

EXPLANATORY MEMORANDUM TO
THE CARE ACT 2014 AND CHILDREN AND FAMILIES ACT 2014
(CONSEQUENTIAL AMENDMENTS) ORDER 2015

2015 No. 914

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 instrument makes consequential and related incidental amendments to primary legislation in consequence of Part 1 the Care Act 2014 and the Children and Families Act 2014.

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

3.1. None.

4. Legislative Context

4.1. Part 1 of the Care Act 2014 makes provision in respect of adult social care law (including the law relating to adult carers who are caring for adults) in relation to England. Sections 96 and 97 of the Children and Families Act 2014 make provision relating to needs assessments for young carers and parent carers in England. They do this by amending the Children Act 1989 (inserting new sections 17ZA to 17ZF into that Act). It is currently the intention that these provisions, in both the Care Act and the Children and Families Act, will be brought into force on 1 April 2015.

4.2. The Social Services and Well-being (Wales) Act 2014 (“the Welsh Act”) makes provision (in relation to Wales) in respect of adult social care law and also makes provision in relation to children. These provisions will not come into force on 1 April 2015. It is currently the intention that the provisions of the Welsh Act will come into force on 1 April 2016, though this is a matter for Welsh Ministers.

4.3. In light of the provisions in Part 1 of the Care Act 2014 and the relevant provisions of the Children and Families Act 2014, existing legislative provisions in respect of these matters can be disapplied in relation to England and references to those disapplied provisions in other primary legislation need to be amended to take account of the new provisions. The existing provisions however need to remain in force in relation to Wales until such time as Wales bring the Welsh Act into force (and make necessary consequential provision)

4.4. This Order makes consequential amendments to the legislative provisions that currently underpin the provision of social care, including provisions in relation to carers, to “carve out” England and to leave the provisions only applying to Wales. It also makes consequential amendments to other primary legislation, and incidental amendments related to such consequential amendments, to reflect such disapplication in respect of England and the new provisions under the Care Act and the amended Children Act 1989. The Order also makes certain savings for transitional purposes.

- 4.5. The Annex to this Explanatory Memorandum gives further detail about the amendments made by the Order

5. Territorial Extent and Application

- 5.1. The instrument has the same extent as the instruments amended

6. European Convention on Human Rights

The Secretary of State for Health has made the following statement regarding Human Rights:

In my view the provisions of the Care Act 2014 and Children and Families Act 2014 (Consequential Amendments) Order 2015 are compatible with the Convention rights.

7. Policy background

- 7.1. Part 1 of the Care Act 2014 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 on 1 April 2015.
- 7.2. Carer provisions have been extended in key areas. Part 1 of the Care Act introduces improved rights for adult carers caring for adults. Section 96 of the Children and Families Act amends the Children Act 1989 to introduce significant new rights for young carers. From April 2015 all young carers will be entitled to an assessment of their needs for support. These new provisions will work alongside those in the Care Act 2014 for assessing adults to enable services to coordinate their approaches to assessment and support for young carers and the people they care for. Section 96(12) of the Children and Families Act introduces a requirement for local authorities to take reasonable steps to identify the extent to which there are young carers within their area with support needs.
- 7.3. Section 97 of the Children and Families Act amends the Children Act 1989 to require local authorities to assess the needs of parent carers of disabled children for support on the appearance of need or where an assessment is requested by the parent and, when carrying out an assessment, to have regard to the parent carer's well-being and the need to safeguard and promote the welfare of the disabled child cared for and any other child for whom the parent carer has parental responsibility. The local authority must be satisfied that the child and their family come within the scope of section 17 of the Children Act (for example the child is a "child in need").

7.4. Because of the sweeping nature of this legislation – consolidating 60 years of fragmented law into a single statute, there are necessarily a large number of consequential amendments to other legislation. For example, many of the core entitlements to social care services included in the National Assistance Act 1948 are disapplied by this Order, because they have been replaced by the overarching duty and power to meet care and support needs included in sections 18 and 19 of the Care Act 2014.

7.5. Many of these amendments disapply previous social care legislation in relation to local authorities in England, though it will remain in force in relation to local authorities in Wales. This is because Welsh local authorities will be subject to the Social Services and Well-being (Wales) Act 2014, and so it will be amendments consequent to that Act that will be the mechanism for disapplying previous legislation in relation to Wales, in due course.

