

**EXPLANATORY MEMORANDUM TO
THE CARE AND SUPPORT (MISCELLANEOUS AMENDMENTS)
REGULATIONS 2015**

2015 No. 644

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 This instrument amends various regulations made under Part 1 of the Care Act 2014 (“the Act”).

3. **Matters of special interest to the Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments**
 - 3.1 None.

4. **Legislative Context**
 - 4.1 Part 1 of the Act makes provision to reform the law relating to care and support for adults and to support for carers. Various regulations under Part 1 of the Act were made and laid in October and November 2014.

 - 4.2 This instrument makes amendments to five sets of regulations.

Amendments to the Care and Support (Deferred Payment) Regulations 2014 (“the Deferred Payment Regulations”)

- 4.3 The overarching policy objective of the scheme is to help avoid people being forced to sell their home within their lifetime to pay for their care. People may face this risk if they are ‘cash poor’ (having little in the way of savings) but ‘asset rich’ (owning a property).

- 4.4 Under the deferred payments scheme, local authorities can enter into an agreement with an individual to pay the costs of the individual’s care and support for them, reclaiming the amount due to them at a later date, or to advance sums to the individual for the purpose of arranging their own care and support. The agreement is typically secured by the authority placing a legal charge on the individual’s property, and the individual typically repays the local authority from the proceeds generated from the sale of said property (though the Deferred Payment Regulations give authorities power to accept other forms of security, and individuals freedom to repay the amount due from other sources).

- 4.5 The amendment is to make clearer that the provisions concerning disposable income do not apply if the local authority ceases to make deferrals.
- 4.6 The regulations and associated explanatory memorandum can be found at:

<http://www.legislation.gov.uk/uksi/2014/2671/contents/made>

Amendments to the Care and Support (Charging and Assessment of Resources) Regulations 2014 (“the Charging Regulations”)

- 4.7 Section 14(7) of the Act provides that a local authority may not make a charge under section 14(1) (charge for meeting needs for care and support or support etc.) if a person’s income would, after deduction of the charge, fall below the amount (“the minimum amount”) specified in regulations. In the case of a person provided with accommodation in a care home, the minimum amount is based on a flat rate, and in the case of other persons, the minimum amount is an aggregate of various amounts. The instrument updates these amounts. The instrument also makes provision as to the meaning of “single person” in the Charging Regulations and makes minor corrections of errors in cross-referencing and terminology in those Regulations.
- 4.8 The regulations and associated explanatory memorandum can be found at:

<http://www.legislation.gov.uk/uksi/2014/2672/made>

Amendments to the Care and Support (Ordinary Residence) (Specified Accommodation) Regulations 2014 (“the Ordinary Residence Regulations”)

- 4.9 Section 39 of the Act specifies where a person who is being provided with accommodation to meet their care and support needs is considered to be ordinarily resident. This is to help identify where responsibility lies for meeting the person’s needs. The Ordinary Residence Regulations set out the types of accommodation to which the ordinary residence deeming rule in section 39(1) of the Act applies. The Ordinary Residence Regulations extend the definition of ‘accommodation’ in relation to section 39 from that which is currently understood under the National Assistance Act 1948, by making it clear that this must be wider than just care home accommodation (to include, for example, supported living arrangements). This is intended to give people receiving services and local authorities greater flexibility in making “out of area” placements that best meet people’s needs, whilst also removing a lacuna through which responsibility can become unclear under the current provisions.
- 4.10 The instrument amends these Regulations to ensure that the rule that the local authority responsible for meeting the person’s needs retains that responsibility when accommodation is arranged in another area does not

apply when a person is living in a specified type of accommodation which they have arranged independently (such as a care home) before they begin to receive care and support from the local authority.

