



Draft Care and Support Bill

Presented to Parliament
by the Secretary of State for Health
by Command of Her Majesty

July 2012



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1. Foreword

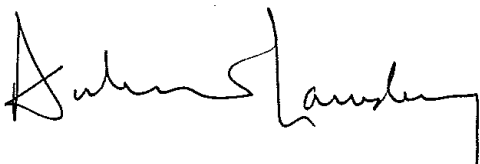
Care and support for adults who are vulnerable is something which concerns us all: we may be in need of care and support now or in the future. The legislation which underpins it plays a critical role in how the system is managed and delivered, and the experience of those who rely on it.

The draft Care and Support Bill published today represents an historic reform of care and support legislation. For over 60 years, social care law has been anchored in the post-war period, looking back to the Poor Law for its principles. Whilst other areas have moved forward with modern times and expectations of public services, care and support law has been left unreformed; a web of complicated, overlapping requirements which have led to confusion, challenge and frustration.

This draft Bill consolidates provisions from over a dozen different Acts into a single, modern framework for care and support. It is intended to do more than bring those Acts together; it achieves a fundamental reform of the way the law works. It places the well-being, needs and goals of people at the centre of the legislation to create care and support which fits around the individual and works for them. It provides a new focus on preventing and reducing needs, and putting people in control of their care and support. For the first time, it brings carers into the heart of the law, on a par with those for whom they care.

The Government has set out a radical agenda for reform in its White Paper, *Caring for our future: reforming care and support*. The draft Bill, building on the recommendations of the Law Commission's excellent three-year review, is the next critical step towards achieving the aims of that agenda.

This is a once-in-a-generation moment to reform the law for adult care and support, and a unique opportunity to engage in the process of making legislation. It is essential for current and future generations that we get this right. We welcome all contributions to this important debate.



Rt Hon Andrew Lansley CBE MP
Secretary of State for Health



Paul Burstow MP
Minister of State for Care Services

2. Summary

- 2.1 This document encloses the draft Care and Support Bill for public consultation and pre-legislative scrutiny in Parliament during the second session.
- 2.2 'Care and support' covers different types of help – financial, practical and emotional – that allow people to manage day-to-day living. It is something that everyone will experience at some point in their lives, whether they need it themselves, know a family member or friend who does, or they provide care themselves.
- 2.3 The draft Care and Support Bill follows the Government's White Paper *Caring for our future: reforming care and support* (July 2012), which sets out a long term programme to reform care and support. Our vision is 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. The draft Bill is the next step in delivering that vision.
- 2.4 The draft Bill takes forward the recommendations of the Law Commission report on adult social care. In May 2011, following a three year review, the Commission concluded that existing care and support legislation is outdated and confusing, and recommended wholesale reform of the law; the Government agrees. As the Commission observed, the law makes it difficult for people who need care and support, and carers, to know what they are entitled to and for local authorities to understand their responsibilities.
- 2.5 In summary, the draft Bill will:
 - **modernise** care and support law so that the system is built around people's needs and what they want to achieve in their lives;
 - **clarify** entitlements to care and support to give people a better understanding of what is on offer, help them plan for the future and ensure they know where to go for help when they need it;
 - **support** the broader needs of local communities as a whole, by giving them access to information and advice, and promoting prevention and earlier intervention to reduce dependency, rather than just meeting existing needs;
 - **simplify** the care and support system and processes to provide the freedom and flexibility needed by local authorities and care professionals to innovate and achieve better results for people; and
 - **consolidate** existing legislation, replacing law in a dozen Acts which still date back to the 1940s with a single, clear statute, supported by new regulations and a single bank of statutory guidance.

2.6 The draft Bill will therefore include the following key provisions:

- **new statutory principles which embed the promotion of individual well-being** as the driving force underpinning the provision of care and support;
- **population-level duties on local authorities** to provide information and advice, prevention services, and shape the market for care and support services. These will be supported by duties to promote co-operation and integration to improve the way organisations work together;
- **clear legal entitlements to care and support**, including giving carers a right to support for the first time to put them on the same footing as the people for whom they care;
- **set out in law that everyone, including carers, should have a personal budget** as part of their care and support plan, and give people the right to ask for this to be made as a direct payment;
- **new duties to ensure that no-one's care and support is interrupted when they move home** from one local authority area to another; and
- **a new statutory framework for adult safeguarding**, setting out the responsibilities of local authorities and their partners, and creating Safeguarding Adults Boards in every area.

2.7 There will also be a small number of critical health measures that:

- **establish Health Education England (HEE) as a non-departmental public body (NDPB)** to provide the necessary independence and stability to empower local healthcare providers and professionals to take responsibility for planning and commissioning education and training;
- **establish the Health Research Authority (HRA) as an NDPB** to strengthen its ability to protect and promote the interests of patients and the public in health and social care research, as well as providing assurance that the HRA will continue streamlining the research approvals process and encouraging investment in research; and
- **allow for the abolition of the Human Fertilisation and Embryology Authority (HFEA) and Human Tissue Authority (HTA)** by amending the Public Bodies Act 2011; this is subject to a public consultation.

2.8 The provisions in the draft Bill largely apply to England only (and therefore extend to England and Wales). Some provisions relating to health research and the abolition of the HFEA and HTA extend to England and Wales, Scotland and Northern Ireland.

3. Care and Support

The case for change

3.1 Today's care and support system fails to live up to the expectations of those who rely on it. People have told us that it can be confusing and not flexible enough to fit around their lives. Moreover, the care and support system faces some major challenges. Demographic changes mean that we can expect 1.4 million more people to need care and support in the next 20 years.

3.2 As set out in *Caring for our future: reforming care and support*¹, there is an acute need for a modern care and support system that is responsive to people's needs and promotes well-being. It must be fair and sustainable in the long-term, and provide high quality care and support to all adults who need it. Our approach to reform is guided by the following principles:

*The **health, well-being, independence and rights** of individuals are at the heart of care and support; timely and effective interventions help to ensure a good quality of life for longer.*

*People are treated with **dignity and respect**, and are **safe from abuse and neglect**; everybody must play a part in making this happen.*

*Personalisation is achieved when a person has real **choice and control** over the care and support they need to achieve their goals, to live a fulfilling life, and be connected with society.*

*The **skills, resources and networks** in every community are harnessed and strengthened support people to live well, and to contribute to their communities where they can and wish to.*

***Carers are recognised** for their vital contribution to society, are supported to reach their full potential and lead the lives they want.*

*A caring, **skilled and valued workforce** delivers quality care and support in partnership with individuals, families and communities.*

3.3 In order to translate these principles into practice, the existing law that underpins care and support must be overhauled. The current legal framework is complex, confusing and over 60 years old, dating back to the post-War period. It is not clear what people are entitled to, and the system is hard to understand and navigate.

¹ www.dh.gov.uk/health/2012/07/careandsupportwhitepaper/

- 3.4 The law is currently built around the provision of State-defined services, rather than around meeting and responding to the needs and goals of individuals. It makes distinctions based on the type of care and support, or the setting in which it is received, often without any clear reason. Moreover, it does not reflect what can be done proactively to support people to maintain their well-being and enable them to make their own decisions about their support. Ultimately, existing legislation does not match our aim for empowering, person-centred care and support.
- 3.5 Following its comprehensive three-year review of adult social care, the Law Commission called for some crucial changes to modernise the legal framework for adult care and support. It consulted widely, and published a report in May 2011 which proposed how the legislation could be improved². The Law Commission's work achieved broad consensus on the approach to reform of the statute, and as the Government's formal response³ to the Commission makes clear, the draft Bill adopts the vast majority of the Commission's proposals.
- 3.6 The Law Commission recommended that the law should recognise that the guiding principle of care and support is to promote the well-being of the individual. The Government agrees, and this principle is at the heart of all our proposals. We want the focus to be on the person and their needs, their choices and their aspirations. This should apply equally to carers; the law should treat carers as equals, not as an extension of the person they care for. It is vital that everyone understands what care and support is, and how it can make a difference to their lives. And, it should ensure local authorities can take responsibility for all people in a community, to lead the local system for the benefit of all.

What will the Bill do?

Embedding the principle of well-being (clause 1)

- 3.7 The draft Bill creates new statutory principles designed to embed the promotion of individual well-being as the driving force behind care and support. The first clause of the draft Bill sets the context for all the provisions which follow: that the well-being of the individual is paramount and that local authorities must promote the individual's well-being in decisions made with and about them. These principles establish the Law Commission's recommendation for a "single unifying purpose around which adult social care is organised".⁴

² lawcommission.justice.gov.uk/docs/lc326_adult_social_care.pdf

³ www.dh.gov.uk/health/2012/07/responsetolawcommission/

⁴ lawcommission.justice.gov.uk/docs/lc326_adult_social_care.pdf (p.19)

Reflecting broader local responsibilities (clauses 2-7)

- 3.8 Local authorities' responsibilities extend beyond providing ongoing care and support on an individual basis, and it is important that the legal framework reflects this role. The draft Bill recognises local authorities' broader care and support role in their wider local community through provisions which focus on the more universal, population-level activities, and which are aimed at a wider group of people, rather than based on individual needs.
- 3.9 The draft Bill sets out a number of general duties on local authorities which focus on these important cross-cutting areas to reflect and encourage best practice. They must:
- provide an information and advice service to help people understand how the care and support system works, what services are available locally, and how to access the services they need now and might do in the future (clause 2);
 - promote the diversity and quality of local services, so that there is a range of high quality providers in all areas allowing people to make the best choice to satisfy their own needs and preferences (clause 3);
 - co-operate with other local organisations, work to integrate services to promote well-being, and improve quality and outcomes (clauses 4-6); and
 - provide services or take steps which are intended to prevent, delay or reduce people's needs for care and support. The focus will be on taking proactive steps and making earlier interventions to reduce dependency, rather than just providing intensive services at the point of crisis (clause 7).

Starting the care and support journey: assessments and eligibility (clauses 8-16)

- 3.10 One of the core objectives of the draft Bill is to provide clarity for people on what they can expect from care and support. A local authority can meet an adult's needs for care and support in many ways, and it is important that the law does not get in the way of choosing the best approach. Clause 8 sets out just some examples of what a local authority might do to meet care and support needs, in order to give an illustration of the range of options available.
- 3.11 Clauses 9-16 relate to the start of the person's journey through the care and support system, setting out the process of assessments for both those who need care and carers, ensuring that the focus is on an individual's needs and outcomes. These clauses:
- state a single right to an assessment for adults, and one for carers, based on having an appearance of needs for care and support (clauses 9-12);

- set out the eligibility framework in legislation for the first time, to provide clarity through regulations on what constitutes ‘eligible’ needs and how decisions are made about support, and allow for national eligibility to be set in the future (clause 13); and
- simplify rules regarding charging and financial assessment, so people understand any contributions they have to make to the cost of their support (clauses 14-15).

3.12 As the Government has announced in *Caring for our future: progress report on funding*⁵, no one should have to sell their home in their lifetime to pay for their care. Clause 16 allows for regulations to require local authorities to offer deferred payment arrangements on a universal basis, and charge interest on these arrangements. This will enable more people to defer care charges and protect their homes. We will work with the care sector on how the deferred payments scheme should work, including who should be eligible and the terms of the arrangement, such as any interest rate.

Clear entitlements to care and support (clauses 17-22)

3.13 The question of who is entitled to care and support is critical and, in the past, different duties and legal tests for different services have caused confusion. One of the key aims of the new statute is to remove anomalies and differences resulting from the type of care or setting, and provide a single route through which consistent entitlements to care and support can be established.

3.14 Clauses 17-18 provide this single route, replacing the precedents with a clear duty to meet an adult’s needs for care and support. This includes an ability for people with eligible needs to request that the local authority help them by brokering care and support on their behalf, regardless of their personal finances. Clause 19 provides the equivalent right for carers, and is their first ever legal entitlement to public support, putting them on the same footing as the people for whom they care.

3.15 These clauses also clarify those circumstances in which adult care and support may not meet needs, because the responsibility rests with another organisation. This is intended to set out the boundary between care and support and other services, for instance, to determine whether the provision of a certain service falls to the NHS, or to a local housing authority, rather than local authorities (clauses 20-22).

⁵ www.dh.gov.uk/health/2012/07/scfunding/

Care planning and personal budgets (clauses 23-30)

- 3.16 Whether the person is entitled to care and support or not, the draft Bill sets out what must happen after the conclusion of the assessments. This includes the process of care and support planning to determine how needs should be met (clauses 23-24), and the requirement for ongoing review of care and support plans (clause 26) to ensure that needs and outcomes continue to be met over time.
- 3.17 Deciding how needs are to be met is at the heart of a person-centred care and support planning process. This process includes the requirement for a personal budget, captured in legislation for the first time for both adults needing care and carers, to help people understand the costs of meeting their needs and find out what public funding is available to help them (clause 25). This will be complemented by an entitlement to direct payments, to maximise the control people have over how money is spent (clauses 28-30).

Moving between areas (clauses 31-33)

- 3.18 No-one's care and support should be interrupted if they choose to move home to another area. The draft Bill sets out new 'portability' arrangements that if a person, and potentially their carer, decides to move home to another area, the new local authority must continue to meet the needs for care and support as in the old area. These transitional arrangements will remain in place until the new authority carries out all assessments and puts a new care and support plan in place.
- 3.19 In addition, the provisions establish a clear rule that where a local authority arranges care including accommodation, of whatever type, in another local authority's area, then the original local authority remains responsible for meeting the person's needs. Together, these provisions will prevent people from being left without the care and support they need.
- 3.20 These clauses also set out the resolution process where there is uncertainty over where a person is ordinarily resident, and therefore which local authority is responsible for meeting their needs, but the matter cannot be resolved locally (clause 33).

A new framework for adult safeguarding (clauses 34-38)

- 3.21 The draft Bill sets out the first ever statutory framework for adult safeguarding, which stipulates local authorities' responsibilities, and those with whom they work, to protect adults at risk of abuse or neglect.

3.22 These provisions require the local authority to carry out enquiries into suspected cases of abuse or neglect (clause 34), and to establish Safeguarding Adults Boards in their area (clauses 35-36). The role of these Boards, described in Schedule 1, will be to develop shared strategies for safeguarding and report to their local communities on their progress.

3.23 As recommended by the Law Commission, the draft Bill will also repeal local authority intervention powers to remove adults from their homes (clause 37). The draft Bill does not propose any new intervention powers in their place, but we recognise the views of some stakeholders that local authorities should have some ability to intervene positively to protect adults from abuse or neglect. We have published a separate consultation to ask for views on possible new powers.⁶

Transition from children's care and support services (clauses 39-44)

3.24 The transition between children's and adult social care is regularly cited as one of the most difficult experiences for young people and their families. We want to use the opportunity of reforming the law for adult care and support to improve this process and the outcomes achieved. These provisions support the transition by giving local authorities powers to assess children, young carers and the carers of children under the adult statute, and so make the transition as smooth as possible.

3.25 No young person should go without the care and support they need at the point of transition. The draft Bill provides a new protection to ensure that any service being provided under children's legislation must continue to be provided after the individual's 18th birthday, until the assessments and care planning required under the adult statute have been completed, and adult care and support is ready to meet their needs. This will ensure that there is no gap in care and support at this critical time.

Other provisions (clauses 45-53)

3.26 The final clauses in Part 1 of the draft Bill also propose a number of other important provisions, including:

- updating local authority powers to recover debts, for instance where an adult has failed to pay any charges for their care and support (clauses 45-46);
- restating and rationalising the provisions which focus local authorities and the NHS on reducing delayed discharges from hospitals (clause 47 and Schedule 2);
- making a number of amendments to section 117 of the Mental Health Act 1983 to remove anomalies between aftercare services provided under that Act to people who have been detained in hospital for a mental disorder, and care and support provided under the new draft Bill (clause 48 and Schedule 3);

⁶ www.dh.gov.uk/health/2012/07/safeguardingadults/

- allowing the Secretary of State to issue guidance to local authorities in relation to their functions in this draft Bill. This new statutory guidance will be an important element of the new framework, which will determine the way in which local authorities carry out their responsibilities (clause 50); and
- giving local authorities new powers to delegate some of their care and support functions to other organisations, for instance, the assessment process or care planning (clause 51).

Areas outside the scope of the draft Bill

3.27 There are some other issues which are not covered by the draft Bill, but may require additional provisions in law. These are subject to separate consultations or the focus of other ongoing work. For instance:

- we have published a consultation paper on whether a new intervention power is needed by local authorities to support their safeguarding role;
- we will publish a consultation paper on the case for more effective oversight of the care and support market later this year;
- we are taking forward work to design a framework for care and support in prisons, in conjunction with local authorities and the National Offender Management Service; and,
- we are working with the devolved administrations in Scotland, Wales and Northern Ireland to agree a set of UK-wide provisions to allow local authorities to arrange care and support in other countries. At present, the law only covers placements between England and Wales, and we want to agree shared rules so that people are supported by their local authority to move to other parts of the UK.

3.28 The draft Bill includes provisions to enable those recommendations of the Dilnot Commission to which the Government has committed in *Caring for our future: progress report on funding*, including national eligibility and universal deferred payments.

3.29 The progress report makes clear the Government's support for the principles of the Dilnot Commission's recommendations – financial protection through capped costs and an extended means test – and the intention to base a new funding model on them, if a way to pay for it can be found. However, whilst there remain several important questions to answer on how any new system could be structured and implemented, the draft Bill cannot make provision at this time. The legal framework has been designed to be flexible enough to adapt to incorporate other reforms. The Government will explore options for what shape a reformed system could take, engaging with stakeholders to ensure it is in the right place to make final decisions at the next Spending Review.

4. Other Provisions

- 4.1 The draft Bill also includes a number of critical health measures. During the passage of the Health and Social Care Bill through Parliament, the Government confirmed its intention to publish clauses on the establishment of Health Education England and the Health Research Authority for pre-legislative scrutiny in the second Parliamentary session.

Health Education England

The case for change

- 4.2 Education and training for healthcare workers plays a critical role in the continued improvement of health services. There are currently 1.4 million people employed in the NHS, and in 2011/12, the Government invested around £5 billion in educating and training health and public health professionals.
- 4.3 As the healthcare system adapts to meet the challenge of sustaining high quality services and continuing to improve health outcomes in the face of demographic and technological change, the workforce must be responsive to these changing needs, supported by an education and training system that reflects the future shape of the NHS.
- 4.4 The Government wants to secure a responsive education and training system, where local healthcare providers and healthcare professionals take a lead role in workforce planning and development. This is so workforce plans can better meet the needs of local patients and communities.
- 4.5 Plans for the education and training system were set out in the recent publication *Liberating the NHS: Developing the Healthcare Workforce – From Design to Delivery* (2012)⁷ which responded to the second NHS Future Forum report on education and training⁸.
- 4.6 Currently, Strategic Health Authorities (SHAs) have a central role in workforce planning and they determine how the central education and training budget is invested. SHAs will be abolished in March 2013, at which point their critical workforce functions, including those carried out by their postgraduate deaneries, will be transferred to Health Education England (HEE) and the governing bodies of Local Education Training Boards (LETBs).

⁷ http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_132087.pdf

⁸ www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_132025.pdf

4.7 HEE was established as a Special Health Authority in June 2012. Whilst it will be able to assume its core education and training functions, including establishing governing bodies of LETBs, the Government wishes to place it on a more stable and independent footing that will support the planning, commissioning and delivery of education and training.

What will the Bill do?

4.8 The provisions establish HEE as a statutory non-departmental public body, in order to provide the certainty needed to plan on a long-term and strategic basis (clause 54). While the Secretary of State will retain overall accountability for securing an effective education and training system, HEE will have day-to-day responsibility for meeting this obligation. The Secretary of State's ability to require HEE to act in a specified way will be limited to specific areas subject to Parliamentary control. This will ensure operational independence and transparency that is consistent with other bodies performing key NHS functions, such as the NHS Commissioning Board.

4.9 HEE will operate with a clearly defined set of duties and powers centring around providing national leadership for education and training. It will ensure that the workforce has the right skills, behaviours and training, and is available in the right numbers, to support the delivery of high quality healthcare and drive health improvement. For example, it will have a duty to obtain advice from those who are involved or have an interest in the provision of education and training, such as professional bodies, and also to exercise its functions with a view to improving quality (clauses 55-60).

4.10 At a local level, HEE will establish and support the development of governing bodies of LETBs, which enable local healthcare providers and professionals to take responsibility for planning and commissioning education and training. Governing bodies of LETBs will bring together all those who provide NHS funded services, to work in partnership with education providers, the professions, local government and the research sector.

4.11 The provisions in clauses 61-65 define the roles and responsibilities of a governing body of a LETB and describe how they will be held to account by HEE. They describe how these governing bodies should be established, including appointing an independent chair, and ensuring all providers of NHS services participate in the new arrangements.

Health Research Authority

The case for change

- 4.12 The complexity of health research regulation and governance has increased over the last 20 years. The system can be confusing, time-consuming and therefore costly, for anyone who is seeking approval to carry out research in this area.
- 4.13 The Government's arm's-length bodies review⁹ announced the intention to create a research regulator. Commissioned by the Department of Health, the Academy of Medical Sciences (AMS) subsequently undertook an independent review of the regulation and governance of health research, and considered the scope and functions of a new research regulator. Its report¹⁰ concluded that the complexity of national regulation and the local governance of health research negatively affects research undertaken in the UK.
- 4.14 The proposal to create the Health Research Authority (HRA) was announced in the *Plan for Growth (2011)*¹¹ in recognition of the contribution health research makes to the UK economy. The HRA was established as a Special Health Authority in December 2011 with the core purpose to protect and promote the interests of patients and the public in health research, and to streamline the regulation of research.
- 4.15 The HRA Special Health Authority has already taken on the core functions of the National Research Ethics Service and is working jointly with others, such as the Medicines and Healthcare products Regulatory Agency (MHRA), to create a unified approval process for research and to promote consistent and proportionate standards for compliance and inspection. However, as a Special Health Authority, the HRA is generally limited to exercising the Secretary of State's functions in relation to the health service.
- 4.16 Putting the HRA on an independent and stable footing as a statutory non-departmental public body (NDPB) will strengthen the HRA's ability to protect and promote the interests of participants, potential participants and the public in health and social care research. It will assure researchers and funders that the HRA will continue working with others to streamline regulatory processes.

9

www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/@ps/documents/digitalasset/dh_118053.pdf

¹⁰ www.acmedsci.ac.uk/p99puid209.html

¹¹ cdn.hm-treasury.gov.uk/2011budget_growth.pdf

What will the Bill do?

- 4.17 Primary legislation will provide a stronger basis for promoting a consistent system of research regulation across health and social care and also the UK as a whole, currently undertaken through agreements. The HRA will be able to take on further functions which are UK wide. For example, it would be possible to transfer functions relating to embryo research, which are UK wide and currently held by the Human Fertilisation and Embryology Authority, to the HRA as a result of the provisions in the draft Bill (described at paragraphs 4.32-4.37 below). Transferring such functions is subject to public consultation and would require further secondary legislation.
- 4.18 The provisions therefore establish the HRA as an NDPB (clause 66). They will set out clear functions for the HRA, enabling it to act independently. In carrying out its functions, the HRA's overarching objectives are to protect participants and potential participants in health and social care research, by encouraging safe and ethical research as well as to promote the interests of these groups by facilitating research (clause 67).
- 4.19 Furthermore, the HRA will have a duty to co-operate with a number of other bodies which regulate research and it will have the function of promoting a coordinated and standardised approach to the regulation of health and social care research across the UK. As part of this role, the HRA must seek to ensure that the regulation of research is proportionate (clause 68).
- 4.20 Provisions in clauses 69-72 relate to research ethics committees (RECs), and clearly set out the requirements for RECs, their approval and establishment. The HRA will have a role in running a system of RECs to assess the ethics of health and social care research (where the research does not relate to a devolved matter). In addition, the draft Bill gives the HRA functions as a member of the UK Ethics Committee Authority, the body responsible for establishing, recognising and monitoring ethics committees in the UK in respect of clinical trials (clause 73).
- 4.21 The draft Bill also sets out functions for the HRA relating to the processing of confidential patient information for the purposes of medical research, whilst ensuring that current safeguards remain in place (clause 74).

Areas outside the scope of the draft Bill

- 4.22 Individual providers of NHS care remain best placed to determine whether, and how, they can deliver a research study. Feasibility assessments and planning, taking account of local circumstances, need to be undertaken for research to be carried out effectively. The National Institute for Health Research (NIHR) is putting in place incentives and support for local initiation and delivery of research.

4.23 As part of its duty to promote the coordination and standardisation of regulatory practice and proportionate regulation of research, the HRA will continue to work to improve the overall system of regulation and governance. For example, it will work with the NIHR to remove duplication and increase consistency across the system. The HRA's Business Plan and further Update¹² set out how it intends to provide a unified approval process for research, and to promote consistent and proportionate standards for compliance and inspection. The Plan also outlines issues for further consideration, such as how to reduce duplication in the various confirmation processes required for research approvals.

The Human Fertilisation and Embryology Authority (HFEA) and Human Tissue Authority (HTA)

The case for change

4.24 Within the broader context of the Government's commitment to reduce the burden of bureaucracy and cut the number of arm's-length bodies (ALBs), the Department of Health's review in 2010¹³ recommended the transfer of functions from the HFEA and the HTA to other regulatory bodies, and the subsequent abolition of the HFEA and HTA by the end of this Parliament.

4.25 The Public Bodies Act 2011 provides the powers to modify or transfer functions from the HFEA and the HTA. Given that current proposals include moving some functions to the HRA, the Government made a commitment in Parliament that no functions will be transferred until the HRA is established in legislation to ensure that the overall state of the system can be considered and, crucially, to avoid piecemeal transfer.

4.26 The Government has made a further commitment to consult on its proposals. Proposals for the transfer of functions from the HFEA and HTA are set out in the *Consultation on proposals to transfer functions from the Human Fertilisation and Embryology Authority and Human Tissue Authority* (June 2012).¹⁴

4.27 The consultation was launched on 28 June and will close on 28 September 2012. The Government will use the responses to the consultation to inform its thinking and aims to publish a response during the course of pre-legislative scrutiny.

¹² www.hra.nhs.uk/hra/hra-publications/?p=2

¹³ www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/@ps/documents/digitalasset/dh_118053.pdf

¹⁴ www.dh.gov.uk/health/files/2012/06/Consultation-on-proposals-to-transfer-functions-from-the-Human-Fertilisation-and-Embryology-Authority-and-the-Human-Tissue-A.pdf

What will the Bill do?

- 4.28 The draft Bill currently includes a clause amending the Public Bodies Act 2011 to allow for the abolition of the HFEA and HTA and to transfer their functions to other bodies as appropriate (clause 75).
- 4.29 Subject to decisions made following the consultation on proposals to transfer functions from the HFEA and the HTA, this clause would replace the existing power to transfer and modify functions of the HFEA and HTA under that Act.

5. Next steps

- 5.1 It is imperative that reform of care and support is right. Experts in care and support, including those who use services, should have the opportunity to share their views so the right legal framework can be proposed. Many in the social care sector have called for the opportunity to debate a draft Bill and the Government wants to hear their views on the framework set out. Over the coming months, the Government will work with stakeholders to discuss the provisions in the draft Bill, take feedback and consider the way forward.
- 5.2 The draft Bill has also been made available for pre-legislative scrutiny in Parliament. Pre-legislative scrutiny is the process where either a House of Commons Select Committee, or Joint Committee of MPs and Peers, examines a draft Bill and then makes recommendations to the Government. We expect that arrangements for pre-legislative scrutiny of the draft Care and Support Bill will be confirmed by Parliament in due course.
- 5.3 We welcome any comments on the draft clauses and legislative approach, as well as the Impact Assessments and Equalities Analyses, by **19 October 2012**. A summary of the feedback received by the Department will be made available in early 2013.
- 5.4 Please submit your comments to careandsupportbill@dh.gsi.gov.uk or, alternatively to:

Draft Care and Support Bill Team
Department of Health
6th Floor
Richmond House
79 Whitehall
London
SW1A 2NS

Please note that comments received after 19 October 2012 will not be considered.

- 5.5 The Government remains committed to legislating at the earliest opportunity to enshrine these reforms into the law, following the outcome of the public consultation and pre-legislative scrutiny process.

The code of practice applying to consultation

5.6 The consultation follows the Government's Code of Practice on Consultation, in particular:

- to consult at a stage when there is scope to influence policy outcome;
- to consult for at least 12 weeks, with consideration given to longer timescales where feasible and sensible;
- to ensure that the consultation documents are clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposal;
- to ensure that the consultation exercise is accessible to, and clearly targeted at, those people the consultation is expected to reach;
- to keep the burden of the consultation to a minimum so that the consultation is effective and consultees' buy-in is obtained;
- to carefully analyse responses and give clear feedback to participants following the consultation; and
- to provide guidance to officials in how to run an effective consultation and share what they have learned from the experience.

5.7 The full text of the Code of Practice is available from the Department for Business, Innovation and Skills.

Confidentiality of Information

5.8 We will manage all the information you provide in response to this consultation in accordance with the Department of Health's Information Charter. Information we receive, including personal information, may be published or disclosed in accordance with the access to information regimes, primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998(DPA) and the Environmental Information Regulations 2004. If you want the information that you provide us with to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, among other things, confidentiality obligations. In view of this, it would be helpful if you could explain to us why you regard the information, you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that the confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, in itself, be regarded as binding on the Department. The Department will process your personal data in accordance with the DPA and in most circumstances, this will mean that your personal data will not be disclosed to third parties.

Summary of the consultation

5.9 A summary of the response to this consultation will be available at the end of the live consultation period and will be placed on the Department's consultation website at: www.dh.gov.uk/en/consultations/responsestoconsultations/index.htm

Concerns about or comments on the consultation process

5.10 The address for responses to the consultation is set out above. This is the address to which responses to the issues raised by the consultation should be sent. Should you have concerns or comments that you would like to make about the consultation process itself please contact:

The Consultation Co-ordinator
Department of Health
3E48 Quarry house
Quarry Hill
Leeds LS2 7UE
Email: consultations@dh.gsi.gov.uk

Care and Support Bill

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Make provision to reform the law relating to care and support for adults and the law relating to support for carers; to make provision about safeguarding adults from abuse or neglect; to establish and make provision about Health Education England; to establish and make provision about a Health Research Authority; to amend the Public Bodies Act 2011 in relation to bodies with functions relating to health; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:–

PART 1

CARE AND SUPPORT

General responsibilities of local authorities

1 Promoting individual well-being

- (1) The general duty of a local authority, in exercising a function under this Part in the case of an adult, is to promote that adult’s well-being.
- (2) “Well-being”, in relation to an adult, means that adult’s well-being so far as relating to any of the following –
 - (a) physical and mental health and emotional well-being;
 - (b) protection from abuse and neglect;
 - (c) control by the adult over day-to-day life (including over the care and support provided to the adult and the way in which it is provided);
 - (d) participation in work, education, training or recreation;
 - (e) social and economic well-being;
 - (f) domestic, family and personal relationships;
 - (g) the adult’s contribution to society.

-
- (3) In exercising a function under this Part in the case of an adult, a local authority must have regard to the following matters in particular –
- (a) the importance of beginning with the assumption that the adult is best-placed to judge the adult’s well-being;
 - (b) the adult’s views, wishes and feelings;
 - (c) the need to ensure that decisions about the adult are made having regard to all the adult’s circumstances (and are not based only on the adult’s age or appearance or any condition of the adult’s or aspect of the adult’s behaviour which might lead others to make unjustified assumptions about the adult’s well-being);
 - (d) the importance of the adult participating as fully as possible in decisions relating to the exercise of the function concerned and being provided with the information and support necessary to enable the adult to participate;
 - (e) the importance of achieving a balance between the adult’s well-being and that of any friends or relatives who are involved in caring for the adult;
 - (f) the need to protect people from abuse and neglect;
 - (g) the need to ensure that any restriction on the adult’s rights or freedom of action that is involved in the exercise of the function is kept to the minimum necessary for achieving the purpose for which the function is being exercised.
- (4) “Local authority” means –
- (a) a county council in England,
 - (b) a district council for an area in England for which there is no county council,
 - (c) a London borough council, or
 - (d) the Common Council of the City of London.
- (5) “Adult” means a person aged 18 or over.

2 Providing information and advice

- (1) A local authority must establish and maintain a service for providing people with information and advice relating to care and support for adults and support for carers.
- (2) The service must provide information and advice on the following matters in particular –
- (a) the system provided for by this Part and how the system operates in the authority’s area,
 - (b) the choice of types of care and support, and the choice of providers, available in the authority’s area,
 - (c) how to access the care and support that is available, and
 - (d) how to raise concerns about the safety of an adult who has needs for care and support.
- (3) In providing information and advice under this section, a local authority must in particular seek to ensure that what it provides is sufficient to enable adults to make plans for meeting needs for care and support that might arise.

