
EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force certain provisions of the Care Act 2014 (c.23) (“the Act”). It is the second such Order to be made under the Act. This Order also contains a transitory provision in connection with a provision of the Act being brought into force by this Order.

Article 2(1) brings into force the following provisions of Part 1 of the Act (care and support) on 1st October 2014, for the purpose of enabling regulations to be made under those provisions—

- section 2(3) and (4) which relates to preventing needs for care and support and the circumstances in which local authorities may, or may not, charge for the provision of services, facilities or resources in relation to this;
- sections 12(1) and (2) and 13(7) and (8) which relate to needs assessments and carer’s assessments and eligibility criteria;
- section 14(5) to (8) and 17(7) and (9) to (13) which relate to charging and assessing financial resources in relation to the meeting of care and support, or support, needs;
- section 22(4)(a) and (6) which relates to the relationship between Part 1 of the Act and the provision of services or facilities that are required to be provided under the National Health Service Act 2006;
- section 23(1)(b) which relates to the relationship between Part 1 of the Act and what local authorities are required to do under other enactments;
- sections 26(4) and 30 which relate to adults’ personal budgets and the provision of preferred accommodation by local authorities;
- section 33(1) and (2) which allow regulations to make provision about direct payments;
- sections 34(1), (2) and (4) to (8) and 35 which relate to deferred payment agreements;
- section 38(8) which relates to a local authority’s duties when a person moves from the area of one authority to another;
- sections 39(1) and (3) and 40(4) which relate to where an adult is ordinarily resident for the purposes of determining which local authority will be responsible for carrying out functions under Part 1 of the Act in respect of those adults;
- section 52(12) which relates to the meaning of “business failure” and the duties imposed on local authorities in England and Wales, and on Health and Social Care trusts in Northern Ireland to meet care and support needs of adults, or support needs of carers, in circumstances where registered care providers are unable to carry on because of business failure;
- sections 53(1), (2) and (7) and 55(5) which relate to the market oversight regime;
- sections 62(2) and 65(1) which relate to the meeting of a child’s carer’s needs for support, a child’s needs assessment and a child’s carer’s assessment;
- section 67(7) which relates to the provision of independent advocacy;
- section 75(6) which allows regulations to be made in respect of a preference for particular accommodation where a local authority is, in discharging its duty under section 117(2) of the Mental Health Act 1983, providing or arranging for the provision of accommodation for the person concerned;

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- section 77(2) which allows regulations to be made to specify the persons who are to be treated as being sight-impaired and severely sight-impaired for the purposes of section 77(1) of the Act;
- section 80 which defines various terms in the Act;
- paragraphs 1(6) and (7), 2(9) and (10), 4(5) and (6), 5(9) to (11) and 11 of Schedule 1, and section 39(8), insofar as it relates to those paragraphs, which relate to cross-border placements between England and Wales, Scotland or Northern Ireland;
- paragraphs 2(5)(b), 4(6), 6 and 8 of Schedule 3 which make provision for the details of the scheme for the discharge of hospital patients with care and support needs; and
- paragraphs 1(10) and (11) of Part 1 of Schedule 4 (and section 75(7) insofar as it relates to those paragraphs) which requires regulations to be made in respect of direct payments in relation to after-care services under section 117(2) of the Mental Health Act 1983.

Article 2(2) brings into force on 1st October 2014 paragraph 3(4) of Schedule 1 to the Act, which amends section 5 of the Community Care and Health (Scotland) Act 2002. That section concerns arrangements by local authorities in Scotland for residential accommodation outside Scotland.

