

# Final Negative Regulations Under Part 1 of the Care Act

*These Regulations will be made and laid before Parliament. They will be subject to the negative procedure and unless Parliament passes a resolution annulling the Regulations, it is intended that they will come into force on 1 April 2015.*

*Please note that The Care and Support (Independent Advocacy) Regulations 2014 are not included here but they will be laid before Parliament shortly.*

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**2014 No. XX**

**SOCIAL CARE, ENGLAND**

**The Care and Support (Assessment) Regulations 2014**

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

*Laid before Parliament* \*\*\*

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

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 12(1) and (2), 65(1) and 125(7) and (8) of the Care Act 2014<sup>(A)</sup>.

**Citation, commencement and interpretation**

**1.**—(1) These Regulations may be cited as the Care and Support (Assessment) Regulations 2014 and come into force immediately after section 12(1) of the Care Act 2014 comes fully into force<sup>(B)</sup>.

(2) In these Regulations—

“the Act” means the Care Act 2014;

“assessment” means—

- (a) a needs assessment<sup>(C)</sup>;
- (b) a child’s needs assessment<sup>(D)</sup>;
- (c) a carer’s assessment<sup>(E)</sup>;
- (d) a child’s carer’s assessment<sup>(F)</sup>;
- (e) a young carer’s assessment<sup>(G)</sup>;

“supported self-assessment” has the meaning given by regulation 2(1).

**Supported self-assessment**

**2.**—(1) A supported self-assessment is an assessment carried out jointly by the local authority<sup>(H)</sup> and the individual to whom it relates.

(2) A local authority proposing to carry out an assessment must ascertain whether the individual to whom the assessment is to relate wishes the assessment to be a supported self-assessment.

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<sup>(A)</sup> 2014 c.23 (“the Act”). The powers to make regulations is exercisable by the Secretary of State - see section 125(1).

<sup>(B)</sup> Section 12(1) was commenced for the purpose of making regulations by S.I. 2014/2473.

<sup>(C)</sup> See section 9 of the Act.

<sup>(D)</sup> See section 58 of the Act.

<sup>(E)</sup> See section 10 of the Act.

<sup>(F)</sup> See section 60 of the Act.

<sup>(G)</sup> See section 63 of the Act.

<sup>(H)</sup> See section 1(4) of the Act for the meaning of “local authority”; the definition is limited to local authorities in England.

- (3) A supported self-assessment must be carried out if the individual concerned is an adult and—
- (a) wishes the assessment to be a supported self-assessment; and
  - (b) has the capacity<sup>(A)</sup> to take part in a supported self-assessment.
- (4) A supported self-assessment may be carried out if the individual concerned is a child and—
- (a) wishes the assessment to be a supported self-assessment;
  - (b) has the capacity, and is competent, to take part in a supported self-assessment; and
  - (c) the local authority believes it appropriate for a self-supported assessment to be carried out having regard to all the circumstances.
- (5) To facilitate the carrying out of the assessment a local authority must provide an individual taking part in a supported self-assessment with any relevant information it may have—
- (a) about that individual; and
  - (b) providing the consent condition in paragraph (6) is met, in the case of—
    - (i) a carer’s assessment, about the adult needing care<sup>(B)</sup>;
    - (ii) a child’s carer’s assessment, about the child needing care;
    - (iii) a young carer’s assessment, about the adult needing care, if the local authority believes it is appropriate for the young carer to have that information having regard to all the circumstances.
- (6) The consent condition referred to in paragraph (5)(b) is met if—
- (a) the adult or child needing care has capacity or is competent to agree to the information in paragraph (5)(b) being provided and does so agree, or
  - (b) the adult or child needing care does not have capacity or is not competent so to agree but the local authority is satisfied that providing the information in paragraph (5)(b) would be in the best interests of the adult or child needing care.
- (7) The information must be provided in a format which is accessible to the individual to whom it is given.

