

Final Affirmative Regulations Under Part 1 of the Care Act

These Regulations are published for information and the final version will be laid before Parliament. Subject to approval from Parliament they will be made and it is intended that they will come into force on 1 April 2015.

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D R A F T S T A T U T O R Y I N S T R U M E N T S

2014 No. XX

SOCIAL CARE, ENGLAND

**The Care and Support (Market Oversight Criteria) Regulations
2014**

Made - - - - *******

Coming into force in accordance with regulation 1(1)

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 53(1), 125(7) and (8) of the Care Act 2014(a).

In accordance with section 125(4)(g) of that Act, a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Care and Support (Market Oversight Criteria) Regulations 2014 and come into force immediately after section 53(1) of the Care Act 2014(b) comes fully into force.

(1) In these Regulations—

“the Act” means the Care Act 2014;

“the 2014 Regulations” means the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014(c);

“group undertaking” has the meaning given by section 1161(5) of the Companies Act 2006(d);

“undertaking” has the meaning given by section 1161(1) of the Companies Act 2006.

Providers of personal care (non-residential)

2.—(1) Section 55 of the Act applies to a registered care provider(e) who is not a local authority(f) and who is registered in respect of the carrying on of the regulated activity set out in paragraph 1 of Schedule 1 to the 2014 Regulations (personal care) where—

(a) the number of hours of regulated care provided by the registered care provider in a week is 30,000 or more;

(a) 2014 c. 23 (“the Act”). The powers to make regulations are exercisable by the Secretary of State. *See* section 125(1) of the Act.

(b) Section 53(1) was commenced for the purpose of making regulations by S.I. 2014/2473.

(c) S.I. X. [to be inserted when made]

(d) 2006 c.46. *See* S.I. 2008/1911 as to the application of section 1161(5) with modifications to limited liability partnerships.

(e) *See* section 48(1) of the Act for the meaning of “registered care provider”.

(f) *See* section 1(4) of the Act for the meaning of “local authority”.

- (b) the number of people to whom regulated care is provided by the registered care provider in a week is 2,000 or more; or
 - (b) (i) the number of people to whom regulated care is provided by the registered care provider in a week is 800 or more; and
 - (i) the number of hours of regulated care provided by that provider in the same week divided by that number of people exceeds 30.
- (2) In this regulation—
- “regulated care” means care provided in connection with the carrying on of the regulated activity set out in paragraph 1 of Schedule 1 to the 2014 Regulations (personal care); and
- “week” means a period of seven consecutive days.
- (3) For the purpose of this regulation, where a registered care provider is an undertaking—
- (a) the hours of regulated care provided by the provider include hours of regulated care provided by any group undertaking of the provider; and
 - (b) the number of people to whom regulated care is provided by the provider includes people to whom regulated care is provided by any group undertaking of the provider.

Providers of residential care

3.—(1) Section 55 of the Act applies to a registered care provider who is not a local authority and who is registered in respect of the carrying on of the regulated activity set out in paragraph 2 of Schedule 1 to the 2014 Regulations (accommodation for persons who require nursing or personal care) where the bed capacity of that provider is—

- (a) 1,000 or more but less than 2,000 and where—
 - (i) the bed capacity of that provider is at least 1 in each of 16 or more local authority areas; or
 - (ii) the bed capacity of that provider in each of 3 or more local authority areas exceeds 10 per cent. of the total bed capacity in each of those local authority areas; or
- (b) 2,000 or more.

(2) In this regulation—

“bed capacity” means the number of beds made available in an area by a registered care provider in connection with the carrying on of the regulated activity set out in paragraph 2 of Schedule 1 to the 2014 Regulations (accommodation for persons who require nursing or personal care); and

“total bed capacity” in relation to an area means the number of beds made available in an area by all registered care providers in connection with the carrying on of the regulated activity set out in paragraph 2 of Schedule 1 to the 2014 Regulations (accommodation for persons who require nursing or personal care).

(3) For the purpose of this regulation, where the registered care provider is an undertaking, the bed capacity of the provider includes the bed capacity of any group undertaking of the provider.

Signed by authority of the Secretary of State for Health.

Name
Minister of State
Department of Health

Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 54(1) of the Care Act 2014 (c.23) (“the Act”) imposes a duty on the Care Quality Commission to determine whether a registered care provider satisfies the criteria for entry into the

market oversight regime (see section 53 of the Act). These Regulations set out the entry criteria to the market oversight regime, which is a regime to monitor the financial sustainability of certain difficult to replace registered care providers.