7.6. There are also a range of other amendments that replace references to previous social care legislation in other Acts. The Department has considered these carefully with other Government Departments to ensure that in each case the consequential amendments replicate as far as possible the existing provision. The Department has also consulted with the devolved administrations in Scotland and Wales throughout the drafting of the Order. No provision is made in the Order which changes the effect of the current law as it applies to Scotland or Wales but some textual changes to the current provisions have been necessary as part of “carving out” of England.

8. Consultation outcome

8.1. The provisions in the instrument are consequential on Part 1 the Care Act 2014 and certain provisions of the Children and Families Act 2014 and have therefore not been subject to public consultation.

9. Guidance

9.1 No guidance is planned to accompany the instrument. Any guidance considered necessary further to specific amendments it makes will be given as part of the broader guidance associated with that legislation.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is minimal.

10.3 An Impact Assessment has not been prepared for this instrument. An enactment impact assessment relating to the majority of Part 1 of the Care Act 2014 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>

11. Regulating small business

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

12. Monitoring and review

- 12.1 No monitoring or review of the instrument as such is planned. The Government has committed to keeping the impact of Part 1 of the Care Act 2014 and the new sections 17ZA to 17ZF of the Children Act under review. We will monitor the impacts of implementation of the policies contained within the Acts and regulations under them 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

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

Annex to Explanatory Memorandum in relation to the Care Act 2014 and Children and Families Act 2014 (Consequential Amendments) Order 2015

Overview

This order is made under provisions in Care Act 2014 (“the Care Act”) and the Children and Families Act 2014 (“the Children and Families Act”). The Care Act 2014 makes provision in respect of the provision of care and support for adults, and support for carers, in England. The Children and Families Act makes provision, inter alia, in respect of carers under the age of 18 and in respect of adults caring for disabled children in England.

This Order amends (subject to certain savings for transitional purposes) primary legislation that currently underpins the provision of care and support, and carer support, in England (“the current social care legislation”) with the result that it will no longer apply to English local authorities. The current social care legislation will however continue to apply to local authorities in Wales.

The Order also makes consequential and incidental amendments to other primary legislative provisions which refer, for various purposes, to the current social care legislation. These amendments make, in respect of England, provision which reflects the new provisions relating to care and support for adults and support for carers.

Article 2 and the Schedule to the Order make the consequential amendments referred to above and described in more detail below.

Article 3 makes a number of savings for transitional purposes.

Detail of the amendments

The National Assistance Act 1948 is amended so as to provide that the obligations imposed by the Act no longer apply to local authorities in England. It retains some reference to English local authorities for certain cross border purposes.

The Disabled Persons (Employment) Act 1958 is amended in light of amendments made elsewhere in the Order to the National Health Service Act 2006.

The Health Services and Public Health Act 1968 is amended so as to provide that certain provisions no longer apply to local authorities in England.

The Civil Evidence Act 1968 is amended to remove reference to provisions that no longer have any application.

The Local Authority Social Services Act 1970 is amended in consequence of the provisions of the Care Act 2014

The Chronically Sick and Disabled Persons Act 1970 is amended in respect of certain provisions that apply in respect of adults in England while ensuring the provisions continue to apply in respect of Wales and in respect of children in England.

The Land Compensation Act 1973 is amended so that provisions relating to disturbance payments in respect of dwellings modified of the needs of disabled persons will continue to apply as before.

The Rating (Disabled Persons) Act 1978 is amended so as to remove reference to provisions that no longer have any application.

The Reserve Forces Act 1980 is amended to add provision relating to those registered as sight-impaired under a register kept under the Care Act 2014.

The Mental Health Act 1983 is amended to ensure continuation of the current prohibition on the provision of registered nursing care in certain circumstances and to ensure that the definition of a place of safety will continue to cover the same kind of premises as before.

The Health and Social Services and Social Security Adjudications Act 1983 is amended so that the powers in relation to charging for services under the current social care legislation no longer apply in relation to English local authorities. The Act is also amended to provide that although an English local authority may no longer create a charge under section 22 of that Act or make an order under section 23 of that Act, any charges previously created or orders made may continue to secure debts owed in respect of accommodation provided by the local authority, whether provided under the previous legislation or under Part 1 of the Care Act.

The Public Health (Control of Disease) Act 1984 is amended so that the provisions relating to the disposal of dead bodies by local authorities will continue as before.

The Transport Act 1984 is amended so that the provisions relating to travel concession arrangements that may be made by local authorities may continue as before.