### **Assessment – general requirements**

- 3.—**(1) A local authority must carry out an assessment in a manner which—
- (a) is appropriate and proportionate to the needs and circumstances of the individual to whom it relates; and
  - (b) ensures that the individual is able to participate in the process as effectively as possible.
- (2) In seeking to ensure that an assessment is carried out in an appropriate and proportionate manner, a local authority must have regard to—
- (a) the wishes and preferences of the individual to whom it relates;
  - (b) the outcome the individual seeks from the assessment; and
  - (c) the severity and overall extent of the individual’s needs.
- (3) In a case where the level of the individual’s needs fluctuates, the local authority must take into account the individual’s circumstances over such period as it considers necessary to establish accurately the individual’s level of needs.
- (4) A local authority must give information about the assessment process—
- (a) to the individual whose needs are being assessed; or
  - (b) in the case of a child’s needs assessment or a young carer’s assessment, if the child or young carer is not competent or lacks capacity to understand the assessment process, to all parents<sup>(A)</sup> of that child or young carer.

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<sup>(A)</sup> A reference to having or lacking capacity is to be interpreted in accordance with the Mental Capacity Act 2005 (c.9), see section 80(2) of the Act.

<sup>(B)</sup> See section 10(3) of the Act for the meaning of “adult needing care”.

(5) The information must be provided prior to the assessment wherever practicable, and in a format which is accessible to the individual to whom it is given.

### **Impact on the individual's family etc**

**4.**—(1) A local authority carrying out an assessment must consider the impact of the needs of the individual to whom the assessment relates on—

- (a) any person who is involved in caring for the individual; and
- (b) any person the local authority considers to be relevant.

(2) Where a local authority considers that any person would benefit from the provision of information and advice relating to care and support for individuals or support for carers, it must advise that person how to obtain such information and advice.

(3) If it appears to a local authority carrying out an assessment that a child is involved in providing care to any individual, the local authority must—

- (a) consider the impact of the needs of the individual concerned on the child's well-being, welfare, education and development; and
- (b) identify whether any of the tasks which the child is performing for the individual are inappropriate for the child to perform having regard to all the circumstances.

### **Training, expertise and consultation**

**5.**—(1) A local authority must ensure that any person (other than in the case of a supported self-assessment, the individual to whom it relates) carrying out an assessment—

- (a) has the skills, knowledge and competence to carry out the assessment in question; and
- (b) is appropriately trained.

(2) A local authority carrying out an assessment must consult a person who has expertise in relation to the condition or other circumstances of the individual whose needs are being assessed in any case where it considers that the needs of the individual concerned require it to do so.

(3) Such consultation may take place before, or during, the carrying out of the assessment.

### **Requirement for specialist expertise – deafblind individuals**

**6.**—(1) An assessment which relates to an individual who is deafblind must be carried out by a person who has specific training and expertise relating to individuals who are deafblind.

(2) A local authority must facilitate the carrying out of the assessment by providing any person carrying out such an assessment with any relevant information which it may have—

- (a) about the individual whose needs are being assessed; and
- (b) in the case of—
  - (i) a carer's assessment, about the adult needing care;
  - (ii) a child's carer's assessment, about the child needing care;
  - (iii) a young carer's assessment, about the adult needing care.

(3) In this regulation, an individual is “deafblind” if the individual has combined sight and hearing impairment which causes difficulties with communication, access to information and mobility.

### **NHS Continuing Healthcare**

**7.**—(1) Where it appears to a local authority carrying out a needs assessment that the individual to whom the assessment relates may be eligible for NHS continuing healthcare<sup>(B)</sup>, the local authority must refer the individual to the relevant body.

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<sup>(A)</sup> See section 58(6) of the Act for the meaning of “parent”.

<sup>(B)</sup> See section 12(10) of the Act for the meaning of “NHS continuing healthcare”.

(2) Where it appears to a local authority carrying out a child's needs assessment that the child may, after becoming 18, be eligible for NHS continuing healthcare, the local authority must refer the individual to the relevant body.

(3) In performing its duties under this regulation, a local authority must have regard to the National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care issued by the Secretary of State and dated 28 November 2012<sup>(A)</sup>.

(4) The "relevant body" means the National Health Service Commissioning Board<sup>(B)</sup> or a clinical commissioning group<sup>(C)</sup> as the case may be, which appears to the local authority to have responsibility for the individual by reason of regulation 20(2) of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012<sup>(D)</sup>.