Regulation 2 sets out the criteria for entry applicable to providers of personal (non-residential) care, that is, providers who are registered in respect of the carrying on of the regulated activity set out in paragraph 1 of Schedule 1 to the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (“the 2014 Regulations”). The criteria will be satisfied where a provider is not a local authority and where they:

- provide at least 30,000 hours of care in a week anywhere in England; or
- provide at least 2,000 people with care in a week anywhere in England; or
- provide at least 800 people with care in a week anywhere in England and the number of hours of care provided in the same week divided by that number of people exceeds 30.

Regulation 2 also provides that the criteria may be met by counting the hours of care provided by any group undertaking of the relevant provider or counting the people to whom care is provided by any such group undertaking.

Regulation 3 sets out the criteria for entry applicable to providers of residential care, that is, providers who are registered in respect of the carrying on of the regulated activity set out in paragraph 2 of Schedule 1 to the 2014 Regulations. The criteria will be satisfied where a provider is not a local authority and where they have a bed capacity:

- of at least 2,000 anywhere in England; or
- of between 1,000 to 1,999 overall, with 1 bed or more in at least 16 local authorities in England; or
- of between 1,000 to 1,999 anywhere in England and where their bed capacity in each of 3 or more local authorities in England exceeds 10 per cent. of the total bed capacity in each of those local authorities.

Regulation 3 also provides that the bed capacity of a provider includes the bed capacity of any group undertaking.

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 the Department of Health, Richmond House, 79 Whitehall, London, SW1A 2NS and is available online at <https://www.gov.uk/government/organisations/department-of-health>.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2014 No. XXXX

SOCIAL CARE

The Care and Support (Business Failure) Regulations 2014

Made - - - - *******

Coming into force in accordance with regulation 1(2)

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 52(12) and 125(7) of the Care Act 2014**(a)**.

In accordance with section 125(4)(f) of the Care Act 2014, a draft of these Regulations was laid before Parliament and was approved by a resolution of each House of Parliament.

In accordance with section 125(9) of the Care Act 2014, the Secretary of State has consulted the Welsh Ministers and the Department for Health, Social Services and Public Safety in Northern Ireland before making these Regulations.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Care and Support (Business Failure) Regulations 2014.

(2) These Regulations come into force—

(a) on the date that section 50 of the Act comes fully into force or, if later, immediately after section 52(12) of the Act comes fully into force**(b)**, in so far as they make provision for the purposes of—

(i) section 50 of the Act**(c)**, and

(ii) section 52 of the Act in so far as it relates to section 50; and

(b) immediately after section 52(12) of the Act comes fully into force for all other purposes.

(3) In these Regulations—

“the Act” means the Care Act 2014;

“the 1986 Act” means the Insolvency Act 1986**(d)**;

“the 1989 Order” means the Insolvency (Northern Ireland) Order 1989**(e)**;

(a) 2014 c.23 (“the Act”). The powers to make regulations are exercisable by the Secretary of State, *see* section 125(1).

(b) Section 52(12) was commenced for the purposes of making regulations by S.I. 2014/2473.

(c) Section 50 concerns duties on local authorities in Wales to meet adults’ needs for care and support or carers’ needs for support in specified circumstances.

(d) 1986 c.45.

(e) S.I. 1989/2405 (N.I. 19).

“a members’ voluntary winding up” means a winding up where a statutory declaration has been made under section 89 of the 1986 Act or Article 75 of the 1989 Order(a);

“a provider” means—

- (a) a registered care provider(b),
- (b) a person registered under Part 2 of the Care Standards Act 2000(c) in respect of an establishment or agency, or
- (c) a person registered under Part 3 of the Health and Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003(d) in respect of an establishment or agency;

“the relevant amount” means the amount specified in section 123(1)(a) of the 1986 Act (definition of inability to pay debts) or Article 103(1)(a) of the 1989 Order (definition of inability to pay debts; the statutory demand) as the case may be.

Business failure

2.—(1) For the purposes of sections 48 and 50 to 52 of the Act—

- (a) business failure has the meaning given in paragraphs (2) to (5); and
- (b) a provider is to be treated as unable to carry on a regulated activity(e) or to carry on or manage an establishment or agency because of business failure if the provider’s inability to do so follows business failure.

