

## Update on final Orders under the Care Act 2014

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The final secondary legislation which will underpin the Care Act is due to be completed in advance of implementation in April 2015. This note summarises those final technical legal orders to provide information to local authorities and other interested stakeholders, and annexes or links to the statutory instruments for ease of reference.

The note also provides clarification on certain matters related to the statutory guidance for the Care Act. Following the publication of the final *Care and support statutory guidance* in October 2014, the Department has received a number of requests for clarification on certain passages. This note clarifies the issues raised and sets out how the statutory guidance will be updated to reflect this in due course. None of these changes amend local authorities' statutory obligations; they serve only to clarify intent in areas where this has been requested.

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## Summary of Orders under the Care Act 2014

### *Transitional Order* (see Annex A)

1. Together with the Primary Consequential Order (see below), the transitional order will set out details of how the transition from the old to the new legislative framework will work. The basic approach is that:
  - i. People who are already receiving services and support (including direct payments) prior to 1 April 2015 will continue to receive such support and services under the old law until the local authority completes a review of that person's case, at which point the new law will apply in respect of that person.
  - ii. In practice, such a review can have one of two basic outcomes:
    - a. the local authority concludes the person does not have care and support needs that they are required to meet under the Care Act (for example because needs do not meet the eligibility criteria), and the authority does not intend to meet any of the person's other needs; or
    - b. the local authority, having concluded that the person does have needs and that they are going to meet some or all of these needs, starts to do so (assuring itself that existing arrangements fully comply with the Care Act, making any adjustments as necessary).
  - iii. Reviews of existing care and support plans will usually take place at least annually. Therefore, it will usually be most pragmatic for the transition under the Care Act to take place at the point of the planned, regular review. In any event, local authorities must undertake a review within one year of the implementation of the Care Act (i.e. before 1<sup>st</sup> April 2016). If they do not, the Care Act will apply as of this date and anyone who has not been reviewed will be treated as having their eligible needs met under the Care Act until the local authority does, in fact, complete a review and reach a decision in accordance with the Care Act. We will make clear in guidance that local authorities will be at risk of increasing violation of their duty to review regularly the longer such a situation continues.
  - iv. We will also make clear in guidance that local authorities must not use existing legislation to underpin care and support planning or provision after 1<sup>st</sup> April 2015 in respect of cases other than these transitional cases. The purpose of the saving in the Order is to enable local authorities only to continue with existing arrangements pending a review, so as to plan a managed transition over the first year.

### *Commencement Order* (see Annex B)

2. This is the fourth commencement order under the Act. We have already commenced certain relevant regulation-making powers in Part 1 of the Care Act in October 2014, in order to make and lay the regulations in Parliament. This order will commence most of the remaining provisions of Part 1 in April as well as provisions relating to care standards, effectively bringing the new care and support system into force from then.

3. The majority of the provisions in the order come into effect on 1 April 2015, but the market oversight provisions commence on 6 April to align with the start of the new financial year, since they impact on business.
4. This order also formalises the previously announced delay to the commencement of section 18(3) of the Act insofar as it creates a duty to meet needs by providing or arranging care home accommodation. Section 18(3), read with section 18(1), gives people with assets above the financial limit (“self-funders”) the right to have their eligible needs met by the local authority. The Department proposes to undertake further work to explore the impact on the social care market of this provision insofar as it relates to care homes, and announced in our response to the consultation on draft regulations and guidance our intention to delay implementation for one year to April 2016 in this regard. The provision in section 18(3) will, however, be commenced on 1 April 2015 in relation to cases where needs are to met by all other types of care and support.
5. The elements of the Care Act relating to funding reform are intended to come into force from April 2016 and are subject to the outcome of the ongoing consultation, so this will not be the subject of this commencement order.
6. The Order will be made once the Primary Consequential Order has been approved by Parliament (see below).

#### *Primary Consequential Order*

7. Broadly speaking, the amendments in this Order come in two forms:
  - i. Disapplication of current social care legislation in relation to England which will be replaced by the Care Act;
  - ii. Removal of references to current social care legislation in relation to England in other Acts and replacing these with references to reflect the Care Act.
8. There are also some general savings for transitional purposes, although detailed transitional provisions will be in the separate order described above.
9. The Order also makes some amendments further to the Children and Families Act 2014. Because current legislation relating to carers will be partially replaced by each Act, it makes sense to simply do a single order dis-applying this legislation in its entirety.
10. As is usual with orders amending primary legislation, this is subject to the affirmative Parliamentary procedure and so remains subject to Parliamentary approval. The draft order to be considered by Parliament can be found here:  
<http://www.legislation.gov.uk/ukdsi/2015/9780111128626/contents>.

