

EXPLANATORY MEMORANDUM TO
THE HEALTH AND SOCIAL CARE ACT 2008 (REGULATED CARE FUNCTIONS)
REGULATIONS 2023

2023 No. 238

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 This instrument sets out local authority functions under Part 1 of the Care Act 2014 which must be reviewed and assessed by the Care Quality Commission under section 46A of the Health and Social Care Act 2008.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 Section 46A of the Health and Social Care Act 2008 places a new duty on the Care Quality Commission (“the Commission”) to review and assess local authorities’ delivery of such of their adult social care functions under Part 1 of the Care Act 2014 as may be set out in regulations. This instrument sets out those functions.

7. Policy background

What is being done and why?

7.1 Part 1 of the Care Act 2014 sets out a range of functions that local authorities exercise in their delivery of adult social care. Local authorities are accountable to their populations and responsible for their own performance in relation to these functions. However, there is currently no independent oversight of how well these functions are delivered by local authorities

- 7.2 Section 46A of the Health and Social Care Act 2008 places a new legal duty on the Commission to review and make an assessment of local authorities' performance in discharging their adult social care functions, under Part 1 of the Care Act 2014.
- 7.3 It is the intention that the new assessment duty will support improved outcomes for people who draw on care and support by providing a greater understanding of practice and provision at a local level. It will highlight where improvements need to be made and make good practice easier to spot and share nationally. The new assessment regime will therefore make the quality of adult social care more transparent for people in their communities, those working in the sector and for the government.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union/ trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 This instrument does not consolidate any legislation.

10. Consultation outcome

- 10.1 There is no statutory requirement for the Secretary of State to consult on the use of powers under s.163 of the 2022 Act. As the regulations do not impose any policy, duty or burden on the public or business, the Department of Health and Social Care determined that public consultation is not required. In considering the parts of Part 1 of the Care Act to bring within CQC's assessments, the Department of Health and Social Care worked closely with local government partners.

11. Guidance

- 11.1 Guidance is not required.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument because these Regulations are part of a package of legislative measures and the relevant impact assessment, published 4 Nov 2022, is available online at <https://www.gov.uk/government/publications/health-and-care-act-2022-combined-impact-assessments>

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The Regulations will be reviewed in light of policy developments, such as additional Care Act duties commencing.

15. Contact

- 15.1 Rohan Saravanamuttu, Policy Lead for Adult Social Care Assurance, at the Department of Health and Social Care: rohan.saravanamuttu@dhsc.gov.uk, can be contacted with any queries regarding the instrument.
- 15.2 Christina Bankes and Julie Laughton (Jobshare), Deputy Director for Data, Assurance and Sector Support, Adult Social Care, at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Helen Whately MP, Minister of State for Social Care at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.