- (4) A local authority may exercise the duty under subsection (1) jointly with one or more other local authorities by establishing and maintaining a service for their combined area; and where they do so –
 - (a) references in this section to a local authority are to be read as references to the authorities acting jointly, and
 - (b) references in this section to a local authority’s area are to be read as references to the combined area.

3 Promoting diversity and quality in provision of services

- (1) A local authority must promote the efficient and effective operation in its area of a market in services for meeting care and support needs with a view to ensuring that any person wishing to access services in the market –
 - (a) has a variety of providers to choose from;
 - (b) has a variety of high quality services to choose from;
 - (c) has sufficient information to make an informed decision about how to meet the needs in question.
- (2) In exercising that duty, a local authority must have regard to the following matters in particular –
 - (a) the need to ensure that the authority has, and makes available, information about the providers of services for meeting care and support needs and the types of services they provide;
 - (b) the need to ensure that it is aware of current and likely future demand for such services and to consider how providers might meet that demand;
 - (c) the importance of ensuring the sustainability of the market (in circumstances where it is operating effectively as well as in circumstances where it is not);
 - (d) the importance of fostering continuous improvement in the quality of such services and the efficiency and effectiveness with which such services are provided and of encouraging innovation in their provision.
- (3) In meeting an adult’s needs for care and support or a carer’s needs for support, a local authority must have regard to its duty under subsection (1).
- (4) A local authority may exercise the duty under subsection (1) jointly with one or more other local authorities in relation to the authorities’ combined area; and where they do so –
 - (a) references in this section to a local authority are to be read as references to the authorities acting jointly, and
 - (b) references in this section to a local authority’s area are to be read as references to the combined area.
- (5) “Services for meeting care and support needs” means –
 - (a) services for meeting adults’ needs for care and support, and
 - (b) services for meeting carers’ needs for support.

4 Co-operating generally

- (1) A local authority must co-operate with each of its relevant partners, and each relevant partner must co-operate with the authority, in the exercise of –
 - (a) their respective functions relating to adults with needs for care and support,

-
- (b) their respective functions relating to carers, and
 - (c) functions of theirs the exercise of which is relevant to functions within paragraph (a) or (b).
- (2) A local authority must co-operate, in the exercise of its functions under this Part, with such other persons as it considers appropriate, being persons who exercise functions, or are engaged in activities, in the authority's area relating to adults with needs for care and support or relating to carers.
- (3) A local authority must make arrangements for ensuring co-operation between—
- (a) the officers of the authority who exercise the authority's functions relating to adults with needs for care and support or its functions relating to carers,
 - (b) the officers of the authority who exercise the authority's functions relating to housing (in so far as the exercise of those functions is relevant to functions referred to in paragraph (a)), and
 - (c) the Director of Children's Services at the authority (in so far as the exercise of functions by that officer is relevant to the functions referred to in paragraph (a)).
- (4) The duties under subsections (1) to (3) are to be exercised for the following purposes in particular—
- (a) promoting the well-being of adults needing care and support and of carers in the authority's area,
 - (b) improving the quality of care and support for adults and support for carers provided in the authority's area (including the outcomes that are achieved from such provision), and
 - (c) protecting adults with needs for care and support who are experiencing, or are at risk of, abuse or neglect.
- (5) Each of the following is a relevant partner of a local authority—
- (a) where the authority is a county council for an area for which there are district councils, each district council;
 - (b) any local authority, or district council for an area in England for which there is a county council, with which the authority agrees it would be appropriate to co-operate under this section;
 - (c) each NHS body in the authority's area;
 - (d) a local policing body the whole or part of whose area is in the local authority's area;
 - (e) the Minister of the Crown exercising functions in relation to prisons, so far as those functions are exercisable in relation to England;
 - (f) a relevant provider of probation services in the local authority's area;
 - (g) such person, or a person of such description, as regulations may specify.
- (6) The reference to an NHS body in a local authority's area is a reference to—
- (a) the National Health Service Commissioning Board, so far as its functions are exercisable in relation to the authority's area,
 - (b) a clinical commissioning group the whole or part of whose area is in the authority's area, or
 - (c) an NHS trust or NHS foundation trust which provides services in the authority's area.

- (7) “Local policing body” has the meaning given by section 101 of the Police Act 1996.
- (8) “Prison” has the same meaning as in the Prison Act 1952 (see section 53(1) of that Act).
- (9) “Relevant provider of probation services” has the meaning given by section 325 of the Criminal Justice Act 2003.

5 Co-operating in specific cases

- (1) Where a local authority requests the co-operation of a relevant partner, or of a local authority which is not one of its relevant partners, in the exercise of a function under this Part in the case of an adult, the partner or authority must comply with the request unless it considers that doing so would –
 - (a) be incompatible with its own duties, or
 - (b) otherwise have an adverse effect on the exercise of its functions.
- (2) Where a relevant partner of a local authority, or a local authority which is not one of its relevant partners, requests the co-operation of the local authority in its exercise of a function in the case of an adult with needs for care and support or in the case of a carer, the local authority must comply with the request unless it considers that doing so would –
 - (a) be incompatible with its own duties, or
 - (b) otherwise have an adverse effect on the exercise of its functions.
- (3) A person who decides not to comply with a request under subsection (1) or (2) must give the person who made the request written reasons for the decision.
- (4) “Relevant partner”, in relation to a local authority, has the same meaning as in section 4.

6 Promoting integration of care and support with health services etc.

- (1) A local authority must exercise its functions under this Part with a view to ensuring the integration of care and support provision with health provision and health-related provision where it considers that this would –
 - (a) promote the well-being of adults in its area with needs for care and support and the well-being of carers in its area,
 - (b) contribute to the prevention or delay of the development by adults in its area of needs for care and support or the development by carers in its area of needs for support, or
 - (c) improve the quality of care and support for adults, and of support for carers, provided in its area (including the outcomes that are achieved from such provision).
- (2) “Care and support provision” means –
 - (a) provision to meet adults’ needs for care and support, and
 - (b) provision to meet carers’ needs for support.
- (3) “Health provision” means provision of health services as part of the health service.
- (4) “Health-related provision” means provision of services which may have an effect on the health of individuals but which are not –
 - (a) health services provided as part of the health service, or

- (b) services provided in the exercise of social services functions (as defined by section 1A of the Local Authority Social Services Act 1970).

7 Preventing needs for care and support

- (1) A local authority must provide or arrange for the provision of services, facilities or resources, or take other steps, which it considers will –
 - (a) contribute towards preventing or delaying the development of needs for care and support by adults in its area, or
 - (b) reduce the needs for care and support of adults in its area who have such needs.
- (2) In exercising that duty, a local authority must have regard to –
 - (a) the importance of identifying the services, facilities and resources already available in the authority’s area and the extent to which the authority could involve or make use of them in exercising that duty;
 - (b) the importance of identifying adults in the authority’s area with needs for care and support which are not being met (by the authority or otherwise).
- (3) Regulations may make provision for enabling a local authority to impose a charge for providing or arranging for the provision of services, facilities or resources, or for taking other steps, under this section.
- (4) A charge imposed under regulations made under subsection (3) may cover only the cost that the local authority incurs in providing or arranging for the provision of the service, facility or resource or for taking the other step.
- (5) A local authority may exercise the duty under subsection (1) jointly with one or more other local authorities in relation to the authorities’ combined area; and where they do so –
 - (a) references in this section to a local authority are to be read as references to the authorities acting jointly, and
 - (b) references in this section to a local authority’s area are to be read as references to the combined area.
- (6) Sections 20 (exception for persons subject to immigration control), 21 (exception for provision of health services) and 22 (exception for provision of housing etc.) apply in relation to the duty under subsection (1), but with the modifications set out in those sections.

Meeting needs for care etc.

8 How to meet needs

- (1) The following are examples of what may be provided to meet needs under sections 17 to 19 –
 - (a) accommodation in a care home or in premises of some other type;
 - (b) care and support at home or in the community;
 - (c) counselling, advocacy and other types of social work;
 - (d) goods and facilities;
 - (e) information and advice.

- (2) The following are examples of the ways in which a local authority may meet needs under sections 17 to 19 –
 - (a) by arranging for a person other than it to provide a service;
 - (b) by itself providing a service;
 - (c) by making direct payments.
- (3) “Care home” has the meaning given by section 3 of the Care Standards Act 2000.

Assessing needs

9 Assessment of needs for care and support

- (1) Where it appears to a local authority that an adult may have needs for care and support, the authority must assess –
 - (a) whether the adult does have needs for care and support, and
 - (b) if the adult does, what those needs are.
- (2) An assessment under subsection (1) is referred to in this Part as a “needs assessment”.
- (3) The duty to carry out a needs assessment applies regardless of the authority’s view of –
 - (a) the level of the adult’s needs for care and support, or
 - (b) the level of the adult’s financial resources.
- (4) A needs assessment must include an assessment of –
 - (a) the outcomes that the adult wishes to achieve in day-to-day life, and
 - (b) whether, or to what extent, the provision of care and support could contribute to the achievement of those outcomes.
- (5) A local authority, in carrying out a needs assessment, must so far as it is feasible to do so consult –
 - (a) the adult,
 - (b) any carer that the adult has, and
 - (c) any person whom the adult asks the authority to consult.

10 Assessment of a carer’s needs for support

- (1) Where it appears to a local authority that a carer may have needs for support (whether currently or in the future), the authority must assess –
 - (a) whether the carer does have needs for support (or is likely to do so in the future), and
 - (b) if the carer does, what those needs are (or are likely to be in the future).
- (2) An assessment under subsection (1) is referred to in this Part as a “carer’s assessment”.
- (3) “Carer” means an adult who provides or intends to provide care for another adult (an “adult needing care”); but see subsections (7) and (8).
- (4) A carer’s assessment must include an assessment of –
 - (a) whether the carer is able, and will continue to be able, to provide care for the adult needing care, and

- (b) whether the carer is willing, and will continue to be willing, to do so.
- (5) A local authority, in carrying out a carer's assessment, must have regard to—
 - (a) whether the carer works or wishes to do so, and
 - (b) whether the carer is participating in or wishes to participate in education, training or recreation.
- (6) A local authority, in carrying out a carer's assessment, must so far as it is feasible to do so consult—
 - (a) the carer, and
 - (b) any person whom the carer asks the authority to consult.
- (7) An adult is not to be regarded as a carer if the adult provides or intends to provide care—
 - (a) under or by virtue of a contract, or
 - (b) as voluntary work.
- (8) But in a case where the local authority considers that the relationship between the adult needing care and the adult providing or intending to provide care is such that it would be appropriate for the latter to be regarded as a carer, that adult is to be regarded as such (and subsection (7) is therefore to be ignored in that case).

11 Refusal of assessment

- (1) Where an adult refuses a needs assessment, the local authority concerned is not required to carry out the assessment (and section 9(1) does not apply in the adult's case).
- (2) But the local authority may not rely on subsection (1) (and so must carry out a needs assessment) if—
 - (a) the adult lacks capacity to refuse the assessment and the authority is satisfied that carrying out the assessment would be in the adult's best interests, or
 - (b) the adult is experiencing, or is at risk of, abuse or neglect.
- (3) Where, having refused a needs assessment, an adult requests the assessment, section 9(1) applies in the adult's case (and subsection (1) above does not).
- (4) Where an adult has refused a needs assessment and the local authority concerned thinks that the adult's needs or circumstances have changed, section 9(1) applies in the adult's case (but subject to further refusal as mentioned in subsection (1) above).
- (5) Where a carer refuses a carer's assessment, the local authority concerned is not required to carry out the assessment (and section 10(1) does not apply in the carer's case).
- (6) Where, having refused a carer's assessment, a carer requests the assessment, section 10(1) applies in the carer's case (and subsection (5) above does not).
- (7) Where a carer has refused a carer's assessment and the local authority concerned thinks that the needs or circumstances of the carer or the adult needing care have changed, section 10(1) applies in the carer's case (but subject to further refusal as mentioned in subsection (5) above).

12 Assessments under sections 9 and 10: further provision

- (1) Regulations must make further provision about carrying out a needs or carer's assessment; the regulations may, in particular –
 - (a) require the local authority, in carrying out the assessment, to have regard to the needs of the family of the person to whom the assessment relates;
 - (b) specify other matters to which the local authority must have regard in carrying out the assessment (including, in particular, the matters to which it must have regard in seeking to ensure that the assessment is carried out in a proportionate manner);
 - (c) specify circumstances in which a person with expertise in a specified matter must carry out the assessment on behalf of the local authority;
 - (d) specify circumstances in which the person to whom the assessment relates, or a specified person or person of a specified description, may carry out the assessment jointly with the local authority;
 - (e) specify persons to whom the local authority must give a copy of the assessment (including persons to whom the adult asks the authority to give a copy).
- (2) The regulations may include provision for facilitating the carrying out of a needs or carer's assessment in circumstances specified under subsection (1)(c) or (d); they may, for example, give the local authority power to provide the person carrying out the assessment –
 - (a) in the case of a needs assessment, with information about the adult to whom the assessment relates;
 - (b) in the case of a carer's assessment, with information about the carer and about the adult needing care;
 - (c) in either case, with whatever resources, or with access to whatever facilities, the authority thinks will be required to carry out the assessment.
- (3) A local authority may, where an adult has a carer, combine a needs assessment with a carer's assessment; but the authority may do so only if the adult needing care and the carer agree.
- (4) A local authority may carry out a needs or carer's assessment at the same time as it or another body carries out another assessment in the case of the person to whom the assessment relates or a carer the person has.
- (5) For the purposes of subsection (4) –
 - (a) the local authority may carry out the other assessment on behalf of or jointly with the other body, or
 - (b) if the other body has already arranged for the other assessment to be carried out by it jointly with another person, the local authority may carry out the other assessment jointly with the other body and that other person.
- (6) A reference to a needs or carer's assessment includes a reference to a needs or carer's assessment (as the case may be) contained in a combined assessment under subsection (3).
- (7) A reference to an assessment includes a reference to part of an assessment.

13 The eligibility criteria

- (1) Where a local authority is satisfied on the basis of a needs or carer’s assessment that an adult has needs for care and support or a carer has needs for support, it must –
 - (a) determine whether any of the needs meet the eligibility criteria, and
 - (b) if any of them do, consider what could be done to meet those that do.
- (2) Regulations must make provision about the exercise of the duty under subsection (1).
- (3) Needs meet the eligibility criteria if they rank at or above the level of need –
 - (a) set in the regulations by reference to specified levels of need, or
 - (b) if the regulations so require, set by a local authority for its area by reference to specified levels of need.
- (4) The regulations may provide that, in cases or circumstances of a specified type, needs are to be regarded as ranking at the level of need specified for cases or circumstances of that type.

*Imposing charges and assessing financial resources***14 Power of local authority to impose charges**

- (1) A local authority –
 - (a) may impose a charge for meeting needs under sections 17 to 19, and
 - (b) where it is meeting needs because section 17(3) or 19(3) or (5) applies, may impose a charge (in addition to the charge it imposes under paragraph (a)) for putting in place the arrangements for meeting those needs.
- (2) A charge imposed under subsection (1)(a) may cover only the cost that the local authority incurs in meeting the needs to which the charge applies.
- (3) Regulations may make provision about the exercise of a power under subsection (1).
- (4) Regulations may require a local authority to meet needs under sections 17 to 19 free of charge; and the regulations may (in reliance on section 79(6)) require a local authority to do so where, for example, the care and support or the support –
 - (a) is of a specified type;
 - (b) is provided in specified circumstances;
 - (c) is provided to an adult of a specified description;
 - (d) is provided for a specified period only.
- (5) Regulations must specify an amount below which an adult’s income must not fall after deduction of the amount of a charge to be imposed under this section.

15 Assessment of financial resources

- (1) Where a local authority, having exercised its duty under section 13(1), thinks that, were it to meet an adult’s needs for care and support, it would impose a charge on the adult, it must assess –
 - (a) the level of the adult’s financial resources, and

- (b) the amount (if any) which the adult would be likely to be able to pay towards the cost of meeting the needs for care and support.
- (2) Where a local authority, having exercised its duty under section 13(1), thinks that, were it to meet a carer’s needs for support, it would impose a charge on the carer, it must assess –
 - (a) the level of the carer’s financial resources, and
 - (b) the amount (if any) which the carer would be likely to be able to pay towards the cost of meeting the needs for support.
- (3) Where a local authority, having exercised its duty under section 13(1), thinks that, were it to meet a carer’s needs for support by providing care and support to the adult needing care, it would impose a charge on the adult needing care, it must assess –
 - (a) the level of the financial resources of the adult needing care, and
 - (b) the amount (if any) which the adult needing care would be likely to be able to pay towards the cost of meeting the carer’s needs for support.
- (4) An assessment under this section is referred to in this Part as a “financial assessment”.
- (5) Regulations must make provision about the carrying out of a financial assessment.
- (6) The regulations must provide that where an adult’s financial resources (whether in terms of income, capital or a combination of both) exceed a specified level, a local authority will not pay towards the cost of the provision of care and support.
- (7) The level specified for the purposes of subsection (6) is referred to in this Part as “the financial limit”.
- (8) The regulations must make provision for –
 - (a) calculating income;
 - (b) calculating capital.
- (9) The regulations may make provision for –
 - (a) treating, or not treating, amounts of a specified type as income or as capital;
 - (b) cases or circumstances in which an adult is to be treated as having financial resources at or above a specified level.

16 Deferred payment agreements

- (1) Regulations may specify cases or circumstances in which, or conditions subject to which, a local authority may or must enter into a deferred payment agreement with an adult –
 - (a) who has needs for care and support which the local authority is meeting (or is going to meet) under section 17 or 18, and
 - (b) who has to pay (or is going to have to pay) towards the cost of meeting those needs.
- (2) A deferred payment agreement is an agreement under which –
 - (a) the local authority agrees not to require payment of the adult’s required amount until the time specified in or determined in accordance with the regulations, and

-
- (b) the adult agrees to give the local authority a charge over the adult's interest in the adult's home to secure payment of the adult's required amount.
 - (3) The adult's required amount is so much of the amount that the adult has to pay towards the cost of meeting those of the adult's needs referred to in subsection (1)(a) as is specified in or determined in accordance with the regulations.
 - (4) The regulations may require or permit the local authority to charge –
 - (a) interest on the adult's required amount;
 - (b) such amount relating to the local authority's administrative costs as is specified in or determined in accordance with the regulations;
 - (c) interest on an amount charged under paragraph (b).
 - (5) The regulations may provide for interest referred to in subsection (4)(a) to be charged by means of an obligation in the deferred payment agreement and to be treated in the same way as the adult's required amount.
 - (6) The regulations may –
 - (a) specify costs which are, or which are not, to be regarded as administrative costs for the purposes of subsection (4)(b);
 - (b) provide for an amount referred to in subsection (4)(b) or for interest referred to in subsection (4)(c) to be charged by means of an obligation in the deferred payment agreement and to be treated in the same way as the adult's required amount.
 - (7) The local authority may not charge interest under regulations made under subsection (4) at a rate that exceeds the rate specified in or determined in accordance with the regulations; the regulations may, for example, provide for a rate to be determined by reference to a specified interest rate or other specified criterion.
 - (8) The regulations must make provision about the duration of the agreement and for its termination by either party; the regulations must, in particular, enable the adult to terminate it and the charge to which it gives effect by –
 - (a) giving the local authority notice, and
 - (b) paying the authority the full amount for which the adult is liable with respect to the adult's required amount and any amount charged under regulations made under subsection (4).
 - (9) The regulations may make provision as to the rights and obligations of the local authority and the adult where the adult disposes of the interest to which the agreement relates and acquires an interest in another property (whether or not it is in the area of that local authority); the regulations may, for example, make provision –
 - (a) for the local authority not to require payment of the amounts referred to in subsection (8)(b) until the time specified in or determined in accordance with the regulations, and
 - (b) for the adult to give the local authority a charge over the adult's interest in the other property.
 - (10) A reference to an adult's home is a reference to the property which the adult occupies as the adult's only or main residence; and a reference to an adult's interest in a property is a reference to the adult's legal or beneficial interest in that property.

- (11) Regulations may apply this section, with or without modifications, for the purpose of enabling an adult to give a charge over the adult's interest in a property which the adult used to occupy as the adult's only or main residence.

Who can have their needs met?

17 Duty to meet needs for care and support

- (1) A local authority, having carried out a needs assessment and (where applicable) a financial assessment, must meet those of an adult's needs for care and support which meet the eligibility criteria if –
- (a) the adult is ordinarily resident in the authority's area, or is present in its area but of no settled residence, and
 - (b) there is not a charge under section 14 for meeting those needs or, in so far as there is, subsection (2), (3) or (4) applies.
- (2) This subsection applies if the local authority is satisfied on the basis of the financial assessment that the adult's financial resources are at or below the financial limit.
- (3) This subsection applies if –
- (a) the local authority is satisfied on the basis of the financial assessment that the adult's financial resources are above the financial limit, but
 - (b) the adult nonetheless asks the authority to meet the adult's needs.
- (4) This subsection applies if –
- (a) the adult lacks capacity to arrange for the provision of care and support, and
 - (b) there is no person authorised to do so under the Mental Capacity Act 2005 or otherwise in a position to do so on the adult's behalf.

18 Power to meet needs for care and support

- (1) Where a local authority, having carried out a needs assessment and (where applicable) a financial assessment, is satisfied that the duty under section 17 does not arise, it may nonetheless meet any of the needs for care and support of the adult concerned.
- (2) A local authority, having carried out a needs assessment and (where applicable) a financial assessment, may meet those of an adult's needs for care and support which meet the eligibility criteria if –
- (a) the adult is ordinarily resident in the area of another local authority,
 - (b) there is not a charge under section 14 for meeting the needs or, in so far as there is, subsection (2), (3) or (4) of section 17 applies, and
 - (c) the local authority has notified the other local authority.
- (3) A local authority may meet those of an adult's needs for care and support which appear to it to be urgent (regardless of whether the adult is ordinarily resident in its area) without having yet –
- (a) carried out a needs assessment or (where applicable) a financial assessment, or
 - (b) exercised the duty under section 13.

19 Duty and power to meet a carer’s needs for support

- (1) A local authority, having carried out a carer’s assessment and (where applicable) a financial assessment, must meet those of a carer’s needs for support which meet the eligibility criteria if –
 - (a) the adult needing care is ordinarily resident in the local authority’s area, or is present in its area but of no settled residence,
 - (b) in so far as meeting the carer’s needs involves the provision of support to the carer –
 - (i) there is not a charge under section 14 for meeting those needs, or
 - (ii) in so far as there is, subsection (2) or (3) applies, and
 - (c) in so far as meeting the carer’s needs involves the provision of care and support to the adult needing care –
 - (i) there is not a charge under section 14 for meeting those needs and the adult needing care agrees to the needs in question being met in that way, or
 - (ii) in so far as there is a charge, subsection (4) or (5) applies.
- (2) This subsection applies if the local authority is satisfied on the basis of the financial assessment that the carer’s financial resources are at or below the financial limit.
- (3) This subsection applies if –
 - (a) the local authority is satisfied on the basis of the financial assessment that the carer’s financial resources are above the financial limit, but
 - (b) the carer nonetheless asks the authority to meet the needs in question.
- (4) This subsection applies if –
 - (a) the local authority is satisfied on the basis of the financial assessment that the financial resources of the adult needing care are at or below the financial limit, and
 - (b) the adult agrees to the authority meeting the needs in question by providing care and support to the adult.
- (5) This subsection applies if –
 - (a) the local authority is satisfied on the basis of the financial assessment that the financial resources of the adult needing care are above the financial limit, but
 - (b) the adult nonetheless asks the authority to meet the needs in question by providing care and support to the adult.
- (6) Where a local authority, having carried out a needs assessment and (where applicable) a financial assessment, is satisfied that the duty under subsection (1) does not arise, it may nonetheless meet any of the carer’s needs for support; but, in so far as meeting the carer’s needs involves the provision of care and support to the adult needing care, it may do so only if the adult agrees.
- (7) Meeting some or all of a carer’s needs for support may involve the provision of care and support to the adult needing care, even where there would be no duty to meet the adult’s needs for that care and support under section 17.
- (8) Where a local authority is required by subsection (1) to meet some or all of a carer’s needs for support but it does not prove feasible for it to do so by providing care and support to the adult needing care, it must, so far as it is feasible to do so, identify some other way in which to do so.

20 Exception for persons subject to immigration control

- (1) A local authority may not meet the needs for care and support of an adult to whom section 115 of the Immigration and Asylum Act 1999 (“the 1999 Act”) (exclusion from benefits) applies and whose needs for care and support have arisen solely –
 - (a) because the adult is destitute, or
 - (b) because of the physical effects, or anticipated physical effects, of being destitute.
- (2) For the purposes of subsection (1), section 95(2) to (7) of the 1999 Act applies but with the references in section 95(4) and (5) to the Secretary of State being read as references to the local authority in question.
- (3) But, until the commencement of section 44(6) of the Nationality, Immigration and Asylum Act 2002, subsection (2) is to have effect as if it read as follows –
 - “(2) For the purposes of subsection (1), section 95(3) and (5) to (8) of, and paragraph 2 of Schedule 8 to, the 1999 Act apply but with references in section 95(5) and (7) and that paragraph to the Secretary of State being read as references to the local authority in question.”
- (4) The reference in subsection (1) to meeting an adult’s needs for care and support includes a reference to providing care and support to the adult in order to meet a carer’s needs for support.
- (5) For the purposes of its application in relation to the duty in section 7(1) (preventing needs for care and support), this section is to be read as if –
 - (a) in subsection (1) –
 - (i) for “meet the needs for care and support of an adult” there were substituted “exercise the duty under section 7(1) in relation to an adult”, and
 - (ii) after “have arisen” there were inserted “, or for whom such needs may in the future arise,”, and
 - (b) subsection (4) were omitted.

21 Exception for provision of health services

- (1) A local authority may not meet needs under sections 17 to 19 by providing or arranging for the provision of a service or facility that is required to be provided under the National Health Service Act 2006 or the National Health Service (Wales) Act 2006 unless doing so would be incidental or ancillary to doing something else to meet needs under those sections.
- (2) Regulations may specify –
 - (a) types of services or facilities which, despite subsection (1), may be provided or the provision of which may be arranged by a local authority, or circumstances in which such services or facilities may be so provided or the provision of which may be so arranged;
 - (b) types of services or facilities which may not be provided or the provision of which may not be arranged by a local authority, or circumstances in which such services or facilities may not be so provided or the provision of which may not be so arranged;
 - (c) services or facilities, or a method for determining services or facilities, the provision of which is, or is not, to be treated as incidental or ancillary for the purposes of subsection (1).

- (3) A local authority may not meet needs under sections 17 to 19 by providing or arranging for the provision of nursing care by a registered nurse.
- (4) But a local authority may, despite subsections (1) and (3), arrange for the provision of accommodation together with nursing care –
 - (a) if the authority has obtained consent for it to arrange for the provision of the nursing care from whichever clinical commissioning group regulations require, or
 - (b) in an urgent case and where the arrangements are temporary.
- (5) In a case to which subsection (4)(b) applies, as soon as is feasible after the temporary arrangements are made, the local authority must seek to obtain the consent mentioned in subsection (4)(a).
- (6) Regulations may require a local authority –
 - (a) to make arrangements for determining disputes between the authority and either a clinical commissioning group or the National Health Service Commissioning Board about whether or not a service or facility is required to be provided under the National Health Service Act 2006 or the National Health Service (Wales) Act 2006;
 - (b) to be involved in the manner specified in processes for assessing a person’s needs for health care and deciding how those needs should be met.
- (7) Nothing in this section affects what a local authority may do under the National Health Service Act 2006, including entering into arrangements under regulations under section 75 of that Act (arrangements with NHS bodies).
- (8) “Nursing care” means a service which involves either the provision of care or the planning, supervision or delegation of the provision of care (but does not include a service which, by its nature and in the circumstances in which it is to be provided, does not need to be provided by a registered nurse).
- (9) For the purposes of its application in relation to the duty in section 7(1) (preventing needs for care and support), this section is to be read as if references to meeting needs under sections 17 to 19 were references to exercising the duty under section 7(1).

22 Exception for provision of housing etc.

- (1) A local authority may not meet needs under sections 17 to 19 by doing anything which it or another local authority is required to do under –
 - (a) the Housing Act 1996, or
 - (b) any other enactment specified in regulations.
- (2) “Another local authority” includes a district council for an area in England for which there is also a county council.
- (3) For the purposes of its application in relation to the duty in section 7(1) (preventing needs for care and support), this section is to be read as if, in subsection (1), for “meet needs under sections 17 to 19” there were substituted “exercise the duty under section 7(1)”.

What happens after the assessments?

23 The steps for the local authority to take

- (1) Where a local authority is required to meet needs under section 17 or 19(1), or decides to do so under section 18(1) or (2) or 19(6), it must –
 - (a) prepare a care and support plan or, in the case of a carer, a support plan,
 - (b) tell the adult which (if any) of the needs that it is going to meet in the adult’s case may be met by direct payments, and
 - (c) help the adult with deciding how to have the needs met.
- (2) Where a local authority has carried out a needs or carer’s assessment but is not required to meet needs under section 17 or 19(1), and decides not to do so under section 18(1) or (2) or 19(6), it must give the adult –
 - (a) a written record of the needs or carer’s assessment,
 - (b) if it has carried out a financial assessment, a written record of it, and
 - (c) advice and information about what can be done to meet the needs or to prevent or delay the development of needs in the future.

24 Care and support plan, support plan

- (1) A care and support plan or, in the case of a carer, a support plan is a document prepared by a local authority which –
 - (a) specifies the needs identified by the needs assessment or carer’s assessment,
 - (b) specifies whether, or to what extent, the needs meet the eligibility criteria,
 - (c) specifies the needs that the local authority is going to meet and how it is going to meet them,
 - (d) specifies to which of the outcomes referred to in section 9(4)(a) the provision of care and support could be relevant or to which of the matters referred to in section 10(4) or (5) the provision of support could be relevant, and
 - (e) includes the personal budget for the adult (see section 25).
- (2) Where some or all of the needs are to be met by making direct payments, the plan must also specify –
 - (a) the needs which are to be so met,
 - (b) how it is that those needs will be met under the arrangements paid for with the direct payments, and
 - (c) the amount and frequency of the direct payments.
- (3) In preparing a care and support plan, the local authority must, so far as it is feasible to do so, consult –
 - (a) the adult for whom it is being prepared,
 - (b) any carer that the adult has, and
 - (c) any other person whom the adult asks the authority to consult.
- (4) In preparing a support plan, the local authority must, so far as it is feasible to do so, consult –
 - (a) the carer for whom it is being prepared,
 - (b) the adult needing care, if the carer asks the authority to do so, and
 - (c) any other person whom the carer asks the authority to consult.

- (5) In seeking to ensure that the plan is proportionate to the needs to be met, the local authority must have regard in particular to—
 - (a) in the case of a care and support plan, the outcomes referred to in section 9(4)(a);
 - (b) in the case of a support plan, the matters referred to in section 10(4) or (5).
- (6) The local authority may authorise a person (including the adult for whom the plan is to be prepared) to prepare the plan jointly with the authority.
- (7) The local authority may do things to facilitate the preparation of the plan in a case within subsection (6); it may, for example, provide a person authorised under that subsection with—
 - (a) in the case of a care and support plan, information about the adult for whom the plan is being prepared;
 - (b) in the case of a support plan, information about the carer and the adult needing care;
 - (c) in either case, whatever resources, or access to whatever facilities, the authority thinks are required to prepare the plan.
- (8) The local authority must give a copy of a care and support plan to—
 - (a) the adult for whom it has been prepared,
 - (b) any carer that the adult has, if the adult asks the authority to do so, and
 - (c) any other person to whom the adult asks the authority to give a copy.
- (9) The local authority must give a copy of a support plan to—
 - (a) the carer for whom it has been prepared,
 - (b) the adult needing care, if the carer asks the authority to do so, and
 - (c) any other person to whom the carer asks the authority to give a copy.
- (10) The local authority may prepare a care and support plan or a support plan at the same time as it or another body is preparing another document in the case of the adult concerned.
- (11) Where an adult has a carer, the local authority may combine a care and support plan with a support plan if the adult and the carer agree.
- (12) Regulations may specify cases or circumstances in which such of paragraphs (a) to (e) of subsection (1) and paragraphs (a) to (c) of subsection (2) as are specified do not apply.

25 Personal budget

- (1) A personal budget for an adult is a statement which specifies—
 - (a) the amount which the local authority assesses as the cost of meeting those of the adult's needs which it is required or decides to meet as mentioned in section 23(1),
 - (b) the amount which, on the basis of the financial assessment, the adult must pay towards that cost, and
 - (c) if on that basis the local authority must itself pay towards that cost, the amount which it must pay.
- (2) A personal budget for an adult may also specify other amounts of public money that are available in the adult's case for spending on matters relating to housing, health care or welfare.