### *Secondary Consequential Order*

11. This is similar to the primary consequential order, but relating to necessary amendments to secondary legislation (e.g. regulations) rather than primary legislation. Broadly speaking, these amendments come in two forms:
  - i. disapplication of current social care legislation in relation to England which will be replaced by legislation under the Care Act;
  - ii. removal of references to current social care legislation in other legislation and replacing these with references to reflect the Care Act where relevant.
12. There are also some general savings for transitional purposes, although detailed transitional provisions will be in a separate order.
13. The Order was laid before Parliament on 11 March 2015 and can be found here:  
<http://legislation.data.gov.uk/uksi/2015/643/made/data.htm?wrap=true>

### *Miscellaneous Amendments Order*

14. This is a set of regulations making relatively minor amendments to other regulations already laid under Part 1 of the Care Act 2014. Amendments to five sets of regulations are proposed:
  - i. **Care and Support (Charging and Assessment of Resources) Regulations 2014**  
Uprating of certain allowances in line with the existing practice on annual uprating of figures, plus some minor corrections of cross references and terminology in two of the provisions and clarification as to the meaning of an expression.
  - ii. **Care and Support (Deferred Payment) Regulations 2014**  
Change to make clearer that the provisions concerning disposable income do not apply if the local authority ceases to make deferrals.
  - iii. **Care and Support (Direct Payment) Regulations 2014**  
Change to the list of local authorities which may make a direct payment for accommodation in a care home (to omit three authorities), to reflect developments in the pilot scheme relating to this.
  - iv. **Care and Support (Ordinary Residence) (Specified Accommodation) Regulations 2014**  
A change to clarify that the ordinary residence deeming principles apply only from the date a person living in specified accommodation receives care and support under the Act. The purpose of the amendment is to ensure that the deeming principles do not apply when a person is living in a specified type of accommodation (such as a care home) before they begin to receive care and support from the local authority. In such a situation the normal ordinary residence rules should apply. That is the position under the current legislation and it has always been the intention that the Care Act should not change this.

**v. Care and Support (Cross-border Placements) (Business Failure Duties of Scottish Local Authorities) Regulations 2014**

A technical change to the definition of “care provider” (in Scotland) for reasons of greater accuracy.

15. The Order was laid before Parliament on 11 March 2015 and can be found here:  
<http://www.legislation.gov.uk/uksi/2015/644/contents/made>

## Clarifications to statutory guidance under the Care Act 2014

16. This section of the note outlines proposed clarifications to the statutory guidance, which will be made when the guidance is updated later in 2015. The points referred to below do not constitute new policy or a change of statutory obligations on local authorities – they are intended only to clarify the intent of existing provisions, responding to feedback and requests for additional detail.

### *Transition to the new statute*

17. The statutory guidance will be updated to reflect the detail of the temporary legislative framework for transition from old care and support law to the Care Act, set out in the *Care Act 2014 and Children and Families Act 2014 (Consequential Amendments) Order 2015* (“the Primary Consequential Order”) and the *Care Act 2014 (Transitional Provision) Order 2015* (“the Transitional Order”) and described above.

18. Although the Primary Consequential Order disapplies the old care and support law in England, it does enable those who are in receipt of services immediately before 1<sup>st</sup> April 2015 to continue to receive those services under the old law until the Care Act applies to them. The Transitional Order sets out the circumstances under which Care Act is to apply to this transitional group; that is, either from the point when the local authority completes a review of that person’s case, or from 1<sup>st</sup> April 2016, whichever is earlier – see the “Transitional Order” section above for more detail.

19. Regarding transitional matters in relation to **ordinary residence** we will also clarify that:

- The extension of the deeming provisions to additional types of accommodation such as supported living will only apply from 1 April 2015. Where someone began to live in supported living before that date, the deeming rule in section 39(1) of the Act will not apply and their ordinary residence will be determined according to where they are actually ordinarily resident.
- Regardless of when an ordinary residence determination is made, the determination will be made in accordance with the law that was in force at the relevant date in respect of which ordinary residence falls to be determined. So, if ordinary residence is to be determined in respect of a period which falls before 1<sup>st</sup> April 2015, then the determination will be made in accordance with the 1948 Act. If, in respect of a period on or after 1<sup>st</sup> April 2015, then the determination will be made in accordance with the Care Act.
- In respect of any determination to be made on or after 1<sup>st</sup> April 2015 (whether to be made for the purposes of 1948 Act or Care Act), the new dispute procedure under the Care Act is to be followed.

20. Regarding transitional matters in relation to **debt recovery**, we will also clarify that:

- For debts that have accrued prior to the commencement of the Care Act 2014 and that would otherwise have been recovered under section 56 of the 1948 Act, the time period for

recovering that debt continues to be three years from the date on which the sum in question became due, as previously set out under section 56 of the 1948 Act. Similarly, the time period for recovering debts under section 17 of the 1983 Act applies in relation to debts that would otherwise have been recovered under that section.

- For any new debts that occur from April 2015, the time period to recover debts has been extended to six years from the date when the sum became due to the local authority. These are the respective “limitation” periods in respect of recovery. Where a debt is taking some time to be recovered, provided recovery proceedings have begun within the limitation period, enforcement can continue; if they have not, the debt must be written off.