Article 3 brings into force the following provisions of Part 2 of the Act (Care Standards) on 1st October 2014—

- section 86 which amends section 19 of the Health and Social Care Act 2008(1) (“the 2008 Act”), to restrict applications for variation or removal of conditions on registration with the Care Quality Commission (“CQC”) if the CQC has already served a notice of proposal or decision to change the conditions in the same way;
- section 87 which creates a right of appeal for individuals against whom the CQC requires action to be taken under Part 1 of the 2008 Act;
- section 88 which makes amendments to paragraph 3 of Schedule 1 to the 2008 Act relating to the membership of the Care Quality Commission;
- section 89 which amends Schedule 1 to the 2008 Act to require the CQC to appoint three Chief Inspectors as executive members of the CQC Board;
- section 90 which repeals or amends several of the Secretary of State’s powers in the 2008 Act that could constrain the CQC’s operational autonomy; and
- section 95 which amends section 20 of the 2008 Act to enable the Secretary of State to make regulations to specify the people that can set training standards for specific group of workers who are engaged in regulated activity.

Article 4 brings into force the following provisions of Part 3 of the Act (Health) on 1st October 2014 for the purposes of enabling regulations or orders to be made under those provisions—

- section 96(4) which enables the Secretary of State by order to provide for the transfer of property, rights and liabilities from the Special Health Authority called Health Education England to the new body corporate called Health Education England (“HEE”);
- sections 104(3)(b), (4) and (13)(a), 105(1) and (4) and paragraph 2(8) of Schedule 6 (and section 104(14) insofar as it relates to that paragraph) which makes provision in relation to local education and training boards;
- sections 109(4) which enables the Secretary of State by order to provide for the transfer of property, rights and liabilities from the Special Health Authority called the Health Research Authority to the new body corporate called the Health Research Authority (“the HRA”);
- section 119 which contains definitions and makes supplementary provision;

(1) 2008 c.14.

- paragraphs 2(1) and (2) and 25 and 26 of Schedule 5 and section 96(2), insofar as it relates to those paragraphs, which relate to the constitution and accounts of HEE.

Article 4 also brings into force on 1st October 2014—

- section 97(7) of the Act which makes an amendment to section 63 of the Health Services and Public Health Act 1968 (c.46), which enables the Secretary of State to make payments to persons who are employed, or intending to be employed, in the health service and are receiving education or training; and
- section 118 of the Act which relates to the provision that may be made in a transfer order to HEE and the HRA.

Article 5 brings into force on 1st January 2015 all remaining provisions of the Act relating to the HRA for remaining purposes. These purposes will include the purpose of the committee appointed by the HRA under paragraph 8(1) of Schedule 7 to the Act giving advice. The Health and Social Care Information Centre is obliged by provision made by section 122(4) of the Act (that inserts new section 262A into the Health and Social Care Act 2012) to have regard, in exercising specified functions of publishing or disseminating information, to the advice of this committee. Article 5 therefore also brings into force section 122(4) of the Act (and section 122(1) of the Act insofar as it is not already in force).

Article 6 brings into force on 1st October 2014, section 121 of the Act which amends Part 11 (Property and Finance) of the National Health Service Act 2006(2) to make provision for a fund for the integration of the provision of health services with the provision of health-related or social care services.

Article 7 makes a transitory modification in respect of the commencement of section 17(8) of the Act for the purposes of making regulations under that section. It modifies section 17(8) so that, until section 15(1) of the Act comes into force (which prevents a local authority from making a charge for meeting an adult's needs under section 18 of the Act if the total costs accrued in meeting the adult's eligible needs exceed the cap on care costs), the regulations made under section 17(8) do not have to set out the cases or circumstances in which, if the financial resources of an adult with care and support needs exceed a specified level, a local authority is not permitted to, or does not have to, either pay towards the cost of providing care and support if the accrued costs do not exceed the cap or pay towards the amount attributable to the adult's daily living costs if the accrued costs exceed the cap. Rather, as modified, it requires regulations to make provision as to the cases or circumstances in which a local authority is not permitted to, or does not have to, pay towards the cost of providing care and support to an adult with care and support needs where the adult's financial resources exceed a specified level.

A full impact assessment has not been produced for this instrument as this Order itself has no impact on the private sector or civil society organisations. Impact Assessments carried out in relation to the Act are available from the Department of Health, Richmond House, 79 Whitehall, London, SW1A 2NS and at <https://www.gov.uk/government/publications/the-government-published-a-series-of-impact-assessments-alongside-the-care-bill>.

(2) 2006 c.41.