26 Review of care and support plan or of support plan

- (1) A local authority must keep under review generally care and support plans, and support plans, that it has prepared.
- (2) A local authority may revise a care and support plan; and in deciding whether or how to do so, it must –
 - (a) have regard in particular to the outcomes referred to in section 9(4)(a) (and specified in the plan under section 24(1)(d)), and
 - (b) in so far as it is feasible to do so, consult –
 - (i) the adult to whom the plan relates,
 - (ii) any carer that the adult has, and
 - (iii) any other person whom the adult asks the authority to consult.
- (3) A local authority may revise a support plan; and in deciding whether or how to do so, it must –
 - (a) have regard in particular to the matters referred to in section 10(4) and (5) (and specified in the plan under section 24(1)(d)), and
 - (b) in so far as it is feasible to do so, consult –
 - (i) the carer to whom the plan relates,
 - (ii) the adult needing care, if the carer asks the authority to do so, and
 - (iii) any other person whom the carer asks the authority to consult.
- (4) Where a local authority is satisfied that the circumstances of the adult to whom a care and support plan or a support plan relates have changed in a way that affects the plan, the authority must –
 - (a) to the extent it thinks appropriate, carry out a needs or carer’s assessment and (where applicable) carry out a financial assessment and exercise the function under section 13, and
 - (b) exercise the power under subsection (2) or (3) accordingly.

27 Cases where adult expresses preference for particular accommodation

- (1) Regulations may provide that where –
 - (a) a local authority is going to meet needs under sections 17 to 19 by providing or arranging for the provision of accommodation of a specified type,
 - (b) the adult concerned expresses a preference for particular accommodation of that type, and
 - (c) specified conditions are met,the local authority must provide or arrange for the provision of the adult’s preferred accommodation.
- (2) The regulations may provide for the adult concerned or a person of a specified description to pay for some or all of the additional cost in specified cases or circumstances.
- (3) “Additional cost” means the cost of providing or arranging for the provision of the adult’s preferred accommodation less that part of the amount specified in the adult’s personal budget for the purposes of section 25(1)(a) that relates to the provision of accommodation of that type.

*Who can receive direct payments?***28 Adults with capacity to request direct payments**

- (1) This section applies where –
 - (a) a personal budget for an adult specifies an amount which the local authority must pay towards the cost of meeting the needs to which the personal budget relates, and
 - (b) the adult requests the local authority to meet some or all of those needs by making payments to the adult or a person nominated by the adult.
- (2) If conditions 1 to 4 are met, the local authority must, subject to regulations under section 30, make the payments to which the request relates to the adult or nominated person.
- (3) A payment under this section is referred to in this Part as a “direct payment”.
- (4) Condition 1 is that –
 - (a) the adult has, or the local authority believes that the adult has, capacity to make the request, and
 - (b) where there is a nominated person, that person agrees to receive the payments.
- (5) Condition 2 is that –
 - (a) the adult or nominated person is not prohibited by regulations under section 30 from receiving direct payments, or
 - (b) where the regulations give the local authority discretion so to decide, it decides that the adult or nominated person should not be prohibited from receiving direct payments.
- (6) Condition 3 is that the local authority is satisfied that the adult or nominated person is capable of managing direct payments –
 - (a) by himself or herself, or
 - (b) with whatever help the authority thinks the adult or nominated person will be able to access.
- (7) Condition 4 is that the local authority is satisfied that making direct payments to the adult or nominated person is an appropriate way to meet the needs in question.

29 Adults without capacity to request direct payments

- (1) This section applies where –
 - (a) a personal budget for an adult specifies an amount which the local authority must pay towards the cost of meeting the needs to which the personal budget relates, and
 - (b) the adult lacks, or the authority believes that the adult lacks, capacity to request the local authority to meet any of those needs by making payments to the adult, but
 - (c) an authorised person requests the local authority to meet some or all of those needs by making payments to the authorised person.
- (2) If conditions 1 to 5 are met, the local authority must, subject to regulations under section 30, make the payments to which the request relates to the authorised person.

- (3) A payment under this section is referred to in this Part as a “direct payment”.
- (4) A person is authorised for the purposes of this section if –
 - (a) the person is authorised under the Mental Capacity Act 2005 to make decisions about the adult’s needs for care and support,
 - (b) where the person is not authorised as mentioned in paragraph (a), a person who is so authorised agrees with the local authority that the person is a suitable person to whom to make direct payments, or
 - (c) where the person is not authorised as mentioned in paragraph (a) and there is no person who is so authorised, the local authority considers that the person is a suitable person to whom to make direct payments.
- (5) Condition 1 is that, where the authorised person is not authorised under subsection (4)(a) but there is at least one person who is so authorised, a person who is so authorised supports the authorised person’s request.
- (6) Condition 2 is that –
 - (a) the authorised person is not prohibited by regulations under section 30 from receiving direct payments, or
 - (b) where the regulations give the local authority discretion so to decide, it decides that the authorised person should not be prohibited from receiving direct payments.
- (7) Condition 3 is that the local authority is satisfied that the authorised person will act in the adult’s best interests in arranging for the provision of the care and support for which the direct payments under this section would be used.
- (8) Condition 4 is that the local authority is satisfied that the authorised person is capable of managing direct payments –
 - (a) by himself or herself, or
 - (b) with whatever help the authority thinks the authorised person will be able to access.
- (9) Condition 5 is that the local authority is satisfied that making direct payments to the authorised person is an appropriate way to meet the needs in question.

30 Direct payments: further provision

- (1) Regulations must make further provision about direct payments.
- (2) The regulations may, in particular, specify –
 - (a) cases or circumstances in which a local authority must not, or cases or circumstances in which it has the discretion to decide whether to, meet needs by making direct payments;
 - (b) conditions which a local authority may or must attach to the making of direct payments;
 - (c) matters to which a local authority may or must have regard when making a decision of a specified type about direct payments;
 - (d) steps which a local authority may or must take before, or after, making a decision of a specified type about direct payments;
 - (e) cases or circumstances in which an adult who no longer lacks, or who the local authority believes no longer lacks, capacity to request the making of direct payments must or may nonetheless be regarded for the purposes of this Part or the regulations as lacking capacity to do so;

- (f) cases or circumstances in which a local authority making direct payments must review the making of those payments.
- (3) A direct payment is made on condition that it be used only to pay for arrangements under which the needs specified in the care and support plan or, in the case of a carer, support plan under section 24(2)(a) are met as specified under section 24(2)(b).
- (4) In a case where one or more of conditions 1 to 4 under section 28 is no longer met or one or more of conditions 1 to 5 under section 29 is no longer met, the local authority must terminate the making of direct payments.
- (5) In a case where a condition specified under subsection (2)(b) or the condition mentioned in subsection (3) is breached, the local authority –
- (a) may terminate the making of direct payments, and
 - (b) may require repayment of the whole or part of a direct payment (with section 45 accordingly applying to sums which the local authority requires to be repaid).

Establishing where a person lives, etc.

31 Continuity of care when an adult moves

- (1) This section applies where –
- (a) a local authority (the “sending authority”) is meeting an adult’s needs for care and support under section 17 or 18,
 - (b) another local authority (the “receiving authority”) is notified by or on behalf of the adult that the adult intends to move to the receiving authority’s area, and
 - (c) the receiving authority is satisfied that the adult’s intention is genuine.
- (2) This section also applies where –
- (a) a local authority (the “sending authority”) is meeting an adult’s needs for care and support under section 17 or 18 by arranging for the provision of accommodation in the area of another local authority (the “receiving authority”),
 - (b) the receiving authority is notified by or on behalf of the adult that the adult intends to move out of that accommodation but to remain in its area and be provided with care and support at home or in the community, and
 - (c) the receiving authority is satisfied that the adult’s intention is genuine.
- (3) The receiving authority must –
- (a) notify the sending authority that it is satisfied as mentioned in subsection (1)(c) or (2)(c),
 - (b) provide the adult and, if the adult has or is proposing to have a carer, the carer with such information as it considers appropriate (in so far as it would not do so under section 2),
 - (c) assess whether the adult has needs for care and support and, if the adult does, what those needs are, and
 - (d) where the adult has or is proposing to have a carer and it is appropriate to do so, assess whether the carer has or will have needs for support and, if the carer does or will, what those needs are or will be.

- (4) Where the sending authority is notified by or on behalf of the adult that the adult intends to move as mentioned in subsection (1)(b) or (2)(b), and has received the notification from the receiving authority under subsection (3)(a), it must provide the receiving authority with—
 - (a) a copy of any care and support plan prepared for the adult,
 - (b) if the adult has a carer and that carer will continue as the adult’s carer after the move, a copy of any support plan prepared for the carer, and
 - (c) such other information relating to the adult and, if the adult has a carer (whether or not one with needs for support), such other information relating to the carer as the receiving authority may request.
- (5) This Part—
 - (a) applies to an assessment under subsection (3)(c) as it applies to a needs assessment, and
 - (b) applies to an assessment under subsection (3)(d) as it applies to a carer’s assessment.
- (6) If, on the day of the move as mentioned in subsection (1)(b) or (2)(b), the receiving authority has yet to carry out the assessment or assessments under subsection (3), or has done so but has yet to take the other steps required under this Part in the adult’s case, it must meet the adult’s needs for care and support, and the needs for support of any carer who is continuing as the adult’s carer, which the sending authority has been meeting.
- (7) The receiving authority is subject to the duty under subsection (6) until it has—
 - (a) carried out the assessment or assessments under subsection (3), and
 - (b) taken the other steps required under this Part in the adult’s case.
- (8) The sending authority is not required to meet the adult’s needs for care and support or, if the adult has a carer, such needs for support as the carer has, for so long as the receiving authority is subject to the duty under subsection (6).
- (9) Where, having complied with the duty under subsection (6), the receiving authority is not required to meet the adult’s needs for care and support under section 17 because the adult is still ordinarily resident in the area of the sending authority, the receiving authority may recover from the sending authority the costs it incurred in complying with the duty under subsection (6).
- (10) Regulations may—
 - (a) specify steps which a local authority must take for the purpose of being satisfied as mentioned in subsection (1)(c) or (2)(c);
 - (b) where the needs identified by a needs or carer’s assessment carried out by the receiving authority are different from the needs specified in the care and support plan or support plan prepared by the sending authority, require the receiving authority to provide specified persons with a written explanation of the differences;
 - (c) specify matters to which the receiving authority must have regard in deciding how to comply with the duty under subsection (6).
- (11) A reference in this section to moving to an area is a reference to moving to that area with a view to becoming ordinarily resident there.

32 Where a person's ordinary residence is

- (1) Where an adult has needs for care and support which can be met only if the adult is living in accommodation of a particular type, the adult is to be treated for the purposes of this Part as ordinarily resident –
 - (a) in the area in which the adult was ordinarily resident immediately before the adult began to live in accommodation of that type, or
 - (b) if the adult was of no settled residence immediately before the adult began to live in accommodation of that type, in the area in which the adult was present at that time.
- (2) Regulations may make provision for determining for the purposes of subsection (1) whether an adult has needs for care and support which can be met only if the adult is living in accommodation of a particular type; and the regulations may make provision by reference to specified types of accommodation.
- (3) An adult who is being provided with accommodation under section 117 of the Mental Health Act 1983 (after-care) is to be treated for the purposes of this Part as ordinarily resident in the area of the local authority on which the duty to provide the adult with services under that section is imposed.
- (4) An adult who is being provided with accommodation under the National Health Service Act 2006 is to be treated for the purposes of this Part as ordinarily resident –
 - (a) in the area in which the adult was ordinarily resident immediately before the accommodation was provided, or
 - (b) if the adult was of no settled residence immediately before the accommodation was provided, in the area in which the adult was present at that time.

33 Disputes about ordinary residence and continuity of care

- (1) Any dispute about where an adult is ordinarily resident for the purposes of this Part, or any dispute between a sending and a receiving authority under section 31 about the application of that section, is to be determined by –
 - (a) the Secretary of State, or
 - (b) such person as the Secretary of State may appoint for that purpose (the “appointed person”).
- (2) The Secretary of State or appointed person may review a determination under subsection (1), provided that the review begins within 3 months of the date of the determination.
- (3) Having carried out a review under subsection (2), the Secretary of State or appointed person must –
 - (a) confirm the original determination, or
 - (b) substitute a different determination.
- (4) Regulations may make further provision about resolution of disputes of the type mentioned in subsection (1); the regulations may, for example, include –
 - (a) provision for ensuring that care and support is provided to the adult while the dispute is unresolved;
 - (b) provision requiring the local authorities in dispute to take specified steps before referring the dispute to the Secretary of State or (as the case may be) person appointed under subsection (1)(b);

- (c) provision about the procedure for referring the dispute to the Secretary of State or appointed person;
- (d) where a review of a determination has been carried out under subsection (2) and a different determination substituted, provision requiring a local authority to take specified steps (including paying specified amounts) in relation to the period before the determination was substituted.

Safeguarding adults at risk of abuse or neglect

34 Enquiry by local authority

- (1) Where a local authority has reasonable cause to suspect that an adult in its area (whether or not ordinarily resident there) –
 - (a) has needs for care and support (whether or not the authority is meeting any of those needs),
 - (b) is experiencing, or is at risk of, abuse or neglect, and
 - (c) as a result of those needs is unable to protect himself or herself against the abuse or neglect or the risk of it,it must make (or cause to be made) whatever enquiries it thinks necessary to enable it to decide whether any action should be taken in the adult’s case (whether under this Part or otherwise) and, if so, what and by whom.
- (2) “Abuse” includes –
 - (a) having money or other property stolen,
 - (b) being defrauded,
 - (c) being put under pressure in relation to money or other property, and
 - (d) having money or other property misused.

35 Safeguarding Adults Boards

- (1) Each local authority must establish a Safeguarding Adults Board (an “SAB”) for its area.
- (2) The objective of an SAB is to help and protect adults in its area in cases of the kind described in section 34(1).
- (3) The way in which an SAB must seek to achieve its objective is by co-ordinating and ensuring the effectiveness of what each of its members does.
- (4) An SAB may do anything which appears to it to be necessary or desirable for the purpose of achieving its objective.
- (5) Schedule 1 (which includes provision about the membership, strategy and annual report of an SAB) has effect.
- (6) Two or more local authorities may exercise their respective duties under subsection (1) by establishing an SAB for their combined area; and, where they do so, in this section, section 36 and Schedule 1 –
 - (a) a reference to the authority establishing the SAB is to be read as a reference to the authorities establishing it, and
 - (b) a reference to the SAB’s area is a reference to the combined area.

36 Safeguarding adults reviews

- (1) An SAB must arrange for there to be a review of any case in which—
 - (a) an adult in the SAB’s area with needs for care and support (whether or not the local authority was meeting any of those needs) was, or the SAB suspects that the adult was, experiencing abuse or neglect, and
 - (b) the adult dies or there is reasonable cause for concern about how the SAB, a member of it or some other person involved in the adult’s case acted.
- (2) Each member of the SAB must co-operate in and contribute to the carrying out of the review with a view to—
 - (a) identifying the lessons to be learnt from the adult’s case, and
 - (b) applying those lessons to future cases.

37 Abolition of local authority’s power to remove persons in need of care

Section 47 of the National Assistance Act 1948 (which gives a local authority power to remove a person in need of care from home) ceases to apply to persons in England.

38 Protecting property of adults being cared for away from home

- (1) This section applies where—
 - (a) an adult is having needs for care and support met under section 17 or 18 in a way that involves the provision of accommodation, or is admitted to hospital (or both), and
 - (b) it appears to a local authority that there is a danger of loss or damage to movable property of the adult’s in the authority’s area because—
 - (i) the adult is unable (whether permanently or temporarily) to protect or deal with the property, and
 - (ii) no suitable arrangements have been or are being made.
- (2) The local authority must take reasonable steps to prevent or mitigate the loss or damage.
- (3) For the purpose of exercising that duty, the local authority—
 - (a) may at all reasonable times and on reasonable notice enter any premises which the adult was living in immediately before being provided with accommodation or admitted to hospital, and
 - (b) may deal with any of the adult’s movable property in any way which is reasonably necessary for preventing or mitigating loss or damage.
- (4) A local authority may not exercise the power under subsection (3)(a) unless—
 - (a) it has obtained the consent of the adult concerned or, where the adult lacks capacity to give consent, the consent of a person authorised under the Mental Capacity Act to give it on the adult’s behalf, or
 - (b) where the adult lacks capacity to give consent and there is no person so authorised, the local authority is satisfied that exercising the power would be in the adult’s best interests.
- (5) Where a local authority is proposing to exercise the power under subsection (3)(a), the officer it authorises to do so must, if required, produce valid documentation setting out the authorisation to do so.

- (6) A person who, without reasonable excuse, obstructs the exercise of the power under subsection (3)(a) –
 - (a) commits an offence, and
 - (b) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (7) A local authority may recover from an adult whatever reasonable expenses the authority incurs under this section in the adult’s case.

Transition for children to adult care and support, etc.

39 Assessment of a child’s needs for care and support

- (1) Where a local authority receives a request from a child in need or a parent or carer of a child in need to assess the child’s needs for care and support, and it appears to the authority that the child is likely to have such needs on becoming 18, the authority may, if the consent condition is met, assess –
 - (a) what the child’s needs for care and support are, and
 - (b) what they are likely to be when the child becomes 18.
- (2) An assessment under subsection (1) is referred to in this Part as a “child’s needs assessment”.
- (3) “Child in need” means a child for whom, or for whose family or for a member of whose family, services are being provided under section 17 of the Children Act 1989 (services for children in need, their families and others).
- (4) “Parent”, in relation to a child in need, includes –
 - (a) a parent of the child who does not have parental responsibility for the child, and
 - (b) a person who is not a parent of the child but who has parental responsibility for the child.
- (5) “Carer”, in relation to a child in need, means a person, other than a parent, who is providing care for the child (whether or not under or by virtue of a contract or as voluntary work).
- (6) Where the child makes the request mentioned in subsection (1), the consent condition is met if the local authority believes that the child has capacity or is competent to consent to a child’s needs assessment being carried out.
- (7) Where the child’s parent or carer makes the request mentioned in subsection (1), the consent condition is met if –
 - (a) the local authority believes that the child has capacity or is competent to consent to a child’s needs assessment being carried out and the child does so consent, or
 - (b) the local authority believes that the child lacks capacity or is not competent so to consent but the authority is satisfied that carrying out a child’s needs assessment would be in the child’s best interests.
- (8) A local authority which decides not to comply with a request under subsection (1) must give the person who made the request its written reasons for its decision.
- (9) A child’s needs assessment must include an assessment of –
 - (a) the outcomes that the child wishes to achieve in day-to-day life, and

- (b) whether, or to what extent, the provision of care and support could contribute to the achievement of those outcomes.
- (10) A local authority, in carrying out a child’s needs assessment, must so far as it is feasible to do so consult –
- (a) the child,
 - (b) the child’s parents and any carer that the child has, and
 - (c) any person whom the child or a parent or carer of the child requests the local authority to consult.
- (11) Where a person to whom a child’s needs assessment relates becomes 18, the authority must decide whether to treat the child’s needs assessment as a needs assessment; and if the authority decides to do so, this Part applies to the child’s needs assessment as if it were a needs assessment that had been carried out after the person became 18.
- (12) In considering what to decide under subsection (11), the authority must have regard to –
- (a) when the child’s needs assessment was carried out, and
 - (b) whether it appears to the authority that the circumstances of the person to whom the child’s needs assessment relates have changed in a way that might affect the assessment.

40 Assessment of a child’s carer’s needs for support

- (1) Where a local authority receives a request from a carer of a child in need to assess the carer’s needs for support, and it appears to the authority that when the child becomes 18 the child is likely to have needs for care and support and the carer is likely to have needs for support, the authority must assess –
- (a) whether the carer has needs for support, and
 - (b) if the carer does, what they are and what they are likely to be when the child becomes 18.
- (2) An assessment under subsection (1) is referred to in this Part as a “child’s carer’s assessment”.
- (3) “Carer”, in relation to a child in need, means an adult (including a parent) who provides or intends to provide care for the child; but see subsection (8).
- (4) “Child in need” and “parent” each have the meaning given by section 39.
- (5) A child’s carer’s assessment must include an assessment of –
- (a) whether the carer is able to provide care for the child in need and will continue to be able to do so after the child becomes 18, and
 - (b) whether the carer is willing to do so and will continue to be willing to do so after the child becomes 18.
- (6) A local authority, in carrying out a child’s carer’s assessment, must have regard to –
- (a) whether the carer works or wishes to do so, and
 - (b) whether the carer is participating in or wishes to participate in education, training or recreation.
- (7) A local authority, in carrying out a child’s carer’s assessment, must so far as it is feasible to do so consult –
- (a) the carer, and

- (b) any person whom the carer asks the local authority to consult.
- (8) An adult is not a carer for the purposes of this section if the adult provides or intends to provide care –
 - (a) under or by virtue of a contract, or
 - (b) as voluntary work.

41 Assessment of a young carer’s needs for support

- (1) Where a local authority receives a request from a young carer or a young carer’s parent to assess the young carer’s needs for support, and it appears to the authority that the young carer is likely to have such needs on becoming 18, the authority may, if the consent condition is met, assess –
 - (a) whether the young carer has needs for support, and
 - (b) if the young carer does, what those needs are and what they are likely to be when the young carer becomes 18.
- (2) An assessment under subsection (1) is referred to in this Part as a “young carer’s assessment”.
- (3) “Young carer” means a person under 18 –
 - (a) who provides or intends to provide care for an adult (but see subsection (13)), and
 - (b) for whom, or for whose family or for a member of whose family, services are being provided under section 17 of the Children Act 1989.
- (4) “Parent” has the meaning given by section 39.
- (5) Where the young carer makes the request under subsection (1), the consent condition is met if the local authority believes that the young carer has capacity or is competent to consent to a young carer’s assessment being carried out.
- (6) Where the young carer’s parent makes the request under subsection (1), the consent condition is met if –
 - (a) the local authority believes that the young carer has capacity or is competent to consent to a young carer’s assessment being carried out and the young carer does so consent, or
 - (b) the local authority believes that the young carer lacks capacity or is not competent so to consent but the authority is satisfied that carrying out a young carer’s assessment would be in the young carer’s best interests.
- (7) If a local authority decides not to comply with a request under subsection (1), it must give the person who made the request its written reasons for its decision.
- (8) A young carer’s assessment must include an assessment of –
 - (a) whether the young carer is able to provide care for the person in question and will continue to be able to do so after the young carer becomes 18, and
 - (b) whether the young carer is willing to do so and will continue to be willing to do so after the young carer becomes 18.
- (9) A local authority, in carrying out a young carer’s assessment, must have regard to –
 - (a) whether the young carer works or wishes to work (or will so wish after the young carer becomes 18),

- (b) whether the young carer is participating in or wishes to participate in education, training or recreation (or will so wish after the young carer becomes 18).
- (10) A local authority, in carrying out a young carer’s assessment, must so far as it is feasible to do so consult –
- (a) the young carer,
 - (b) the young carer’s parents, and
 - (c) any person whom the young carer or a parent of the young carer requests the authority to consult.
- (11) Where a person to whom a young carer’s assessment relates becomes 18, the authority must decide whether to treat the young carer’s assessment as a carer’s assessment; and if the authority decides to do so, this Part applies to the young carer’s assessment as if it were a carer’s assessment that had been carried out after the person became 18.
- (12) In considering what to decide under subsection (11), the authority must have regard to –
- (a) when the young carer’s assessment was carried out, and
 - (b) whether it appears to the authority that the circumstances of the person to whom the young carer’s assessment relates have changed in a way that might affect the assessment.
- (13) A person is not a young carer for the purposes of this section if the person provides or intends to provide care –
- (a) under or by virtue of a contract, or
 - (b) as voluntary work.

42 Assessments under sections 39 to 41: further provision

- (1) Regulations under section 12 –
- (a) may make such provision about carrying out a child’s needs assessment as they may make about carrying out a needs assessment;
 - (b) may make such provision about carrying out a child’s carer’s assessment or a young carer’s assessment as they may make about carrying out a carer’s assessment.
- (2) A local authority may combine a child’s needs assessment with a child’s carer’s assessment; but the authority may do so only if –
- (a) the local authority believes that the child has capacity or is competent to agree to a combined assessment and the child and the carer do so agree, or
 - (b) the local authority believes that the child lacks capacity or is not competent so to agree but –
 - (i) the authority is satisfied that a combined assessment would be in the child’s best interests, and
 - (ii) the carer agrees to a combined assessment.
- (3) A local authority may combine a young carer’s assessment with a needs assessment carried out in respect of an adult; but the authority may do so only if –
- (a) the local authority believes that the young carer has capacity or is competent to agree to a combined assessment and the young carer and the adult do so agree, or

- (b) the local authority believes that the young carer lacks capacity or is not competent so to agree but—
 - (i) the authority is satisfied that a combined assessment would be in the young carer’s best interests, and
 - (ii) the adult agrees to a combined assessment.
- (4) A local authority may carry out a child’s needs assessment or a child’s carer’s assessment at the same time as it or another body carries out another assessment in the case of the child or any carer the child has.
- (5) A local authority may carry out a young carer’s assessment at the same time as it or another body carries out another assessment in the case of the young carer.
- (6) For the purposes of subsections (4) and (5)—
 - (a) the local authority may carry out the other assessment on behalf of or jointly with the other body, or
 - (b) if the other body has already arranged for the other assessment to be carried out by it jointly with another person, the local authority may carry out the other assessment jointly with the other body and that other person.
- (7) A reference to an assessment includes a reference to part of an assessment.

43 Continuity of services under section 17 of the Children Act 1989

After section 17 of the Children Act 1989 (provision of services for children etc.) insert—

“17ZA Section 17 services: transition for children to adult care and support

- (1) This section applies where a local authority providing services for a child in need in the exercise of functions conferred by section 17 receive a request for a child’s needs assessment or a young carer’s assessment to be carried out in relation to the child.
- (2) If the local authority carry out the requested assessment before the child reaches the age of 18 and decide to treat it as a needs or carer’s assessment in accordance with section 39(11) or 41(11) of the Care and Support Act 2013 (with Part 1 of that Act applying to the assessment as a result), the authority must continue to comply with section 17 after the child reaches the age of 18 until they reach a conclusion in his case.
- (3) If the local authority carry out the requested assessment before the child reaches the age of 18 but decide not to treat it as a needs or carer’s assessment in accordance with either of those provisions of that Act—
 - (a) they must carry out a needs or carer’s assessment (as the case may be) after the child reaches the age of 18, and
 - (b) they must continue to comply with section 17 after he reaches that age until they reach a conclusion in his case.
- (4) If the local authority decide to comply with the request but do not carry out the assessment before the child reaches the age of 18, they must continue to comply with section 17 after he reaches that age until—
 - (a) they decide that the duty under section 9 or 10 of the Care and Support Act 2013 (needs or carer’s assessment) does not arise, or

- (b) having decided that the duty arises and having exercised it, they reach a conclusion in his case.
- (5) If the local authority do not decide, before the child reaches the age of 18, whether or not to comply with the request, they must continue to comply with section 17 after he reaches that age until—
 - (a) they decide that the duty under section 9 or 10 of the Care and Support Act 2013 does not arise, or
 - (b) having decided that the duty arises and having exercised it, they reach a conclusion in his case.
- (6) A local authority reach a conclusion in a person’s case when—
 - (a) they conclude that he does not have needs for care and support or for support (as the case may be), or
 - (b) having concluded that he 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 he 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).
- (7) In this section, “child’s needs assessment”, “young carer’s assessment”, “needs assessment”, “carer’s assessment” and “eligibility criteria” each have the same meaning as in Part 1 of the Care and Support Act 2013.”

44 Power to meet child’s carer’s needs for support

- (1) Where a local authority, having carried out a child’s carer’s assessment, is satisfied that the carer has needs for support, it may meet such of those needs as it considers appropriate.
- (2) Regulations may make provision in connection with the exercise of the power under subsection (1); the regulations may, in particular, provide for provisions of this Part to apply with or without modifications.
- (3) In deciding whether or how to exercise the power under subsection (1), a local authority must have regard to any services being provided to the carer under section 17 of the Children Act 1989.

Enforcement of debts

45 Recovery of charges, interest etc.

- (1) Any sum due to a local authority under this Part is recoverable by the authority as a debt due to it.
- (2) But subsection (1) does not apply in a case where a deferred payment agreement could, in accordance with regulations under section 16(1), be entered into, unless—
 - (a) the local authority has sought to enter into such an agreement with the person from whom the sum is due, and
 - (b) that person has refused.
- (3) A sum is recoverable under this section—

- (a) in a case in which the sum becomes due to the local authority on or after the commencement of this section, within six years of the date the sum becomes due;
 - (b) in any other case, within three years of the date on which it becomes due.
- (4) Where an adult needing care, or a carer, misrepresents or fails to disclose (whether fraudulently or otherwise) to a local authority any material fact in connection with the provisions of this Part, the following sums are due to the authority from the adult needing care or the carer –
- (a) any expenditure incurred by the authority as a result of the misrepresentation or failure, and
 - (b) any sum recoverable under this section which the authority has not recovered as a result of the misrepresentation or failure.
- (5) The costs incurred by a local authority in recovering or seeking to recover a sum due to it under this Part are recoverable by the authority as a debt due to it.
- (6) Regulations may –
- (a) make provision for determining the date on which a sum becomes due to a local authority for the purposes of this section;
 - (b) specify cases or circumstances in which a sum due to a local authority under this Part is not recoverable by it under this section;
 - (c) specify cases or circumstances in which a local authority may charge interest on a sum due to it under this Part;
 - (d) where interest is chargeable, provide that it –
 - (i) must be charged at a rate specified in or determined in accordance with the regulations, or
 - (ii) may not be charged at a rate that exceeds the rate specified in or determined in accordance with the regulations.

46 Transfer of assets to avoid charges

- (1) This section applies in a case where an adult’s needs have been or are being met by a local authority under sections 17 to 19 and where –
- (a) the adult has transferred an asset to another person (a “transferee”),
 - (b) the transfer was undertaken with the intention of avoiding charges for having the adult’s needs met, and
 - (c) either the consideration for the transfer was less than the value of the asset or there was no consideration for the transfer.
- (2) The transferee is liable to pay to the local authority an amount equal to the difference between –
- (a) the amount the authority would have charged the adult were it not for the transfer of the asset, and
 - (b) the amount it did in fact charge the adult.
- (3) But the transferee is not liable to pay to the authority an amount which exceeds the benefit accruing to the transferee from the transfer.
- (4) Where an asset has been transferred to more than one transferee, the liability of each transferee is in proportion to the benefit accruing to that transferee from the transfer.

- (5) “Asset” means anything which may be taken into account for the purposes of a financial assessment.
- (6) The value of an asset (other than cash) is the amount which would have been realised if it had been sold on the open market by a willing seller at the time of the transfer, with a deduction for –
 - (a) the amount of any incumbrance on the asset, and
 - (b) a reasonable amount in respect of the expenses of the sale.
- (7) Regulations may specify cases or circumstances in which liability under subsection (2) does not arise.

Miscellaneous

47 Discharge of hospital patients with care and support needs

Schedule 2 (which includes provision about the discharge of hospital patients with care and support needs) has effect.

48 After-care under the Mental Health Act 1983

- (1) In section 117 of the Mental Health Act 1983 (after-care), in subsection (2), after “to provide” insert “or arrange for the provision of”.
- (2) In subsection (2D) of that section, for the words from “as if” to the end substitute “as if the words “provide or” were omitted.”
- (3) In subsection (3) of that section, after “means the local social services authority” insert “–
 - (a) if, immediately before being detained, the person concerned was ordinarily resident in England, for the area in England in which he was ordinarily resident;
 - (b) if paragraph (a) does not apply in his case but he was detained in a hospital in England and is sent on discharge by that hospital to an area in England, for that area; or
 - (c) in any other case”.
- (4) After that subsection insert –

“(4) Section 33 of the Care and Support Act 2013 applies to a dispute about where a person was ordinarily resident for the purposes of subsection (3)(a) above as it applies to a dispute about where a person was ordinarily resident for the purposes of Part 1 of that Act.”
- (5) After subsection (4) insert –

“(5) In this section, “after-care services” means services the purpose of which is –

 - (a) to meet a need arising from the mental disorder of the person concerned; and
 - (b) to reduce the likelihood of the person requiring admission to a hospital again for treatment for the disorder.”

