



THE CARE ACT 2014

FACTSHEET

Introduction

1. The Care Act 2014 received Royal Assent (i.e. became law) on 14 May 2014

What does the Care Act 2014 do?

2. The current law on social care and support is complex and fragmented. It is set out in several pieces of legislation which have been passed over the years. Some of the legislation is very old, for example, the National Assistance Act 1948. A number of the principles set out in the current legislation are no longer relevant to today's society and have not kept up with all the policy changes in recent years.
3. The Care Act 2014 ("the Act") sets out a new comprehensive legal framework for the provision of adult social care.
4. The provisions relating to adult care and support are in Part 1 of the Act.

Part 1 of the Act

- Pulls together the different pieces of law on adult social care into a single, modern legal framework for care and support;
- Implements policy reforms modernising the provision of care and support, which promotes individuals' wellbeing by enabling them to prevent and postpone the need for care and support;
- It puts carers on a par with those for whom they care by giving them an entitlement to assessment and services in their own right;
- It implements the changes put forward by the Dilnot Commission on the funding of care and support by introducing a cap on the costs that people will have to pay for care in their lifetime.

Regulations and Guidance:

5. The Act sets out the core legal framework for the provision of adult social care and support. The detailed requirements and further legal duties and powers are contained in the care and support Regulations. The statutory guidance explains how local authorities should implement the duties and powers in the Act.
6. There are currently 22 sets of Regulations. The statutory guidance will replace most of the different pieces of guidance and policies which currently exist. It will

bring the guidance in respect of adult social care, for the most part, into one place.

When do the provisions come into effect?

7. Part 1 of the Care Act 2014 and the care and support Regulations come into effect on **1 April 2015**. The funding reforms (i.e. cap on care costs), extended means test and direct payments for residential care will come into effect in **April 2016**. This timetable is intended to give local authorities time to make the necessary preparations to ensure they are able to fulfil the new requirements when they come into effect.
8. The draft Regulations and statutory guidance were issued for consultation on 6 June 2014 and the consultation closed on 15 August 2014. Final versions of the Regulations and guidance are expected to be approved by Parliament in October 2014.

A SUMMARY OF THE NEW LEGAL PROVISIONS AND CHANGES¹

GENERAL RESPONSIBILITIES OF LOCAL AUTHORITIES: SECTIONS 1-7

The Care And Support (Preventing Needs for Care) Regulations 2014

- **'Wellbeing duty'** – A general duty on LAs to promote an individual's "wellbeing" whenever they are exercising a function in Part 1 of the Bill in relation to that individual. Components of 'wellbeing' are set out in section 1 of the Act and include personal dignity and respect, physical and mental and emotional wellbeing, protection from abuse and neglect among other matters;
- **Duty** to prevent, reduce or delay needs for care and support by providing or arranging for the provision of services, facilities, resources, or taking other steps which will do so;
- **Duty** on LAs to carry out their care and support functions with the aim of integrating services provided by the NHS, and health related provision e.g. housing where this will promote wellbeing, reduce, prevent delay in developing care needs, or improve the quality of care in the local authority's area;
- **Duty** to establish and maintain a service for providing people in its area with comprehensive information and advice about care and support services for adults and carers, including choice of providers, how to access independent financial advice on matters relevant to the meeting of needs for care and support, among other matters;
- **Duty** to promote diversity and quality in the provision of services for meeting care

¹ "Sections" and "schedules" refers to the relevant provisions in the Care Act 2014.

and support (i.e. market shaping);

- **Duty** to co-operate with relevant partners and other persons as it considers appropriate who exercise functions in the LA's area relating to adults with needs for care and support. Relevant partners include care providers, persons who provide primary medical, dental, ophthalmic, pharmaceutical services etc under the NHS Act 2006, private registered providers of housing;
- **Duty** to make arrangements for ensuring internal co-operation e.g. with housing, children's services and public health.