(2) Where a provider is not an individual, business failure means that, in respect of that provider—

- (a) the appointment of an administrator (within the meaning given by paragraph 1(1) of Schedule B1 to the 1986 Act(f) or paragraph 2(1) of Schedule B1 to the 1989 Order(g)) takes effect;
- (b) a receiver is appointed;
- (c) an administrative receiver as defined in section 251 of the 1986 Act(h) or Article 5 of the 1989 Order is appointed;
- (d) a resolution for a voluntary winding up is passed other than in a members’ voluntary winding up;
- (e) a winding up order is made;
- (f) an order by virtue of Article 11 of the Insolvent Partnerships Order 1994 (joint bankruptcy petition by individual members of insolvent partnership)(i) is made;
- (g) an order by virtue of Article 11 of the Insolvent Partnerships Order (Northern Ireland) 1995 (joint bankruptcy petition by individual members of insolvent partnership)(j) is made;
- (h) the charity trustees of the provider become unable to pay their debts as they fall due;

(a) See S.I. 2001/1090 and 2012/3013 as to the application of section 89 to Limited Liability Partnerships and Charitable Incorporated Organisations respectively. As to the application of section 89 to co-operative and community benefit societies see section 123 of the Co-operative and Community Benefit Societies Act 2014 (c.14), and as to the application of Article 75 of the 1989 Order to industrial and provident societies in Northern Ireland, see section 64 of the Industrial and Provident Societies Act (Northern Ireland) 1969 (c.24), as substituted by S.I. 2009/1941.

(b) See section 48(1) of the Act for the meaning of “registered care provider”.

(c) 2000 c.14.

(d) S.I. 2003/431 (N.I. 9).

(e) See section 8 of the Health and Social Care Act 2008 (c.14) for the meaning of “regulated activity”.

(f) Schedule B1 was inserted by section 248(2) of, and Schedule 16 to, the Enterprise Act 2002 (c.40). As to the application of Part 2 of the 1986 Act to co-operative and community benefit societies see S.I. 2014/229 as amended by S.I. 2014/1822.

(g) Schedule B1 was inserted by S.I. 2005/1455 (N.I. 10).

(h) There are amendments to section 251 but none is relevant.

(i) S.I. 1994/2421.

(j) S.R. (N.I.) 1995 No. 225.

- (i) every member of the partnership (in a case where the provider is a partnership) is adjudged bankrupt; or
 - (j) a voluntary arrangement proposed for the purposes of Part 1 of the 1986 Act^(a) or Part 2 of the 1989 Order has been approved under that Part of that Act or Order.
- (3) In relation to a provider who is an individual, business failure means that—
- (a) the individual is adjudged bankrupt; or
 - (b) a voluntary arrangement pursuant to Part 8 of the 1986 Act or Part 8 of the 1989 Order is proposed by or entered into by the individual.
- (4) For the purposes of paragraph (2)(h), a person is a charity trustee of a provider if—
- (a) the provider is a charity that is unincorporated; and
 - (b) the person is a trustee of that charity.
- (5) For the purposes of paragraph (2)(h), the charity trustees of a provider are to be treated as becoming unable to pay their debts as they fall due if—
- (a) a creditor to whom the trustees are indebted in a sum exceeding the relevant amount then due has served on the trustees a written demand requiring the trustees to pay the sum so due and the trustees have for 3 weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor;
 - (b) in England and Wales, execution or other process issued on a judgment, decree or order of a court in favour of a creditor of the trustees is returned unsatisfied in whole or in part;
 - (c) in Scotland, the *induciae* of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made; or
 - (d) in Northern Ireland, a certificate of unenforceability has been granted in respect of a judgment against the trustees.

Signed by authority of the Secretary of State for Health

Date

Name
Minister of State
Department of Health

EXPLANATORY NOTE

(This note is not part of the Regulations)

Sections 48 to 52 of the Care Act 2014 (“the Act”) impose duties (“temporary duties”) on local authorities in England and Wales, and on Health and Social Care trusts in Northern Ireland (“HSC trusts”), to meet care and support needs of adults, or support needs of carers, in circumstances where registered providers of care are unable to carry on because of “business failure”.

These Regulations make provision as to the interpretation, for those purposes, of “business failure” and as to circumstances in which a person is to be treated as unable to do something because of “business failure”. (As regards Scotland, certain duties are imposed on local authorities under Part 2 of the Social Work (Scotland) Act 1968.)