- (6) After section 117 of that Act insert –

“117A After-care: preference for particular accommodation

- (1) The Secretary of State may by regulations provide that where –
- (a) the local social services authority under section 117 is, in discharging its duty under subsection (2) of that section, providing or arranging for the provision of accommodation for the person concerned;
 - (b) the person concerned expresses a preference for particular accommodation; and
 - (c) any prescribed conditions are met,
- the local social services authority must provide or arrange for the provision of the person’s preferred accommodation.
- (2) Regulations under this section may provide for the person concerned, or a person of a prescribed description, to pay for some or all of the additional cost in prescribed cases.
- (3) In subsection (2), “additional cost” means the cost of providing or arranging for the provision of the person’s preferred accommodation less the amount that the local social services authority would expect to be the usual cost of providing or arranging for the provision of accommodation of that kind.
- (4) The power to make regulations under this section –
- (a) is exercisable only in relation to local social services authorities in England;
 - (b) includes power to make different provision for different cases or areas.”
- (7) The ways in which a local authority may exercise its duty under section 117 of the Mental Health Act 1983 (after-care) include by making direct payments; and for that purpose Schedule 3 (which includes modifications of the provisions of this Part relating to direct payments) has effect.
- (8) In the case of a person who, immediately before the commencement of subsections (3) and (4), is being provided with after-care services under section 117 of the Mental Health Act 1983, the amendments made by those subsections do not apply while those services are continuing to be provided to that person.

49 Registers of sight impaired adults, disabled adults, etc.

- (1) A local authority must establish and maintain a register of sight impaired and severely sight impaired adults who are ordinarily resident in its area.
- (2) Regulations may specify descriptions of persons who are, or are not, to be treated as being sight impaired or severely sight impaired for the purposes of this section.
- (3) A local authority may establish and maintain one or more registers of adults to whom subsection (4) applies, and who are ordinarily resident in the local authority’s area, for the purposes in particular of –
- (a) planning the provision by the authority of services to meet needs for care and support, and
 - (b) monitoring changes over time in the number of adults in the authority’s area with needs for care and support and the types of needs they have.

- (4) This subsection applies to an adult who –
- (a) has a disability,
 - (b) has a physical or mental impairment which is not a disability but which gives rise, or which the authority considers may in the future give rise, to needs for care and support, or
 - (c) comes within any other category of persons the authority considers appropriate to include in a register of persons who have, or the authority considers may in the future have, needs for care and support.
- (5) “Disability” has the meaning given by section 6 of the Equality Act 2010.

50 Guidance

- (1) A local authority must act under the general guidance of the Secretary of State in the exercise of functions given to it by this Part or by regulations under this Part.
- (2) Before issuing any guidance for the purposes of subsection (1), the Secretary of State must consult such persons as the Secretary of State considers appropriate.

51 Delegation of local authority functions

- (1) A local authority may authorise a person to exercise on its behalf a function it has under –
 - (a) this Part or regulations under this Part (but see subsection (2)), or
 - (b) section 117 of the Mental Health Act 1983 (after-care services).
- (2) The references in subsection (1)(a) to this Part do not include a reference to –
 - (a) sections 4 and 5 (co-operating),
 - (b) section 6 (promoting integration with health services etc.),
 - (c) section 14 (imposing charges),
 - (d) sections 28 to 30 (making direct payments),
 - (e) sections 34 to 38 (safeguarding adults at risk of abuse or neglect), or
 - (f) this section.
- (3) An authorisation under this section may authorise an employee of the authorised person to exercise the function to which the authorisation relates; and for that purpose, where the authorised person is a body corporate, “employee” includes a director or officer of the body.
- (4) An authorisation under this section may authorise the exercise of the function to which it relates –
 - (a) either wholly or to the extent specified in the authorisation;
 - (b) either generally or in cases, circumstances or areas so specified;
 - (c) either unconditionally or subject to conditions so specified.
- (5) An authorisation under this section –
 - (a) is for the period specified in the authorisation;
 - (b) may be revoked by the local authority;
 - (c) does not prevent the local authority from exercising the function to which the authorisation relates.
- (6) Anything done or omitted to be done by or in relation to a person authorised under this section in, or in connection with, the exercise or purported exercise

of the function to which the authorisation relates is to be treated for all purposes as done or omitted to be done by or in relation to the local authority.

- (7) But subsection (6) does not apply –
- (a) for the purposes of the terms of any contract between the authorised person and the local authority which relate to the function, or
 - (b) for the purposes of any criminal proceedings brought in respect of anything done or omitted to be done by the authorised person.
- (8) Schedule 15 to the Deregulation and Contracting Out Act 1994 (which permits disclosure of information between local authorities and contractors where that is necessary for the exercise of the functions concerned, even if that would otherwise be unlawful) applies to an authorisation under this section as it applies to an authorisation by virtue of an order under section 70(2) of that Act.
- (9) The Secretary of State may by order –
- (a) amend subsection (1) so as to add to or remove from the list a provision relating to care and support for adults or support for carers;
 - (b) amend subsection (2) so as to add to or remove from the list a provision of this Part;
 - (c) impose conditions or other restrictions on the exercise of the power under subsection (1), whether by amending this section or otherwise.
- (10) The provision which may be made in an order under subsection (9) in reliance on section 79(7) (supplementary etc. provision in orders under this Act) includes, in particular, provision as to the rights and obligations of local authorities and persons authorised under this section in light of the provision made by the order.
- (11) “Function” includes a power to do anything that is calculated to facilitate, or is conducive or incidental to, the exercise of a function.

General

52 Part 1: interpretation

- (1) For the purposes of this Part, an expression in the first column of the following table is defined or otherwise explained by the provision of this Act specified in the second column.

<i>Expression</i>	<i>Provision</i>
Abuse	Section 34(2)
Adult	Section 1(5)
Adult needing care	Section 10(3)
Authority under the Mental Capacity Act 2005	Subsection (3) below
Best interests	Subsection (2) below
Capacity, having or lacking	Subsection (2) below
Care and support plan	Section 24

<i>Expression</i>	<i>Provision</i>
Carer (other than in sections 39 to 44 and Part 2 of Schedule 4)	Section 10(3), (7) and (8)
Carer's assessment	Sections 10(2) and 12(6) and (7)
Direct payment	Sections 28 and 29
Eligibility criteria	Section 13
Financial assessment	Section 15(4)
Financial limit	Section 15(7)
Financial year	Section 80
The health service	Section 80
Local authority	Section 1(4)
Needs assessment	Sections 9(2) and 12(6) and (7)
Personal budget	Section 25
Support plan	Section 24
Well-being	Section 1(2)

- (2) A reference in this Part to having or lacking capacity, or to a person's best interests, is to be interpreted in accordance with the Mental Capacity Act 2005.
- (3) A reference in this Part to being authorised under the Mental Capacity Act 2005 is a reference to being authorised (whether in general or specific terms) as—
- (a) a donee of a lasting power of attorney granted under that Act, or
 - (b) a deputy appointed by the Court of Protection under section 16(2)(b) of that Act.

53 Repeals and revocations

- (1) Schedule 4 (which includes repeals and savings) has effect.
- (2) The Secretary of State may by order provide for a provision specified in Part 1 of Schedule 4 to be disapplied in relation to England, subject to such savings or other limitations as may be specified, pending the repeal or revocation of the provision by that Part of that Schedule.

PART 2

HEALTH

CHAPTER 1

HEALTH EDUCATION ENGLAND

Establishment

54 Health Education England

- (1) There is to be a body corporate called “Health Education England” (referred to in this Act as “HEE”).
- (2) Schedule 5 (which includes provision about HEE’s constitution, the exercise of its functions and its financial and reporting duties) has effect.
- (3) The Special Health Authority called Health Education England is abolished; and, in consequence of that, revoke –
 - (a) the Health Education England (Establishment and Constitution) Order 2012 (S.I. 2012/1273), and
 - (b) the Health Education England Regulations (S.I. 2012/1290).
- (4) The Secretary of State may by order provide for the transfer of property, rights and liabilities from that Special Health Authority to HEE; for further provision about an order under this section, see section 76.

National functions

55 Planning education and training for care workers etc.

- (1) HEE must exercise on behalf of the Secretary of State the duty under section 1F(1) of the National Health Service Act 2006 (planning and delivery of education and training), so far as that duty applies to the functions of the Secretary of State under –
 - (a) section 63(1) and (5) of the Health Services and Public Health Act 1968 (instruction for officers of hospital authorities etc.),
 - (b) section 258(1) of the National Health Service Act 2006 (university clinical teaching and research), and
 - (c) such other of the enactments listed in section 1F(3) of that Act as regulations may specify.
- (2) Regulations may –
 - (a) provide for the duty under section 1F(1) of the National Health Service Act 2006 –
 - (i) to apply to such other functions of the Secretary of State as are specified;
 - (ii) to be exercisable in relation to persons who are, or who are considering becoming, engaged in activities of a specified type, and
 - (b) impose on HEE a duty to exercise the duty as it applies as a result of provision made under paragraph (a).

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- (3) Regulations may provide that the duty under subsection (1) or a duty imposed under subsection (2) is exercisable only, or is not exercisable, in relation to persons of a specified description.
 - (4) In each of the following provisions of the National Health Service Act 2006, after “the Secretary of State” insert “and Health Education England” –
 - (a) section 1F(2) (duty on providers of health services to support system of education and training for health care workers);
 - (b) section 13M (duty on National Health Service Commissioning Board to support that system);
 - (c) section 14Z (duty on clinical commissioning groups to support that system).
 - (5) HEE may, with the consent of the Secretary of State, carry out such other activities relating to education and training for care workers as it considers appropriate; it may, for example –
 - (a) work with persons who provide health services to ensure an adequate provision of continuing professional development for care workers;
 - (b) provide a service for giving information and advice on careers in the health service.
 - (6) Where HEE generates income from carrying out activities for the purposes of or in connection with the exercise of its functions, it must ensure that the income is used for exercising its functions.
 - (7) After section 63(6) of the Health Services and Public Health Act 1968 insert –
 - “(6A) The Secretary of State may make such other payments as the Secretary of State considers appropriate to persons availing themselves of such instruction in England.
 - (6B) The Secretary of State may make a payment under subsection (6)(b) or (6A) subject to such terms and conditions as the Secretary of State decides; and the Secretary of State’s power to make such a payment includes power to suspend or terminate the payment, or to require repayment, in such circumstances as the Secretary of State decides.”
 - (8) The power of the Secretary of State under section 63(6) or (6A) of the Health Services and Public Health Act 1968 is exercisable concurrently with HEE; but, in exercising the power, HEE must have regard to any guidance or other information issued by the Secretary of State about its exercise.
 - (9) “Care workers” means persons in relation to whom HEE’s duty under section 1F(1) of the National Health Service Act 2006 is exercisable.
 - (10) “Health services” means health services provided as part of the health service.

56 Ensuring sufficient skilled care workers for the health service

- (1) HEE must exercise its functions with a view to ensuring that a sufficient number of persons with the skills and training to work as care workers for the purposes of the health service is available to do so throughout England.
- (2) Regulations may provide that the duty under subsection (1) is exercisable only, or is not exercisable, in relation to persons of a specified description.

57 Quality improvement in education and training, etc.

- (1) HEE must exercise its functions with a view to securing continuous improvement—
 - (a) in the quality of education and training provided for care workers;
 - (b) in the quality of health services.
- (2) HEE must, in exercising its functions, have regard to—
 - (a) the need to promote research into matters relating to the activities listed in section 63(2) of the Health Services and Public Health Act 1968 (social care services, primary care services and other health services);
 - (b) the need to promote the use in those activities of evidence obtained from the research.
- (3) In section 2(2) of the Health Act 2009 (bodies required to have regard to NHS Constitution when exercising health service functions), after paragraph (g) insert—
 - “(h) Health Education England.”
- (4) HEE must, in exercising its functions, act with a view to securing that education and training for care workers is provided in a way which promotes the NHS Constitution.
- (5) Regulations may—
 - (a) require HEE to exercise specified functions in a specified manner;
 - (b) give HEE further functions relating to education and training for care workers.
- (6) “NHS Constitution” has the meaning given by section 1(1) of the Health Act 2009.

58 Priorities and outcomes

- (1) The Secretary of State must publish a document which specifies—
 - (a) the priorities that the Secretary of State has set in relation to the education and training to be provided for care workers, and
 - (b) the outcomes that the Secretary of State has set for HEE to achieve having regard to those priorities.
- (2) The Secretary of State—
 - (a) may revise a document published under subsection (1), and
 - (b) if the Secretary of State does so, must publish it as revised.
- (3) HEE must publish a document which—
 - (a) specifies the priorities that it has set, for the period specified in the document, for the planning and delivery of education and training to care workers,
 - (b) specifies the outcomes that HEE expects to achieve in that respect during that period having regard to those priorities, and
 - (c) includes, or refers to a document which includes, guidance for the governing bodies of LETBs (see sections 61 and 62) on the exercise of the function under section 65(1).
- (4) HEE must ensure that the priorities and outcomes specified for the purposes of subsection (3)(a) and (b) are consistent with those specified for the purposes of subsection (1)(a) and (b).

- (5) A document under subsection (3) may specify different periods in relation to different categories of care worker.
- (6) HEE must, before the end of 12 months beginning with the date on which a document under subsection (3) is published—
 - (a) review the document, and,
 - (b) if HEE revises it, publish it as revised.
- (7) The Secretary of State may exercise the duty under subsection (1), and HEE may exercise the duty under subsection (3), by publishing two or more documents which, taken together, comply with the subsection in question.

59 Sections 56 and 58: matters to which HEE must have regard

In exercising the duty under section 56(1) (ensuring sufficient skilled workers for the health service) or the duty under section 58(3) (setting priorities and outcomes for education and training), HEE must have regard to the following matters in particular—

- (a) the likely future demand for health services and for persons with the skills and training to work as care workers for the purposes of the health service,
- (b) the sustainability of the supply of persons with the skills and training to work as such,
- (c) the priorities that providers of health services have for the education and training of persons wishing to work as such,
- (d) the mandate published under section 13A of the National Health Service Act 2006,
- (e) the objectives of the Secretary of State in exercising public health functions (as defined by section 1H of that Act),
- (f) the priorities that the National Health Service Commissioning Board has for the provision of health services,
- (g) documents published by the Secretary of State under section 58(1), and
- (h) such other matters as regulations may specify.

60 Advice

- (1) HEE must make arrangements for obtaining advice on the exercise of its functions from persons who are involved in, or who HEE thinks otherwise have an interest in, the provision of education and training for care workers.
- (2) HEE must ensure that it receives representations from the following, in particular, under the arrangements it makes under subsection (1)—
 - (a) persons who provide health services;
 - (b) persons to whom health services are provided;
 - (c) carers for persons to whom health services are provided;
 - (d) care workers;
 - (e) bodies which regulate care workers;
 - (f) persons who provide, or contribute to the provision of, education and training for care workers.
- (3) HEE may exercise a duty under subsection (2) by ensuring that it receives representations from organisations which represent the persons referred to in the paragraph in question.

- (4) Regulations may specify –
 - (a) matters relating to the exercise of its functions on which HEE must seek to obtain advice under the arrangements under subsection (1);
 - (b) descriptions of other persons from whom HEE must ensure that it receives representations under the arrangements.
- (5) HEE must advise the Secretary of State on such matters relating to its functions as the Secretary of State may request; and a request under this subsection may specify how and when the advice is to be provided.
- (6) “Carer” means an adult who provides or intends to provide care for another person.

Local functions

61 Local Education and Training Boards

- (1) HEE must work with commissioners of health services to ensure that every person who provides health services becomes a member of a group –
 - (a) the other members of which are other persons who provide health services in the same area in England in which that person does, and
 - (b) the purpose of which is to help with the exercise of functions under this Chapter.
- (2) A group of the kind referred to in subsection (1) is called a Local Education and Training Board (and is referred to in this Chapter as an “LETB”); and each LETB must have a governing body established in accordance with section 62.
- (3) A provider of health services may be a member of more than one LETB.
- (4) Regulations must require specified commissioners of health services to include in the arrangements under the National Health Service Act 2006 for the provision of such services terms to ensure that a provider of such services –
 - (a) is a member of an LETB;
 - (b) co-operates with the governing body of the LETB of which it is a member (or, where it is a member of more than one LETB, with the governing body of each LETB of which it is a member), in such manner and to such extent as the governing body may request, in planning the provision of, and in providing, education and training for care workers;
 - (c) provides the governing body with such information as it may request;
 - (d) complies with such other obligations relating to education and training for care workers as may be specified.
- (5) Regulations may specify factors to which the governing body of an LETB must, when proposing to make a request of the type mentioned in subsection (4)(b) or (c), have regard in considering the reasonableness of making the request.
- (6) A reference to a commissioner of health services is a reference to –
 - (a) the National Health Service Commissioning Board,
 - (b) a clinical commissioning group, or
 - (c) such other person as arranges for the provision of such services.

62 The governing body of an LETB: establishment etc.

- (1) Where, on an application under this section, HEE is satisfied that the applicants meet the criteria that HEE has set for the purpose (“the establishment criteria”), HEE must establish the applicants as the governing body of an LETB for such area as HEE considers appropriate.
- (2) Where, on an application under this section, HEE is satisfied that the applicants meet some (but not all) of the establishment criteria, it may nonetheless establish the applicants as the governing body of an LETB for such area and subject to such conditions as HEE considers appropriate.
- (3) The members of the governing body of an LETB must include members of the LETB; and the following persons are also entitled to serve as members of the governing body of an LETB –
 - (a) persons who provide education or training for care workers or for persons wishing to work as care workers, and who are in the area in which the members who provide health services do so, and
 - (b) persons of such other description as HEE may decide.
- (4) Neither a non-executive member of HEE nor an executive member is eligible for membership of a governing body established under subsection (1) or (2); and “non-executive member” and “executive member” each have the meaning given by paragraph 1 of Schedule 5.
- (5) The establishment criteria must include criteria designed to ensure that a majority of the members of the governing body of an LETB are members of the LETB.
- (6) Where there is an area of England which does not include or form part of the area of the governing body of an LETB, HEE must establish a governing body for the area in question; and the persons entitled to serve as members of the governing body include employees of HEE.
- (7) On establishing the governing body of an LETB under this section, HEE must appoint the chair of the governing body; but it may not appoint as chair a person who –
 - (a) provides health services in the area for which the LETB is established, or
 - (b) provides education or training for care workers, or for persons wishing to work as care workers, and is in the area in which the members of the governing body who provide health services do so.
- (8) HEE must notify applicants under this section of the decision on the application and –
 - (a) in the case of an approval on an application under subsection (1) or (2), the area for which the LETB is established and the appointment under subsection (7);
 - (b) in the case of a rejection, the reasons for the rejection.
- (9) HEE, having complied with subsection (8), must publish the decision and, in the case of a rejection, the reasons for the rejection.
- (10) The governing body of an LETB, on being established under this section, becomes a committee of HEE.

- (11) The conditions on which a person is appointed as a member of the governing body of an LETB must include a condition not to use information obtained in the capacity as such otherwise than for the purposes of the governing body.
- (12) Regulations may make further provision about the membership of the governing body of an LETB.

63 Governing bodies of LETBs: functions, etc.

- (1) The main function of the governing body of an LETB is to exercise on HEE's behalf its functions under sections 55(1) and 56(1) (planning and delivering education for care workers, ensuring sufficient skilled care workers in the health service), so far as they are exercisable in or in relation to the governing body's area.
- (2) In carrying out its main function, the governing body of an LETB must represent the interests of all the members of that LETB.
- (3) The governing body of an LETB may co-operate with the governing body of another LETB in the exercise of functions; and two or more governing bodies may exercise functions jointly.
- (4) HEE may attend any meeting held by the governing body of an LETB about a matter of concern to HEE.
- (5) Schedule 6 (which includes provision about the area of the governing body of an LETB, the establishment criteria and the exercise of a governing body's functions) has effect.

64 Education and training plans

- (1) The governing body of each LETB must publish for each financial year a document (called an "education and training plan") specifying how it proposes to exercise its main function (see section 63(1)).
- (2) The education and training plan of the governing body of an LETB must specify how the governing body proposes to achieve—
 - (a) the outcomes set by the Secretary of State under section 58(1)(b), and
 - (b) the outcomes set by HEE under section 58(3)(b).
- (3) In preparing its education and training plan, the governing body of an LETB must have regard to—
 - (a) the priorities that the providers of health services whom the governing body represents have in relation to the provision in the body's area of health services and of education and training for care workers or persons wishing to become care workers,
 - (b) the priorities that commissioners of health services in the governing body's area have in relation to those matters,
 - (c) the priorities set by the Secretary of State under section 58(1)(a),
 - (d) the priorities set by HEE under section 58(3)(a),
 - (e) any assessment of relevant needs relating to the governing body's area prepared under section 116 of the Local Government and Public Involvement in Health Act 2007, and
 - (f) any joint health and wellbeing strategy relating to the governing body's area prepared under section 116A of that Act.

- (4) In preparing its education and training plan, the governing body of an LETB must involve (whether by consultation or otherwise) –
 - (a) the providers of health services whom the governing body represents,
 - (b) the commissioners of health services in the governing body's area,
 - (c) the Health and Wellbeing Board for that area,
 - (d) such persons as HEE may direct the governing body to involve, and
 - (e) such other persons as the governing body considers appropriate.
- (5) Before publishing its education and training plan, the governing body of an LETB must –
 - (a) if it meets the establishment criteria, obtain acknowledgment from HEE that HEE has reviewed the plan;
 - (b) if it meets only some of the establishment criteria, obtain approval of the plan from HEE.
- (6) Before giving an acknowledgment or approval under subsection (5), HEE may direct the governing body concerned to amend the education and training plan as HEE specifies.
- (7) But, in the case of a governing body which meets all the establishment criteria, the only amendments which HEE may direct to be made under subsection (6) are those HEE considers necessary in order to ensure that the governing body achieves the outcomes set by HEE under section 58(3)(b).
- (8) Where HEE exercises the power under subsection (7), it must publish –
 - (a) the amendments in question, and
 - (b) its reasons for directing them to be made.
- (9) The governing body of an LETB may itself amend its education and training plan –
 - (a) after sending it to HEE for review or approval and before HEE has reviewed or approved it;
 - (b) after HEE has approved or renewed it.
- (10) But if the governing body of an LETB considers that amendments under subsection (9) are significant, it must send HEE the plan as amended (and subsections (5) to (8) apply accordingly).
- (11) HEE may give the governing bodies of LETBs directions about –
 - (a) what to include in their education and training plans;
 - (b) how to present them;
 - (c) when to send them to HEE for review or approval.
- (12) The governing body of an LETB may exercise the duty under subsection (1) by preparing two or more documents which, taken together, specify how it proposes to exercise its main function so as to achieve the outcomes referred to in subsection (2)(a) and (b).

65 Commissioning education and training

- (1) The governing body of each LETB must for each financial year arrange for the provision of education and training in accordance with its education and training plan for that year.

- (2) HEE must for each financial year allocate to the governing body of each LETB the amount that HEE considers appropriate to enable the governing body to comply with subsection (1).
- (3) Where HEE considers that it would be better for the arrangements for the provision of certain education and training to be made on a national basis, it—
 - (a) may arrange for the provision of that education and training accordingly, or
 - (b) may direct one or more governing bodies of LETBs to do so on its behalf.
- (4) Before exercising a power under subsection (3), HEE must (whether by consultation or otherwise) involve the governing bodies of LETBs in making its decision.
- (5) The governing body of an LETB may arrange for another person to help it to exercise the function under subsection (1) or (where it is directed to do so under subsection (3)(b)) the function under subsection (3)(a) (and such functions as are exercisable for the purposes of or in connection with the function concerned).
- (6) The governing body of each LETB—
 - (a) must keep under review the quality of the education and training the provision of which it arranges, and
 - (b) must report its findings to such persons as it considers may be interested by them.
- (7) The governing body of an LETB must produce such reports on the exercise of the function under subsection (1) (including on the quality of the education and training the provision of which it arranges) as HEE may require.

CHAPTER 2

THE HEALTH RESEARCH AUTHORITY

Establishment

66 The Health Research Authority

- (1) There is to be a body corporate called the Health Research Authority (referred to in this Act as “the HRA”).
- (2) Schedule 7 (which includes provision about the HRA’s constitution, the exercise of its functions and its financial and reporting duties) has effect.
- (3) The Special Health Authority called the Health Research Authority is abolished; and, in consequence of that, revoke—
 - (a) the Health Research Authority (Establishment and Constitution) Order 2011 (S.I. 2011/2323), and
 - (b) the Health Research Authority Regulations 2011 (S.I. 2011/2341).
- (4) The Secretary of State may by order provide for the transfer of property, rights and liabilities from that Special Health Authority to the HRA; for further provision about an order under this section, see section 76.

General functions

67 The HRA’s functions

- (1) The main functions of the HRA are –
 - (a) functions relating to the co-ordination and standardisation of practice relating to the regulation of health and social care research (see section 68).
 - (b) functions relating to research ethics committees (see sections 69 to 72);
 - (c) functions as a member of the United Kingdom Ethics Committee Authority (see section 73 and the Medicines for Human Use (Clinical Trials) Regulations 2004 (S.I. 2004/1031));
 - (d) functions relating to approvals for processing confidential information relating to patients (see section 74 and the Health Service (Control of Patient Information) Regulations 2002 (S.I. 2002/1438)).
- (2) The main objective of the HRA in exercising its functions is –
 - (a) to protect participants and potential participants in health or social care research and the general public by encouraging research that is safe and ethical, and
 - (b) to promote the interests of those participants and potential participants and the general public by facilitating the conduct of such research.
- (3) Health research is research into matters relating to people’s physical or mental health.
- (4) Social care research is research into matters relating to personal care or other practical assistance for individuals in need of care or assistance because of age, physical or mental illness, disability, pregnancy, childbirth, dependence on alcohol or drugs or other similar circumstances; and “illness” has the meaning given by section 275(1) of the National Health Service Act 2006.
- (5) A reference to health or social care research does not include a reference to research into matters which are within the legislative competence of a devolved legislature.
- (6) A reference to research that is ethical is a reference to research that conforms to generally accepted ethical standards.
- (7) The Secretary of State may by order amend subsection (1) in consequence of –
 - (a) functions being given to the HRA,
 - (b) functions being taken away from the HRA, or
 - (c) changes to the description of functions that the HRA has for the time being.

Regulatory practice

68 Co-ordinating and promoting regulatory practice etc.

- (1) The HRA and each of the following must co-operate with each other in the exercise of their respective functions relating to health or social care research, with a view to co-ordinating and standardising practice relating to the regulation of such research –
 - (a) the Secretary of State;

- (b) the licensing authority for the purposes of the Medicines Act 1968;
 - (c) the Health and Social Care Information Centre;
 - (d) the Chief Medical Officer of the Department of Health;
 - (e) the Human Fertilisation and Embryology Authority;
 - (f) the Human Tissue Authority;
 - (g) the Care Quality Commission;
 - (h) the Administration of Radioactive Substances Advisory Committee.
- (2) In exercising the duty under subsection (1), a person must have regard to the need—
- (a) to protect participants and potential participants in health or social care research and the general public by encouraging research that is safe and ethical, and
 - (b) to promote the interests of those participants and potential participants and the general public by facilitating the conduct of such research.
- (3) The HRA must promote the co-ordination and standardisation of practice in the United Kingdom relating to the regulation of health and social care research; and it must, in doing so, seek to ensure that such regulation is proportionate.
- (4) The HRA and each devolved authority must co-operate with each other in the exercise of their respective functions relating to the regulation of assessments of the ethics of health and social care research, with a view to co-ordinating and standardising practice in the United Kingdom relating to such regulation.
- (5) The HRA must—
- (a) keep under review matters relating to the ethics of health or social care research and matters relating to the regulation of such research, and
 - (b) provide the Secretary of State with such advice about the matters referred to in paragraph (a) as the Secretary of State requests.
- (6) The HRA must publish guidance on—
- (a) principles of good practice in the conduct of health and social care research;
 - (b) requirements, whether imposed by enactments or otherwise, to which persons conducting health or social care research are subject.
- (7) The Secretary of State may by order amend subsection (1) so as to add a person to the list or remove a person from it.
- (8) The ways in which persons may co-operate with each other under subsection (1) or (4) include, for example, by sharing information.
- (9) Section 290 of the Health and Social Care Act 2012 (duties for health and social care authorities to co-operate), so far as applying to a person for the time being specified in subsection (1), does not apply to functions of that person relating to health or social care research.
- (10) Section 67(5) (exclusion of research into matters within devolved competence) does not apply to the reference in subsection (1) or (4) to health and social care research.

Research ethics committees

69 The HRA’s policy on research ethics committees

- (1) The HRA must ensure that research ethics committees it recognises or establishes under this Chapter provide an efficient and effective means of assessing the ethics of health and social care research.
- (2) A research ethics committee is a group of persons which assesses the ethics of research involving individuals; and the ways in which health or social care research might involve individuals include, for example –
 - (a) by obtaining information from them;
 - (b) by obtaining bodily tissue or fluid from them;
 - (c) by using information, tissue or fluid obtained from them on a previous occasion;
 - (d) by requiring them to undergo a test or other process (including xenotransplantation).
- (3) For the purposes of subsection (1), the HRA –
 - (a) must publish a document (called “the REC policy document”) which specifies the requirements which it expects research ethics committees it recognises or establishes under this Chapter to comply with, and
 - (b) must monitor their compliance with those requirements.
- (4) The HRA may do such other things in relation to research ethics committees it recognises or establishes under this Chapter as it considers appropriate; it may, for example –
 - (a) co-ordinate their work;
 - (b) allocate work to them;
 - (c) develop and maintain training programmes designed to ensure that their members and staff can carry out their work effectively;
 - (d) provide them with advice and help (including help in the form of financial assistance).
- (5) The requirements in the REC policy document may, for example, relate to –
 - (a) membership;
 - (b) proceedings;
 - (c) staff;
 - (d) accommodation and facilities;
 - (e) expenses;
 - (f) objectives and functions;
 - (g) accountability;
 - (h) procedures for challenging decisions.
- (6) The HRA must ensure that the requirements imposed on research ethics committees in the REC policy document do not conflict with the requirements imposed on them by the Medicines for Human Use (Clinical Trials) Regulations 2004 (S.I. 2004/1031).
- (7) Before publishing the REC policy document, the HRA must consult –
 - (a) the devolved authorities, and
 - (b) such other persons as it considers appropriate.

- (8) The HRA may revise the REC policy document and, where it does so, it must publish the document as revised; subsection (7) applies to a revised policy document in so far as the HRA considers the revisions significant.
- (9) The HRA must indemnify the members of each research ethics committee it recognises or establishes under this Chapter against any liability to a third party for loss, damage or injury arising from the committee's exercise of its functions in assessing the ethics of health or social care research.

70 Approval of research

- (1) The HRA must publish guidance on—
 - (a) the cases in which, in its opinion, good practice requires a person proposing to conduct health or social care research that involves individuals to obtain the approval of a research ethics committee recognised or established by the HRA under this Chapter, and
 - (b) the cases in which an enactment requires a person proposing to conduct research of that kind to obtain that approval.
- (2) Before publishing guidance under subsection (1), the HRA must—
 - (a) consult the devolved authorities and such other persons as the HRA considers appropriate, and
 - (b) obtain the approval of the Secretary of State.
- (3) The HRA may revise guidance under subsection (1) and, where it does so, it must publish the guidance as revised; subsection (2) applies to revised guidance in so far as the HRA considers the revisions significant.
- (4) Schedule 8 (which amends various references to research ethics committees in secondary legislation) has effect.

71 Recognition by the HRA

- (1) The HRA may, on an application made by or on behalf of a group of persons, recognise the group as a research ethics committee which is capable of—
 - (a) approving research of the kind referred to in section 70(1), and
 - (b) giving such other approvals as enactments require.
- (2) The HRA may not recognise a group under this section unless it is satisfied that—
 - (a) the group will, if recognised, comply with the requirements set out in the REC policy document, and
 - (b) there is or will be a demand for such a group.
- (3) In deciding whether to recognise a group under this section, the HRA must have regard to whether the group is recognised as a research ethics committee by or on behalf of a devolved authority.
- (4) The HRA may do anything (including providing financial assistance) to help a group wishing to be recognised under this section to reach a position from which it should be able to make an application for recognition under this section that is likely to succeed.
- (5) The HRA may revoke a recognition under this section if it is satisfied that—
 - (a) the group to which the recognition applies is not complying with the requirements specified in the REC policy document,

- (b) the group is not (or is not properly) carrying out its function of assessing the ethical aspects of research, or
 - (c) revocation is necessary or desirable for some other reason.
- (6) A group in existence immediately before the commencement of section 66, and established or recognised by or on behalf of the old Health Research Authority, or by or on behalf of the Secretary of State, as a research ethics committee which assesses health or social care research is to be regarded as recognised by the HRA under this section.
- (7) The reference in subsection (6) to the old Health Research Authority is a reference to the Special Health Authority called the Health Research Authority (and abolished by clause 66).

72 Establishment by the HRA

- (1) The HRA may establish research ethics committees which have the following functions –
- (a) approving research of the kind referred to in section 70(1);
 - (b) giving such other approvals as enactments require.
- (2) The HRA must ensure that a research ethics committee established under this section complies with the requirements set out in the REC policy document.
- (3) The HRA may abolish a research ethics committee established under this section.