DoH Factsheet 1: The Care Act – General responsibilities of local authorities: Prevention, information and shaping the market of care and support services

ASSESSING NEEDS AND ELIGIBILITY: SECTIONS 18-20

The Care and Support (Assessment) Regulations 2014

The Care and Support (Eligibility Criteria) Regulations 2014

- There will be one single **duty** to assess where it **appears** to the LA that an adult has needs for care and support – assess whether they have needs and what those needs are;
- The duty applies **regardless** of the LA's view of (a) the level of the adult's need for support or (b) of the level of the adult's financial resources. Self-funders can ask for an assessment and can ask the LA to arrange their care.
- There will be a single **duty to assess carers** where it appears to the LA that a carer will have needs for support at that time or in the future and to establish what those needs may be, **regardless** of any views the LA may have about (a) the level carer's need for support or (b) level of financial resources of the person being cared for or the carer;
- If an adult refuses a needs assessment, the LA **must** still carry it out if (a) the adult lacks capacity to refuse an assessment and the LA thinks it would be in the adults best interests to carry it out, or (b) the adult is experiencing or at risk of abuse or neglect;
- The Regulations establish a national minimum eligibility threshold. All LA's must meet the needs of individuals which satisfy the national eligibility criteria.

DoH Factsheet 2: The Care Act – Who is entitled to Public Support?

DoH Factsheet 3: The Care Act – Assessments and Eligibility

DoH Factsheet 8: The Care Act – Carers

ASSESSING FINANCIAL RESOURCES AND CHARGES: SECTIONS 14-17

The Care and Support (Charging and Assessment of Resources) Regulations 2014

- There is no longer a duty to charge for residential care but a **power**;
- No power to charge once an individual has reached the cap on care costs;
- The Act specifies which services can't be charged for, e.g. needs and carers' assessments.

DoH Factsheet 5: The Care Act – Charging

CAP ON CARE COSTS: SECTIONS 15 - 17

- There will be a limit on the amount a person can be required to pay for eligible care costs over their lifetime. No charging for services to meet eligible needs once the amount of a person's accrued care costs reach the level of the cap.
- The amount of the cap will be specified in regulations that are yet to be published for consultation and there will be a power to set the cap at different amounts for people of different ages.

DoH Factsheet 6: The Care Act – Funding Reform

DUTIES AND POWERS TO MEET NEEDS: SECTIONS 18-20

The Care and Support (Ordinary Residence) (Specified Accommodation) Regulations 2014

- **Duty** to meet an adults needs for care and support which meet the eligibility criteria if:
 - the adult is ordinarily resident or present in the LA's area but is of no settled residence;
 - the adult's accrued costs do not exceed the cap on care costs;
 - the adult's resources are at or below the financial limit;
 - the adult's resources are above the financial limit but nonetheless he/she asks the LA to meet their needs;
 - when the cap on care costs comes into effect, their care and support costs exceed the cap.
- **Power** to meet needs the LA is not otherwise required to mee e.g. because they don't meet the eligibility criteria
- Power to meet needs in urgent cases and prior to completion of an assessment.
- Sets out the different ways in which needs for care and support may be met.

DoH Factsheet 2: The Care Act – Who is entitled to public care and support?

DoH Factsheet 3: The Care Act – Assessments and Eligibility

DoH Factsheet 4: The Care Act – Care and support planning

CARE ACCOUNT: SECTION 29

- **Duty** to:
 - (a) keep an up to date record of an adults accrued costs, and
 - (b) Inform the adult once the costs exceed the cap on costs.

DoH Factsheet 6: The Care Act – Funding reform

DoH Factsheet 5: The Care Act – Charging

STEPS TO TAKE FOLLOWING AN ASSESSMENT: SECTIONS 24-30

The Care and Support (Assessment) Regulations 2014

The Care and Support (Eligibility Criteria) Regulations 2014

- Specifies the duty to prepare a care and support plan or support plan when the LA is required to meet eligible needs;

Where it has carried out an assessment but it is not required to meet needs:

- LA must provide written reasons for not meeting the needs;
- Must provide advice and information about meeting, reducing, delaying development of needs.