Regulation 2 sets out the events which constitute business failure for the purposes of the temporary duties on local authorities in England and Wales, and on HSC trusts.

(a) As to the application of Part 1t of the 1986 Act to co-operative and community benefit societies *see* S.I. 2014/229 as amended by S.I. 2014/1822.

In relation to a provider, other than an individual, registered in England, Wales or Northern Ireland, business failure consists of—

- the appointment of an administrator;
- the appointment of a receiver;
- the appointment of an administrative receiver;
- the passing of a resolution for a voluntary winding up in a creditors' voluntary winding up;
- the making of a winding up order;
- the making of bankruptcy orders where individual members of a partnership present a joint bankruptcy petition;
- in relation to an unincorporated charity, the charity trustees becoming unable to pay their debts as they fall due;
- all members of a partnership being adjudged bankrupt; or
- a voluntary arrangement being approved under the Insolvency Act 1986 (“the 1986 Act”) or the Insolvency (Northern Ireland) Order 1989 (“the 1989 Order”).

In relation to a provider who is an individual registered in England, Wales or Northern Ireland, business failure consists of the individual being adjudged bankrupt or proposing or entering into an individual voluntary arrangement under Part 8 of the 1986 Act or Part 8 of the 1989 Order.

Under the Act, the temporary duties are triggered where a registered provider becomes unable to carry on a regulated activity or to carry on an establishment or agency because of business failure. Regulation 2(1)(b) provides that a provider is to be treated as unable to carry on a regulated activity or to carry on or manage an establishment or agency because of business failure if the provider's inability to do so follows business failure.

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 <https://www.gov.uk/government/organisations/department-of-health>.

STATUTORY INSTRUMENTS

2014 No. XXX

SOCIAL CARE, ENGLAND

The Care and Support (Children’s Carers) Regulations 2014

Made - - - - *xxxx*

Coming into force in accordance with regulations 1(1)

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 62(2) and 125(7) and (8) of the Care Act 2014(a).

A draft of these Regulations has been laid before, and approved by, a resolution of each House of Parliament in accordance with section 125(4)(i) of that Act.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Care and Support (Children’s Carers) Regulations 2014 and come into force immediately after section 61(1) of the Care Act 2014 comes into force.

(1) In these Regulations “the Act” means the Care Act 2014.

Application of Part 1 etc in relation to the exercise of the power to meet a child’s carer’s needs for support

2.—(1) The following apply, with the modifications specified in regulations 4 to 14, to the exercise of the power to meet a child’s carer’s(b) needs for support under section 62(1) of the Act insofar as they apply to the exercise of the power to meet a carer’s(c) needs for support under section 20(6) of the Act—

- (a) the provisions of Part 1 of the Act, insofar as they do not already apply to the exercise of the power under section 62(1) of the Act, except for the provisions listed in paragraph (2); and
- (b) the Regulations specified in paragraph (3).

(2) The excepted provisions referred to in paragraph (1)(a) are—

- (a) section 30 (cases where adult expresses preference for particular accommodation);
- (b) section 41 (financial adjustments between local authorities); and
- (c) section 74 and Schedule 3 (discharge of hospital patients with care and support needs).

(3) The Regulations referred to in paragraph (1)(b) are—

(a) 2014 c.23. The power to make regulations is exercisable by the Secretary of State - *see* section 125(1).
(b) *See* section 60(7) to (9) of the Act for the meaning of “carer” in relation to a child.
(c) *See* section 10(3) of the Act for the meaning of “carer”.

- (a) the Care and Support (Independent Advocacy) Regulations 2014(a);
- (b) the Care and Support (Charging and Assessment of Resources) Regulations 2014(b);
- (c) the Care and Support (Personal Budget Exclusion of Costs) Regulations 2014(c); and
- (d) the Care and Support (Direct Payments) Regulations 2014(d).

Prohibition on providing support to a carer by providing care and support to a child

3. A local authority(e) may not meet a child’s carer’s needs for support under section 62(1) of the Act by providing care and support to the child.

Modification of section 8 (how to meet needs)

4. Section 8 of the Act applies as if, after “sections 18 to 20”, wherever occurring, there were inserted “or section 62(1)”.

Modification of section 14 (power of local authority to charge)

5. Section 14 of the Act applies as if, in subsection (1)(a), after “sections 18 to 20” there were inserted “or section 62(1)”.

