons Act 2001	In Schedule 12, paragraph 3 and the cross-heading.	SCH. 4
2003 c.7	Matrimonial Proceedings Act 2003	Section 132(4)(b).	
2006 c.15	Audit Act 2006	In Schedule 1, paragraph 2 and the cross-heading.	