#### *Delegation of powers*

21. We intend to clarify that the power to delegate functions in the Care Act does not supersede the pre-existing ability for NHS and local authorities to enter into partnership arrangements under section 75 NHS Act 2006. This means that local authorities can enter into partnership arrangements with the NHS in respect of their “health-related functions” (under the NHS Bodies and Local Authorities Partnership Arrangement Regulations 2000).

#### *Ordinary residence*

22. Some authorities have asked for further clarity with regard to local authorities arranging care and support out of area. We will make clearer in the guidance that the principle of ‘deeming’ ordinary residence applies where a local authority considers that an adult’s care and support needs can only be met if they are living in a specified type of accommodation (as currently set out in the guidance and regulations) in the area of another local authority, and that it is not necessary for the local authority to be arranging the accommodation in order for the deeming rules to apply.
23. We have also heard a request for guidance on the stipulation that the ordinary residence provisions apply only where a person’s needs “can only be met” by a specified form of accommodation, to avoid different interpretations amongst local authorities. We will amend the relevant section of the statutory guidance to make clearer that an absence of evidence that needs can *only* be met in a certain way is not the same as proof that there are other viable options.
24. We will also clarify that the local authority responsible for someone’s after-care under s.117(3) of the Mental Health Act 1983 (as amended by the Care Act) will be identified based on where the person is resident immediately before being detained under the Mental Health Act, if the patient’s ordinary residence immediately before being detained cannot be established.

#### *Charging and financial assessment*

25. To respond to a request for further clarification on capital limits and the minimum threshold, we will include a new paragraph and make changes to paragraph 24 of Annex B (Treatment of Capital) stating that local authorities have discretion to set their own capital limits in relation to adults receiving support in locations other than care homes, provided they are no lower than £23,250 for the higher limit and £14,250 for the lower limit.

26. We will also clarify paragraph 8.37 on the responsibilities of local authorities, stating that they must ensure an individual has a genuine choice when it comes to choice of accommodation. They must also ensure that at least one of the accommodation options provided by the local authority is within that person's personal budget and they should ensure that there is more than one accommodation option available.
27. Regarding charging for support to carers, we will clarify that local authorities cannot charge the carer for certain services identified in their carer's assessment, such as services provided to the adult so that the carer can have time away from the person they care for, so that they can stay on top of other aspects of their lives. Such services would be provided direct to the cared-for person, even though they may meet the needs of both parties.
28. Further clarification will be included on requesting local authority support to meet eligible needs, more specifically where the person's resources are above the financial limit. A person's entitlement to local authority support in meeting their needs may be dependent on the request having been made. This reinforces the importance of the person, and any carer, advocate or other person they wish to involve, being made aware of this ability and the consequences for their care and support.
29. A number of amendments will be made to Annex C (Treatment of Income) as follows:
  - a) paragraph 16 – to state that local authorities are only required to take into account income from the benefits listed in the paragraph where care and support is arranged in a care home;
  - b) sub-paragraph 16(n) – to clarify that Working Tax Credit should be disregarded in the calculation of income for care and support arranged other than in a care home;
  - c) sub-paragraph 25(b) – to clarify that, in accordance with the treatment of income support claimants, if a person is drawing income from their pension fund which is less than 100% of the annuity the fund would yield, then a local authority should only apply notional income equivalent to 100% of the annuity that would be yielded and any actual income drawn should be disregarded to avoid double counting. This means that where a person draws income that is less than 100% of the annuity that would be yielded, the notional income is the difference between the amount drawn and 100% of the annuity that would be yielded. Where the income drawn is more than 100% of the annuity that would be yielded the actual amount is taken into account.
  - d) sub-paragraph 28(b) – to clarify that Child Benefit must be fully disregarded with the exception of where accommodation is arranged under the Care Act in which the cared-for adult and child or young person both live;
  - e) paragraph 33 – to clarify the age at which notional income should be applied where a person has a personal pension plan but has not purchased an annuity or is not drawing down the equivalent maximum annuity income that would be available from the plan. This is when the person reaches Pension Credit qualifying age; and,
  - f) a new paragraph to state that where people are receiving care and support other than in a care home, any savings credit the adult receives should be fully disregarded.



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STATUTORY INSTRUMENTS

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**2015 No. XXXY**

**SOCIAL CARE, ENGLAND**

**The Care Act 2014 (Transitional Provision) Order 2015**

*Made* - - - - - *\*\*\**

*Coming into force in accordance with article 1(1)*

The Secretary of State makes this Order in exercise of the powers conferred by sections 124 and 125(7) of the Care Act 2014(1).

**Citation, commencement and interpretation**

**1.**—(1) This Order may be cited as the Care Act 2014 (Transitional Provision) Order 2015 and comes into force on the day on which section 1 of the Act comes into force.

(2) In this Order—

“the Act” means the Care Act 2014;

“the 1948 Act” means the National Assistance Act 1948(2);

“the 1983 Act” means the Health and Social Services and Social Security Adjudications Act 1983(3);

“the 2001 Act” means the Health and Social Care Act 2001(4);

“the 2015 Order” means the Care Act 2014 and Children and Families Act 2014 (Consequential Amendments) Order 2015(5);

“relevant date” means, in relation to a person, the date on which Part 1 of the Act (care and support) applies to that person by virtue of article 2.