Modification of section 17 (assessment of financial resources)

6. Section 17 of the Act applies as if—

- (a) after subsection (3) there were inserted—

“(3A) Where a local authority thinks that, if it were to meet a child’s carer’s needs for support, it would charge the child’s carer under section 14(1) for meeting at least some of the needs, it must assess—

- (a) the level of the child’s carer’s financial resources, and
- (b) the amount (if any) which the child’s carer would be likely to be able to pay towards the cost of meeting the needs for support.”; and

- (b) after subsection (9), there were inserted—

“(9A) The regulations must make provision as to cases or circumstances in which, if the financial resources of a child’s carer who has needs for support (whether in terms of income, capital or a combination of both) exceed a specified level, a local authority is not permitted to, or may (but need not), pay towards the cost of the provision of support for the child’s carer.”.

Modification of section 22 (exception for provision of health services)

7. Section 22 of the Act applies as if, in subsections (1) and (3), after “sections 18 to 20”, there were inserted “or section 62(1)”.

Modification of section 23 (exception for provision of housing etc)

8. Section 23 of the Act applies as if, in subsection (1), after “sections 18 to 20”, there were inserted “or section 62(1)”.

(a) [Insert SI reference]
 (b) [Insert SI reference]
 (c) [Insert SI reference]
 (d) [Insert SI reference]
 (e) See section 1(4) of the Act for the meaning of “local authority”; the definition is limited to local authorities in England.

Modification of section 24 (the steps for the local authority to take)

9. Section 24 of the Act applies as if, in subsection (1), after “20(6)”, there were inserted “or 62(1)”.

Modification of section 25 (support plan)

10. Section 25 of the Act applies as if—

- (a) in subsection (1), after “in the case of a carer”, there were inserted “or child’s carer”;
- (b) in subsection (1)(a), after “carer’s assessment”, there were inserted “or child’s carer’s assessment”;
- (c) in subsection (1)(b), at the beginning, there were inserted “except in the case of a child’s carer.”;
- (d) in subsection (1)(d), after “section 10(5) and (6)”, there were inserted “or (in the case of a child’s carer) section 61(1) and (2)”;
- (e) in subsection (4)(a), after “carer”, there were inserted “or child’s carer”;
- (f) in subsection (4)(b), at the beginning, there were inserted “in the case of a carer.”;
- (g) after subsection (4)(b), there were inserted—
 - “(ba) in the case of a child’s carer, the child the child’s carer cares for, if the child’s carer asks the authority to do so, and”;
- (h) in subsection (4)(c), after “carer”, there were inserted “or child’s carer”;
- (i) in subsection (5), after “carer”, there were inserted “or child’s carer”;
- (j) in subsection (6)(b), after “section 10(5) and (6)”, there were inserted “or (in the case of a child’s carer) section 61(1) and (2)”;
- (k) in subsection (8)(b), after “carer”, there were inserted “or child’s carer” and after “adult needing care”, there were inserted “or child the child’s carer cares for”;
- (l) in subsection (10)(a), after “carer”, there were inserted “or child’s carer”;
- (m) in subsection (10)(b), at the beginning, there were inserted “in the case of a carer.”;
- (n) after subsection (10)(b), there were inserted—
 - “(ba) in the case of a child’s carer, the child the child’s carer cares for, if the child’s carer asks the authority to do so, and”;
- (o) in subsection (10)(c), after “carer”, there were inserted “or child’s carer”.

Modification of section 27 (review of support plan)

11. Section 27 of the Act applies as if—

- (a) in subsection (1)(b), after “carer”, there were inserted “or child’s carer”;
- (b) in subsection (3)(a), after “section 10(5) and (6)”, there were inserted “or (in the case of a child’s carer) section 61(1) and (2)”;
- (c) in subsection (3)(b)(i), after “carer”, there were inserted “or child’s carer”;
- (d) in subsection (3)(b)(ii), at the beginning, there were inserted “in the case of a carer.”;
- (e) after subsection (3)(b)(ii), there were inserted—
 - “(iia) in the case of a child’s carer, the child the child’s carer cares for, if the child’s carer asks the authority to do so, and”;
- (f) in subsection (3)(b)(iii), after “carer”, there were inserted “or child’s carer”;
- (g) in subsection (4), after “or a support plan”, there were inserted “in respect of a carer”;
- (h) after subsection (4), there were inserted—
 - “(4A) Where a local authority is satisfied that circumstances have changed in a way that affects a support plan in respect of a child’s carer, the authority must—

- (a) to the extent it thinks appropriate, carry out a child’s carer’s assessment and a financial assessment; and
- (b) revise the support plan accordingly.”.