73 Membership of the United Kingdom Ethics Committee Authority

In regulation 5 of the Medicines for Human Use (Clinical Trials) Regulations 2004 (S.I. 2004/1031) (United Kingdom Ethics Committee Authority) –

- (a) in paragraphs (1), (2) and (3), for “the Secretary of State for Health”, in each place it appears, substitute “the Health Research Authority”, and
- (b) in paragraph (2), for “the Secretary of State” substitute “the Health Research Authority”.

Patient information

74 Approval for processing confidential patient information

- (1) The Health Service (Control of Patient Information) Regulations 2002 (S.I. 2002/1438) are amended as follows.
- (2) In regulation 5 (the title to which becomes “Approval for processing information”) –
- (a) the existing text becomes paragraph (1), and
 - (b) in sub-paragraph (a) of that paragraph, for “both the Secretary of State and a research ethics committee” substitute “the Health Research Authority”.
- (3) After paragraph (1) of that regulation insert –
- “(2) The Health Research Authority may not give an approval under paragraph (1)(a) unless a research ethics committee has approved the medical research concerned.”

- (4) After paragraph (2) of that regulation insert –
 - “(3) The Health Research Authority shall put in place and operate a system for reviewing decisions it makes under paragraph (1)(a).”
- (5) In regulation 6 (registration requirements in relation to information), in paragraph (1) –
 - (a) before “the Secretary of State” insert “the Health Research Authority or”, and
 - (b) before “he” insert “it or”.
- (6) In paragraph (2)(d) of that regulation, before “the Secretary of State” insert “the Health Research Authority or (as the case may be)”.
- (7) In paragraph (3) of that regulation, for the words from the beginning to “in the register” substitute “The Health Research Authority shall retain the particulars of each entry it records in the register, and the Secretary of State shall retain the particulars of each entry he records in the register.”
- (8) For paragraph (4) of that regulation substitute –
 - “(4) The Health Research Authority shall, in such manner and to such extent as it considers appropriate, publish entries it records in the register; and the Secretary of State shall, in such manner and to such extent as he considers appropriate, publish entries he records in the register.”

CHAPTER 3

MISCELLANEOUS AND GENERAL

Miscellaneous

75 Amendments to the Public Bodies Act 2011

- (1) The Public Bodies Act 2011 is amended as follows.
- (2) In Schedule 1 (power to abolish bodies), at the appropriate place insert –
 - “Human Fertilisation and Embryology Authority”, and
 - “Human Tissue Authority”.
- (3) In Schedule 5 (power to modify or transfer functions), omit –
 - (a) the entry for the Human Fertilisation and Embryology Authority, and
 - (b) the entry for the Human Tissue Authority.

76 Transfer orders

- (1) An order under section 54 (establishment of Health Education England) or section 66 (establishment of the Health Research Authority) (a “transfer order”) may make provision for rights and liabilities relating to an individual’s contract of employment.
- (2) A transfer order may, in particular, make provision the same as or similar to provision in the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246).

- (3) A transfer order may provide for the transfer of property, rights or liabilities –
 - (a) whether or not they would otherwise be capable of being transferred;
 - (b) irrespective of any requirement for consent that would otherwise apply.
- (4) A transfer order may create rights, or impose liabilities, in relation to property, rights or liabilities transferred.
- (5) A transfer order may provide for things done by or in relation to the transferor for the purposes of or in connection with anything transferred to be –
 - (a) treated as done by or in relation to the transferee or its employees;
 - (b) continued by or in relation to the transferee or its employees.
- (6) A transfer order may in particular make provision about continuation of legal proceedings.

General

77 Part 2: interpretation and supplementary provision

- (1) For the purposes of this Part, an expression in the first column of the following table is defined or otherwise explained by the provision of this Act specified in the second column.

<i>Expression</i>	<i>Provision</i>
Care workers	Section 55
Commissioner of health services	Section 61
Devolved authority	Section 80
Devolved legislature	Section 80
Direct or direction	Subsection (2) below
Enactment	Section 80
Establishment criteria	Section 62
Financial year	Section 80
Health research	Section 67
The health service	Section 80
Health services	Section 55
HEE	Section 54
HRA	Section 66
LETB	Section 61
Social care research	Section 67

- (2) A power under this Part to give a direction –

- (a) includes a power to vary or revoke the direction by a subsequent direction, and
 - (b) must be exercised by giving the direction in question in writing.
- (3) The amendments made by sections 73 and 74 and Schedule 8 to provisions of subordinate legislation do not affect the power to make further subordinate legislation amending or revoking the amended provisions.

PART 3

GENERAL

78 Power to make consequential provision

- (1) The Secretary of State may by order make provision in consequence of this Act.
- (2) An order under this section may, in particular, amend, repeal, revoke or otherwise modify an enactment.
- (3) A saving or a transitional or transitory provision in an order under this section may, in particular, modify the application of a provision made by the order pending the commencement of –
 - (a) another provision of the order,
 - (b) a provision of this Act, or
 - (c) any other enactment.
- (4) Before making an order under this section that contains provision which is within the legislative competence of a devolved legislature, the Secretary of State must consult the relevant devolved authority.
- (5) A reference in this section to an enactment includes a reference to an enactment passed or made after the passing of this Act.

79 Regulations and orders

- (1) A power or duty to make regulations under this Act is exercisable by the Secretary of State.
- (2) Regulations and orders under this Act must be made by statutory instrument.
- (3) Subject to subsections (4) and (5), a statutory instrument containing regulations or an order under this Act is subject to annulment as an instrument to which section 5(1) of the Statutory Instruments Act 1946 applies.
- (4) A statutory instrument which contains (whether alone or with other provision) any of the following may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament –
 - (a) regulations under section 13(2) (the eligibility criteria);
 - (b) an order under section 51(9) (delegation of local authority functions);
 - (c) an order under section 68(7) (addition to list of bodies subject to duty to co-operate with the HRA);
 - (d) an order under section 78 (consequential provision) which includes provision that amends or repeals a provision of an Act of Parliament;
 - (e) regulations under paragraph 17 of Schedule 7 (fees chargeable by the HRA).

- (5) Subsection (3) does not apply to—
- (a) an order under section 54 (transfer order from old to new HEE);
 - (b) an order under section 66 (transfer order from old to new HRA);
 - (c) an order under section 81 (commencement).
- (6) A power to make regulations or an order under this Act—
- (a) may be exercised for all cases to which the power applies, for those cases subject to specified exceptions, or for any specified cases or descriptions of case,
 - (b) may be exercised so as to make, for the cases for which it is exercised—
 - (i) the full provision to which the power applies or any less provision (whether by way of exception or otherwise);
 - (ii) the same provision for all cases for which the power is exercised, or different provision for different cases or different descriptions of case, or different provision as respects the same case or description of case for different purposes of this Act;
 - (iii) any such provision either unconditionally or subject to specified conditions, and
 - (c) may, in particular, make different provision for different areas.
- (7) A power to make regulations or an order under this Act includes—
- (a) power to make incidental, supplementary, consequential, saving, transitional or transitory provision, and
 - (b) power to provide for a person to exercise a discretion in dealing with a matter.

80 General interpretation

In this Act—

“devolved authority” means the Scottish Ministers, the Welsh Ministers or the Department for Health, Social Services and Public Safety in Northern Ireland,

“devolved legislature” means the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly,

“enactment” includes—

- (a) an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978), and
- (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament, an Act or Measure of the National Assembly for Wales or Northern Ireland legislation,

“financial year” means a period of 12 months ending with 31 March (but this is subject to paragraph 2 of Schedule 1, paragraphs 17 and 24 of Schedule 5 and paragraph 18 of Schedule 7), and

“the health service” means the comprehensive health service in England continued under section 1(1) of the National Health Service Act 2006.

81 Commencement

- (1) The provisions of Parts 1 and 2 come into force on such day as the Secretary of State may by order appoint.
- (2) The provisions of this Part come into force on the day on which this Act is passed.

- (3) Different days may be appointed under subsection (1) for different purposes (including different areas).
- (4) A saving or a transitional or transitory provision in an order under this section may modify the application of a provision of this Act pending the commencement of—
 - (a) another provision of this Act, or
 - (b) any other enactment (including one passed or made after the passing of this Act).

82 Extent and application

- (1) Subject to subsections (2) and (3), this Act extends to England and Wales only.
- (2) Any amendment, repeal or revocation made by this Act has the same extent as the enactment amended, repealed or revoked.
- (3) The following also extend to Scotland and Northern Ireland—
 - (a) Chapter 2 of Part 2 (the HRA);
 - (b) section 77 (Part 2: interpretation and supplementary provision);
 - (c) this Part;
 - (d) paragraph 15 of Schedule 5 (arrangements between HEE and devolved authorities).
- (4) The Secretary of State may by order provide that specified provisions of this Act, in their application to the Isles of Scilly, have effect with such modifications as may be specified.

83 Short title

This Act may be cited as the Care and Support Act 2013.

SCHEDULES

SCHEDULE 1

Section 35

SAFEGUARDING ADULTS BOARDS

Membership, etc.

- 1 (1) The members of an SAB are –
 - (a) the local authority which established it,
 - (b) a clinical commissioning group the whole or part of whose area is in the local authority’s area,
 - (c) the chief officer of police for a police area the whole or part of which is in the local authority’s area, and
 - (d) such persons, or persons of such description, as may be specified in regulations.
- (2) The membership of an SAB may also include such other persons as the local authority which established it, having consulted the other members listed in sub-paragraph (1), considers appropriate.
- (3) A local authority, having consulted the other members of its SAB, must appoint as the chair a person whom the authority considers to have the required skills and experience.
- (4) Each member of an SAB must appoint a person to represent it on the SAB; and the representative must be a person whom the member considers to have the required skills and experience.
- (5) Where more than one clinical commissioning group or more than one chief officer of police comes within sub-paragraph (1), a person may represent more than one of the clinical commissioning groups or chief officers of police.
- (6) The members of an SAB (other than the local authority which established it) must, in acting as such, have regard to such guidance as the Secretary of State may issue.
- (7) Guidance for the local authority on acting as a member of the SAB is to be included in the guidance issued for the purposes of section 50(1).
- (8) An SAB may regulate its own procedure.

Strategic plan

- 2 (1) An SAB must publish for each financial year a plan (its “strategic plan”) which sets out –
 - (a) its strategy for achieving its objective (see section 35), and
 - (b) what each member is to do to implement that strategy.

- (2) In preparing its strategic plan, the SAB must –
 - (a) consult the Local Healthwatch organisation for its area, and
 - (b) in so far as it is feasible to do so, involve (whether by consultation or otherwise) the community in its area.
- (3) In this paragraph and paragraph 3, “financial year”, in relation to an SAB, includes the period –
 - (a) beginning with the day on which the SAB is established, and
 - (b) ending with the following 31 March or, if the period ending with that date is 3 months or less, ending with the 31 March following that date.

Annual report

- 3 (1) As soon as is feasible after the end of each financial year, an SAB must publish a report on –
 - (a) what it has done during that year to achieve its objective,
 - (b) what it has done during that year to implement its strategy,
 - (c) what each member has done during that year to implement the strategy,
 - (d) the findings of the reviews arranged by it under section 36 (safeguarding adults reviews) which have concluded in that year (whether or not they began in that year), and
 - (e) the reviews arranged by it under that section which are ongoing at the end of that year (whether or not they began in that year).
- (2) The SAB must send a copy of the report to –
 - (a) the chief executive and the leader of the local authority which established the SAB,
 - (b) the local policing body the whole or part of whose area is in the local authority’s area,
 - (c) the Local Healthwatch organisation for the local authority’s area, and
 - (d) the chair of the Health and Wellbeing Board for that area.
- (3) “Local policing body” has the meaning given by section 101 of the Police Act 1996.

SCHEDULE 2

Section 47

DISCHARGE OF HOSPITAL PATIENTS WITH CARE AND SUPPORT NEEDS

What happens where a hospital patient is likely to have care and support needs after discharge?

- 1 (1) Where the NHS body responsible for a hospital patient considers that it is not likely to be safe to discharge the patient unless arrangements for meeting the patient’s needs for care and support are in place, the body must give notice to –
 - (a) the local authority in whose area the patient is ordinarily resident, or
 - (b) if it appears to the body that the patient is of no settled residence, the local authority in whose area the hospital is situated.

- (2) A notice under sub-paragraph (1) is referred to in this Schedule as an “assessment notice”; and the local authority to which an assessment notice is given is referred to in this Schedule as “the relevant authority”.
- (3) An assessment notice –
 - (a) must describe itself as such, and
 - (b) may not be given more than seven days before the day on which the patient is expected to be admitted to hospital.
- (4) Before giving an assessment notice, the NHS body responsible for the patient must consult –
 - (a) the patient, and
 - (b) where it is feasible to do so, any carer that the patient has.
- (5) An assessment notice remains in force until –
 - (a) the patient is discharged (whether by the NHS body responsible for the patient or by the patient himself or herself),
 - (b) the patient dies, or
 - (c) the NHS body responsible for the patient withdraws the notice by giving a notice (a “withdrawal notice”) to the relevant authority.
- (6) A reference in this paragraph to a hospital patient includes a reference to a person who it is reasonable to expect is about to become one.

What happens when the responsible NHS body gives the local authority an assessment notice?

- 2 (1) The NHS body responsible for a hospital patient, having given the relevant authority an assessment notice, must –
 - (a) consult the authority before deciding what it will do for the patient in order for discharge to be safe, and
 - (b) give the authority notice of the day on which it proposes to discharge the patient.
- (2) A notice under sub-paragraph (1)(b) is referred to in this Schedule as a “discharge notice”.
- (3) A discharge notice must specify –
 - (a) whether the NHS body responsible for the patient will be providing or arranging for the provision of services under the National Health Service Act 2006 to the patient after discharge, and
 - (b) if it will, what those services are.
- (4) A discharge notice remains in force until –
 - (a) the end of the relevant day, or
 - (b) the NHS body responsible for the patient withdraws the notice by giving a withdrawal notice to the relevant authority.
- (5) The “relevant day” is the later of –
 - (a) the day specified in the discharge notice, and
 - (b) the last day of such period as regulations may specify.
- (6) A period specified under sub-paragraph (5)(b) must –
 - (a) begin with the day after that on which the assessment notice is given, and
 - (b) last for a period of at least two days.

- 3 (1) The relevant authority, having received an assessment notice and having in light of it carried out a needs assessment and (where applicable) a carer’s assessment, must inform the NHS body responsible for the patient –
 - (a) whether the patient has needs for care and support,
 - (b) (where applicable) whether a carer has needs for support,
 - (c) whether any of the needs referred to in paragraphs (a) and (b) meet the eligibility criteria, and
 - (d) how the authority plans to meet such of those needs as meet the eligibility criteria.
- (2) Where, having carried out a needs assessment or carer’s assessment in a case within section 26(4), the relevant authority considers that the patient’s needs for care and support or (as the case may be) the carer’s needs for support have changed, it must inform the NHS body responsible for the patient of the change.

What happens if discharge of the patient is delayed?

- 4 (1) If the relevant authority, having received an assessment notice and a discharge notice, has not carried out a needs or (where applicable) carer’s assessment and the patient has not been discharged by the end of the relevant day, the NHS body responsible for the patient may require the relevant authority to pay the specified amount for each day of the specified period.
- (2) If the relevant authority has not put in place arrangements for meeting some or all of those of the needs under sections 17 to 19 it proposes to meet in the case of the patient or (where applicable) a carer, and the patient has for that reason alone not been discharged by the end of the relevant day, the NHS body responsible for the patient may require the relevant authority to pay the specified amount for each day of the specified period.
- (3) If, in a case within sub-paragraph (1) or (2), the assessment notice ceases to be in force, any liability arising under that sub-paragraph before it ceased to be in force is unaffected.
- (4) A payment under sub-paragraph (1) or (2) must be made to –
 - (a) the NHS body responsible for the patient, or
 - (b) in such a case as regulations may specify, the person specified.
- (5) The “relevant day” has the meaning given by paragraph 2(5).
- (6) A reference to a requirement to pay the specified amount is a reference to a requirement to pay the amount specified in regulations; and the reference to the specified period is a reference to the period specified in or determined in accordance with regulations.
- (7) In specifying the amount of a payment, the Secretary of State must have regard in particular to either or both of –
 - (a) costs to NHS bodies of providing accommodation and personal care to patients ready to be discharged, and
 - (b) costs to local authorities of meeting needs under sections 17 to 19 in the case of persons who have been discharged.

What happens if the bodies involved disagree about something?

- 5 (1) Regulations may provide for panels appointed by clinical commissioning groups to help to resolve disputes between authorities about matters arising under or in relation to this Schedule; and, for this purpose, “authority” means an NHS body or a local authority.
- (2) The members of a panel must be appointed by a clinical commissioning group from lists required by the regulations to be kept by the group; and the regulations must ensure that the local authority whose area includes the group’s area is consulted about the persons whose names are on a list kept by the group for that purpose.
- (3) The regulations may make further provision about the panels; they may, in particular, make provision about recommendations (including recommendations for payments by one party to another) which a panel may make on a dispute referred to it.
- (4) Regulations may prohibit an authority from bringing legal proceedings against another authority in relation to a dispute before specified steps relating to a panel have been taken.

Adjustments between local authorities

- 6 (1) Regulations may modify, or otherwise make provision about, the application of a provision of this Schedule in a case where it appears to the NHS body responsible for a hospital patient that the patient is ordinarily resident in the area of another local authority.
- (2) The regulations may, in particular, authorise or require a local authority –
- (a) to accept an assessment notice given to it even though it may wish to dispute that it was the correct authority to which to give the notice;
 - (b) to become the relevant authority in the patient’s case;
 - (c) to recover expenditure incurred –
 - (i) in the exercise of functions under this Schedule;
 - (ii) in meeting needs under sections 17 to 19 in a case under this Schedule.

Meaning of “hospital patient”, “NHS hospital”, “NHS body”, etc.

- 7 (1) A hospital patient is a person ordinarily resident in England who –
- (a) is being accommodated at an NHS hospital, or at an independent hospital as a result of arrangements made by an NHS body, and
 - (b) is receiving (or has received or can reasonably be expected to receive) acute care.
- (2) “NHS hospital” means a health service hospital (as defined by the National Health Service Act 2006) in England.
- (3) “Independent hospital” means a hospital (as defined by that Act) in England which is not an NHS hospital.
- (4) “NHS body” means –
- (a) an NHS trust in England, or
 - (b) an NHS foundation trust.

- (5) A reference to the NHS body responsible for a hospital patient is—
 - (a) if the hospital is an NHS hospital, a reference to the NHS body managing it, or
 - (b) if the hospital is an independent hospital, a reference to the NHS body that arranged for the patient to be accommodated in it.
- (6) “Acute care” means intensive medical treatment provided by or under the supervision of a consultant, that lasts for a limited period after which the person receiving the treatment no longer benefits from it.
- (7) Care is not “acute care” if the patient has given an undertaking (or one has been given on the patient’s behalf) to pay for it; nor is any of the following “acute care”—
 - (a) care of an expectant or nursing mother;
 - (b) mental health care;
 - (c) palliative care;
 - (d) a structured programme of care provided for a limited period to help a person maintain or regain the ability to live at home;
 - (e) care provided for recuperation or rehabilitation.
- (8) “Mental health care” means psychiatric services, or other services provided for the purpose of preventing, diagnosing or treating illness, the arrangements for which are the primary responsibility of a consultant psychiatrist.

Further provision about assessment notices, discharge notices, etc.

- 8 Regulations may—
 - (a) specify the form and content of an assessment notice, a discharge notice or a withdrawal notice;
 - (b) specify the manner in which an assessment notice, a discharge notice or a withdrawal notice may be given;
 - (c) specify when a discharge notice may be given;
 - (d) specify circumstances in which a withdrawal notice must be given;
 - (e) make provision for determining the day on which an assessment notice, a discharge notice or a withdrawal notice is to be regarded as given.

SCHEDULE 3

Section 48

AFTER-CARE UNDER THE MENTAL HEALTH ACT 1983: DIRECT PAYMENTS

- 1 (1) Sections 28 (adults with capacity to request direct payments), 29 (adults without capacity to request direct payments) and 30 (direct payments: further provision) apply in relation to section 117 of the Mental Health Act 1983 but as if the following modifications were made to those sections.
 - (2) For subsection (1) of section 28, substitute—
 - “(1) This section applies where an adult to whom section 117 of the Mental Health Act 1983 (after-care) applies requests the local authority to make payments to the adult or a person nominated by

the adult that are equivalent to the cost of providing or arranging for the provision of after-care services for the adult under that section.”

- (3) In subsection (7) of that section, for “to meet the needs in question” substitute “to discharge its duty under section 117 of the Mental Health Act 1983”.
 - (4) For subsection (1) of section 29, substitute –
 - “(1) This section applies where –
 - (a) an adult to whom section 117 of the Mental Health Act 1983 (after-care) applies lacks, or the local authority believes that the person lacks, capacity to request the authority to make payments equivalent to the cost of providing or arranging for the provision of after-care services for the adult under that section, and
 - (b) an authorised person requests the local authority to make such payments to the authorised person.”
 - (5) In subsection (4)(a) of that section, for “the adult’s needs for care and support” substitute “the provision to the adult of after-care services under section 117 of the Mental Health Act 1983”.
 - (6) In subsection (7) of that section, for “the provision of the care and support” substitute “the provision of the after-care services under section 117 of the Mental Health Act 1983”.
 - (7) In subsection (9) of that section, for “to meet the needs in question” substitute “to discharge its duty under section 117 of the Mental Health Act 1983”.
 - (8) In subsection (2)(a) of section 30, for “meet needs” substitute “discharge its duty under section 117 of the Mental Health Act 1983”.
 - (9) For subsection (3) of that section, substitute –
 - “(3) A direct payment is made on condition that it be used only to pay for arrangements under which after-care services for the adult are provided under section 117 of the Mental Health Act 1983.”
- 2
- (1) Section 117(2C) of the Mental Health Act 1983 (references to after-care services to include those provided by means of direct payments) is amended as follows.
 - (2) In paragraph (a), for “regulations under section 57 of the Health and Social Care Act 2001 or” substitute “–
 - (i) sections 28 to 30 of the Care and Support Act 2013 (as applied by Schedule 3 to that Act), or
 - (ii) regulations under”.
 - (3) In paragraph (b), after “apart from” insert “those sections (as so applied) or”.

SCHEDULE 4

Section 53

REPEALS, REVOCATIONS AND SAVINGS

PART 1

REPEALS AND REVOCATIONS

- 1 The following provisions are repealed or revoked (as the case may be) to the extent specified, subject to the savings in Part 2 of this Schedule –

<i>Title</i>	<i>Extent of repeal or revocation</i>
National Assistance Act 1948	Section 1. Sections 21 to 30. Section 32. Sections 45 to 48. Sections 51 to 56.
Health Services and Public Health Act 1968	Section 45.
Chronically Sick and Disabled Persons Act 1970	Sections 1 and 2.
Health and Social Services and Social Security Adjudications Act 1983	Section 17. Sections 21 to 24.
Disabled Persons (Services, Consultation and Representation) Act 1986	Sections 3 and 4.
National Health Service and Community Care Act 1990	Sections 46 and 47.
Health and Social Care Act 2001	Section 49. Sections 54 to 57.
Community Care (Delayed Discharges etc.) Act 2003	The whole Act.
Delayed Discharges (Mental Health Care) (England) Order 2003	The whole Order.
Delayed Discharges (England) Regulations 2003	The whole Regulations.
National Health Service Act 2006	Schedule 20.
Community Care, Services for Carers and Children’s Services (Direct Payments) (England) Regulations 2009	Regulations 2, 3, 5, 6, 8, 10, 12, 16, 18.

PART 2

SAVINGS

- 2 Section 2 of the Chronically Sick and Disabled Persons Act 1970 is to continue to have effect in so far as it is applied by section 28A of that Act (application of provisions to disabled children).
- 3 Section 4 of the Disabled Persons (Services, Consultation and Representation) Act 1986 is to continue to have effect in so far as it applies to

- the provision of services to persons aged under 18 who are disabled within the meaning of Part 3 of the Children Act 1989.
- 4 Section 17 of the Health and Social Services and Social Security Adjudications Act 1983 is to continue to have effect in so far as it applies (as a result of subsection (2)(f) of that section) to the provision of services to carers aged 16 or 17.
- 5 (1) Section 57 of the Health and Social Care Act 2001 is to continue to have effect in so far as it applies (as a result of subsection (2)(b) of that section) to the provision of services to carers aged 16 or 17.
- (2) Subsections (3) to (5) and (7) of that section are to continue to have effect for the purposes of their application by section 17A(3) of the Children Act 1989 (direct payments).
- 6 “Carer” has the meaning given by section 1 of the Carers and Disabled Children Act 2000.

SCHEDULE 5

Section 54

HEALTH EDUCATION ENGLAND

PART 1

CONSTITUTION

Membership

- 1 (1) HEE consists of—
- (a) a chair appointed by the Secretary of State,
 - (b) five other members appointed by the Secretary of State,
 - (c) a chief executive appointed by the members appointed under paragraphs (a) and (b), and
 - (d) no more than four other members appointed by the members appointed under paragraphs (a) and (b).
- (2) The members appointed under sub-paragraph (1)(a) and (b)—
- (a) are not employees of HEE, and
 - (b) are referred to in this Schedule as the “non-executive members”.
- (3) The members appointed under sub-paragraph (1)(c) and (d)—
- (a) are employees of HEE, and
 - (b) are referred to in this Schedule as the “executive members”.

Non-executive members: terms of office

- 2 (1) A person holds office as a non-executive member of HEE on the terms of that person’s appointment.
- (2) A person may not be appointed as a non-executive member for a period of more than four years.

- (3) A person who ceases to be a non-executive member is eligible for re-appointment.
- (4) A person may resign from office as a non-executive member by giving notice to the Secretary of State.
- (5) The Secretary of State may remove a person from office as a non-executive member on any of the following grounds –
 - (a) incapacity;
 - (b) misbehaviour;
 - (c) failure to carry out his or her duties as a non-executive member.
- (6) The Secretary of State may suspend a person from office as a non-executive member if it appears to the Secretary of State that there are or may be grounds to remove that person from office under sub-paragraph (5).

Non-executive members: suspension from office

- 3 (1) Having decided to suspend a person under paragraph 2(6), the Secretary of State must give notice of the decision to the person; and the suspension takes effect when the person receives the notice.
 - (2) The notice may be –
 - (a) delivered in person (in which case the person is taken to receive it when it is delivered), or
 - (b) sent by first class post to the person’s last known address (in which case, the person is taken to receive it on the third day after the day on which it is posted).
 - (3) The initial period of suspension must not exceed six months.
 - (4) The Secretary of State may review the suspension.
 - (5) The Secretary of State –
 - (a) must review the suspension, if requested in writing by the person to do so, but
 - (b) need not review the suspension less than three months after the beginning of the initial period of suspension.
 - (6) Following a review during a period of suspension, the Secretary of State may –
 - (a) revoke the suspension, or
 - (b) suspend the person for a period of no more than six months from the expiry of the current period.
 - (7) The Secretary of State must revoke the suspension if the Secretary of State –
 - (a) decides that there are no grounds to remove the person from office under paragraph 2(5), or
 - (b) decides that there are grounds to do so but nonetheless decides not to do so.
- 4 (1) Where a person is suspended from office as the chair under paragraph 2(6), the Secretary of State may appoint a non-executive member as interim chair to exercise the chair’s functions.
 - (2) Appointment as interim chair is for a term not exceeding the shorter of –
 - (a) the period ending with either –

- (i) the appointment of a new chair, or
 - (ii) the revocation or expiry of the existing chair’s suspension, and
 - (b) the remainder of the interim chair’s term as a non-executive member.
- (3) A person who ceases to be the interim chair is eligible for re-appointment.

Non-executive members: pay

- 5 (1) HEE must pay its non-executive members such remuneration as the Secretary of State may decide.
- (2) HEE must pay, or provide for the payment of, such allowances or gratuities as the Secretary of State may decide to a person who is or has been a non-executive member of HEE.

Employees: terms of office

- 6 (1) Each executive member of HEE is appointed as an employee of HEE on such terms as it decides.
- (2) A person may not be appointed as chief executive without the consent of the Secretary of State.
- (3) HEE may appoint, on such terms as it decides, other persons as employees of HEE (in addition to those appointed as executive members).

Employees: pay

- 7 (1) HEE must pay its employees such remuneration as it decides.
- (2) HEE may pay, or provide for the payment of, such pensions, allowances or gratuities as it decides to or in respect of a person who is or has been an employee of HEE.
- (3) Before making a decision about pay under this paragraph, HEE must obtain the approval of the Secretary of State to its policy on the matter.

Committees and sub-committees

- 8 (1) HEE may appoint committees and sub-committees.
- (2) A committee or sub-committee may consist of or include persons who are not members or employees of HEE.
- (3) HEE may pay such remuneration and allowances as it decides to a person who is a member of a committee (including one established under section 62 as the governing body of an LETB) or sub-committee, but is not an employee of HEE, regardless of whether the person is a non-executive member of HEE.
- (4) Any committees and sub-committees of the Special Health Authority called Health Education England in existence immediately before its abolition are to become respectively committees and sub-committees of HEE (and are to be treated as appointed under this paragraph).

Procedure

- 9 (1) HEE may regulate its own procedure.

- (2) A vacancy among the members of HEE, or a defect in the appointment of a member, does not affect the validity of any act of HEE.

Seal and evidence

- 10 (1) The application of HEE’s seal must be authenticated by the signature of a member of HEE or a person who has been authorised (whether generally or specifically) for the purpose.
- (2) A document purporting to be duly executed under HEE’s seal or to be signed on its behalf must be received in evidence and, unless the contrary is proved, taken to be so executed or signed.

Status of HEE

- 11 (1) HEE is not to be regarded as a servant or agent of the Crown, or as enjoying any status, privilege or immunity of the Crown.
- (2) HEE’s property is not to be regarded as property of, or property held on behalf of, the Crown.

PART 2

FUNCTIONS

Exercise of functions

- 12 (1) HEE must exercise its functions effectively, efficiently and economically.
- (2) HEE may arrange for any person to help it to exercise its functions (whether in a particular case or in cases of a particular description).
- (3) Arrangements under sub-paragraph (2) may provide for the payment of remuneration and allowances to the persons with whom HEE makes the arrangements.
- (4) HEE may not arrange for a committee which is not the governing body of an LETB to exercise a function which is exercisable by the governing body of an LETB.
- (5) HEE may in any way it thinks appropriate involve care workers, persons to whom health services are provided or carers for such persons, in decisions it makes about the exercise of its functions; and “carer” means an adult who provides or intends to provide care for another person.
- (6) HEE may do anything which appears to it to be necessary or desirable for the purposes of or in connection with the exercise of its functions.
- (7) In section 247C of the National Health Service Act 2006 (Secretary of State’s duty to keep health service functions of certain bodies under review), in subsection (2), after paragraph (e) insert –
- “(ea) Health Education England;”.

Help or advice for other public authorities

- 13 (1) HEE may provide help or advice to another public authority for the purpose of the exercise by that authority of its functions.

- (2) Help or advice under this paragraph may be provided on such terms as HEE decides (including terms relating to payment of remuneration or allowances).
- (3) “Public authority” –
- (a) includes any person certain of whose functions are functions of a public nature, but
 - (b) does not include either House of Parliament or a person exercising functions in connection with proceedings in Parliament.
- (4) A reference to a public authority –
- (a) includes a public authority in the Channel Islands or the Isle of Man, but
 - (b) subject to that, does not include a reference to a public authority outside the United Kingdom.

Co-operation

- 14 (1) HEE must, in the exercise of its functions, co-operate with the Secretary of State in the exercise of the Secretary of State’s public health functions (as defined by section 1H of the National Health Service Act 2006).
- (2) In section 72 of that Act (co-operation between NHS bodies), after subsection (3) insert –
- “(4) For the purposes of this section, Health Education England is an NHS body.”
- (3) HEE and the Care Quality Commission must co-operate with each other in the exercise of their respective functions.
- (4) Regulations may require HEE and a specified person to co-operate with each other in the exercise of their respective functions or such of their functions as are specified.

Arrangements with devolved authorities

- 15 (1) HEE may arrange with a devolved authority for HEE –
- (a) to exercise on behalf of the devolved authority any function which corresponds to a function of HEE;
 - (b) to provide services or facilities in so far as the devolved authority requires them in connection with the exercise of such a function.
- (2) The terms and conditions on which arrangements under this paragraph may be made include provision for payment to HEE in respect of its costs in giving effect to the arrangements.