Signed by authority of the Secretary of State for Health

Address  
Date

*Name*  
Minister of State  
Department of Health

### EXPLANATORY NOTE

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

Sections 9 and 10 of the Care Act 2014 impose duties on a local authority to assess an adult's needs for care and support, and a carer's needs for support, by carrying out a needs assessment or a carer's assessment. These Regulations make further provision about such assessments.

The Regulations also apply to an assessment carried out under that Act in relation to the likely care and support needs of a child on becoming an adult (a child's needs assessment), the likely support needs of a young carer on becoming an adult (a young carer's assessment) and the support needs of an adult carer of a child (a child's carer's assessment).

Regulation 2 makes provision for supported self-assessment, where the individual to whom the assessment relates and the local authority carry out the assessment jointly. Regulation 3 makes provision about the manner in which assessments are carried out, and regulation 4 imposes requirements on local authorities relating to persons involved in the care of the individual whose needs are being assessed, including where it appears that any child is involved in providing care to any individual.

Regulation 5 makes provision about the training and expertise of persons carrying out assessments, and regulation 6 makes specific provision about training and expertise in connection with the assessment of individuals who are deafblind. Regulation 7 requires the local authority to make a referral to the health service where it appears that the individual whose needs are being assessed may have a need for NHS Continuing Healthcare.

A separate impact assessment has not been prepared for these Regulations. These Regulations are part of a package of legislative measures and the relevant impact assessment can be requested via [careactconsultation@dh.gsi.gov.uk](mailto:careactconsultation@dh.gsi.gov.uk) or Department of Health, Richmond House, 79 Whitehall, London SW1A 2NS and is available online at <http://www.gov.uk/government/organisations/department-of-health>.

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<sup>(A)</sup> Copies available from the Department of Health, Richmond House, 79 Whitehall, London, SW1A 2NS and at [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/213137/National-Framework-for-NHS-CHC-NHS-FNC-Nov-2012.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/213137/National-Framework-for-NHS-CHC-NHS-FNC-Nov-2012.pdf).

<sup>(B)</sup> The National Health Service Commissioning Board is established by section 1H of the National Health Service Act 2006 (c.41). Section 1H was inserted by section 9(1) of the Health and Social Care Act 2012 (c.7).

<sup>(C)</sup> A clinical commissioning group is a body established under section 14D of the National Health Service Act 2006. Section 14D was inserted by section 25(1) of the Health and Social Care Act 2012.

<sup>(D)</sup> S.I. 2012/2996.

**2014 No. \*\*\***

**SOCIAL CARE, ENGLAND**

**The Care and Support (Charging and Assessment of Resources)  
Regulations 2014**

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

*Laid before Parliament* \*\*\*

*Coming into force in accordance with regulation 1*

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PART 1 — Sums to be disregarded

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SCHEDULE 2 — Capital to be disregarded

The Secretary of State makes these Regulations in exercise of the powers in sections 14(5) to (8), 17(7) to (13) and 125(7) and (8) of the Care Act 2014<sup>(A)</sup>.

**PART 1**  
General

**Citation and commencement**

1. These Regulations may be cited as the Care and Support (Charging and Assessment of Resources) Regulations 2014 and come into force immediately after sections 14(5) and 17(7) of the Act are both fully in force.

**Interpretation**

2.—(1) In these Regulations—

“the Act” means the Care Act 2014;

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<sup>(A)</sup> 2014 c.23. The powers to make regulations are exercisable by the Secretary of State, *see* section 125(1). Sections 14(5) to (8) and 17(7) to (13) were commenced for the purposes of making regulations by S.I. 2014/2473. Section 17(8) was commenced in modified form.