Modification of section 70 (transfer of assets to avoid charges)

12. Section 70 of the Act applies as if in subsection (1), after “sections 18 to 20”, there were inserted “or section 62(1)”.

Modification of regulations on charging and assessment of resources

13. The Care and Support (Charging and Assessment of Resources) Regulations 2014 apply as if—

- (a) in regulation 2, there were inserted at the appropriate place—
 - ““carer” has the same meaning as in—
 - (a) section 10(3) of the Act in a case where the adult provides or intends to provide care for an adult needing care; and
 - (b) section 60(7) of the Act in a case where the adult provides or intends to provide care for a child;”;
- (b) in regulation 3, in paragraphs (1) and (3), after “or 20”, there were inserted “or 62(1)”.

Modification of regulations on personal budgets

14. The Care and Support (Personal Budget Exclusion of Costs) Regulations 2014 apply as if in regulation 1(2), after “20(6)”, there were inserted “or 62(1)”.

Signed by authority of the Secretary of State for Health

Address	<i>Name</i>
Date	Minister of State Department of Health

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 62(1) of the Care Act 2014 (“the Act”) provides a power for a local authority to meet the support needs of the carer of a child in circumstances where the authority has carried out an assessment of the carer’s needs under section 60 in advance of the child becoming 18. These Regulations make provision in connection with the exercise of that power.

Regulation 2 provides for provisions of Part 1 of the Act, together with specified regulations made under that Part, to apply with modifications to the local authority’s exercise of its power under section 62(1) of the Act, as they would apply to the local authority’s exercise of the power under section 20(6) to meet the support needs of a carer. Thus, where provisions of Part 1 of the Act do not apply to the exercise of the power under section 20(6), they would not apply to the exercise of the power under section 62(1). By way of example, sections 15, 16, 28, 29, 34, 35, 37, 38, 39, 40, and 47, do not apply because they relate to an adult with needs for care and support, and sections 13, 42 to 46 and 53 to 57 do not apply because they do not specifically apply to the exercise of the power under section 20(6). Certain provisions of Part 1, such as 1, 3 and 7 already apply because they apply to the exercise of any function under Part 1 of the Act.

Regulation 2(2) excludes some provisions within Part 1 which otherwise would apply to the exercise of the power under section 62(1).

Regulation 3 prohibits a local authority, in exercising the power under section 62(1) of the Act, from meeting the needs of the child's carer by providing care and support to the child in question. As a result, section 14(3) does not apply to the exercise of the power under section 62(1).

Regulations 4 to 14 make modifications to certain provisions of Part 1 and regulations under that Part which are applied to the exercise of the power under section 62(1) by regulation 2, in order to ensure that in their application to the exercise of that power they have the correct effect.

Some of these modifications make straightforward substitutions of references to section 62(1) or to a "child's carer".

The more complex modifications are explained below.

Regulation 10(c) modifies section 25 of the Act to ensure that there is no requirement for a support plan prepared under section 24 to specify whether the child's carer's needs meet the local authority's eligibility criteria. This is because the exercise of the power under section 62(1) is not conditional upon needs meeting eligibility criteria.

Regulation 11(h) modifies section 27 of the Act to ensure that where on the review of a support plan for a child's carer it transpires that circumstances have changed, a child's carer's assessment and financial assessment must be carried out if the person being cared for is still a child (that is to say still under 18). Section 27(4) of the Act provides that a carer's assessment, financial assessment and eligibility determination should be carried out if the person being cared for is no longer a child (in other words is over 18).

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.gov.uk/government/organisations/department-of-health>.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2014 No. 000

SOCIAL CARE, ENGLAND

The Care and Support (Eligibility Criteria) Regulations 2014

Made - - - - - *******

Coming into force in accordance with regulation 1

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 13(7) and (8) and 125(7) and (8) of the Care Act 2014(a).

A draft of this instrument has been laid before and approved by a resolution of each House of Parliament in accordance with section 125(4)(a) of that Act.

Citation and commencement

1. These Regulations may be cited as the Care and Support (Eligibility Criteria) Regulations 2014 and come into force immediately after section 13(7) of the Care Act 2014 comes fully into force(b).