**Transitional provision in respect of persons in receipt of services**

**2.**—(1) Except as provided by this Order, Part 1 of the Act does not apply in the case of a person to whom, or in relation to whom, immediately before this Order comes into force, support or services are being provided, or payments towards the cost of support or services are being made.

(2) A local authority providing such support or services or making such payments must, before 1st April 2016, complete a review of that person’s case and from the time the local authority has completed that review, Part 1 of the Act will apply in respect of that person’s case.

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(1) 2014 c. 23.  
(2) 1948 c. 29.  
(3) 1983 c. 41.  
(4) 2001 c. 15.  
(5) S.I. 2015/XXXXX.

(3) If a local authority fails to comply with paragraph (2), Part 1 of the Act applies in that person's case with effect from 1st April 2016.

(4) In respect of a person to whom paragraph (3) applies, that person is to be treated as—

- (a) having needs for care and support or support which meet the eligibility criteria under section 13(7) of the Act (the eligibility criteria);
- (b) being entitled to have those needs met under the Act; and
- (c) having complied with any requirements in or under the Act to enable the person to have those needs met,

until the local authority has completed a review in that person's case.

(5) A local authority has completed a review in a person's case when—

- (a) they conclude that the person does not have needs for care and support or for support (as the case may be) in accordance with the Act;
- (b) having concluded that the person has such needs and that they are going to meet some or all of them, they begin to do so; or
- (c) having concluded that the person has such needs, they conclude that they are not going to meet any of those needs (whether because those needs do not meet the eligibility criteria or for some other reason).

### **Transitional provision in relation to enforcement of debts**

**3.—**(1) Subject to paragraphs (3) and (4), a sum or charge to which paragraph (2) applies is recoverable under section 69 of the Act (recovery of charges, interest etc.) as if it were a sum due to the local authority in question under Part 1 of the Act.

(2) This paragraph applies to any sum or charge due under Part 3 of the 1948 Act (local authority services) or section 17 of the 1983 Act (charges for local authorities in England and Wales) to a local authority in England in respect of support or services (including a sum or charge which becomes due on or after the date on which this Order comes into force).

(3) Paragraph (1) does not apply to a sum or charge in respect of which proceedings for recovery have begun prior to this Order coming into force.

(4) A sum or charge is recoverable under paragraph (1) within the period within which it would, but for this article, have been recoverable under section 56 of the 1948 Act (legal proceedings) or, as the case may be, section 17 of the 1983 Act.

(5) Notwithstanding article 3(3) of the 2015 Order, neither section 56(1) of the 1948 Act nor section 17(4) of the 1983 Act apply in relation to a sum or charge which is recoverable under paragraph (1).

### **Transitional modifications in respect of deferred payments**

**4.—**(1) Sections 34 and 35 (deferred payment agreements etc.) of the Act apply in the case of a person to whom, by virtue of article 2, Part 1 of the Act does not otherwise apply.

(2) Where sections 34 and 35 of the Act apply in a person's case by virtue of paragraph (1), the Care and Support (Deferred Payment) Regulations 2014<sup>(6)</sup> ("the regulations") apply with the following modifications—

- (a) regulation 3(1)(a) of the regulations (local authority permitted to enter into a deferred payment agreement) shall have effect as if after sub-paragraph (i)—
  - (i) "or" were omitted, and
  - (ii) the following sub-paragraph were inserted—

“(ia)are being met by the provision of accommodation under Part 3 of the National Assistance Act 1948; or”; and

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(6) S.I. 2014/2671.

- (b) regulations 5 (deferred amount and equity limit) and 6 (adults' contribution) of the regulations shall have effect as if any sums due to a local authority under section 22 of the 1948 Act (charges to be made for accommodation) or section 54 of the 2001 Act (funding by resident etc. of more expensive accommodation) were an amount due under section 14 (power of local authority to charge) or 30(2) of the Act (cases where adult expresses preference for particular accommodation), as the case may be.

(3) Notwithstanding paragraph (1), where a deferred payment agreement under section 55 of the 2001 Act (power for local authorities to take charges on land instead of contributions) is in force in respect of that person—

- (a) the regulations do not apply in respect of amounts due from that person to an authority under—
  - (i) section 14 of the Act; and
  - (ii) where that deferred payment agreement applies in respect of payments which are additional payments for the purpose of section 54 of the 2001 Act, section 30 of the Act; and
- (b) the deferred payment agreement under section 55 of the 2001 Act shall continue to apply on the terms and conditions which pertained to it immediately before the coming into force of the regulations, save that from the relevant date in relation to the person concerned, references in that agreement to—
  - (i) accommodation provided under Part 3 of the 1948 Act must be read as including accommodation provided by a local authority under section 18 or 19 (duty or power to meet needs for care and support) of the Act (including anything provided in connection with that accommodation), and
  - (ii) relevant contributions must be read as including the amount due from the person to the local authority under section 14 or, as the case may be, section 30 of the Act.

