

EXPLANATORY MEMORANDUM TO
THE CARE AND SUPPORT (CHARGING AND ASSESSMENT OF RESOURCES)
REGULATIONS 2014

2014 No. 2672

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1. The purpose of The Care and Support (Charging and Assessment of Resources) Regulations 2014 is to set out how a local authority must conduct a financial assessment when seeking to calculate what a person can afford to contribute towards the cost of their care and support.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1. None.

4. Legislative Context

4.1. Section 14 of the Care Act 2014 provides a local authority with the power to charge a person for meeting their care and support needs under sections 18 to 20 of the Care Act and sets out where a charge cannot be made. Where a local authority chooses to charge a person, section 17 of the Care Act sets out that a financial assessment of the person's resources must be undertaken to determine what they can afford to contribute towards the cost of their care.

4.2. Section 14(7) and section 17 provide regulatory powers to set out the detail of how the financial assessment should be undertaken, in particular how different types of income and capital should be treated and the minimum amount of income a person must be left with after charging.

4.3. The provisions in the Care Act relating to charging and financial assessment replace a number of existing powers for local authorities to charge in relation to certain care and support services, including Section 22 of the National Assistance Act 1948 and Section 17 of the Health and Social Services and Social Security Adjudications Act 1983. Consolidation of the existing legal framework for charging was recommended as part of the Law Commission's review of adult social care law.

4.4. These regulations replace existing statutory instruments which set out equivalent provisions in relation to charging in the current system, for example the National Assistance (Assessment of Resources) Regulations 1992.

5. Territorial Extent and Application

5.1. This instrument applies to England only.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1. Adult care and support is not a free service, and charging has always been part of the system. Existing legal powers to charge for specific care services date back to the National Assistance Act 1948.
- 7.2. The Care Act 2014 provides a single legal framework for charging for care and support for the first time, consolidating various existing provisions. It also enables a local authority to decide whether or not to charge a person when it is meeting or arranging to meet their needs. The new framework does not introduce radical changes and local authorities should be able to broadly continue their current practices. But it is intended to make charging fairer and more clearly understood by everyone. The overarching principle underpinning the regulations is that people should only be required to pay what they can afford.
- 7.3. The regulations set out the point at which people become eligible for local authority means-tested support (i.e. financial support with the costs of meeting their needs for care and support). It will be important to ensure that sufficient information and advice is also available to ensure that the person or their representative are able to understand any contributions they are asked to make.
- 7.4. In assessing someone's finances, a local authority will need to take account of both a person's income (for example, their income from a pension or benefits) and capital (for example, financial assets such as a property). The regulations therefore set out how each of these should be treated to ensure a consistent approach so that people with similar care and support needs and similar financial circumstances are treated in a similar way.
- 7.5. The regulations also ensure that when a person is charged for the costs of their care, they are left with a minimum amount of income after charges, sufficient to meet wider costs. The level will vary depending on the setting in which they receive care.

8. Consultation outcome

- 8.1. The consultation on the package of regulations relating to Part One of the Care Act was published on 5 June 2014, and ran for ten weeks to 15 August. In order to reach a comprehensive and varied pool of experience and expertise, the consultation contained a mix of digital and face-to-face meetings and events with the full spectrum of stakeholders, including: people receiving care and support and their carers; social workers and other frontline practitioners; local authority finance managers, commissioners and elected members; voluntary and private social care providers; national representative groups and other charities and trusts; and NHS agencies, housing departments, DWP Job Centre Plus and other key partners involved in the reforms. In total, the consultation drew over 4,000 responses from many different sources. Responses were carefully analysed and, where appropriate, changes were made to regulations.

8.2. The consultation responses on the draft regulations and guidance over the summer of 2014 were broadly welcoming of the approach to the charging regulations and in particular welcomed the greater clarity provided by the guidance. In particular the responses were able to highlight areas where unintentional changes were proposed as a result of updating the charging regime such as in relation to housing-related expenditure and gave an opportunity for these to be addressed. The Department was able to consider these issues and made changes to the proposals where appropriate.

8.3 The Government response to the consultation was published on 23 October and can be found here:

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

9. Guidance

9.1 Statutory guidance to support implementation of Part One of the Care Act was subject to public consultation as part of the consultation on regulations under that part. The guidance was published at <https://www.gov.uk/government/publications/care-act-2014-statutory-guidance-for-implementation> on 23 October. This guidance is not itself the subject of parliamentary scrutiny.

10. Impact

10.1. A separate impact assessment has not been prepared for these Regulations. These Regulations are part of a package of legislative measures and the relevant impact assessment can be requested via careactconsultation@dh.gsi.gov.uk or Department of Health, Richmond House, 79 Whitehall, London SW1A 2NS and is available online at <http://www.legislation.gov.uk/ukpga/2014/23/resources>.

10.2. As the impact assessment sets out, we have given a clear commitment to making minimal change in the charging framework to enable local authorities to continue with current practices in order to prepare for funding reform. The instrument is therefore a replacement for existing legislation, updated to reflect the new context of the Care Act and is accordingly not expected to represent an additional cost burden for either the private or public sector.

11. Regulating small business

11.1. This will have no bearing on the regulation of existing small businesses.

12. Monitoring and review

12.1. The Government has committed to keeping the impact of the package of regulations under review. We will monitor the impacts of implementation of the policies contained within the Act and regulations under it on an ongoing basis. This will include continuing to work closely with local government to understand the impact of implementation of the reforms.

12.2. The rates in regulations 6 & 7, which set out the minimum amount that a person must be left with after charges, are likely to require amendment if, before these Regulations come into force, the income support rates are amended.

13. Contact

Sara Mason or Alan Probett at the Department of Health can answer any queries regarding the instrument. Sara Mason: Tel: 020 7276 5616 or e-mail: sara.mason@dh.gsi.gov.uk Alan Probett : Tel: 020 7276 5593 or email alan.probett@dh.gsi.gov.uk