The Disabled Persons (Services, Consultation and Representation) Act 1986 is amended in respect of its application to English local authorities.

The Local Government Finance Act 1988 is amended so that provisions relating to certain rating exemptions for premises used by disabled persons may continue as before.

The Children Act 1989 is amended in relation to provisions concerning young carers and parent carers and the making of direct payments.

The Opticians Act 1989 is amended to add reference to the Care Act provision under which registers of those with sight impairment may be registered.

The National Health Service and Community Care Act 1990 is amended so as to provide that its provisions will not apply to local authorities in England in respect of those matters for which the Care Act makes provision.

The Water Industry Act 1991 is amended so that provisions which provide that certain premises may not be disconnected for non-payment of charges may continue as before.

The Social Security Contributions and Benefits Act 1992 is amended in light of amendments made elsewhere in the Order to the National Health Service Act 2006.

The Local Government Finance Act 1992 is amended so that provisions relating to persons to be disregarded for the purposes of council tax discount may continue as before.

The Carers (Recognition and Services) Act 1995 is amended to provide that its provisions will not apply in relation to local authorities in England, subject to some saving of its provisions in relation to certain adult carers of children.

The Housing Grants, Construction and Regeneration Act 1996 is amended to provide that the definition of disabled persons for the purposes of Part 1 of the Act reflects the provisions of the Care Act.

The Carers and Disabled Children Act 2000 is amended to provide that its provisions will not apply in relation to local authorities in England.

The Health and Social Care Act 2001 is amended to provide that the provisions of Part 4 of the Act, subject to certain exceptions in relation to children, will not apply in relation to local authorities in England.

The Nationality, Immigration and Asylum Act 2002 is amended to provide that the provisions relating to those not eligible for support or assistance will continue as before.

The Community Care (Delayed Discharges) Act 2003 is amended to provide that the provisions will no longer apply in relation to English NHS bodies and also to omit provisions at section 15 relating to the free provision of services in England and to re-state the current provisions relating to free provision of services in Wales but in a way that does not, as now, require reference to the provisions of section 15.

The Carers (Equal Opportunities) Act 2004 is amended to provide that its provisions will not apply in relation to local authorities in England.

The Mental Capacity Act 2005 is amended so that provisions relating to the provision of accommodation by a local authority in England and those relating to questions of ordinary residence for the purpose of identifying supervisory bodies will continue to apply as before.

The National Health Service Act 2006 is amended so as to omit provisions in relation to English local authorities that are no longer required in light of the new provisions in the Care Act 2014. The provisions so omitted also had some application in relation to Welsh local authorities.

The National Health Service (Wales) Act 2006 (“the Welsh NHS Act”) is amended so as to provide that the obligations on Welsh local authorities previously provided for through the National Health Service Act 2006 (and omitted by the amendment referred to above) will continue to be provided for but through the Welsh NHS Act.

The Safeguarding Vulnerable Groups Act 2006 (the 2006 Act”) is amended to provide that provisions concerning direct payments made by English local authorities will continue as before and also to add the provision of advocacy to adults (under sections 67 and 68 of the Care Act) to the list of regulated activities under the 2006 Act.

The Income Tax Act 2007 is amended to add, in connection with provisions relating to a blind person’s allowance, reference to those registered as severely sight-impaired under a register kept under the Care Act.

The Health and Social Care Act 2008 is amended so as to omit provisions that currently provide that certain activities are to be considered as the exercise of functions of a public nature, in light of comparable provisions in the Care Act. They also amend provision in relation to financial assistance and (in prospective amendment of the Safeguarding Vulnerable Groups Act 2006) to regulated activity providers so that those provisions continue to apply as before.

The Welfare Reform Act 2009 is amended to provide that the definition of community care services for the purpose of Part 2 of the Act reflects the changes made by the Care Act.

The Personal Care at Home Act 2010 is amended so as to amend the prospective amendments made by that Act to the Community Care (Delayed Discharges) Act 2003, in light of the amendments to that latter Act referred to above.

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 is amended to reflect, in relation to the provision of legal aid, the provisions of the Care Act.

The Children and Families Act 2014 is amended in light of the amendments made to the Chronically Sick and Disabled Persons Act 1970 referred to above.

The Social Services and Well-being (Wales) Act 2014 is amended so that the reference to direct payments, in the provision relating to provider failure, reflects the new direct payment provisions in the Care Act.