#### **Transitional provision relating to ordinary residence disputes**

5. Any question as to a person's ordinary residence arising under the 1948 Act and which is to be determined by the Secretary of State on or after this Order comes into force is to be determined in accordance with section 40 of the Act (disputes about ordinary residence or continuity of care).

#### **Transitional provision relating to where a person's ordinary residence is**

6.—(1) Any person who, immediately before the relevant date in relation to that person, is deemed to be ordinarily resident in a local authority's area by virtue of section 24(5) or (6) of the 1948 Act (authority liable for provision of accommodation) is, on that date, to be treated as ordinarily resident in that area for the purposes of Part 1 of the Act.

(2) Section 39 of the Act (where a person's ordinary residence is) does not have effect in relation to a person who, immediately before the relevant date in relation to that person, is being provided with—

- (a) non-hospital NHS accommodation (within the meaning of article 12 of the Health and Social Care Act 2008 (Commencement No. 15, Consequential Amendments and Transitional and Savings Provisions) Order 2010(7)) which has been provided since immediately before 19th April 2010;
- (b) shared lives scheme accommodation (within the meaning of regulation 4 of the Care and Support (Ordinary Residence) (Specified Accommodation) Regulations 2014(8)) ("the 2014 Regulations"); or
- (c) supported living accommodation (within the meaning of regulation 5 of the 2014 Regulations),

for as long as the provision of that accommodation continues.

#### **Transitional provision in relation to protecting property of persons admitted to hospitals etc.**

7.—(1) Notwithstanding article 3(3) of the 2015 Order, any steps taken immediately before this Order comes into force by a local authority in England to prevent or mitigate the loss of, or damage to, property

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(7) S.I. 2010/708.

(8) S.I. 2014/2828.

in accordance with section 48 of the 1948 Act (duty of Councils to provide temporary protection for property of persons admitted to hospitals etc.) are, on or after this Order comes into force, to be treated as taken in accordance with section 47 of the Act (protecting property of adults being cared for away from home).

(2) Any reasonable expenses incurred but not recovered before this Order comes into force by the local authority in England under section 48 of the 1948 Act may, on or after this Order comes into force, be recovered under section 47(7) of the Act.

### **Transitional provision in relation to sight registers**

**8.** A person who is registered as blind or partially sighted in a register maintained by or on behalf of a local authority in England under section 29 of the 1948 Act (welfare services) immediately before this Order comes into force is to be treated on or after that date as being registered as, respectively, severely sight-impaired or sight-impaired in the register maintained by or on behalf of that local authority under section 77 of the Act (registers of sight-impaired adults, disabled adults, etc.).

Signed by the 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 Order)*

The Order makes transitional provision in relation to Part 1 of the Care Act 2014 (“the Act”) (care and support). Article 2 makes the general transitional provision as to when Part 1 of the Act applies to a person who has been in receipt of services immediately before the Order comes into force. The remaining articles make further transitional provision relating to debt recovery (article 3), deferred payments (article 4), ordinary residence (articles 5 and 6), protection of property of a person admitted to hospital etc. (article 7) and sight registers (article 8).

A full impact assessment has not been produced for this instrument as the Order itself has no impact on the private sector or civil society organisations. A full impact assessment has been produced in relation to the provisions of the Act and a copy can be requested via [careactconsultation@dh.gsi.gov.uk](mailto: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>.

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 STATUTORY INSTRUMENTS
 

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**2015 No.**

**MENTAL HEALTH, ENGLAND AND WALES**

**NATIONAL HEALTH SERVICE, ENGLAND**

**SOCIAL CARE**

**The Care Act 2014 (Commencement No. 4) Order 2015**

*Made* - - - - - *\*\*\**

The Secretary of State makes this Order in exercise of the powers conferred by sections 124 and 127(1) and (5) of the Care Act 2014<sup>(9)</sup>.

In accordance with section 127(3) of the Care Act 2014, the Secretary of State has obtained the consent of the Welsh Ministers before making this Order.

In accordance with section 127(4) of the Care Act 2014, the Secretary of State has obtained the consent of the Department for Health, Social Services and Public Safety in Northern Ireland before making this Order.

**Citation and interpretation**

**1.**—(1) This Order may be cited as the Care Act 2014 (Commencement No. 4) Order 2015.

(2) In this Order—

“the Act” means the Care Act 2014;

“the 1983 Act” means the Mental Health Act 1983<sup>(10)</sup>;

“the SSWWA 2014” means the Social Services and Well-being (Wales) Act 2014<sup>(11)</sup>.

**Provisions coming into force on 1st April 2015**

**2.** 1st April 2015 is the day appointed for the coming into force of the following provisions of the Act insofar as they are not already in force—

(a) sections 1 (promoting individual well-being) to 13 (the eligibility criteria);

(b) section 14(1) and (3) to (8) (power of local authority to charge);

(c) subject to the modification made by article 7(2) of the Care Act 2014 (Commencement

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<sup>(9)</sup> 2014 c.23.

<sup>(10)</sup> 1983 c.20.

<sup>(11)</sup> 2014 anaw 4.