Needs which meet the eligibility criteria: adults who need care and support

2.—(1) An adult’s needs meet the eligibility criteria if—

- (a) the adult’s needs arise from or are related to a physical or mental impairment or illness;
- (b) as a result of the adult’s needs the adult is unable to achieve two or more of the outcomes specified in paragraph (2); and
- (c) as a consequence there is, or is likely to be, a significant impact on the adult’s well-being.

(2) The specified outcomes are—

- (a) managing and maintaining nutrition;
- (b) maintaining personal hygiene;
- (c) managing toilet needs;
- (d) being appropriately clothed;
- (e) being able to make use of the adult’s home safely;
- (f) maintaining a habitable home environment;
- (g) developing and maintaining family or other personal relationships;
- (h) accessing and engaging in work, training, education or volunteering;

(a) 2014 c.23. The power to make regulations is exercisable by the Secretary of State, *see* section 125(1).

(b) Section 13(7) was commenced for the purpose of making regulations by S.I. 2014/2473.

- (i) making use of necessary facilities or services in the local community including public transport, and recreational facilities or services; and
 - (j) carrying out any caring responsibilities the adult has for a child.
- (3) For the purposes of this regulation an adult is to be regarded as being unable to achieve an outcome if the adult—
- (a) is unable to achieve it without assistance;
 - (b) is able to achieve it without assistance but doing so causes the adult significant pain, distress or anxiety;
 - (c) is able to achieve it without assistance but doing so endangers or is likely to endanger the health or safety of the adult, or of others; or
 - (d) is able to achieve it without assistance but takes significantly longer than would normally be expected.
- (4) Where the level of an adult’s needs fluctuates, in determining whether the adult’s needs meet the eligibility criteria, the local authority must take into account the adult’s circumstances over such period as it considers necessary to establish accurately the adult’s level of need.

Needs which meet the eligibility criteria: carers

- 3.—(1) A carer’s needs meet the eligibility criteria if—
- (a) the needs arise as a consequence of providing necessary care for an adult;
 - (b) the effect of the carer’s needs is that any of the circumstances specified in paragraph (2) apply to the carer; and
 - (c) as a consequence of that fact there is, or is likely to be, a significant impact on the carer’s well-being.
- (2) The circumstances specified in this paragraph are as follows—
- (a) the carer’s physical or mental health is, or is at risk of, deteriorating;
 - (b) the carer is unable to achieve any of the following outcomes—
 - (i) carrying out any caring responsibilities the carer has for a child;
 - (ii) providing care to other persons for whom the carer provides care;
 - (iii) maintaining a habitable home environment in the carer’s home (whether or not this is also the home of the adult needing care);
 - (iv) managing and maintaining nutrition;
 - (v) developing and maintaining family or other personal relationships;
 - (vi) engaging in work, training, education or volunteering;
 - (vii) making use of necessary facilities or services in the local community, including recreational facilities or services; and
 - (viii) engaging in recreational activities.
- (3) For the purposes of paragraph (2) a carer is to be regarded as being unable to achieve an outcome if the carer—
- (a) is unable to achieve it without assistance;
 - (b) is able to achieve it without assistance but doing so causes the carer significant pain, distress or anxiety; or
 - (c) is able to achieve it without assistance but doing so endangers or is likely to endanger the health or safety of the carer, or of others.
- (4) Where the level of a carer’s needs fluctuates, in determining whether the carer’s needs meet the eligibility criteria, the local authority must take into account the carer’s circumstances over such period as it considers necessary to establish accurately the carer’s level of need.

Signed by authority of the Secretary of State for Health

Date

Name
Minister of State
Department of Health

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations specify the eligibility criteria for the purposes of Part 1 of the Care Act 2014 (“the Act”).

When an adult is found to have care and support needs following a needs assessment under section 9 of the Act (or in the case of a carer, support needs following a carer’s assessment under section 10), the local authority must determine whether those needs are at a level sufficient to meet the “eligibility criteria” under section 13 of the Act. Sections 18 and 20 of the Act set out the duty of local authorities to meet those of an adult’s needs for care and support and those of a carer’s needs for support which meet the eligibility criteria.

Regulation 2 sets out the eligibility criteria for adults who need care and support, and regulation 3 sets out the eligibility criteria for carers who need support.

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 the Department of Health, Richmond House, 79 Whitehall, London, SW1A 2NS and is available online at <https://www.gov.uk/government/organisations/department-of-health>.