Failure to exercise functions

- 16 (1) If the Secretary of State considers that HEE is failing or has failed to exercise any of its functions, and that the failure is significant, the Secretary of State may direct HEE to exercise such of its functions, in such manner and within such period, as the direction specifies.
- (2) If HEE fails to comply with a direction under this section, the Secretary of State may –
- (a) exercise the functions specified in the direction, or

- (b) make arrangements for some other person to exercise them on the Secretary of State’s behalf.
- (3) Where the Secretary of State exercises a power under sub-paragraph (1) or (2), the Secretary of State must publish the reasons for doing so.
- (4) Reference in sub-paragraph (1) to failure to exercise a function includes a reference to failure to exercise it properly.

PART 3

FINANCE AND REPORTS

Funding

- 17 (1) The Secretary of State must pay HEE for each financial year sums not exceeding the amount the Secretary of State has allotted for that year towards meeting the expenditure that is attributable to HEE’s exercise of its functions in that year.
- (2) An amount is to be regarded as allotted when the Secretary of State notifies HEE accordingly.
- (3) The Secretary of State may make a new allotment under this paragraph increasing or decreasing the allotment previously made, but only if –
- (a) HEE agrees,
 - (b) a parliamentary general election takes place, or
 - (c) the Secretary of State considers that exceptional circumstances make a new allotment necessary.
- (4) The Secretary of State may give directions to HEE about the payment by it to the Secretary of State of sums in respect of charges or other amounts relating to the valuation or disposal of assets.
- (5) Sums payable to HEE under this paragraph are payable subject to such conditions as to records, certificates or otherwise as the Secretary of State may decide.
- (6) In this Part of this Schedule, “financial year” includes the period –
- (a) beginning with the day on which HEE is established, and
 - (b) ending with the following 31 March or, if the period ending with that date is 3 months or less, ending with the 31 March following that date.

Financial duties: expenditure

- 18 (1) HEE must ensure that total expenditure attributable to its exercise of its functions in each financial year (its “total spending”) does not exceed the aggregate of –
- (a) the amount allotted to it for that year under paragraph 17,
 - (b) the income generated in that year from carrying out activities for the purposes of or in connection with the exercise of its functions, and
 - (c) any other sums received by it in that year for the purpose of enabling it to meet such expenditure.

- (2) The Secretary of State may direct that spending of a specified description is, or is not, to be treated for the purposes of sub-paragraph (1) as part of HEE's total spending.
- (3) The Secretary of State may by directions determine –
 - (a) the extent to which, and circumstances in which, sums received by HEE under paragraph 17 but not yet spent are to be treated for the purposes of sub-paragraph (1) as part of HEE's total spending, and
 - (b) to which financial year those sums are to be attributed.
- (4) The Secretary of State may direct HEE to use specified banking facilities for specified purposes.

Financial duties: controls on total resource use

- 19 (1) HEE must ensure that –
 - (a) its use of capital resources in a financial year does not exceed the amount specified by the Secretary of State, and
 - (b) its use of revenue resources in a financial year does not exceed the amount specified by the Secretary of State.
- (2) The Secretary of State may, in relation to a financial year, direct that for the purposes of this paragraph –
 - (a) resources of a specified description are, or are not, to be treated as capital resources or revenue resources;
 - (b) a specified use of capital resources or revenue resources is, or is not, to be taken into account.
- (3) An amount specified for the purposes of sub-paragraph (1)(a) or (b) may be varied only if –
 - (a) HEE agrees,
 - (b) a parliamentary general election takes place, or
 - (c) the Secretary of State considers that exceptional circumstances make the variation necessary.
- (4) A reference to the use of capital resources or revenue resources is a reference to their expenditure, consumption or reduction in value.

Financial duties: additional controls on resource use

- 20 (1) The Secretary of State may direct HEE to ensure that –
 - (a) total capital resource use in a financial year which is attributable to specified matters does not exceed a specified amount,
 - (b) total revenue resource use in a financial year which is attributable to specified matters does not exceed a specified amount, and
 - (c) total revenue resource use in a financial year which is attributable to specified matters relating to administration does not exceed a specified amount.
- (2) The Secretary of State may give directions, in relation to a financial year, specifying uses of capital resources or revenue resources which are, or are not, to be taken into account for the purposes of sub-paragraph (1)(a), (b) or (c) (as the case may be).

- (3) The Secretary of State may not give a direction under sub-paragraph (1)(a) or (b) unless the direction is for the purpose of complying with a limit imposed by the Treasury.

Accounts

- 21 (1) HEE must keep –
- (a) proper accounts, and
 - (b) proper records relating to the accounts.
- (2) The Secretary of State may, with the approval of the Treasury, give directions to HEE about –
- (a) the content and form of its accounts, and
 - (b) the methods and principles to be applied in the preparation of its accounts.
- (3) The reference in sub-paragraph (2) to accounts includes a reference to –
- (a) the accounts prepared under paragraph 22, and
 - (b) such accounts as are prepared under paragraph 23.
- (4) The chief executive of HEE is to be its accounting officer.

Annual accounts

- 22 (1) HEE must prepare consolidated annual accounts for each financial year.
- (2) The consolidated annual accounts must include –
- (a) the annual accounts of the governing body of each LETB,
 - (b) the annual accounts of each other committee of HEE, and
 - (c) the annual accounts relating to the rest of HEE’s activities.
- (3) HEE must send copies of the consolidated annual accounts to –
- (a) the Secretary of State, and
 - (b) the Comptroller and Auditor General,
- within such period after the end of the financial year to which the accounts relate as the Secretary of State directs.
- (4) The Comptroller and Auditor General must –
- (a) examine, certify and report on the consolidated annual accounts, and
 - (b) lay copies of them and the report on them before Parliament.

Interim accounts

- 23 (1) The Secretary of State may, with the approval of the Treasury, direct HEE to prepare accounts in respect of such period or periods as are specified in the direction (“interim accounts”).
- (2) The interim accounts in respect of any period must include –
- (a) the accounts of the governing body of each LETB in respect of that period, and
 - (b) the accounts of each other committee of HEE in respect of that period.
- (3) HEE must send copies of any interim accounts to –
- (a) the Secretary of State, and

- (b) if the Secretary of State directs, the Comptroller and Auditor General,
 within such period as the Secretary of State directs.
- (4) The Comptroller and Auditor General must—
- (a) examine, certify and report on any interim accounts sent under subparagraph (3)(b),
 - (b) if the Secretary of State directs, send a copy of the report on the accounts to the Secretary of State, and
 - (c) if the Secretary of State directs, lay copies of the accounts and the report on them before Parliament.

Annual report

- 24 (1) As soon as is feasible after the end of each financial year, HEE must prepare an annual report on how it has exercised its functions during the year.
- (2) The report must include, in particular, HEE’s assessment of its achievement during the year of the outcomes set by the Secretary of State under section 58(1)(b).
- (3) HEE must—
- (a) lay a copy of the report before Parliament, and
 - (b) send a copy of it to the Secretary of State.
- (4) HEE must provide the Secretary of State with such other reports and information relating to the exercise of its functions as the Secretary of State may request.
- (5) In this paragraph, “financial year” also has the meaning given by paragraph 17.

PART 4

CONSEQUENTIAL AMENDMENTS

Public Records Act 1958

- 25 In Part 2 of the Table in Schedule 1 to the Public Records Act 1958, at the appropriate place insert—
 “Health Education England.”

Public Bodies (Admission to Meetings) Act 1960

- 26 In the Schedule to the Public Bodies (Admission to Meetings) Act 1960, after paragraph (bl) insert—
 “(bm) Health Education England;”.

House of Commons Disqualification Act 1975

- 27 In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975, at the appropriate place insert—
 “Health Education England.”

Copyright, Designs and Patents Act 1988

- 28 In section 48(6) of the Copyright, Designs and Patents Act 1988 (definition of “the Crown”), after “the Care Quality Commission” insert “, Health Education England”.

Freedom of Information Act 2000

- 29 In Part 3 of Schedule 1 to the Freedom of Information Act 2000 (health service), at the appropriate place insert—
“Health Education England.”

Equality Act 2010

- 30 In Part 1 of Schedule 19 to the Equality Act 2010 (authorities subject to the public sector equality duty), in the group of entries under the heading “Health, social care and social security”, before the entry for the Health Service Commissioner for England, insert—
“Health Education England.”

SCHEDULE 6

Section 62

THE GOVERNING BODY OF A LOCAL EDUCATION AND TRAINING BOARD

The area for which the governing body of an LETB is established

- 1 (1) HEE must ensure that the areas of the governing bodies of LETBs—
(a) do not coincide or overlap, and
(b) together cover the whole of England.
(2) HEE may vary the area of the governing body of an LETB.
(3) HEE must—
(a) keep an up-to-date record of the area of the governing body of each LETB, and
(b) publish the record.

Assessment of whether governing bodies meet the establishment criteria

- 2 (1) HEE must, whenever it considers appropriate, assess—
(a) whether the governing body of an LETB meets the establishment criteria, and
(b) if it does not, whether it meets enough of the establishment criteria in order to exercise its functions.
(2) Having carried out an assessment under sub-paragraph (1), HEE must notify the governing body of, and then publish—
(a) the result of the assessment, and
(b) if HEE is not satisfied that the governing body meets the criteria, HEE’s reasons for not being so satisfied.
(3) Where, on an assessment under sub-paragraph (1), HEE is not satisfied that a governing body is meeting all the establishment criteria but is satisfied that

the governing body is meeting enough of them to be able to exercise its functions, HEE may impose conditions on the governing body relating to its operation.

- (4) Where, on an assessment under sub-paragraph (1), HEE is not satisfied that a governing body is meeting enough of the establishment criteria to be able to exercise its functions, HEE may do one or more of the following—
 - (a) appoint new members of the governing body (whether as well as or instead of existing members);
 - (b) exercise functions on behalf of the governing body;
 - (c) make arrangements requiring the members of the LETB that the governing body represents to become members of another LETB instead (and therefore be represented by another governing body).
- (5) Before imposing conditions under sub-paragraph (3) or taking action under sub-paragraph (4), HEE must notify the governing body concerned of—
 - (a) the conditions it proposes to impose or action it proposes to take, and
 - (b) its reasons for proposing to impose those conditions or take that action.
- (6) Having imposed conditions under sub-paragraph (3) or taken action under sub-paragraph (4), HEE must publish—
 - (a) details of the conditions it imposed or action it took, and
 - (b) its reasons for imposing those conditions or taking that action.
- (7) Before imposing a requirement under sub-paragraph (4)(c), HEE must obtain the approval of the other governing body.
- (8) Regulations must require specified commissioners of health services to include in the arrangements under the National Health Service Act 2006 for the provision of such services terms for ensuring compliance with a requirement imposed under sub-paragraph (4)(c).
- (9) Regulations may specify other circumstances in which HEE may intervene in the operation of the governing body of an LETB (whether by imposing conditions or in such other way as is specified).
- (10) A reference to exercising a function includes a reference to exercising it properly.

Publication and review of the establishment criteria

- 3 (1) HEE must publish the establishment criteria; but before doing so it must obtain the approval of the Secretary of State.
- (2) HEE must keep the establishment criteria under review and may revise them; and the duty to obtain approval under sub-paragraph (1) applies to revised criteria only in so far as HEE considers the revisions significant.

Exercise of functions

- 4 (1) Regulations may—
 - (a) give governing bodies of LETBs additional functions relating to the provision of education and training for care workers or to the planning of its provision;

- (b) impose requirements on governing bodies of LETBs relating to how they exercise functions.
- (2) The governing body of an LETB may do anything which appears to it to be necessary or desirable for the purposes of, or in connection with, the exercise of its functions.
- (3) If HEE considers that the governing body of an LETB is failing or has failed to exercise a function, or that there is a significant risk that it will fail to do so, HEE must direct the governing body to exercise such function within such period, and in such manner, as the direction specifies.
- (4) If the governing body of an LETB fails to comply with a direction under sub-paragraph (3), HEE may take action under one or more of paragraphs (a) to (c) of paragraph 2(4) (with paragraph 2(5) to (7) applying accordingly).
- (5) The reference in sub-paragraph (3) to exercising a function includes a reference to exercising it properly.

SCHEDULE 7

Section 66

THE HEALTH RESEARCH AUTHORITY

PART 1

CONSTITUTION

Membership

- 1 (1) The HRA consists of—
 - (a) a chair appointed by the Secretary of State,
 - (b) at least three but no more than four other members appointed by the Secretary of State,
 - (c) a chief executive appointed by the members appointed under paragraphs (a) and (b), and
 - (d) at least two but no more than three other members appointed by the members appointed under paragraphs (a) and (b).
- (2) The members appointed under sub-paragraph (1)(a) and (b)—
 - (a) are not employees of the HRA, and
 - (b) are referred to in this Schedule as the “non-executive members”.
- (3) The members appointed under sub-paragraph (1)(c) and (d)—
 - (a) are employees of the HRA, and
 - (b) are referred to in this Schedule as the “executive members”.
- (4) The number of non-executive members must exceed the number of executive members.

Non-executive members: terms of office

- 2 (1) A person holds office as a non-executive member of the HRA on the terms of that person’s appointment.

- (2) A person may not be appointed as a non-executive member for a period of more than four years.
- (3) A person who ceases to be a non-executive member is eligible for re-appointment.
- (4) A person may resign from office as a non-executive member by giving notice to the Secretary of State.
- (5) The Secretary of State may remove a person from office as a non-executive member on any of the following grounds –
 - (a) incapacity;
 - (b) misbehaviour;
 - (c) failure to carry out his or her duties as a non-executive member.
- (6) The Secretary of State may suspend a person from office as a non-executive member if it appears to the Secretary of State that there are or may be grounds to remove that person from office under sub-paragraph (5).

Non-executive members: suspension from office

- 3 (1) Having decided to suspend a person under paragraph 2(6), the Secretary of State must give notice of the decision to the person; and the suspension takes effect when the person receives the notice.
 - (2) The notice may be –
 - (a) delivered in person (in which case the person is taken to receive it when it is delivered), or
 - (b) sent by first class post to the person’s last known address (in which case, the person is taken to receive it on the third day after the day on which it is posted).
 - (3) The initial period of suspension must not exceed six months.
 - (4) The Secretary of State may review the suspension.
 - (5) The Secretary of State –
 - (a) must review the suspension, if requested in writing by the person to do so, but
 - (b) need not review the suspension less than three months after the beginning of the initial period of suspension.
 - (6) Following a review during a period of suspension, the Secretary of State may –
 - (a) revoke the suspension, or
 - (b) suspend the person for a period of no more than six months from the expiry of the current period.
 - (7) The Secretary of State must revoke the suspension if the Secretary of State –
 - (a) decides that there are no grounds to remove the person from office under paragraph 2(5), or
 - (b) decides that there are grounds to do so but nonetheless decides not to do so.
- 4 (1) Where a person is suspended from office as the chair under paragraph 2(6), the Secretary of State may appoint a non-executive member as interim chair to exercise the chair’s functions.

- (2) Appointment as interim chair is for a term not exceeding the shorter of –
 - (a) the period ending with either –
 - (i) the appointment of a new chair, or
 - (ii) the revocation or expiry of the existing chair’s suspension, and
 - (b) the remainder of the interim chair’s term as a non-executive member.
- (3) A person who ceases to be the interim chair is eligible for re-appointment.

Non-executive members: pay

- 5 (1) The HRA must pay its non-executive members such remuneration as the Secretary of State may decide.
- (2) The HRA must pay, or provide for the payment of, such allowances or gratuities as the Secretary of State may decide to a person who is or has been a non-executive member of the HRA.

Employees: terms of office

- 6 (1) Each executive member of the HRA is appointed as an employee of the HRA on such terms as it decides.
- (2) A person may not be appointed as chief executive without the consent of the Secretary of State.
- (3) The HRA may appoint, on such terms as it decides, other persons as employees of the HRA (in addition to those appointed as executive members).

Employees: pay

- 7 (1) The HRA must pay its employees such remuneration as it decides.
- (2) The HRA may pay, or provide for the payment of, such pensions, allowances or gratuities as it decides to or in respect of a person who is or has been an employee of the HRA.
- (3) Before making a decision about pay under this paragraph, the HRA must obtain the approval of the Secretary of State to its policy on the matter.

Committees and sub-committees

- 8 (1) The HRA may appoint committees and sub-committees.
- (2) A committee or sub-committee may consist of or include persons who are not members or employees of the HRA.
- (3) The HRA may pay such remuneration and allowances as it decides to a person who is a member of a committee or sub-committee, but is not an employee of the HRA, regardless of whether the person is a non-executive member of the HRA.

Procedure

- 9 (1) The HRA may regulate its own procedure.

- (2) A vacancy among the members of the HRA, or a defect in the appointment of a member, does not affect the validity of any act of the HRA.

Seal and evidence

- 10 (1) The application of the HRA’s seal must be authenticated by the signature of a member of the HRA or a person who has been authorised (whether generally or specifically) for the purpose.
- (2) A document purporting to be duly executed under the HRA’s seal or to be signed on its behalf must be received in evidence and, unless the contrary is proved, taken to be so executed or signed.

Status of the HRA

- 11 (1) The HRA is not to be regarded as a servant or agent of the Crown, or as enjoying any status, privilege or immunity of the Crown.
- (2) The HRA’s property is not to be regarded as property of, or property held on behalf of, the Crown.

PART 2

FUNCTIONS

Exercise of functions

- 12 (1) The HRA must exercise its functions effectively, efficiently and economically.
- (2) The HRA may arrange for any person (other than a devolved authority) to exercise any of its functions on its behalf.
- (3) The HRA may arrange for any person to help it in the exercise of its functions (whether in a particular case or in cases of a particular description).
- (4) Arrangements under sub-paragraph (2) or (3) may provide for the payment of remuneration and allowances to the persons with whom the HRA makes the arrangements.
- (5) The HRA may do anything which appears to it to be necessary or desirable for the purposes of or in connection with the exercise of its functions.

Help or advice for other public authorities

- 13 (1) The HRA may provide help or advice to another public authority for the purpose of the exercise by that authority of its functions.
- (2) Help or advice under this paragraph may be provided on such terms as the HRA decides (including terms relating to payment of remuneration and allowances).
- (3) “Public authority” –
- (a) includes any person certain of whose functions are functions of a public nature, but
 - (b) does not include either House of Parliament or a person exercising functions in connection with proceedings in Parliament.

- (4) A reference to a public authority –
 - (a) includes a public authority in the Channel Islands or the Isle of Man, but
 - (b) subject to that, does not include a reference to a public authority outside the United Kingdom.

Arrangements with devolved authorities

- 14 (1) The HRA may arrange with a devolved authority for the HRA –
 - (a) to exercise on behalf of the devolved authority any function which corresponds to a function of the HRA;
 - (b) to provide services or facilities in so far as the devolved authority requires them in connection with the exercise of such a function.
- (2) The terms and conditions on which arrangements under this paragraph may be made include provision for payment to the HRA in respect of its costs in giving effect to the arrangements.

Failure to exercise functions

- 15 (1) If the Secretary of State considers that the HRA is failing or has failed to exercise any of its functions, and that the failure is significant, the Secretary of State may direct the HRA to exercise such of its functions, in such manner and within such period, as the direction specifies.
- (2) If the HRA fails to comply with a direction under this paragraph, the Secretary of State may –
 - (a) exercise the functions specified in the direction, or
 - (b) make arrangements for some other person to exercise them on the Secretary of State’s behalf.
- (3) Where the Secretary of State exercises a power under sub-paragraph (1) or (2), the Secretary of State must publish the reasons for doing so.
- (4) Reference in sub-paragraph (1) to failure to exercise a function includes a failure to exercise it properly.

PART 3

FINANCE AND REPORTS

Funding

- 16 The Secretary of State may, with the consent of the Treasury, make payments to the HRA at such times and on such conditions (if any) as the Secretary of State considers appropriate.

Fees and indemnities

- 17 (1) Regulations may require payment of a fee in relation to the exercise of a specified function of the HRA; and the amount of the fee is to be the amount specified in, or determined in accordance with, the regulations.
- (2) Where the amount of a fee is to be specified in regulations under this paragraph –

- (a) the Secretary of State must, before specifying the amount of the fee, have regard to the cost incurred in the exercise of the function to which the fee relates, and
 - (b) the HRA must provide the Secretary of State with such information, in such form, as the Secretary of State requires.
- (3) Regulations under this paragraph may require the HRA to determine the amount of a fee; and, where they do so, the regulations –
- (a) must require the HRA, before determining the amount of the fee, to have regard to the cost incurred in the exercise of the function to which the fee relates, and
 - (b) must require the HRA to obtain the approval of the Secretary of State to the proposed amount of the fee.
- (4) Regulations under this paragraph which provide for the amount of a fee to be determined may specify factors in accordance with which it is to be determined.
- (5) Regulations under this paragraph may include provision –
- (a) for determining the time by which a fee is payable;
 - (b) for any unpaid balance to be recoverable as a debt due to the HRA (but for this not to affect any other method of recovery).
- (6) Before making regulations under this paragraph, the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (7) In section 71 of the National Health Service Act 2006 (schemes for meeting losses and liabilities etc. of certain health service bodies), in subsection (2), after paragraph (f) insert –
- “(fa) the Health Research Authority;”.

Accounts

- 18 (1) The HRA must keep accounts in such form as the Secretary of State may determine.
- (2) The HRA must prepare annual accounts in respect of each financial year in such form as the Secretary of State may determine.
- (3) The HRA must send copies of the annual accounts to –
- (a) the Secretary of State, and
 - (b) the Comptroller and Auditor General,
- within such period after the end of the financial year to which the accounts relate as the Secretary of State may determine.
- (4) The Comptroller and Auditor General must –
- (a) examine, certify and report on the annual accounts, and
 - (b) lay copies of them and the report on them before Parliament.
- (5) In this paragraph and paragraph 19, “financial year” includes the period –
- (a) beginning with the day on which the HRA is established, and
 - (b) ending with the following 31 March or, if the period ending with that date is 3 months or less, ending with the 31 March following that date.

Annual report

- 19 (1) As soon as is feasible after the end of each financial year, the HRA must prepare an annual report on –
- (a) the activities it has undertaken during the year, and
 - (b) the activities it proposes to undertake during the current financial year.
- (2) The report must set out the steps the HRA has taken during the year to fulfil its main objective (see section 67(2)).
- (3) The HRA must –
- (a) lay a copy of the report before Parliament, and
 - (b) send a copy of it to the Secretary of State.
- (4) The HRA must provide the Secretary of State with such other reports and information relating to the exercise of its functions as the Secretary of State may request.

PART 4

CONSEQUENTIAL AMENDMENTS

Public Records Act 1958

- 20 In Part 2 of the Table in Schedule 1 to the Public Records Act 1958, at the appropriate place insert –
“Health Research Authority.”

Public Bodies (Admission to Meetings) Act 1960

- 21 In the Schedule to the Public Bodies (Admission to Meetings) Act 1960, after paragraph (bm) (inserted by paragraph 26 of Schedule 5) insert –
“(bn) the Health Research Authority;”.

Parliamentary Commissioner Act 1967

- 22 In Schedule 2 to the Parliamentary Commissioner Act 1967, at the appropriate place insert –
“Health Research Authority.”

House of Commons Disqualification Act 1975

- 23 In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975, at the appropriate place insert –
“The Health Research Authority.”

Copyright, Designs and Patents Act 1988

- 24 In section 48(6) of the Copyright, Designs and Patents Act 1988 (definition of “the Crown”), after “Health Education England” (inserted by paragraph 28 of Schedule 5) insert “, the Health Research Authority”.

Freedom of Information Act 2000

- 25 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (other public bodies), at the appropriate place insert –
 “The Health Research Authority.”

Equality Act 2010

- 26 In Part 1 of Schedule 19 to the Equality Act 2010 (authorities subject to the public sector equality duty), in the group of entries under the heading “Health, social care and social security”, after the entry for Health Education England (inserted by paragraph 30 of Schedule 5) insert –
 “The Health Research Authority.”

SCHEDULE 8

Section 70

RESEARCH ETHICS COMMITTEES: AMENDMENTS

Ionising Radiation (Medical Exposure) Regulations 2000 (S.I. 2000/1059)

- 1 In regulation 2(1) of the Ionising Radiation (Medical Exposure) Regulations 2000 (S.I. 2000/1059), in the definition of “ethics committee” –
- (a) omit paragraph (a), and
 - (b) for paragraph (c) substitute –
 - “(c) a research ethics committee recognised or established by or on behalf of the Health Research Authority under the Care and Support Act 2013, or
 - (d) any other group of persons which assesses the ethics of research involving individuals and which is recognised for that purpose by or on behalf of the Welsh Ministers or the Scottish Ministers;”.

Ionising Radiation (Medical Exposure) Regulations (Northern Ireland) 2000 (S.R. 2000/194)

- 2 In regulation 2(1) of the Ionising Radiation (Medical Exposure) Regulations (Northern Ireland) 2000 (S.R. 2000/194), for the definition of “ethics committee” substitute –
 ““ethics committee” means a group of persons which assesses the ethics of research involving individuals and which is recognised for that purpose by or on behalf of the Department;”.

Health Service (Control of Patient Information) Regulations 2002 (S.I. 2002/1438)

- 3 In regulation 1(2) of the Health Service (Control of Patient Information) Regulations 2002 (S.I. 2002/1438), for the definition of “research ethics committee” substitute –
 ““research ethics committee” means –

- (a) a research ethics committee recognised or established by or on behalf of the Health Research Authority under the Care and Support Act 2013, or
- (b) any other group of persons which assesses the ethics of research involving individuals and which is recognised for that purpose by or on behalf of the Welsh Ministers.”

Nursing and Midwifery Council (Midwives) Rules 2004 (S.I. 2004/1764)

- 4 In rule 8 of the Schedule to the Nursing and Midwifery Council (Midwives) Rules 2004 (S.I. 2004/1764) (clinical trials), in the definition of “ethics committee” in paragraph (2), omit the words from “or established” to the end.

Nursing Homes Regulations (Northern Ireland) 2005 (S.R. 2005/160)

- 5 In regulation 2(1) of the Nursing Homes Regulations (Northern Ireland) 2005 (S.R. 2005/160), for the definition of “ethics committee” substitute –
““ethics committee” means a group of persons which assesses the ethics of research involving individuals and which is recognised for that purpose by or on behalf of the Department of Health, Social Services and Public Safety;”.

Residential Care Homes Regulations (Northern Ireland) 2005 (S.R. 2005/161)

- 6 In regulation 2(1) of the Residential Care Homes Regulations (Northern Ireland) 2005 (S.R. 2005/161), for the definition of “ethics committee” substitute –
““ethics committee” means a group of persons which assesses the ethics of research involving individuals and which is recognised for that purpose by or on behalf of the Department of Health, Social Services and Public Safety;”.

Independent Health Care Regulations (Northern Ireland) 2005 (S.R. 2005/174)

- 7 In regulation 2(1) of the Independent Health Care Regulations (Northern Ireland) 2005 (S.R. 2005/174), for the definition of “ethics committee” substitute –
““ethics committee” means a group of persons which assesses the ethics of research involving individuals and which is recognised for that purpose by or on behalf of the Department of Health, Social Services and Public Safety;”.

Approval of Research on Organs No Longer Required for Procurator Fiscal Purposes (Specified Purposes) (Scotland) Order 2006 (S.S.I. 2006/310)

- 8 In article 1(2) of the Approval of Research on Organs No Longer Required for Procurator Fiscal Purposes (Specified Purposes) (Scotland) Order 2006 (S.S.I. 2006/310), for the definition of “appropriate Research Ethics Committee” substitute –
““appropriate Research Ethics Committee” means a group of persons which assesses the ethics of research involving

individuals and which is recognised for that purpose by or on behalf of the Scottish Ministers;”.

Human Tissue Act 2004 (Ethical Approval, Exceptions from Licensing and Supply of Information about Transplants) Regulations 2006 (S.I. 2006/1260)

- 9 In regulation 1(2) of the Human Tissue Act 2004 (Ethical Approval, Exceptions from Licensing and Supply of Information about Transplants) Regulations 2006 (S.I. 2006/1260), for the definition of “research ethics authority” substitute –

““research ethics authority” means –

- (a) a research ethics committee recognised or established by or on behalf of the Health Research Authority under the Care and Support Act 2013, or
- (b) any other group of persons which assesses the ethics of research involving individuals and which is recognised for that purpose by or on behalf of the Welsh Ministers or the Department of Health, Social Services and Public Safety in Northern Ireland.”

Mental Capacity Act 2005 (Appropriate Body) (England) Regulations 2006 (S.I. 2006/2810)

- 10 In regulation 2 of the Mental Capacity Act 2005 (Appropriate Body) (England) Regulations 2006 (S.I. 2006/2810) (definition of “appropriate body”), for the words from “is a committee” to the end substitute “is a group of persons which assesses the ethics of research involving individuals and which is recognised for that purpose by or on behalf of the Secretary of State.”

Mental Capacity Act 2005 (Appropriate Body) (Wales) Regulations 2007 (S.I. 2007/833)

- 11 In regulation 2 of the Mental Capacity 2005 (Appropriate Body) (Wales) Regulations 2007 (S.I. 2007/833) (definition of “appropriate body”), for the words from “is a committee” to the end substitute “is a group of persons which assesses the ethics of research involving individuals and which is recognised for that purpose by or on behalf of the Welsh Ministers.”

Human Fertilisation and Embryology (Disclosure of Information for Research Purposes) Regulations 2010 (S.I. 2010/995)

- 12 In regulation 2(1) of the Human Fertilisation and Embryology (Disclosure of Information for Research Purposes) Regulations 2010 (S.I. 2010/995), for the definition of “research ethics committee” substitute –

““research ethics committee” means a research ethics committee recognised or established by or on behalf of the Health Research Authority under the Care and Support Act 2013;”

Independent Health Care (Wales) Regulations 2011 (S.I. 2011/734)

- 13 In regulation 25 of the Independent Health Care (Wales) Regulations 2011 (S.I. 2011/734) (research), in paragraph (2) for the words from “a research ethics committee” to the end substitute “a group of persons which assesses the ethics of research involving individuals and which is recognised for that purpose by or on behalf of the Welsh Ministers.”

Annex B – Detailed Notes

INTRODUCTION

1. These notes relate to the draft Care and Support Bill as published for pre-legislative scrutiny in July 2012. They have been prepared by the Department of Health in order to assist the reader of the Bill and help inform debate on it.
2. These notes are intended to be read in conjunction with the draft Bill and the overall summary in this Command Paper. They are not, and are not meant to be, a comprehensive description of the draft Bill. Therefore, where a clause or part of a clause does not seem to require any explanation or comment, none is given.
3. A glossary of terms and abbreviations used in these notes is provided at the end of these notes.

TERRITORIAL EXTENT AND APPLICATION

4. With regard to territorial extent, the majority of provisions in the Bill extend to England and Wales with some provisions also extending to Scotland and Northern Ireland.
5. The provisions on Part 1 (Care and Support) apply to England only as social care is a devolved matter for Scotland, Wales and Northern Ireland.
6. The health provisions largely apply to England only (and therefore extend to England and Wales). Some provisions relating to health research and the abolition of the HFEA and HTA extend to England, Wales, Scotland and Northern Ireland. Provision is also made for the HRA and HEE to take on some functions from the devolved authorities by agreement.

DETAIL ON CLAUSES

PART 1 – CARE AND SUPPORT

7. This Part of the Bill imposes duties on local authorities regarding the provision of care and support relating both to adults who have a need for such care, and carers who have a need for support. Most clauses are designed to cover both adults needing care, and adults who are carers. In some cases, there are separate provisions, and the terms “adult needing care” and “carer” are used as needed.

Clause 1 – Promoting individual well-being

8. This clause provides a set of legal principles, which frame how local authorities must carry out their care and support functions for adults needing care and carers. The “well-being principle” in subsection (1) is directed at local authorities (and their officers) making decisions about adults. It is not intended to be directly enforceable as an individual right, but to carry indirect legal weight, where a local authority’s failure to follow the principle may be challenged through judicial review. “Well-being” is not defined precisely. However, subsection (2) lists outcomes which develop the concept of well-being. These outcomes are not a series of requirements, but serve as a description to aid understanding.

Clause 2 – Providing information and advice

9. This clause places a duty on local authorities to provide an information and advice service in relation to care and support. Information and advice is available to all people regardless of whether or not, for example, they have eligible needs, or whether or not they live in the local authority’s area. For instance, a person who was thinking of moving to a new area could ask for information and advice from that new local authority. It is for the local authority to determine the precise scope of the information and advice it will offer, subject to the basic requirements in the clause.

Clause 3 – Promoting diversity and quality in provision of services

10. This clause places a duty on local authorities to promote diversity and quality amongst care and support providers in the local area. Providers of care and support may be of all types, including private sector organisations, not-for-profit and social enterprises, and mutuals. They may also be of different sizes, such as small and medium size enterprises and micro-providers.
11. Local authorities must consider this duty when providing or arranging services to meet the care and support needs of adults (including carers). This is because local authorities’ commissioning practice can influence the local market of providers.