- No. 2) Order 2014<sup>(12)</sup>, section 17 (assessment of financial resources) apart from subsection (2);
- (d) sections 19 (power to meet needs for care and support) to 23 (exception for provision of housing etc.);
  - (e) section 24(1) and (2) (the steps for the local authority to take);
  - (f) section 25 (care and support plan, support plan);
  - (g) section 26(1), (3) and (4) (personal budget);
  - (h) section 27 (review of care and support plan or of support plan);
  - (i) sections 30 (cases where adult expresses preference for particular accommodation) to 35 (deferred payment agreements and loans: further provision);
  - (j) section 37(1), (3), (4), (5) (apart from subsection (5)(b), (c) and (d)) and (6) to (15) (notification, assessment, etc.);
  - (k) section 38 (case where assessments not complete on day of move);
  - (l) section 39(1) to (7) (where a person's ordinary residence is) and section 39(8) insofar as it relates to the provisions referred to in paragraph (w);
  - (m) sections 40 (disputes about ordinary residence or continuity of care) to 42 (enquiry by local authority);
  - (n) section 43 and Schedule 2 (Safeguarding Adults Boards);
  - (o) sections 44 (safeguarding adults reviews) to 47 (protecting property of adults being cared for away from home);
  - (p) sections 48, 49 and 51 (provider failure) and, insofar as it relates to those sections, section 52 (sections 48 to 51: supplementary);
  - (q) sections 58 (assessment of a child's need for care and support) to 70 (transfer of assets to avoid charges);
  - (r) section 73 (Human Rights Act 1998: provision of regulated care or support etc. a public function);
  - (s) section 74 and Schedule 3 (discharge of hospital patients with care and support needs);
  - (t) sections 76 (prisoners and persons in approved premises etc.) to 79 (delegation of local authority functions);
  - (u) section 80 (Part 1: interpretation) insofar as it relates to provisions commenced by this Order;
  - (v) sections 82 (warning notice) and 83 (imposition of licence conditions on NHS foundation trusts);
  - (w) sections 92 to 94 (false or misleading information);
  - (x) in Schedule 1 (cross-border placements)—
    - (i) paragraphs 1 (placements from England), 2(1), (9) and (10) (placements from Wales), 3 to 8 (placements from Scotland, Northern Ireland, etc.), 11 (regulations), 12 (interpretation) and 14(1), (2) and (5) to (7) (transitory modifications);
    - (ii) insofar as it relates to paragraph 2(1) of Schedule 1, paragraph 14(3).

### **Commencement of section 18 (duty to meet needs for care and support)**

**3.** 1st April 2015 is the day appointed for the coming into force of section 18(1)(a) and (c), (2), (3), (4), (6) and (7) of the Act (duty to meet needs for care and support) except insofar as it imposes any duty on a local authority to meet an adult's needs for care and support by the provision of accommodation in a care home<sup>(13)</sup> in a case where Condition 2 in section 18(3) is met.

### **Provisions coming into force on 6th April 2015**

**4.** 6th April 2015 is the day appointed for the coming into force of sections 53 to 57 of the Act (market oversight) insofar as they are not already in force.

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<sup>(12)</sup> S.I. 2014/2473.

<sup>(13)</sup> See section 8(3) of the Care Act 2014 as to the meaning of "care home".

### **Transitory modifications pending the commencement of section 15 (cap on care costs)**

5. Until section 15(1) of the Act (cap on care costs) comes into force—
- (a) section 37(4)(b) and (14) of the Act is to be read as if “, (2)(c)” were omitted;
  - (b) section 38(1) of the Act is to be read as if the following were omitted—
    - (i) “, (2)(b)”;
    - (ii) paragraph (b) and the “and” immediately before it.

### **Transitory modification in respect of the commencement of section 39(4) (ordinary residence of an adult provided with after-care)**

6. Until section 143 of the SSWWA 2014 (social services functions of local authorities) comes into force, section 39(4)(b) of the Act (ordinary residence of an adult provided with after-care) is to be read as—

“(b) “local authority in Wales” means a council in Wales which is a local authority for the purposes of the Local Authority Social Services Act 1970(14).”

### **Commencement of section 75 (after-care under the Mental Health Act 1983) and transitory modifications**

- 7.—(1) 1st April 2015 is the day appointed for the coming into force of—
- (a) section 75(1) to (5), (12) and (13) of the Act (after-care under the Mental Health Act 1983);
  - (b) insofar as they are not already in force, section 75(6) and (7) of, and Part 1 of Schedule 4 to, the Act (after-care under the Mental Health Act 1983: direct payments).
- (2) Until section 195 of the SSWWA 2014 (disputes about ordinary residence and portability of care and support) comes into force, in section 75(4) of the Act, the inserted section 117(4)(b) of the 1983 Act is to be read as—
- “(b) if the dispute is between local social services authorities in Wales, the dispute is to be determined by the Welsh Ministers;”.
- (3) 1st April 2015 is the day appointed for the coming into force of section 75(11) of the Act except insofar as paragraph (a) of that subsection substitutes provisions of section 117(2C) of the 1983 Act relating to Wales.
- (4) Until section 50 of the SSWWA 2014 (direct payments to meet an adult’s needs) comes into force, section 75(11)(a) of the Act is to be read as if the inserted sub-paragraph (ii) (but not the “or” after it) were omitted.
- (5) Until section 143 of the SSWWA 2014 (social services functions of local authorities) comes into force, in section 75(13) of the Act, the inserted paragraph (b) of the definition of “local social services authority” is to be read as—
- “(b) a council in Wales which is a local authority for the purposes of the Local Authority Social Services Act 1970.”.

