

EXPLANATORY MEMORANDUM TO
THE CARE AND SUPPORT (ASSESSMENT) REGULATIONS 2014
2014 No. 2827

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 provisions of the Care Act 2014 require local authorities to carry out a needs assessment wherever an individual has an appearance of need for care and support or a carers assessment for those carers with an appearance of need for support.

2.2 This instrument specifies further matters about the carrying out of an assessment. This includes provisions for supported self-assessment, NHS Continuing Healthcare, considering the impact on the individual's family, training, expertise and consultation, and requirement for specialist expertise when assessing a deafblind individual.

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

3.1 None.

4. **Legislative Context**

4.1 Sections 9 and 10 of the Care Act 2014 provide for local authority duties to assess the needs for care and support of adults and carers respectively. These provisions consolidate and update various existing requirements to carry out assessments, including those under Section 47 of the NHS and Community Care Act 1990 (for adults with care and support needs), and Section 1 of the Carers and Disabled Children Act 2000.

4.2 Section 12 of the Care Act provides a power for regulations to specify further requirements in relation to needs assessments and carers' assessments carried out under the Act. This instrument sets out those additional requirements. It replaces certain requirements in existing secondary legislation (namely, the Community Care Assessment Directions 2004 and the NHS Continuing Healthcare (Responsibilities) Directions 2009, and under existing statutory guidance (*Prioritising need in the context of Putting People First: a whole system approach to eligibility for social care (2010)*).

5. **Territorial Extent and Application**

5.1 This instrument applies to England.

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 Assessment is a fundamental part of the care and support system. The process of assessing a person's needs for care and support provides for a critical interaction between the local authority and the individual. The assessment is not merely a gateway to ongoing services for people with higher needs; but can be an intervention in its own right, that provides the opportunity to support people to understand their needs and circumstances, access different types of support around them in their communities, and plan and prepare for the future.

7.2 Individual entitlements to an assessment of needs are also a central part of the existing legal framework, for both adults with care and support needs and carers. The Care Act maintains and updates these entitlements, and in relation to carers it extends them.

7.3 As part of its review into adult social care law, the Law Commission considered the role of assessment within the care and support system (Law Com 326, HC 941, May 2011). The Law Commission was clear that assessment duties should remain a core element of the new statute. Moreover, the Law Commission recommended that the Secretary of State should be required to make regulations in relation to assessments which:

- Specify the circumstances in which specialist assessment should be arranged, to recreate the effect of existing guidance which required a specialist assessment for deafblind people.¹
- Empower “self-assessment” by the person. The lawfulness of self-assessment (i.e. the process by which the person takes responsibility for certain elements of the assessment process) has been questioned in the past, and the Commission recommended that this be clarified in the new legal framework. The Regulations, together with statutory guidance, provide for clarity on when and how the person concerned may carry out the assessment jointly with the local authority, and in particular set out the local authority's continuing obligation to assure itself of the accuracy of the information captured by the person.
- Require a proportionate approach to assessment. The assessment process is not a single event, and may adapt to the needs and circumstances of the individual. The process and professional input required may vary, and therefore there should be explicit reference that a proportionate approach should be followed. The Regulations, supported by statutory guidance, accordingly set out the considerations to take into account when ensuring that the process is proportionate.
- Require the local authority to consider the needs of the whole family in assessing an adult, reflecting the impact of caring roles, for instance. The Regulations set out requirements in relation to identification of young carers and the consideration of separate

¹ Existing guidance (LAC(DH)(2009)6, Social Care for Deafblind Children and Adults, para 22 and NAWFC 10/2001, Social Care for Deafblind Children and Adults, para 21.) recommends that specialist assessors carry out the assessment of a deafblind person.

assessments or services, as well as taking into account the impact of the adult's needs on others in their family.

7.4 Further to the Law Commission's recommendations, the Regulations also draw on evidence provided through public engagement and pre-legislative scrutiny on the draft Care and Support Bill. Specifically, responses highlighted the need to focus the assessment on the outcomes which matter to the person and the impact on their wellbeing, and this has been incorporated into regulation 3 on general requirements for assessment. The Joint Committee which carried out pre-legislation scrutiny also recommended that if it appeared to a local authority when undertaking a needs assessment that a person has a healthcare need, they should be referred accordingly. This has been incorporated as regulation 7, which sets out requirements to refer for an assessment for NHS Continuing Healthcare where the local authority considers that the person may have a primary need for healthcare. This regulation replaces a previous requirement under the NHS Continuing Healthcare (Responsibilities) Directions 2009.

7.5 The regulations and guidance have been developed in collaboration with a reference group which included local authority representatives, third sector organisations, professionals and practitioners, and academics as well as people who use care. The group assisted by providing their views on the Regulations regarding clarification of requirements around self-assessment and considering the impact of needs on the whole family, expanding general requirements to include consideration of fluctuating needs and bringing in requirements around training and expertise for assessors. This has led to the development of further requirements in these areas to reinforce the role of assessment and support the overall policy objectives.

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 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>

8.3 The majority of responses on assessment focused on statutory guidance, rather than the regulations. They sought clarification of processes

and concepts including what a “proportionate” assessment is, where safeguarding should fit into the assessment process, and how integrated assessments can be supported. These sections have been updated accordingly.

8.4 Some respondents raised concerns about the requirement for local authorities to provide carers carrying out a supported self-assessment with information about the person they care for. We have therefore added a regulation that requires the consent of the person being cared for before any information about them is shared.

8.5 As part of this consultation, the Government asked what further circumstances there are in which a person undergoing assessment would require a specialist assessor. Respondents were asked to describe why a specialist would be needed and what additional training would be required to be appropriately trained to carry out the assessment in question.

8.6 The responses were varied. Many with conditions that affect communication noted the particular needs relating to their condition – such as those on the Autistic spectrum and blind or partially sighted. On the other hand, some local authorities, practitioners and third sector representatives raised concerns about having a ‘checklist’ of conditions and the implications both for workforce planning and for the quality of the assessment itself, which may require varied experience on a case-by-case basis.

8.7 Regulation 5 already lays down requirements around training, knowledge and expertise that apply to all assessments, and a requirement for specific specialist assessors for a longer list of conditions or circumstances is not necessary. Such a requirement would add to local authorities’ burdens, and could be restrictive. The regulations have therefore not extended the circumstances in which specialist assessments are to be required.

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 this instrument. The instrument is 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 The process for assessing people who may have care and support needs, and the threshold at which the duty is triggered, reflects current practice. We have assumed that there will not be an additional burden on local

authorities as they would have had to carry out these assessments under the current system.

10.3 The Care Act does place a new duty to assess carers where there is an appearance of need for support, which extends the existing duties in this regards. The impact assessment estimates that 270,000 additional carers will come forward for an assessment in 2015/2016 and this will rise over time and reach a steady state in 2017/18 when it estimates that 360,000 additional carers will come forward for an assessment annually. At a median unit cost of £116 for a carer's assessment, the additional costs for carers assessments are as follows:

Cost of carers assessments				
Number of assessments	2015/16	2016/17	2017/18	2018/19
	270,000	315,000	360,000	360,000
Costs	£31,320,000	£36,540,000	£41,760,000	£41,760,000

10.4 The costs above are associated with the duty in Section 10 of the Care Act, and not with these regulations. The regulations themselves are not anticipated to have any additional cost impact in relation to carer's assessments beyond those created by the primary legislation.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & 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.

13. Contact

Paul Woods at the Department of Health Tel: 0207 210 5701 or email: paul.woods@dh.gsi.gov.uk can answer any queries regarding the instrument.