Clause 4 – Co-operating generally

12. This clause requires local authorities and their partners, as listed in subsection (5), to co-operate in carrying out their respective functions relevant to care and support. It does not create any new functions, or require the local authority to undertake any particular activities, but there are a number of other existing powers which local authorities may be able to use to promote joint working.
13. For instance, local authorities may share information with other partners, or provide them with staff, services or other resources. Under section 75 of the NHS Act 2006, a local authority may contribute to a ‘pooled budget’ with an NHS body, a shared fund out of which payments can be made.

Clause 5 – Co-operating in specific cases

14. This duty supplements the duty in clause 4. It is intended to be used by local authorities or partners where their co-operation is requested in relation to an individual adult or carer who has needs by either the local authority or one of the “relevant partners” in clause 4. The duty is not limited to particular situations but could be used, for example, in relation to adult safeguarding enquiries, when an adult requires an assessment for NHS Continuing Healthcare, or when an adult moves between local authority areas.

Clause 6 – Promoting integration of care and support with health services etc.

15. This clause places a duty on local authorities to carry out their care and support functions with the aim of integrating services with those provided by the NHS or other health-related services (for example, housing). This clause is intended to reflect the duty placed on clinical commissioning groups by section 14Z1 of the NHS Act 2006 (as amended by section 26 of the Health and Social Care Act 2012).

Clause 7 – Preventing needs for care and support

16. This clause places a duty on local authorities to take steps, including making services available, which are aimed at preventing, delaying or reducing adults’ needs for care and support. This duty is intended to reflect that imposed on the local authority by section 2B of the NHS Act 2006 (public health responsibilities), and NHS responsibilities in relation to recovery from illness, to allow organisations to work together to promote the health and well-being of the local population.
17. These duties may in part be discharged through Joint Strategic Needs Assessments and Joint Health and Well-being Strategies as set out under sections 116, 116A and 116B of the Local Government and Public Involvement in Health Act 2007. These place duties on the local authority and clinical commissioning group to prepare an assessment of the current and future health and social care needs of local people, which could be met by either the local authority, clinical commissioning group or the NHS Commissioning Board, and to prepare a strategy for meeting those needs.

Clause 8 – How to meet needs

18. Care needs will be specific to each individual, and there are many ways in which local authorities can meet such needs. This clause is intended to provide some indication of the range of what a local authority can do to meet those needs by listing some general examples. It is not intended to be a full definition or an exhaustive list. The examples provided are intended to be wide enough to cover all specific services which may be provided, including, for instance, residential care, home care and replacement care to allow a carer to take a break.

Clause 9 – Assessment of needs for care and support

19. This clause requires a local authority to carry out a “needs assessment” where it appears that an adult may have needs for care and support. The objective of the needs assessment is to determine whether the adult has care and support needs and what those needs may be. It is the gateway to receiving ongoing care and support services.
20. The clause replaces a number of existing powers and duties with a single duty to assess, including: section 2 of the Chronically Sick and Disabled Persons Act 1970; section 4 of the Disabled Persons (Services, Consultation and Representation) Act 1986; and section 47(1) of the National Health Service and Community Care Act 1990.

Clause 10 – Assessment of carer’s needs for support

21. This clause creates a single duty to undertake a “carer’s assessment”. This is comparable to the duty in clause 9. The aim of the assessment is to determine whether the carer has support needs and what those needs may be. A “carer” is defined as any adult who is caring, or intends to care, for another adult. This would not include anyone who cares for someone as part of their employment or as voluntary work. However, the local authority may still assess such a carer if it considers that under the particular circumstances there is a reason to carry out the assessment, for instance, where someone who had previously been an unpaid family carer begins to receive some payment for their caring role, and so may not otherwise be entitled to a carer’s assessment.
22. This duty replaces existing duties in relation to the assessment of adult carers in section 1(1) of the Carers (Recognition and Services) Act 1995 and section 1 of the Carers and Disabled Children Act 2000. However, the new duty does not require (as the previous provision did) that the carer must be providing “substantial care on a regular basis”.

Clause 12 – Assessments under sections 9 and 10: further provision

23. This clause requires the Secretary of State to make regulations about how an assessment is carried out, to provide clarity and ensure consistent practice. Regulations may, for instance, require local authorities to consider the needs of the whole family when carrying out an assessment on an adult. They may also specify when a specialist assessment must be carried out (for instance, an assessment for NHS Continuing Healthcare), and enable self-assessment by the person themselves.

Clause 13 – The eligibility criteria

24. This clause requires local authorities to determine whether a person’s needs are eligible needs, after carrying out a needs assessment or carer’s assessment. “Eligible” needs are those needs of a level or nature which the local authority is under a duty to meet. The use of the word “eligible” here refers only to the person’s needs, not to their financial resources or other circumstances.

25. The Secretary of State must make regulations setting out the eligibility framework, including the process by which local authorities determine eligibility, and may include setting a single threshold for defining eligible needs. The regulations will be the route to establishing eligibility for all types of care and support, replacing the separate provisions and legal tests for residential accommodation (in section 21 of the National Assistance Act 1948) and other services (for instance, in section 2 of the Chronically Sick and Disabled Persons Act 1970).
26. Regulations will also specify some circumstances in which a person is to be considered to have eligible needs, for instance, when an adult has urgent needs for accommodation. They will replace existing statutory guidance¹⁵, and will be subject to affirmative resolution.

Clause 14 – Power of local authority to impose charges

27. This clause gives local authorities a general power to charge for certain types of care and support, at their discretion. It replaces the existing duty on local authorities to charge for care home accommodation set out in section 22(1) of the National Assistance Act 1948, and powers to charge for other types of care and support (including those under section 17 of the Health and Social Services and Social Security Adjudications Act 1983, and section 8 of the Carers and Disabled Children Act 2000). The power extends to all types of care and support, unless regulations state that the specific type must be provided for free.
28. When a person has care and support needs but does not qualify for financial support from the local authority, they are still able to request that the local authority arrange the care and support that they require (see clauses 17 and 19). Where the local authority arranges the care and support necessary for that individual, subsection (1)(b) gives the local authority a power to charge a fee to cover the costs of arranging that care and support. However, the local authority may not charge such fees in relation to any types of care and support specified in the regulations in subsection (4).

Clause 15 – Assessment of financial resources

29. This clause requires a local authority to carry out a financial assessment if they are likely to charge for meeting the individual's needs under the power in clause 14. Regulations will set out how a financial assessment is conducted to ensure that such assessments are carried out on a consistent basis. In particular, these regulations will stipulate how local authorities treat an adult's income and capital in calculating their overall financial resources, and they will set a specific limit for those resources, above which the local authority will not be required to fund any eligible needs. These provisions replace those under section 22 of the National Assistance Act 1948.

¹⁵www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_113154

Clause 16 – Deferred payment agreements

30. This clause allows regulations to specify when and upon what conditions a deferred payment agreement may or must be entered into with an adult. This is an agreement for the local authority to pay the sum the adult would otherwise be required to pay towards the cost of meeting his or her care and support needs, secured by a charge against the adult's legal or beneficial interest over his or her home.
31. The clause replaces Section 55 of the Health and Social Care Act 2001, which allows authorities to defer care home charges. However, the clause enables regulations to allow local authorities to defer charges for other types of care and support and administrative costs, and to charge interest on the deferred sum.

Clause 17 – Duty to meet needs for care and support

32. This clause sets out the principal individual entitlement to care and support for adults (the equivalent for carers is provided for in clause 19). This replaces a number of duties to provide particular care and support services to adults: sections 21(1) and 29(1) of the National Assistance Act 1948, section 2(1) of the Chronically Sick and Disabled Persons Act 1970, and section 45(1) of the Health Services and Public Health Act 1968.
33. There are a number of ways in which an adult may become entitled to care and support. The common requirements for establishing this entitlement are:
 - that the adult is ordinarily resident in the local authority area (or has no settled residence in any area, but is living in the local authority area at that time). “Ordinary residence” is also referred to in clause 32; and
 - that the adult has been assessed by the local authority and has been determined to have eligible needs for care and support (this would be decided using the eligibility framework set out in regulations made under clause 13).
34. If the local authority has decided not to charge for a particular type of care and support (using the discretion provided by clause 14), or it is of a type which must be provided for free, then there are no further conditions, and the local authority is under a duty to meet the adult's eligible needs for care and support.
35. If, however, the local authority does choose to charge for a type of care and support (and most local authorities currently charge for most types), then one of three additional conditions must be met in order for the adult to be entitled to care and support to meet their eligible needs:
 - the adult does not have sufficient financial resources to pay any charge due. This will be calculated following a financial assessment carried out by the local authority (under clause 15) based on the financial limit set out in regulations;
 - the adult requests the local authority to meet their needs, even if they have sufficient financial resources to pay any charge. The request would trigger the duty to meet their eligible needs; and

- the adult lacks the mental capacity to arrange care and support, and there is no other person willing or able to do so on their behalf. In these cases, the duty to meet eligible needs applies, regardless of other factors.

Clause 18 – Power to meet needs for care and support

36. This clause provides a broad power to enable local authorities to meet the assessed needs of adults who are not otherwise eligible, for instance, because the adult is not ordinarily resident, does not have eligible needs, or needs urgent care.

Clause 19 – Duty and power to meet a carer’s needs for support

37. This clause sets out the duty on the local authority to meet a carer’s eligible needs for support. This is equivalent to the duty in clause 17. This duty replaces the power to provide services to carers in section 2 of the Carers and Disabled Children Act 2000.

38. As with clause 17, this establishes common requirements for entitlement to support: that the carer must have eligible needs (as determined in accordance with the regulations in clause 13), and the adult for whom they care must be ordinarily resident in the local authority’s area, or have no settled residence but be living there at the time.

39. It may be the case that one means of meeting a carer’s needs for support would be to provide care and support to the adult for whom they care, with that person’s agreement (for example, by providing a replacement care worker to allow the carer to have a break from caring). Where there is a charge for such care and support, further conditions must be met before the local authority is obliged to provide it. A financial assessment would have to be carried out on the adult needing care, with their agreement (as the care and support is being provided directly to them). If they are below the financial threshold or, where above, nevertheless agree to pay the charge, the local authority is under a duty to meet the carer’s needs by providing the care and support to the adult needing care.

40. Subsection (7) provides a power for local authorities to meet the needs of carers who are not otherwise eligible, as long as they have carried out a carer’s assessment and a financial assessment, where relevant.

Clause 20 – Exception for persons subject to immigration control

41. This clause restates sections 21(1A) and 21(1B) of the National Assistance Act 1948 and similar exceptions in other legislation. It places limits on the circumstances in which certain persons subject to immigration control (as defined in section 115 of the Immigration and Asylum Act 1999) may be provided with care and support, by providing that any needs which have arisen solely from “destitution” may not be met by care and support. In practice, this clause, like the provision it replaces, mainly affects asylum seekers and certain categories of failed asylum seeker, and forms the boundary between cases supported by the National Asylum Support Service and cases supported by local authorities.

42. The restated clause applies in relation to all forms of care and support, because one of the objects of this Bill is to replace the different legal provisions which currently apply to residential and non-residential services with unified rules governing all care and support.

Clause 21 – Exception for provision of health care services

43. This clause sets out the boundary in law between the responsibilities of local authorities for care and support, and those of the NHS for health care. It replaces prohibitions found in sections 21(8) and 29(6) of the National Assistance Act 1948 and section 49 of the Health and Social Care Act 2001.

44. A local authority cannot meet care and support needs by providing those services which are required to be provided under the NHS Act 2006. This includes all healthcare services which the NHS is required to provide, for instance, primary medical, dental and ophthalmic services, and those commissioned by clinical commissioning groups, the NHS Commissioning Board, or any other NHS body. Neither may it meet care and support needs by providing or arranging nursing care by a registered nurse.

45. However, the prohibitions are subject to certain exceptions. Subsection (1) provides that the local authority may provide some healthcare services, as long as the service provided is “incidental or ancillary”, for instance, it is minor and accompanies some other type of care and support which the local authority is permitted to provide. Subsection (2) provides for regulations which may be used to provide further detail on the types of service which may or may not be provided by local authorities, and in which circumstances. Such regulations will allow for clarity in the operation of the boundary between local authority care and support and the NHS.

46. The prohibition on arranging (as opposed to providing) nursing by a registered nurse is also subject to an exception where the local authority has obtained prior consent from the relevant clinical commissioning group, to allow for local authorities to arrange placements in care homes which provide registered nursing care. However, local authorities need not seek this consent where these relate to temporary arrangements in urgent cases.

47. This clause also provides, at subsection (6), for making regulations governing the part local authorities must play in assessments to establish whether a person is entitled to continuing healthcare (which would be provided under the NHS).

Clause 22 – Exception for provision of housing etc.

48. This clause sets out the legal boundary between a local authority’s duties towards individuals under this Part of the Bill and its or another local authority’s duties under other relevant legislation, in particular the Housing Act 1996.

Clause 23 – The steps for the local authority to take

49. This clause sets out the next steps, following the determination of whether the adult (or carer) has eligible needs. It provides that where a local authority is going to meet an adult's needs, it must provide a care and support plan (or a support plan for a carer), and help the adult decide how to have their needs met.

Clause 24 – Care and support plan, support plan

50. This clause sets out the minimum content that local authorities must include within the plan. In particular, the plan must include a personal budget (as defined in clause 25). Local authorities can choose to include additional information at their discretion to reflect the circumstances of the person. Such plans must be produced in consultation with the adult, and focus on the outcomes the person wishes to achieve. The plan will be the formal record kept by the adult and the local authority, following the end of the process of care and support planning.

Clause 25 – Personal budget

51. This clause defines personal budgets, which must be included in the plan prepared under clause 24. The adult needs to know this information so that he or she can make sensible choices as to how to meet their needs. Whilst the personal budget sets out the cost of meeting care and support needs, the local authority may set out at the same time any other public funds that the adult will have available to them, for instance personal health budgets (where the adult receives a direct payment to pay for healthcare), or other benefits or allocations.

Clause 27 – Cases where the adult expresses preference for particular accommodation

52. This clause provides a power for regulations to ensure that an adult should have a choice of accommodation when deciding how their needs are met. Currently the right to choose accommodation is limited to care homes, but this clause provides a power to extend that right to other forms of accommodation.
53. In some instances, the local authority may incur additional costs when making arrangements with the preferred care home or other accommodation. An individual, for example, may wish to be placed in a care home that is more expensive than one for which the local authority would normally pay. Regulations may provide that in certain circumstances, the person (or a third party) may make an additional payment to secure their preferred accommodation.

Clause 28 – Adults with capacity to request direct payments

54. This clause provides that, instead of meeting needs by providing or arranging for the provision of services, the local authority must make a payment to the adult who requests one (or to a person nominated by them), if the four conditions set out are met. It replaces section 57 of the Health and Social Care Act 2001, and associated regulations.

Clause 29 – Adults without capacity to request direct payments

55. This clause makes similar provision as in clause 28 for adults who lack, or who the local authority believes lack, the capacity to request a direct payment. It requires the local authority to make a direct payment to an authorised person who requests one, provided the five conditions set out in the clause are met.

Clause 30 – Direct payments: further provision

56. This clause requires the Secretary of State to make regulations in relation to direct payments. It also provides that a direct payment must be used for meeting the needs specified in the care and support plan (or support plan), and enables the local authority to stop making payments and require the adult to repay some or all of it, if it is not used to meet those needs.
57. It also provides that a local authority must terminate a direct payment if it is no longer satisfied that it is an appropriate way to meet the adult's needs. Therefore, for example, if the local authority has reasonable grounds to think that there is a risk of misuse of a direct payment, it must stop making the payment until it makes the necessary enquiries.

Clause 31 – Continuity of care when an adult moves

58. This clause seeks to ensure that a person who moves local authority area does so with no interruption to their care. It stipulates that duties on the 'sending authority' and the 'receiving authority' are triggered when they are notified that an adult wishes to move local authority area. If the local authority is satisfied that the adult genuinely intends to move, the receiving authority must carry out an assessment of the person's care and support needs and provide care and support accordingly. If the receiving authority does not carry out the assessment before the person arrives in the new area, it must provide care and support based on the care and support plan of the sending authority until it is able to carry out its own assessment. This should ensure that the person does not experience a gap in the provision of care and support.
59. Subsection (9) of this clause provides for the receiving local authority to be able to recoup the costs of meeting needs under this provision from the sending authority, where it happens that the adult does not become ordinarily resident in the new area. This may be because, for instance, after moving to the new area, the adult changes their mind and moves back to the original local authority. The adult may in this case have remained ordinarily resident in the original authority's area.

Clause 32 – Where a person’s ordinary residence is

60. A person’s ordinary residence will normally depend on the facts of the case, but this clause provides that if a local authority meets an adult’s care and support needs by arranging some types of accommodation, then they will be considered to remain ordinarily resident in that authority’s area, no matter where the accommodation is located. This is to ensure that people cannot lose their ordinary residence by being placed in accommodation in other areas. This replaces the rules in section 24(5) of the National Assistance Act 1948, which relates to care homes only, and extends the principle to other types of accommodation related to care and support needs.
61. The clause also extends this principle to both NHS accommodation, to clarify that adults in such accommodation remain ordinarily resident in the area in which they were resident before entering that accommodation, and to accommodation provided under section 117 of the Mental Health Act 1983, to clarify that adults in such accommodation remain ordinarily resident in the area which was responsible for providing the section 117 after-care services.

Clause 33 – Disputes about ordinary residence and continuity of care

62. This clause provides that if uncertainty arises about where a person is ordinarily resident and cannot be resolved locally, a determination of ordinary residence is to be made by the Secretary of State or a person appointed by the Secretary of State. This clause also clarifies that the Secretary of State may review a previous determination, within three months of the original decision. This is to allow for changes, for instance, where new evidence comes to light, without having to resort to judicial review. This procedure also applies to disputes between authorities in relation to the portability duties in clause 31.

Clause 34 – Enquiry by local authority

63. This clause places a duty on local authorities to make enquiries, or to ask others to make enquiries, where they reasonably suspect that an adult in its area with care and support needs is at risk of abuse or neglect. The purpose of the enquiry is to establish what, if any, action is required in relation to the case. This clause supplements the existing obligations on other organisations to look after the people in their care effectively, or, in the case of the police, to prevent and respond to criminal activity. It applies to adults currently in its geographical area, whether or not the person is ordinarily resident there, and regardless of whether the authority is meeting their care and support needs.

Clause 35 – Safeguarding Adults Boards

64. This clause requires a local authority to establish a Safeguarding Adults Board (SAB), to bring together key organisations in an area with functions relevant to adult safeguarding. Further details about SABs are set out in Schedule 1.

Clause 36 – Safeguarding adults reviews

65. This clause requires an SAB to arrange for a safeguarding adults review in certain circumstances, where an adult dies or there is concern about the conduct of a member of the SAB in the case. The aim of a review is to ensure that lessons are learned from such cases, not to allocate blame, but to improve future practice and partnership working, to minimise the possibility of it happening again. This does not prevent the Board carrying out a review in any other case where they feel it would be appropriate.

Clause 38 – Protecting property of adults being cared for away from home

66. This clause updates the duty originally set out at section 48 of the National Assistance Act 1948, and re-enacts an offence associated with this duty, found at section 55 of the National Assistance Act 1948.

Clause 39 – Assessing a child’s needs for care and support

67. This clause provides a power for local authorities to assess a child’s needs for care and support. Children have rights to assessment and support under the Children Act 1989, and this provision does not affect those rights. However, it provides a right for a child, or a person acting on their behalf, to request an assessment in advance of their 18th birthday. If the local authority does not accept this request, it must explain why in writing. The purpose of the assessment is to determine what needs for care and support a child may have at the age of 18 years, to support transition planning.

Clause 40 – Assessing a child’s carer’s needs for support

68. This clause requires a local authority to assess the needs for support of a child’s carer, when requested. A “child’s carer” is any adult providing care to a child, regardless of whether they are the parent of that child. Such carers also have a right to an assessment under section 6 of the Carers and Disabled Children Act 2000, and support would normally be provided under the Children Act 1989, as part of a whole-family approach. However, there may be certain services available only through adult care and support, and a child’s carer should be able to request an assessment under this Part as the means of accessing any such services.

Clause 41 – Assessing a young carer’s needs for support

69. This clause provides a power for local authorities to assess a young carer’s needs for support. This provision does not affect existing rights to assessment under section 1 of the Carers and Disabled Children Act 2000. However, as with other young people in clause 39, it provides a right for a young carer, or a person acting on their behalf, to request an assessment in advance of their 18th birthday, to support transition planning. If the local authority does not accept this request, it must explain why in writing.

70. A local authority may not provide any services to meet a young carer's needs in advance of their 18th birthday. However, the transitional protection provided by clause 43 also applies in respect of young carers receiving services under section 17 of the 1989 Act.

Clause 43 – Continuity of service under section 17 of the Children Act 1989

71. A local authority may not provide any care and support under this Part to meet a child's or young carer's needs in advance of their 18th birthday. However, it is possible that on their 18th birthday, adult care and support may not be in place immediately. Where this happens, and the child or young carer has previously been receiving services under section 17 of the 1989 Act, this clause provides that the local authority must continue to provide those services, until the relevant steps have been undertaken. This is to ensure no gap in provision during the transition to adult care and support.

Clause 44 – Power to meet a child's carer's needs for support

72. This clause provides a power for a local authority to meet a child's carer's needs for support. A child's carer's needs will usually be met under section 17 of the Children Act 1989. However, this clause allows for additional support to be provided, where appropriate, for instance, because a certain type of support is only available via that route.

Clause 45 – Recovery of charges, interest etc.

73. This clause allows local authorities to recover any sums owed to them, such as unpaid charges, and any expenditure arising from misrepresentation or non-disclosure of material facts. The exception to this is cases where an authority could (in accordance with clause 16) enter into a deferred payment agreement, unless the adult has refused one. Charges are to be recoverable as debts, which means that the local authority must pursue the debt through the County Court process.
74. Subsection (6) provides for regulations allowing authorities to charge interest on the sum owed, at a rate in accordance with the regulations. These provisions consolidate various powers, including section 45 of the National Assistance Act 1948, and sections 22-24 of the Health and Social Services and Social Security Adjudications Act 1983.

Clause 46 – Transfer of assets to avoid charges

75. If the person has transferred assets to another individual in order to avoid charges for their care and support, subsections (2) and (4) enable the local authority to recover their lost income from the individual, or individuals. The type of assets included and how they should be valued, are set out in subsections (5) and (6). This replaces section 21 of the Health and Social Services and Social Security Adjudications Act 1983.

Clause 47 and Schedule 2 – Delayed discharges

76. Schedule 2 re-enacts the delayed discharges provisions of the Community Care (Delayed Discharges etc) Act 2003 (“the 2003 Act”) and the relevant regulations. The Schedule deals with the planning of safe discharge of patients in England from NHS hospital care to local authority social care to ensure that patients are not delayed in hospital despite being fit, safe and ready to be discharged.

Clause 48 and Schedule 3 – After-care under the Mental Health Act 1983

77. This clause is intended to clarify the meaning of, and make minor amendments to, section 117 of the Mental Health Act 1983. Section 117 places a duty on clinical commissioning groups and local authorities to arrange after-care services for people who have been detained in hospitals for a mental disorder. It is a freestanding duty to provide a particular type of service in specific circumstances, and is not part of the main care and support provisions in this Bill. However, we want to remove a number of anomalies, whereby after-care services under section 117 are subject to different rules to other types of care and support, for instance, to provide for regulations about choice of accommodation to apply to after-care accommodation. Schedule 3 makes a number of consequential amendments to enable direct payments to continue to be made in respect of these services, as they are now.

Clause 50 – Guidance

78. This clause has been drafted with the intention that guidance issued about functions under Part 1 of this Bill will have the same legal status as guidance issued under section 7 of the Local Authority Social Services Act 1970. The Courts have interpreted the words “acting under the general guidance” to mean that local authorities must “follow the path charted by the Secretary of State’s guidance, with liberty to deviate from it where the local authority judges on admissible grounds that there is good reason to do so, but without freedom to take a substantially different course” (*R v Islington LBC ex parte Rixon* [1997] 1 CCLR 119 at 123). Section 7 continues to apply in relation to guidance about the exercise of all other social services functions.

Clause 51 – Delegation of local authority functions

79. This clause provides a power for local authorities to delegate their care and support functions to a third party, unless specifically excluded. It also allows for delegation of certain functions under other Acts.

80. If a local authority chooses to delegate a function, such as assessment or care planning, it may place certain conditions on or share information with the person to whom it delegates the function. However, delegation does not remove responsibility from the local authority for ensuring that the requirements of this Part and other statutory obligations are met, and the local authority is accountable for any breach of those obligations.

81. The clause includes an order-making power to enable the Secretary of State to change the functions to which this power applies, and also to impose conditions and limitations on the exercise of the power. The clause makes similar provision to, but does not replace or supersede, powers to delegate functions by order of the Secretary of State under the Deregulation and Contracting Out Act 1994. However, it allows local authorities to determine when functions are delegated, subject to any conditions made.

Clause 53 and Schedule 4 – Repeals and revocations

82. Schedule 4 lists the main existing provisions in primary legislation which will be repealed and replaced by Part 1 of this Bill. The list is not intended to be comprehensive. For example, carers legislation in the Carers (Recognition and Services) Act 1995, Carers and Disabled Children Act 2000 and Carers (Equal Opportunities) Act 2003 is not included at this stage, but will be repealed or where appropriate amended in due course. Part 2 of Schedule 4 makes savings, so that certain existing provisions are retained so far as they relate to children. Further work will be needed to revise this Schedule before introduction of the Bill to Parliament, in particular to preserve legislation which relates to the transition from children's services to adult care and support for children and carers.

PART 2 – HEALTH

Chapter 1 – Health Education England

Clause 54 – Health Education England

83. This clause establishes a new body called Health Education England (HEE). HEE will have functions relating to education and training for the health service and will replace the existing Special Health Authority (SpHA).

Schedule 5 – Health Education England

84. Paragraph 12(7) amends section 247C of the National Health Service Act 2006 to impose a duty on the Secretary of State to keep HEE's functions under review.
85. Section 72 of the National Health Service Act 2006 requires NHS bodies to co-operate with each other in the exercise of their functions. Paragraph 14(2) amends section 72 so that HEE is treated as a NHS body for the purposes of that section.
86. This means that all NHS bodies (which are defined in section 275 of the National Health Service Act 2006 as the National Health Service Commissioning Board, clinical commissioning groups, an NHS Trust, and NHS Foundation Trust and a Local Health Board), the National Institute for Health and Care Excellence, and the Health and Social Care Information Centre will be required to co-operate with HEE in the exercise of their functions, and HEE will be required to co-operate with them.

87. Paragraph 15 gives HEE a power to exercise on behalf of a devolved authority any functions which are similar to HEE's functions. There are occasions where UK wide co-operation and activity is required to support education and training, for example, planning for the medical workforce. This will allow HEE to lead work of this nature on behalf of the devolved authorities.

Clause 55 – Planning education and training for healthcare workers etc.

88. The Secretary of State has a duty in section 1F of the National Health Service Act 2006 to carry out his functions under prescribed enactments to secure an effective system for the planning and delivery of education and training to persons who are employed, or who are considering becoming employed, in an activity which involves or is connected with the provision of services as part of the health service in England. The prescribed enactments include section 63 of the Health Services and Public Health Act 1968 ("the 1968 Act") and the National Health Service 2006.
89. Section 63 of the 1968 Act gives the Secretary of State a power to provide, either directly or by entering into arrangements with others, education and training to persons specified in that section, which includes all NHS workers. Section 258 of the National Health Service Act 2006 imposes a duty on the Secretary of State to make available those facilities required by universities for clinical teaching and research connected with clinical medicine or clinical dentistry.
90. Subsection (1) delegates the Secretary of State's duty under section 1F, so far as it applies to section 63 of the Health Services and Public Health Act 1968 and section 258 of the National Health Service Act 2006 to HEE.
91. Sections 13M and 14Z of the National Health Service Act 2006 place a duty on the NHS Commissioning Board and clinical commissioning groups to promote education and training to assist the Secretary of State in the discharge of his duty in section 1F of that Act. These duties are amended by subsection (4) to require co-operation with HEE to assist in the discharge of HEE's delegated section 1F duty, in addition to the Secretary of State.
92. Section 63(6)(b) of the Health Services and Public Health Act 1968 gives the Secretary of State a power to pay travel and other allowances to persons who undertake education and training under that section. Subsection (7) amends section 63(6) of that Act to give the Secretary of State a power to make payments as the Secretary of State considers appropriate and for payments to be subject to such terms and conditions as the Secretary of State decides. This means that provisions can be made about suspension, termination or repayments of payments.
93. Subsection (8) provides that the power of the Secretary of State under section 63(6) of the 1968 Act is exercisable concurrently with HEE, but in exercising the power, HEE must have regard to any guidance or other information issued by the Secretary of State.

Clause 56 – Ensuring sufficient skilled workers for the NHS

94. This clause places a duty on HEE to act with a view to ensuring that there is a sufficient number of care workers with the skills and training to provide NHS services in England. For example, HEE will need to ensure that sufficient nurses are trained nationally to meet anticipated demand for future NHS service provision.

Clause 57 – Quality improvement in education and training etc.

95. This clause places obligations on HEE in respect of the quality of education and training provided to care workers, the quality of NHS services, and research. It also amends section 2 of the Health Act 2009 to add HEE to the list of bodies that must, when performing their NHS functions, have regard to the NHS constitution. An NHS function is defined in section 2 of the Health Act 2009 as any function under an enactment concerned with, or connected to, the provision, commissioning or regulation of NHS services.

Clause 58 – Priorities and outcomes

96. This clause requires both the Secretary of State and HEE to publish documentation specifying their priorities and outcomes for the education and training of care workers. HEE's document should also include guidance for governing bodies of Local Education and Training Boards (LETBs) about their commissioning functions in clause 65. HEE is required to ensure that its priorities and outcomes are consistent with Secretary of State's, and to review the documents every 12 months.

Clause 59 – Sections 54 and 56: matters to which HEE must have regard

97. The requirement for HEE to have regard to certain matters when carrying out its duty will ensure that HEE's activities are linked to the future priorities of NHS services.

Clause 60 – Advice

98. The requirement for HEE to make advisory arrangements will ensure that HEE receives representations from those who have an interest in education and training. The education and training landscape is complex, and many organisations have an interest in the development of health professionals, ranging from local employers in the NHS through to national organisations such as the professional regulators e.g. the General Medical Council, and professional bodies such as the medical Royal Colleges.

Clause 61 – Local Education and Training Boards

99. HEE has a duty to work with commissioners of NHS services to ensure that all providers of NHS services are a member of a LETB. The other persons in this group will all be providers of NHS services in the same geographical area. The purpose of the group will be to help with the exercise of education and training functions. Each LETB will have a governing body which is established in accordance with clause 62.

100. The Secretary of State must make regulations requiring commissioners of NHS services to include arrangements in their commissioning contracts to ensure that the provider: is a member of a LETB; co-operates with the governing body of the LETB; provides the governing body of a LETB with information requested; and complies with any other obligations related to education and training that are specified. The regulations may also prescribe factors that the governing body must have regard to when making a request about co-operation or the provision of information. For example, they may require governing bodies of LETBs to take into account the size of the provider and the number or type of NHS services provided by each NHS provider.

Clause 62 – The governing body of an LETB: establishment, etc.

101. Persons will apply to HEE to be established as a governing body of a particular LETB. HEE will consider the application and will establish the governing body if the applicant meets all the establishment criteria, or sufficient criteria to carry out the functions of a governing body of a LETB. In the latter case, HEE may establish the governing body subject to such conditions as it considers appropriate. The governing body of a LETB will be a committee of HEE and will be supported by operational staff employed by HEE. These will include staff from Strategic Health Authorities and postgraduate medical and dental deaneries.
102. A governing body of a LETB must include members of the LETB it will represent and may include persons who provide education and training for care workers (or persons wishing to work as care workers) and such other persons as HEE determines. Executive and non-executive members of HEE are not entitled to apply to be members of a governing body of a LETB. However, this does not apply if HEE establishes a governing body itself in cases where there is an area of England that does not have a governing body of a LETB (see subsections (4) and (6)).

Clause 63 – Governing Bodies of LETBs: functions, etc.

103. The key function of the governing body of a LETB will be to exercise, on behalf of HEE, the duties to secure an effective education and training system for the planning and delivery of education and training to care workers and to ensure a sufficient number of skilled NHS workers. It will do this by: preparing and publishing education and training plans; commissioning education and training in accordance with those plans; and by ensuring appropriate systems are in place for the quality assurance of the education and training that is provided. The governing body of a LETB is required to represent the interests of all members of that LETB.