Signed by authority of the Secretary of State for Health

Date

*Name*  
Minister of State  
Department of Health

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(14) 1970 c.42. See section 1 of the Local Authority Social Services Act 1970 as to the local authorities for the purposes of that Act. Section 1 was amended by section 195(1) and (3) of the Local Government Act 1972 (c.70) and by paragraph 7 of Schedule 10 to the Local Government (Wales) Act 1994 (c.19).

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order brings into force certain provisions of the Care Act 2014 (c.23) (“the Act”). It is the fourth such Order to be made under the Act. This Order also contains transitory provisions in connection with commencement of certain provisions of the Act.

Article 2 brings into force the following provisions of the Act on 1st April 2015 insofar as they are not already in force—

- (a) sections 1 to 7 which relate to general responsibilities of local authorities;
- (b) section 8 which relates to how to meet needs under sections 18 to 20;
- (c) sections 9 to 13 which relate to assessing needs;
- (d) section 14 which concerns a local authority’s power to charge for meeting needs;
- (e) section 17 which relates to assessment of financial resources;
- (f) sections 19 to 23 which relate to local authorities’ duties and powers to meet needs;
- (g) sections 24(1) and (2), 25, 26(1), (3) and (4), 27 and 30 which relate to steps for local authorities to take after assessments of needs;
- (h) sections 31 to 33 which relate to direct payments;
- (i) sections 34 and 35 which relate to deferred payment agreements;
- (j) section 37(1), (3), (4), (5) (apart from subsection (5)(b), (c) and (d)) and (6) to (15) (notification, assessment, etc.);
- (k) section 38 which relates to continuity of care and support when adults move;
- (l) section 39(1) to (7) which relates to a person’s ordinary residence;
- (m) in Schedule 1—
  - (i) paragraphs 1, 2(1), (9) and (10), 3 to 8, 11, 12, 14(1), (2) and (5) to (7) which relate to cross-border residential placements;
  - (ii) insofar as it relates to paragraph 2(1) of Schedule 1, paragraph 14(3) which makes transitory provision;
- (n) insofar as it relates to the provisions referred to in paragraph (m), section 39(8) which relates to Schedule 1;
- (o) sections 40 to 41 which relate to the establishing of where a person lives;
- (p) sections 42 to 47 and Schedule 2 which relate to safeguarding adults at risk of abuse or neglect by reason of their care and support needs;
- (q) sections 48, 49 and 51 and, insofar as it relates to those sections, section 52, which relate to provider failure;
- (r) sections 58 to 66 which relate to transition for children to adult care and support etc.;
- (s) sections 67 to 68 which relate to independent advocacy support;
- (t) sections 69 and 70 which concern enforcement of debts;
- (u) section 73 which relates to the application of the Human Rights Act 1998 to the provision of regulated care or support;
- (v) section 74 and Schedule 3 which relate to the discharge of hospital patients with care and support needs;
- (w) section 76 which relates to prisoners and persons in approved premises etc.;
- (x) section 77 which relates to registers of sight-impaired adults, disabled adults, etc.;
- (y) section 78 which relates to guidance;
- (z) section 79 which relates to delegation of local authority functions;
- (aa) insofar as it relates to provisions commenced by this Order, section 80 which makes provision about interpretation;



(bb) sections 82 and 83 which relate to care standards and quality of services;

(cc) sections 92 to 94 which create new offences relating to supplying, publishing or otherwise making available false or misleading information.

Article 3 brings into force on 1st April 2015 section 18(1)(a) and (c), (2), (3), (4), (6) and (7) which relate to a local authority's duty to meet needs for care and support except insofar as it imposes any duty on a local authority to meet an adult's needs for care and support by the provision of accommodation in a care home in a case where Condition 2 in section 18(3) is met i.e. the adult's financial resources are above the financial limit but the adult nonetheless asks the local authority to meet the adult's needs.

Article 4 brings into force on 6th April 2015 sections 53 to 57 of the Act which provide for there to be a market oversight regime, where the Care Quality Commission will have oversight over certain registered care providers, and make related provision.

Article 5 makes transitory modifications to certain sections of the Act until section 15(1) of the Act (cap on care costs) comes into force. Those sections are section 17(8) which relates to assessment of financial resources and sections 37(4)(b) and (14) and 38(1) which relate to continuity of care and support when an adult moves.

Article 6 makes a transitory modification, pending the commencement of certain provisions of the Social Services and Well-being (Wales) Act 2014 ("the SSWWA 2014"), to section 39(4) of the Act which relates to the ordinary residence of a person provided with after-care under the Mental Health Act 1983 ("the 1983 Act").