- 4.11 The regulations and associated explanatory memorandum can be found at:

<http://www.legislation.gov.uk/uksi/2014/2828/made>

Amendments to the Care and Support (Cross-border Placements) (Business Failure Duties of Scottish Local Authorities) Regulations 2014 (“the Cross-border Regulations”)

- 4.12 The Cross-border Regulations specify circumstances in which, in a case where arrangements for residential accommodation in Scotland have been made by a local authority in England or Wales or a Health and Social Care trust in Northern Ireland, specified duties of Scottish local authorities under the Social Work (Scotland) Act 1968 apply in the case of the person concerned notwithstanding that those duties are disapplied by Schedule 1 to the Act. The instrument substitutes the definition of “care provider” in those Regulations for reasons of greater accuracy.

- 4.13 The regulations and associated explanatory memorandum can be found at:

<http://www.legislation.gov.uk/uksi/2014/2839/contents/made>

Amendments to the Care and Support (Direct Payments) Regulations 2014 (“the Direct Payment Regulations”)

- 4.14 Direct payments give people the opportunity to arrange their own personalised care and to plan flexible and innovative ways to meet care and support needs, resulting in better outcomes for both the service user and their carer. This Direct Payment Regulations largely replicate the existing regulatory framework. The amendment is to the list of local authorities which may make a direct payment for accommodation in a care home (to omit three authorities).

- 4.15 The regulations and associated explanatory memorandum can be found at:

<http://www.legislation.gov.uk/uksi/2014/2871/contents/made>

5. Territorial Extent and Application

- 5.1 The amendments made by the instrument have the same extent as the provisions they amend, that is to say, England and Wales, except the amendments to the Cross-border Regulations which extend to the UK.

6. European Convention on Human Rights

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

7. Policy background

7.1 Part 1 of the Act is a crucial step in delivering the commitments in the Government's white paper Caring for our future: reforming care and support, which set out our vision for a modern system which promotes people's well-being by enabling them to prevent and postpone the need for care and support and to pursue opportunities, including education and employment, to realise their potential. It takes forward the recommendations of the Law Commission to consolidate existing care and support law into a single, unified, modern statute. It refocuses the law around the person not the service, strengthens rights for carers to access support, and introduces a new adult safeguarding framework. It also provides for the proposals of the Commission on the Funding of Care and Support to introduce a cap on the care costs that people will spend in their lifetime, although these provisions will not come into force in April 2015.

7.2 Various regulations under Part 1 of the Act were laid in October and November 2014 including the regulations which this instrument amends. The policy background to those regulations is set out in the explanatory memoranda to those regulations. This instrument amends five sets of regulations, to uprate figures, to make minor corrections in relation to terminology, cross-references and a definition, to make certain clarifications and to make certain changes to reflect developments in the pilot scheme relating to direct payments. This is to ensure that the regulations being amended give full and proper effect to the policy intention. In particular-

- the uprating of figures in the Charging Regulations reflects established practice of annual uprating carried out in relation to social care charging;
- in the case of the Ordinary Residence Regulations, the policy is that in the situation described in paragraph 4.10 (accommodation is arranged independently before a person begins to receive care and support from a local authority), the normal ordinary residence rules should apply. That is the position under the current legislation and it has always been the intention that Care Act 2014 should not change this; and
- the amendment to the Direct Payment Regulations reflects developments in the pilot scheme relating to direct payments.

8. Consultation outcome

- 8.1 The consultation on the package of regulations relating to Part 1 of the Act was published on 5 June 2014, and ran for ten weeks to 15 August. This included draft versions of the five sets of regulations amended by this instrument.
- 8.2 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.
- 8.3 A consultation response document has been published at: <https://www.gov.uk/government/topics/social-care>
- 8.4 As the amendments made by this instrument are relatively minor, there has been no separate consultation on this instrument.

9. Guidance

- 9.1 Statutory guidance to support implementation of Part 1 of the Care Act was subject to public consultation as part of the consultation on regulations under that part. The guidance is published at <https://www.gov.uk/government/topics/social-care>. 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. This 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 <https://www.gov.uk/government/organisations/department-of-health>

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 the Act 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

Phillip Anderson at the Department of Health Tel: 0207 210 5696 or email: phillip.anderson@dh.gsi.gov.uk can answer any queries regarding the instrument.