DoH Factsheet 3: The Care Act – Assessments and Eligibility

DoH Factsheet 4: The Care Act – Care and support planning

CARE AND SUPPORT PLAN, SUPPORT PLAN AND REVIEWS: SECTION 25

- The Act lists the matters that must be included in the care and support plan, or in the case of carers, the support plan.
- **Duty** to keep under review generally care and support and support plans;
- There is a **power** to revise a care and support plan, support plan;
- There is a **duty** to re-assess and revise the care and support where the LA is satisfied that circumstances have changed in a way that affects the plan.

DoH Factsheet 4: The Care Act – Care and support planning

PERSONAL BUDGETS AND INDEPENDENT PERSONAL BUDGETS: SECTIONS 26 AND 28

The Care and Support (Personal Budget Exclusion of Costs) Regulations 2014

- The section 26 defines a personal budget as a statement and sets out what

needs to be included in the statement.

- Section 28 establishes the concept of independent personal budgets for adults who have eligible needs which are not being met by their LA. They will not have personal budgets under section 26 as the LA is not under a duty to prepare a care and support plan for them, so a separate mechanism is needed to record their care costs for the purposes of measuring progress towards the costs cap

DoH Factsheet 4: The Care Act – Care and support planning

DIRECT PAYMENTS: SECTIONS 31-33 and Schedule 4

The Care and Support (Direct Payments) Regulations 2014

- Legal provisions in relation to direct payments for people (a) who have capacity to request a direct payment –direct payments must be made if certain conditions are satisfied (b) adults who lack capacity to request direct payments - direct payments must be made to an authorised person who requests this provided the conditions specified are met.

.These provisions replicate the law as it currently stands. Direct payments will be available for residential care from April 2016.

DoH Factsheet 4: The Care Act – Care and support planning

DEFERRED PAYMENT AGREEMENTS AND LOANS: SECTIONS 34-36

The Care and Support (Deferred Payment) Regulations 2014

- The Act extends the availability of deferred payment agreements to adults making their own care arrangements for care and support services i.e. self funders

DoH Factsheet 6: The Care Act – Funding Reform

CONTINUITY OF CARE WHEN AN ADULT MOVES: SECTIONS 37-38 & Schedule 1

The Care and Support (Ordinary Residence) (Specified Accommodation) Regulations 2014

The Care and Support (Ordinary Residence Disputes, etc.) Regulations 2014

The Care and Support (Continuity of Care) Regulations 2014

The Care and Support (Cross-border Placements and Provider Failure: Temporary Duty) (Dispute Resolution) Regulations 2014

- New duties to ensure that when an adult in receipt of care and support moves home, they will continue to receive care on the day of arrival in the new authority.

Notification and assessment duties:

- Adult must tell the “second authority” they intend to move to their area;
- If the "second authority" is satisfied that the adult’s intention to move is genuine they must tell the “first authority” i.e. the authority where the adult currently lives

of the intention to move;

- First authority must provide the care and support plan and care account for the adult to the second authority;
- On receipt of information from the first authority, the second authority to carry out it's own assessment of needs in respect of the adult;

Continuity duty:

- If on the day of the move the second authority has not completed the assessment the second authority **must** meet any of the needs that were being met by first authority from the day the person arrives in the new area.
- Schedule 1 sets out cross border placements provisions enabling people who wish to move into residential accommodation across borders within the UK (e.g. Wales and Northern Ireland) to do so

DoH Factsheet 9: The Care Act – Continuity of care

ESTABLISHING WHERE A PERSON LIVES AND ORDINARY RESIDENCE: SECTIONS 39-41

The Care and Support (Ordinary Residence) (Specified Accommodation) Regulations 2014

- No change in relation to persons provided with accommodation by LA1 in the area of LA2; deemed ordinary residence in LA1;
- However the above regulations now specify that “deemed ordinary residence” also applies in respect people living in shared lives and supported living accommodation. The statutory guidance aims to assist in identifying ordinary residence in complex cases;
- Clarifies the meaning of “ordinary residence” for persons in receipt of services under section 117 of the Mental Health Act 1983. It says that where a person is provided with accommodation under section 117, they are to be treated as ordinarily resident in the area of the LA which has the duty to provide the adult with those services.

