

Appendix C The Legal Framework for Equipment Provision

In terms of the Community Equipment Store there are many Acts and Regulations that determine the legal framework in which the service operates. These Acts and Regulations cover the span of duties and functions across Health and Social Care, some regulation is more universal in application. Whilst some of the Acts are more relevant to say the assessment process these Acts influence the provision of equipment and need to be carefully considered when determining any recommendations. The key legislation is as follows;

The Care Act 2014 – This Act came into force in England in April 2015, replacing a great deal of adult social care legislation in England – including the NHS and Community Care Act 1990 and the Chronically Sick and Disabled Persons Act 1970 (although the latter continues to apply to children).

National Health Service Act 2006 – This sets out health related duties. These general duties under the NHS Act mean that the legal basis for provision of equipment by the NHS differs significantly from the provision by local authorities. Whereas local authorities function in relation to eligibility criteria, which create legally enforceable duties, this is not how the NHS works. NHS provision of equipment is determined by individual clinical judgement. In practice it may be in fact also subject to local priorities and rationing.

NHS Continuing Health Care - For adults this is defined in regulations as meaning “a package of care arranged and funded solely by the health service in England for a person aged 18 or over to meet physical or mental health needs which have arisen as a result of disability, accident or illness. “The word “solely” denotes that legal responsibility lies with the NHS. By the same token, s.22 of the Care Act 2014 forbids a local authority, under the Care Act, to meet needs by providing a facility or service that the NHS is required to provide. Putting these two legal provisions together, NHS Continuing Healthcare and National Health Service Act 2006, once NHS continuing healthcare status is established, and then it is the NHS that has responsibility for providing community equipment to people in their own homes. The CHC framework also highlights this point.

None of the Acts or regulations prevents a local authority providing equipment for a person on behalf of the NHS, even when the NHS is responsible legally for provision. This could be founded on a joint working agreement under Section 75 Agreement of the NHS Act 2006. This would then mean that the equipment was being provided by the local authority not under the Care Act 2014, but under the NHS Act 2006.