Schedule 6 – The Governing Body of a Local Education and Training Board

104. This Schedule sets out: HEE's responsibilities concerning the geographical coverage of governing bodies of LETB; its process for assessing and reviewing whether governing bodies of LETBs continue to meet the establishment criteria; and HEE's powers of intervention where it considers a governing body has failed or is at risk of failing.

Clause 64 – Education and training plans

105. Each governing body of a LETB must develop and publish an education and training plan (in one or more documents) for each financial year. This will set out how it will exercise its functions to secure an effective education and training system and ensure a sufficient number of skilled NHS workers. The plan must set out how the governing body proposes to achieve the outcomes set by the Secretary of State and HEE under clause 58.

Clause 65 – Commissioning education and training

106. Each governing body of a LETB must commission education and training that will support their education and plans for that year. Under subsection (6), each governing body is required to keep under review the quality of education and training and report its findings to interested persons. This would include, for example, the relevant professional regulators. HEE may also require the governing body of a LETB to produce reports on its commissioning of education and training.

Chapter 2 – The Health Research Authority

Clause 66 – The Health Research Authority

107. This clause establishes the Health Research Authority (HRA) to take on functions relating to health and social care research and to replace the existing Special Health Authority (SpHA).

Schedule 7 – The Health Research Authority

108. This Schedule makes provision for the constitution and establishment of the HRA, similar to that made by Schedule 5 for Health Education England.

109. Paragraph 17 gives the Secretary of State the power to make regulations requiring a fee to be paid to the HRA for specified functions. Any regulations made under this clause would be subject to the affirmative parliamentary procedure.

110. Paragraph 17 (7) amends section 71 of the National Health Service Act 2006 to add the HRA to the list of bodies that may join a scheme established by the Secretary of State for the purpose of meeting expenses arising from any loss, damage or injury incurred by members, to their property and liabilities, and to third parties for loss damage or injury arising out of carrying out the functions of the bodies.

Clause 67 – The HRA's functions

111. This clause sets out the HRA's key functions and its main objective in carrying out these functions. Subsections (3) and (4) define health and social care research which falls within the remit of the HRA. Research is excluded where it is into matters within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly (subsection (5)).

Clause 68 – Coordinating and promoting regulatory practice etc.

112. Subsection (1) imposes an obligation on the HRA and the people and bodies listed to co-operate with each other. The aim of this subsection is to encourage co-ordination and standardisation of practice when carrying out functions relating to the regulation of health and social care research. Subsection (3) and (4) impose duties on the HRA and the devolved authorities, and provide the basis for the HRA to encourage consistent and proportionate standards by bodies regulating health and social care research and a harmonised system of regulation of the ethics of research across the UK.
113. The references to the Secretary of State and the licensing authority under subsections (1)(a) and (b) ensure that functions carried out by the Medicines and Healthcare products Regulatory Agency fall within the duty to co-operate. The reference to the Chief Medical Officer under subsection (1)(d) ensures that the Chief Medical Officer’s function of receiving abortion notifications under regulation 4(1) of the Abortion Regulations 1991 (made under section 2 of the Abortion Act 1967) is covered by the duty.
114. The Department of Health currently publishes the Research Governance Framework¹⁶ which sets out the broad principles for good research governance. Subsection (6) requires the HRA to publish guidance on principles of good practice in the conduct of health and social care research, and any requirements imposed upon researchers in legislation or elsewhere.

Clauses 69 to 72 – Research ethics committees (RECs)

115. A REC is a group of people who assesses the ethics of research which involves individuals. Clause 69 gives the HRA functions in relation to those RECs it recognises or establishes to assess the ethics of health and social care research, including requiring the HRA to ensure that such RECs provide an efficient and effective means of assessing research.
116. The HRA must publish a document for RECs (the “REC policy document”) setting out the requirements with which RECs must comply, for example, about REC membership. The HRA will monitor compliance with these requirements. Separate legislative requirements apply to ethics committees that consider clinical trials (under the Clinical Trials Regulations). To enable RECs to consider the ethics of both the health and social care research set out in its guidance and clinical trials, the HRA is required to ensure that the requirements in its REC policy document do not conflict with the requirements for ethics committees which consider clinical trials.
117. The HRA must indemnify members of those RECs it recognises or establishes against any liability to a third party for loss, damage or injury arising from the committee’s functions in assessing the ethics of health or social care research.

¹⁶www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_126474

118. Under clause 70, the HRA is required to publish guidance on when it is good practice for a person seeking to conduct health or social care research to obtain approval from a REC recognised or established by the HRA, as well as the cases where there is a legislative requirement. At present, the Department of Health issues policy guidance¹⁷ setting this out. The HRA must consult on its guidance and seek approval from the Secretary of State before publication.
119. Clauses 71-72 give the HRA power to establish and recognise RECs for the purpose of assessing research. In deciding whether to recognise a REC, the HRA is required to have regard to whether a REC is recognised by, or on behalf of a devolved authority, encouraging consistent practice across the UK. Any group which was established or recognised as a REC by the SpHA Health Research Authority or by the Secretary of State, and which exists when the new provisions come into force would receive automatic recognition by the HRA.

Schedule 8 – Research ethics committees (RECs): amendments

120. Paragraphs 1 to 13 of Schedule 8 make amendments to secondary legislation where references are made to RECs. The amendments replace references to ethics committees recognised by the Secretary of State with references to those established or recognised by the HRA under this Bill. The amendments also standardise the definitions of RECs to bring them into line with the definition of a REC under clause 69.

Clause 73 – Membership of the United Kingdom Ethics Committee Authority (UKECA)

121. This clause amends the Clinical Trials Regulations to transfer functions from the Secretary of State to the HRA. Subsection (1) amends regulation 5 which provides for the HRA to replace the Secretary of State’s membership of the UKECA. The other amendments are consequential on this change.

Clause 74 – Approval for processing confidential patient information

122. This clause makes a number of amendments to the Health Service (Control of Patient Information) Regulations 2002 (S.I. 2002/1438) (the 2002 Regulations). These amendments transfer the Secretary of State’s power to approve the processing of confidential patient information for research purposes to the HRA, and change the way that the requirement for REC approval is expressed legally. Subsection (4) would require the HRA to put in place a system to review its decisions about processing patient information. These changes will retain the safeguards currently in place.

¹⁷ Ibid

Chapter 3 – Miscellaneous and general

Clause 75 – Amendments to the Public Bodies Act 2011

123. This clause inserts the Human Fertility and Embryology Authority (HFEA) and the Human Tissue Authority (HTA) into the list of bodies that can be abolished by Order in Schedule 1 of the Public Bodies Act 2011. Correspondingly, it also therefore removes the HFEA and HTA from the list of bodies for whom there is a power to modify or transfer functions.

PUBLIC SECTOR COST AND MANPOWER IMPLICATIONS

124. The draft Bill accounts for a majority of the overall revenue costs in the White Paper, and there are no additional costs which have not been included in that process.

125. The proposals in the draft Bill will not have a direct impact upon the care and support workforce, and we do not anticipate that any redundancies will be necessary as a result of these proposals.

126. Evidence suggests that social workers do not feel that they have sufficient time to spend with services users. We anticipate that clarifying and simplifying the legal framework will reduce the administrative burden on social workers, as they will spend less time interpreting legal issues. This will free them up to spend more time in face-to-face contact with service users.

127. We also believe that simplifying the law will lead to a reduction in the level of litigation that local authorities face, as fewer mistakes will be made as a result of its misinterpretation. This will result in savings in legal advisors' time.

128. These assumptions are outlined in more detail in the Impact Assessments. None of the health proposals is expected to have any effect on public expenditure.

SUMMARY OF IMPACT ASSESSMENTS

129. A set of Impact Assessments has been prepared. A summary is included at Annex C and the full Impact Assessments have been published on the Department of Health's website.¹⁸

130. Analyses of any effect these measures may have on equality have also been undertaken alongside each of these documents to ensure the Department of Health is complying with the public sector equality duty. A summary is included at Annex D and the analyses have been published in full on the Department's website.

¹⁸ www.dh.gov.uk/health/2012/07/careandsupportbill/

COMPATIBILITY WITH THE EUROPEAN CONVENTION OF HUMAN RIGHTS

131. The Department of Health takes the view that none of the provisions of the Bill would breach the European Convention on Human Rights or the international human rights obligations of the United Kingdom.
132. The object of Part 1 of the Bill is to improve individuals' well-being by ensuring the provision of suitable care and support for individuals who need it, and for carers. The Department considers that the draft Bill will ensure that appropriate care and support is provided, so individuals' rights under the Convention are protected.
133. The most relevant Convention rights are Article 2 (right to life), Article 3 (right not to be subjected to inhuman and degrading treatment) and Article 8 (right to family and private life). In particular, the new adult safeguarding duty in clause 34, and the establishment of Safeguarding Adult Boards, will strengthen protection for adults at risk of abuse or neglect.
134. The Department's view is that all providers of publicly funded or arranged health and social care services should consider themselves to be bound by section 6 of the Human Rights Act 1998, which requires public authorities to act compatibly with the Convention rights.
135. The establishment of Health Education England includes requirements on local healthcare providers to become involved in planning and commissioning education and training, and provisions relating to the sharing of information. These provisions are compatible with rights under Article 1 of protocol 1 (protection of property) and Article 8 of the Convention. The processes by which HEE will appoint individuals to take on such functions, along with the membership provisions of HEE itself are compatible with Article 6 of the Convention (right to a fair hearing).
136. The Health Research Authority will have functions relating to the recognition of research ethics committees (RECs), and such RECs will have functions to approve health and social care research. The review processes for such functions are compatible with Article 6 of the Convention. Provisions conferring functions on the HRA relating to the processing of confidential information are compatible with rights under Article 8 of the Convention. The membership provisions for HRA are compatible with Article 6.
137. The provisions relating to the powers to abolish the Human Fertilisation and Embryology Authority and Human Tissue Authority do not raise any substantive issues under the Convention.

GLOSSARY OF ABBREVIATIONS

Abbreviation	Meaning
ALB	Arm's-length body
AMS	Academy of Medical Sciences
HEE	Health Education England
HFEA	Human Fertilisation and Embryology Authority
HRA	Health Research Authority
HTA	Human Tissue Authority
LETB	Local Education and Training Board
MHRA	Medicines and Healthcare products Regulatory Agency
NDPB	Non Departmental Public Body
NHS Act 2006	National Health Service Act 2006
REC	Research Ethics Committee
SAB	Safeguarding Adults Board
SpHA	Special Health Authority
UKECA	UK Ethics Committee Authority

Annex C: Summary of Impact Assessments

1. Impact Assessments have been prepared for all the measures in the draft Bill.
2. The covering summary of each Impact Assessment is included as part of this Annex. Full versions of each Impact Assessment, together with an accompanying document that brings together and summarises the four Care and Support impact assessments, have been published on the Department of Health's website¹⁹.

Care and Support

3. There are four separate consultation stage Impact Assessment (IA) documents that set out our analysis of the relative costs, benefits and impact of the proposals in both *Caring for our future: reforming care and support*²⁰ (July 2012) and the draft Care and Support Bill. Reform of the law underpins many of the policy proposals set out in the White Paper. Together these Impact Assessments set out an analysis of the impact of law reform itself, as well as of both legislative and non-legislative policy initiatives.
4. These four Impact Assessments are entitled:
 - reform of adult social care legislation (IA No. 7065);
 - independence, choice and control (IA No. 7062);
 - assessment, eligibility and portability for care users and carers (IA No. 7064); and
 - quality, care providers and the workforce (IA No. 7063).
5. Final stage Impact Assessments will be published when legislation is introduced into Parliament. These will take into account any changes made to the care and support aspects of the Bill as a result of the public consultation and pre-legislative scrutiny process.
6. The overarching policy objective of these measures is to support people who use care and support, and their carers, to maintain their health, wellbeing and independence for as long as possible. As set out in detail in the four Impact Assessments, the recommendations of the Law Commission, together with evidence from the *Caring for our future* engagement, have played a crucial role in policy development.

¹⁹ www.dh.gov.uk/health/2012/07/careandsupportbill/

²⁰ www.dh.gov.uk/health/2012/07/careandsupportwhitepaper/

Title: Reform of adult social care legislation Accompanying IA for the White Paper "Caring for our future: reforming care and support" IA No: 7065 Lead department or agency: Department of Health Other departments or agencies:	Impact Assessment (IA)
	Date: 03/07/2012
	Stage: Consultation
	Source of intervention: Domestic
	Type of measure: Primary legislation

Summary: Intervention and Options	RPC Opinion: GREEN
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Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out? Measure qualifies as
£90m	£0m	NA	No NA

What is the problem under consideration? Why is government intervention necessary?

The law provides the underpinning framework for care and support and is critical to the way care is delivered on a day-to-day basis to people who need it. Well-crafted legislation makes a fundamental difference to the ease of implementation on the ground and the clarity provided for professionals and the public. However, the legal framework for adult social care had been roundly criticised as opaque, complex and anachronistic and there is widespread support for reforming it. Doing nothing would mean retaining this complex and confusing legal framework.

What are the policy objectives and the intended effects?

Our aims in reforming the law around care and support are to:

- modernise the legal basis to reflect the Government's ambitions for personalised adult social care;
- simplify the law into one single statute for adult social care; and
- consolidate all existing legislation and repeal old statute dating back over 60 years.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Two options have been considered:

Option 1: Do nothing. This would mean retaining the current legal framework, under which there are well over a dozen Acts of Parliament dealing with adult social care.

Option 2: Consolidation and reform of the law, taking the Law Commission's recommendations into consideration. This is the preferred option, which will provide one unified adult social care statute, accessible and understandable for both local authority professionals and service users and carers.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: Month/Year					
Does implementation go beyond minimum EU requirements?				No	
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		Micro No	< 20 No	Small No	Medium No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)				Traded: Non-traded:	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY:  Date: 3/7/12

Title: Independence, choice and control Accompanying IA for the White Paper "Caring for our future: reforming care and support"	Impact Assessment (IA)		
	Date: 03/07/2012		
	Stage: Consultation		
	Source of intervention: Domestic		
IA No: 7062	Type of measure: Primary legislation		
Lead department or agency: Department of Health			
Other departments or agencies:			
Summary: Intervention and Options		RPC Opinion: AMBER	

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out?	Measure qualifies as
N/A	£0m	£0m	No	NA

What is the problem under consideration? Why is government intervention necessary?

Care and support is too focused on intervention at the point of crisis, rather than helping individuals to maintain independence and prevent the onset of care needs. Rather than being shaped around the needs of individuals, services have developed on the basis of systems, structures and funding flows. There are still significant barriers preventing people from having choice and control over how their needs are met. In particular, access to high quality information and advice is variable in terms of quality and access across the country. The extent to which care and support is personalised and integrated with other public services has implications for quality of outcomes, user experience and efficient use of public resource.

What are the policy objectives and the intended effects?

To improve outcomes and experience of care and secure a more effective use of public and community resources. Specifically to improve the evidence base for preventative approaches; incentivise innovative approaches to investment in prevention; promote the welfare of older people through a wider range of housing options; enable all care users to have independence, choice and control and to achieve their desired outcomes; ensure that health, care and other public services work together to improve outcomes and experience; enable people to understand what support is available and how to access it; enable people to make informed choices and provide access to transparent information about available services.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

As set out in the White Paper, take forward the following policy proposals: Improve the focus on prevention by accelerating the roll-out of assistive technology, developing an evidence base for investment in prevention and exploring new investment approaches; provide capital funding to support the specialised housing market; set out in legislation an entitlement to personal budgets for people eligible for care and support; develop direct payments for people in residential care; exempt earnings from residential financial assessment; ensure that outcome measures support integration; provide a national information and signposting service including a directory of services; introduce a statutory duty on local authorities to provide information and advice; improve local authorities' web-based information and advice services; make available additional provision of advice and support; make clearer the duty for local authorities to share information; and develop best practice models for support and representation services.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: Month/Year

Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro No	< 20 No	Small No	Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded:		Non-traded:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY:  Date: 3/7/12

Title: Assessment, eligibility and portability for care users and carers Accompanying IA for the White Paper "Caring for our future: reforming care and support" IA No: 7064 Lead department or agency: Department of Health Other departments or agencies:	Impact Assessment (IA)		
	Date: 03/07/2012		
	Stage: Consultation		
	Source of intervention: Domestic		
Type of measure: Primary legislation			

Summary: Intervention and Options	RPC Opinion: GREEN
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Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out?	Measure qualifies as
N/A	£0m	£0m	No	NA

What is the problem under consideration? Why is government intervention necessary?

The current system of assessment and eligibility is often confusing and unfair for users and carers, with variable access across the country. Care users find it difficult to move between councils, particularly as their care and support can be interrupted until a new assessment is carried out. Carers do not yet have the same entitlements to assessment and support as care users, which can affect both their own outcomes and those of the people they care for. There is a lack of clarity regarding the responsibility for the assessment and provision of care and support in prisons, which has led to care needs not being assessed or appropriately provided for. Injured veterans must use their compensation payments to pay for social care.

What are the policy objectives and the intended effects?

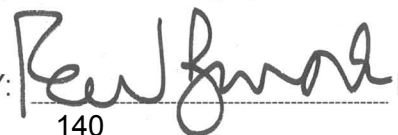
To bring about greater clarity, consistency and equality of access to care and support for care users and carers; provide freedom of movement and continuity of care and support to individuals with care needs and carers who move from one local authority area to another; create a more nationally consistent system for assessment and eligibility for users and carers which is understandable, transparent and outcome-focused; ensure early and effective assessment and support for carers to help them maintain their own health and wellbeing and support those they care for to stay at home; provide better access to assessment and provision of care for people with care needs in prison; and recognise the contribution of injured veterans.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

As set out in the White Paper "Caring for our future", take forward the following policy proposals: Implement a minimum national threshold for eligibility; introduce a duty for local authorities to provide an equivalent package of care and support for users and carers who move into their area until they are able to carry out a reassessment; develop and then test proposals for a new assessment and eligibility framework working with local government and the sector; simplify the legislation in respect of carers' assessments; introduce a new duty on local authorities to meet eligible needs for carers' support; specify in legislation that there should be a threshold of responsibility between prisons and local authorities for prisoners' care and support; and disregard armed forces compensation payments from the financial assessment for social care.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: Month/Year					
Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro No	< 20 No	Small No	Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded:		Non-traded:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY:  Date: 4/7/12

Title: Quality, care providers and the workforce Accompanying IA for the White Paper "Caring for our future: reforming care and support" IA No: 7063 Lead department or agency: Department of Health Other departments or agencies:	Impact Assessment (IA)
	Date: 03/07/2012
	Stage: Consultation
	Source of intervention: Domestic
	Type of measure: Primary legislation

Summary: Intervention and Options	RPC Opinion: GREEN
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Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out?	Measure qualifies as
£m	£m	£m	No	NA

What is the problem under consideration? Why is government intervention necessary?

The quality of care and support is variable between local authority areas and between providers, requiring improvement in the interests of the welfare of individuals, families and carers and to support greater equity. Reasons for this problem include: lack of sufficient numbers of adequately skilled and motivated staff in the care sector, cases of commissioning which focus too much on short-term savings at the expense of wider value for money and the sustainability of the local market, lack of information for users on the quality of available support and for providers on what services are needed locally and a lack of coherent legal framework to promote co-ordination between local agencies on safeguarding.

What are the policy objectives and the intended effects?


To improve outcomes for users and carers through improved quality of care throughout the country, covering the full range of care services, for all those in need of care and support. This will require a more highly skilled, better led workforce with lower turnover and vacancy rates, more strategic commissioning which incentivises quality and value for money, greater support for local authorities to understand and facilitate their local market, a more joined up approach to safeguarding to protect those in vulnerable circumstances, readily available and transparent information about the quality of care offered by providers, and a stronger role for users and carers in assessing, defining and demanding higher quality.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

As set out in the White Paper, take forward the following policy proposals: Strengthen system leadership and develop a quality framework; measure quality by piloting clinical audit in social care and extending NICE quality standards; make available provider-level information including user feedback; work with the sector to improve commissioning information and skills; support and enable increased user assessment of services, including training for local Healthwatch organisations; place a market shaping duty on local authorities; support local authorities to understand their local market better; enable development of leaders who can implement joined up approaches across health and care; build workforce capacity to meet future demographic challenges; increase capability and skills for all working in adult social care; clarify through legislation the core membership and responsibilities of Safeguarding Adults Boards (SABs); clarify in legislation that local authorities should have a function to make enquiries about adult protection cases.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: Month/Year					
Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro No	< 20 No	Small No	Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded:		Non-traded:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY:  Date: 3/7/12

Other Provisions

1. For the health measures, two final stage Impact Assessment documents have been prepared. These cover:
 - establishment of Health Education England as a Non-Departmental Public Body (NDPB) (IA No. 8040); and
 - establishment of the Health Research Authority as an NDPB (IA No. 9517).
2. The Impact Assessments for these measures will be updated and re-published when legislation is introduced to Parliament.
3. A further consultation Impact Assessment has been prepared to accompany the initial consultation on proposals to transfer functions from the Human Fertilisation and Embryology Authority and Human Tissue Authority (IA No. 6044). This has been published alongside the consultation document²¹.

²¹<http://www.dh.gov.uk/health/files/2012/06/Consultation-on-proposals-to-transfer-functions-from-the-Human-Fertilisation-and-Embryology-Authority-and-the-Human-Tissue-A.pdf>

Title: Health Education England IA No: 8040 Lead department or agency: Department of Health Other departments or agencies:	Impact Assessment (IA)
	Date: 03/07/2012
	Stage: Final
	Source of intervention: Domestic
	Type of measure: Primary legislation

Summary: Intervention and Options	RPC Opinion: GREEN
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Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out?	Measure qualifies as In/Out/zero net cost
£0m	£0m	£0m	No	In/Out/zero net cost

What is the problem under consideration? Why is government intervention necessary?

The education and training of the NHS workforce is crucial to the continuing delivery of high quality services. Health Education England, as the body responsible for providing national leadership for education and training, and with a budget to invest of around £5 billion, needs to be able to operate with independence and autonomy. Health Education England was established in the first instance as a Special Health Authority in June 2012, however, a more sustainable and appropriate statutory basis for a body of this type is to establish it as an Executive Non Departmental Public Body that will be at arms length from the Department of Health, whilst remaining accountable to the Secretary of State.

What are the policy objectives and the intended effects?

The policy objective is to ensure that the education and training system can operate safely and effectively as part of a stable health and social care system. Health Education England will continue to drive quality and value for money in the investment in education and training. As a Non Departmental Public Body, it will give the public and stakeholders across the NHS greater confidence that their needs and expectations will be addressed and that investment in education and training will be directed by service and clinical priorities.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Two options are considered.

Option 0 - Do nothing. This would leave Health Education England in place as a Special Health Authority. Whilst it would be able to carry out its education and training functions, this will not allow for the type of independent, permanent and stable system that will be crucial if it is to gain the full confidence of the range of partners involved in the planning, commissioning and delivery of education and training that will be required if it is to succeed in the long term.

Option 1 - Establish Health Education England as an Executive Non Departmental Public Body. This is the preferred option. It would see the roles and responsibilities of Health Education England and the wider education and training system enshrined in primary legislation. There are no cost implications associated with this option as the functions and budget for Health Education England will not change.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: Month/Year					
Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro No	< 20 No	Small No	Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: 0	Non-traded: 0	

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister:  Date: 3/7/12

Title: Health Research Authority (HRA) IA No: 9517 Lead department or agency: Department of Health Other departments or agencies:	Impact Assessment (IA)
	Date: 03/07/2012
	Stage: Final
	Source of intervention: Domestic
	Type of measure: Primary legislation

Summary: Intervention and Options **RPC Opinion: GREEN**

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out?	Measure qualifies as
£3.721m	£0m	£0m	No	NA

What is the problem under consideration? Why is government intervention necessary?

The complexity of health research regulation and governance has increased over the last 20 years. The Academy of Medical Sciences (AMS) review of regulation and governance in health research said that this complexity is impacting on health research undertaken in the UK. To address this quickly, the HRA was established as a Special Health Authority (SpHA) on 1 December 2011. Whilst the problems of complexity and bureaucracy in regulation are being addressed by the SpHA, it still lacks independence and stability which are essential to its purpose of protecting and promoting the interests of participants and the public in research. Government intervention is necessary to establish the HRA as a NDPB.

What are the policy objectives and the intended effects?

The objectives are to establish HRA as part of a stable health and social care system, as an independent regulator with an overarching objective to protect and promote interests of participants and the public in research. Intended effects are to: (a) put HRA at arm's-length of Ministers on a stable, independent footing assured by parliamentary scrutiny; (b) give HRA a stronger basis to promote a consistent system across health and social care and the UK; (c) strengthen public confidence in the protection regulation provides; (d) give HRA independence so it can put interests of research participants and the public first and be seen to be free from political interference; and (e) provide stability for researchers and funders including industry.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

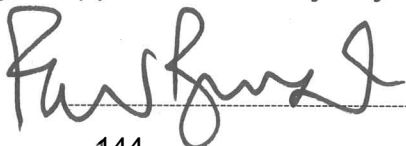
Two options have been considered. Option 0 - Do nothing. Retain the HRA as a SpHA. The AMS report recommended establishing the HRA as an arm's-length body but in order to ensure that problems are addressed quickly, it recommended establishing it as a SpHA in the interim.

Option 1 - Establish the HRA as a NDPB. The AMS supported this option.

Option 1 is the preferred option as it would put the HRA at arm's-length of Government enabling it to act independently in the interests of participants and potential participants and the public, and be seen to be free from political interference. The stability will assure industry that the HRA will continue to make research easier to undertake through robust, proportionate regulation and provide a stronger basis for the HRA to promote a consistent system of regulating research across health and social care and across the UK.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: Month/Year					
Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro No	< 20 No	Small No	Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A	Non-traded: N/A	

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister:  Date: 3/7/12

Annex D: Summary of Equality Analyses

1. In order to ensure that the Department of Health is complying with the public sector equality duty, analysis has been undertaken to assess the effect of the draft Bill on equality. Equality Analyses have been published on the Department of Health's website²² covering the following areas:
 - care and support (incorporating both *Caring for our future: reforming care and support*²³ and the draft Bill);
 - establishment of Health Education England as a Non-Departmental Public Body (NDPB); and
 - establishment of the Health Research Authority as an NDPB.
2. This Annex provides a summary of the key findings from each of the analyses. Comments and evidence will be welcomed during the pre-legislative process, and the analyses will be updated when legislation is introduced to Parliament.

Care and Support

3. The reforms outlined in the White Paper, and enacted through the draft Care and Support Bill, aim to build a care and support system that is inclusive and meets the needs of all individuals throughout the time they experience a care need. We want people to have confidence in the care and support that they receive, access high quality and personalised services when they need them, and plan and prepare for the future.
4. The White Paper sets the framework for a more transparent system where all individuals are likely to benefit from the improved availability of information and advice, greater choice and control through personal budgets, a holistic approach to carers' assessments, and the development of the social care workforce. The draft Bill will set out the provisions for a new legal framework to support and strengthen the implementation of many of these proposals.

Age

- An emphasis on early intervention and prevention will enable people approaching later life to plan and prepare for their future care needs, access preventative services sooner and remain independent for as long as possible.
- Housing is key in enabling people to remain confidently in their own homes, especially those in later life. The White Paper sets out how we will promote the roll out of telecare, improve the availability of aids and adaptations, and invest in specialist housing.

²² www.dh.gov.uk/health/2012/07/careandsupportbill/

²³ www.dh.gov.uk/health/2012/07/careandsupportwhitepaper/

- Information will be more readily available to enable people to make informed decisions. We know that older people may be less likely to have access to the internet than younger cohorts and recognise that information will need to be available in a variety of formats.
- The transition from Children's to Adult social care is often a source of worry for young people. The White Paper sets out the plans to expand the window for transition and give young people more control over how to best plan and manage the move from children's to adult services.

Carers

- The draft Care and Support Bill will provide the first ever legal entitlement of carers to support from the local authority. This new right to support will greatly improve carers' access to services to help them live their lives as they wish to alongside their caring role.
- The new assessment for carers will include consideration of the carer's wishes to pursue work, education and leisure opportunities as well as the carer's ability and willingness to care.
- Adoption of a whole family approach will enable adult social care services to identify the needs of young carers, those caring at a distance and those who are caring for more than one person.

Disability

- Information and advice will be more readily available to all, enabling people to make more informed decisions about their care.
- National eligibility and portability will enable people to move across the country to follow employment or family and friends, with confidence that the care and support system will support them in doing so.
- The roll out of personal budgets will enable people to be in greater control of their care and how their individual needs are met. Younger people with physical disabilities are more likely to request a direct payment and enjoy the freedom and flexibility that they bring.
- Exempting earned income from the residential care financial assessment will enable people to take greater control over their lives and realise the financial benefits of working.

Gender

- Women are more likely to be carers and provide more informal support to family members or friends. Reform of the carers' statute will have a positive impact for all carers, but women will be at a particular advantage given the high proportion of female carers.

- Men are more likely to access care and support at a higher level of need, perhaps because of the stigma of needing support. The greater availability and accessibility of technology and adaptations to the home should enable people who do not want to access formal services to remain more confidently in their own homes.

Race

- A 'one size fits all' approach is not fit for purpose and the White Paper highlights that care should be personalised around the needs of the individual. We know that BME communities want to be able to access services that are more culturally desirable and personalised to their needs and aspirations. Providing personal budgets as the default option will enable people from BME communities to have greater control over their care and support arrangements.
- The White Paper recognises that appropriate services need to be available to allow people to access genuine choice and control across a range of providers. The proposals for law reform will put duties on to local authorities to promote a diversity of services that reflect local need.
- Co-design of services between the local authority and the local population, through health and wellbeing boards, will also ensure that the services available more adequately reflect what is needed in local communities.
- People from BME communities often access services at a higher level of need, the reasons for which are often a lack of information or fear of discrimination. Making information more readily available, and accessible to all, will enable people to make informed and confident decisions about their care and support.
- It is important to many communities and groups that their relatives are able to move closer to them when they need extra care and support. National eligibility and portability of care packages will enable people to move more freely to be near their relatives or friends.

Religion

- The roll out of personal budgets, underpinned by high quality information and a plurality of providers, has the potential to ensure that people can select the care that best meets their individual, cultural and religious needs.
- Co-design of local services is key in ensuring that local, diverse communities are most suitably catered for. The White Paper builds on the Health and Social Care Act 2012, which established Health and Wellbeing Boards and Joint Strategic Needs Assessments to identify local need.
- The development of the social care workforce has an important role to play in ensuring that cultural and religious requirements are considered and respected.

Rural communities

- Rural communities face some specific challenges, notably relating to accessing appropriate services. The Government recognises that local communities are best placed to determine how to meet the needs of their local populations. Co-designing services with local communities will ensure that the services available more adequately reflect local need.
- The White Paper sets out the vision for services to be more personalised to the needs of the individual. Personal budgets and the availability of locally specific information on services will enable people to have greater control over the services they access.

Sexual orientation and transgender

- LGBT people are likely to access care and support at a later stage, despite being more likely to live alone in old age. Providing high quality information on the care and support system, including preventative solutions, will enable people to make informed decisions about their care and support and have greater control over the services they receive.
- The provider quality profile will enable clear and transparent comparison between different care providers, giving people the confidence that the care they access services will be compatible with individual wants and aspirations.
- The personalisation agenda, and the roll out of personal budgets, will enable people to have greater choice and control in selecting services that most adequately meet their needs and aspirations.

Socio-economic status

- Carers will find it easier to access personalised advice and support to help them care for as long as they wish. Recognising that carers are less likely to be in full time work because of their caring responsibilities, we want to enable carers to pursue education and employment should they choose to do so.
- The work with the sector to stimulate the market for specialist housing options will hope to restore a balance whereby homeowners and non-homeowners face equal opportunity when considering their future housing options.

The establishment of the Health Research Authority and Health Education England as Non-Departmental Public Bodies

5. It is not anticipated that there will be a material impact on any of the protected groups as a result of the Health Research Authority's (HRA) and Health Education England's (HEE) change in status from Special Health Authorities to Non-Departmental Public Bodies (NDPBs).

6. The legislation amends the status of existing bodies. The functions of the HRA and HEE as NDPBs will not differ substantially from those of the Special Health Authorities, and no evidence has been found of any impact on equalities as a result of the HRA's and HEE's proposed change in status.
7. On its establishment as a Special Health Authority in December 2011, the Health Research Authority published an equality policy that sets out the culture and working practices the Authority intends to develop to address equality, as well as how it will take forward its public duty under the Equality Act 2010²⁴. It is expected that this policy will evolve as the HRA's new roles take shape and are carried over into the NDPB.
8. Now that HEE has been established as a SpHA, it will publish an equality policy that sets out the culture and working practices the SpHA intends to develop to address equality, as well as how it will take forward its public duty under the Equality Act 2010. This policy will continue and evolve as HEE's status changes to an NDPB.

²⁴ www.nres.nhs.uk/hra/hra-publications/?entryid85=138967