Article 7 commences section 75 of the Act which makes amendments to the 1983 Act relating to after-care. Article 7 also makes transitory modifications to section 75 pending the commencement of certain provisions of the SSWWA 2014.

A full impact assessment has not been produced for this instrument as this Order itself has no impact on the private sector or civil society organisations. Impact Assessments carried out in relation to the Act are available from the Department of Health, Richmond House, 79 Whitehall, London, SW1A 2NS and at <https://www.gov.uk/government/publications/the-government-published-a-series-of-impact-assessments-alongside-the-care-bill>.

#### **NOTE AS TO EARLIER COMMENCEMENT ORDERS**

*(This note is not part of the Order)*

The following provisions of the Care Act 2014 have been or will be brought into force by a commencement order made before the date of this Order.

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
section 2(3) and (4) (partially)	1.10.2014	2014/2473
section 12(1) and (2) (partially)	1.10.2014	2014/2473
section 13(7) and (8) (partially)	1.10.2014	2014/2473
section 14(5) to (8) (partially)	1.10.2014	2014/2473
section 17(7) to (13) (partially)	1.10.2014	2014/2473
section 22(4)(a) and (6) (partially)	1.10.2014	2014/2473
section 23(1)(b) (partially)	1.10.2014	2014/2473
section 26(4) (partially)	1.10.2014	2014/2473
section 30 (partially)	1.10.2014	2014/2473
section 33(1) and (2) (partially)	1.10.2014	2014/2473

section 34(1), (2) and (4) to (8) (partially)	1.10.2014	2014/2473
section 35 (partially)	1.10.2014	2014/2473
section 38(8) (partially)	1.10.2014	2014/2473
section 39(1), (3) and (8) (partially)	1.10.2014	2014/2473
section 40(4) (partially)	1.10.2014	2014/2473
section 52(12) (partially)	1.10.2014	2014/2473
section 53(1), (2) and (7) (partially)	1.10.2014	2014/2473
section 55(5) (partially)	1.10.2014	2014/2473
section 62(2) (partially)	1.10.2014	2014/2473
section 65(1) (partially)	1.10.2014	2014/2473
section 67(7) (partially)	1.10.2014	2014/2473
section 74 (partially)	1.10.2014	2014/2473
section 75(6) and (7) (partially)	1.10.2014	2014/2473
section 77(2) (partially)	1.10.2014	2014/2473
section 80(1) (partially)	1.10.2014	2014/2473
section 81 (partially)	7.7.2014	2014/1714
section 81 (remainder)	15.7.2014	2014/1714
section 84	15.7.2014	2014/1714
section 85	15.7.2014	2014/1714
sections 86 to 90	1.10.2014	2014/2473
section 91(1) and (2) (partially)	7.7.2014	2014/1714
section 91 (remainder)	1.10.2014	2014/1714
section 92(1) and (3) to (6) (partially)	15.7.2014	2014/1714
section 95	1.10.2014	2014/2473
section 96(2) and (4) (partially)	1.10.2014	2014/2473
section 96 (remainder)	1.4.2015	2014/3186
section 97(7)	1.10.2014	2014/2473
section 97 (remainder)	1.4.2015	2014/3186
sections 98 to 103	1.4.2015	2014/3186
section 104(3)(b), (4), (13)(a) and (14) (partially)	1.10.2014	2014/2473
section 104 (remainder)	1.4.2015	2014/3186
section 105(1) and (4) (partially)	1.10.2014	2014/2473
section 105 (remainder)	1.4.2015	2014/3186
sections 106 to 108	1.4.2015	2014/3186
section 109(2) (partially)	15.7.2014	2014/1714
section 109(4) (partially)	1.10.2014	2014/2473
section 109 (remainder)	1.1.2015	2014/2473
sections 110 to 117	1.1.2015	2014/2473
section 118	1.10.2014	2014/2473
section 119 (partially)	1.10.2014	2014/2473
section 119 (partially)	1.1.2015	2014/2473
section 119 (remainder)	1.4.2015	2014/3186
section 120	15.7.2014	2014/1714
section 121	1.10.2014	2014/2473
section 122(1) (partially)	15.7.2014	2014/1714

section 122(1) (remainder)	1.1.2015	2014/2473
section 122(2) and (3)	15.7.2014	2014/1714
section 122(4)	1.1.2015	2014/2473
Schedule 1 (partially)	1.10.2014	2014/2473
Schedule 3 (partially)	1.10.2014	2014/2473
Schedule 4 (partially)	1.10.2014	2014/2473
Schedule 5 (partially)	1.10.2014	2014/2473
Schedule 5 (remainder)	1.4.2015	2014/3186
Schedule 6 (partially)	1.10.2014	2014/2473
Schedule 6 (remainder)	1.4.2015	2014/3186
Schedule 7 (partially)	15.7.2014	2014/1714
Schedule 7 (remainder)	1.1.2015	2014/2473
Schedule 8	1.1.2015	2014/2473