DoH Factsheet 9: The Care Act – Continuity of care

SAFEGUARDING ADULTS: SECTIONS 42-47 and Schedule 2

- First ever statutory framework for adult safeguarding. Statutory **duty** on Las to make enquiries, or to ask others to make enquiries, where they reasonably suspect that an adult in its area is at risk of neglect or abuse, including financial abuse;
- **Duty** on LAs to establish Safeguarding Adults Boards, to carry out reviews, and

duty on other individuals/organisations to supply information to the SAB if certain conditions are met.

DoH Factsheet 7: The Care Act 2014 – Safeguarding

MARKET OVERSIGHT AND PROVIDER FAILURE : SECTIONS 49-50 AND 54-58

The Care and Support (Cross-border Placements and Provider Failure: Temporary Duty) (Dispute Resolution) Regulations 2014

- Temporary **duty** to ensure the needs of people in residential care or receiving care in their homes continue to be met if a provider’s business fails;
- Duty exists regardless of whether the person pays for the care themselves or the LA pays;
- Duty is regardless of the person’s ordinary residence, or whether the LA has carried out a needs assessment or whether any of the needs meets the eligibility criteria.

DoH Factsheet 10: The Care Act – market oversight and provide failure

TRANSITION² - SECTIONS 59-67

The Care and Support (Assessment) Eligibility Regulations 2014

- **Duty** to assess a child likely to have needs for care and support after becoming 18 – “child’s needs assessment”
- **Duty** to assess carer of a child likely to have needs for care and support after child becomes 18 where it considers there is significant benefit to the carer in doing so – “child’s carer’s assessment”
- **Duty** to assess young carer where it appears they will have needs for support after becoming 18. “young carer’s assessment”.
- Amendments to the Children Act 1989 so as to ensure continuity of provision pending transition if adult care and support is not immediately available upon the young person reaching 18.

DoH Factsheet 11: The Care Act – Transition

² To be read in conjunction with provisions in Part 3 of the Children and Families Act 2014 which are aimed at improving co-operation between all services that support children with special educational needs and their families and Chapter 8 of the new SEND Code of Practice.

INDEPENDENT ADVOCACY SUPPORT: SECTIONS 68-69

The Care and Support (Independent Advocacy) Regulations 2014

- **Duty** to provide independent advocacy support to persons (i) during assessment and support planning and (ii) during safeguarding enquiries and reviews if they would otherwise struggle to understand the process and have no-one else to represent them.

AFTERCARE UNDER THE MENTAL HEALTH ACT 1983 - Section 74 and Schedule 4

The Care and Support and Aftercare (Choice of Accommodation) Regulations 2014

- Defines the meaning of aftercare services as services which (a) meet a need arising from or related to a person's mental disorder and (b) reduce the risk of deterioration of the person's mental condition and accordingly reducing the risk of the person requiring admission to a hospital again for treatment for mental disorder;
- The section also allows persons receiving accommodation as a section 117 aftercare service to express a preference for particular accommodation, and enables direct payments to be made in respect of section 117 services.

PRISONERS AND PERSONS IN APPROVED PREMISES - SECTION 76

- Sets out LAs responsibilities for the provision of care and support for adult prisoners who are in prisons in their areas and people residing in approved premises which includes bail accommodation) in their area.

READING AND USEFUL LINKS:

1. Department of Health Care Act 2014 Fact sheets:

<https://www.gov.uk/government/publications/care-act-2014-part-1-factsheets>

2. The Care Act 2014:

<http://www.legislation.gov.uk/ukpga/2014/23/contents/enacted/data.htm>

3. The draft care and support Regulations and statutory guidance:

<https://www.gov.uk/government/consultations/updating-our-care-and-support-system-draft-regulations-and-guidance>

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