“the 1992 Act” means the Social Security Contributions and Benefits Act 1992<sup>(A)</sup>;

“the adult” in relation to a financial assessment carried out by a local authority for the purposes of section 17(1), (3) or (4) of the Act means the adult or, as the case may be, the carer in respect of whom the authority is carrying out the financial assessment;

“armed forces independence payment” means armed forces independence payment under the Armed Forces and Reserved Forces (Compensation Scheme) Order 2011<sup>(B)</sup>;

“attendance allowance” has the same meaning as in the Income Support Regulations;

“care home” means a care home (within the meaning given in section 3 of the Care Standards Act 2000<sup>(C)</sup>) in respect of which a person is registered under the Health and Social Care Act 2008<sup>(D)</sup> for the regulated activity of the provision of residential accommodation together with nursing or personal care;

“carer premium” means a carer premium under the Income Support Regulations;

“child benefit” means a child benefit under the 1992 Act;

“child tax credit” means a child tax credit under the Tax Credits Act 2002<sup>(E)</sup>;

“council tax” is to be construed in accordance with section 1(1) of the Local Government Finance Act 1992<sup>(F)</sup>;

“couple” has the same meaning as in the Income Support Regulations;

“disability living allowance” means a disability living allowance under the 1992 Act;

“disability premium” means a disability premium under the Income Support Regulations;

“employed earner” is to be construed in accordance with section 2(1)(a) of the 1992 Act<sup>(G)</sup>;

“enhanced disability premium” means an enhanced disability premium under the Income Support Regulations;

“guardian’s allowance” means a guardian’s allowance under the 1992 Act;

“income support” means income support under the 1992 Act;

“Income Support Regulations” means the Income Support (General) Regulations 1987<sup>(H)</sup>;

“lone parent” has the same meaning as in the Income Support Regulations;

“partner” has the same meaning as in the Income Support Regulations;

“Pension Credit Regulations” means the State Pension Credit Regulations 2002<sup>(I)</sup>;

“pension credit age” means the qualifying age for state pension credit within the meaning of section 1(6) of the State Pension Credit Act 2002;

“permanent resident” means a resident who is not a temporary resident or a short-term resident;

“personal independence payment” means a personal independence payment under Part 4 of the Welfare Reform Act 2012<sup>(J)</sup>;

“personal pension scheme” has the same meaning as in the Income Support Regulations;

“prospective resident” means a person for whom accommodation in a care home is proposed to be provided under the Act;

“resident” means a person who is provided with accommodation in a care home under the Act;

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<sup>(A)</sup> 1992 c.4.

<sup>(B)</sup> S.I. 2011/517.

<sup>(C)</sup> 2000 c.14.

<sup>(D)</sup> 2008 c.14.

<sup>(E)</sup> 2002 c.21.

<sup>(F)</sup> 1992 c.14.

<sup>(G)</sup> Section 2(1)(a) was amended by paragraphs 169 and 171 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c.1) and section 15(1) of the National Insurance Contributions Act 2014 (c.7).

<sup>(H)</sup> S.I. 1987/1967.

<sup>(I)</sup> S.I. 2002/1792.

<sup>(J)</sup> 2012 c.5.

“savings credit” means a savings credit under the State Pension Credit Act 2002;

“self-employed earner” is to be construed in accordance with section 2(1)(b) of the 1992 Act;

“severe disablement occupational allowance” means a severe disablement occupational allowance paid under article 10 of the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006<sup>(A)</sup> or under article 16 of the Personal Injuries (Civilians) Scheme 1983<sup>(B)</sup>;

“short-term resident” means a person who is provided with accommodation in a care home under the Act for a period not exceeding 8 weeks;

“temporary resident” means a resident whose stay is—

(a) unlikely to exceed 52 weeks; or

(b) in exceptional circumstances, unlikely to substantially exceed that period;

“working tax credit” means a working tax credit under the Tax Credits Act 2002.

(2) Where reference is made in these Regulations to the application of a provision in the Income Support Regulations, any reference to “claimant” in the provision of the Income Support Regulations is to be construed as a reference to the adult concerned.

(3) In these Regulations any reference to a resident’s accommodation in a care home, or to accommodation provided for a resident in a care home, is to be construed in the case of a resident who is a prospective resident as a reference to accommodation to be provided for that resident under section 18, 19 or 20 of the Act.

## PART 2

### Power of the local authority to charge for care and support

#### Services to be provided free of charge

**3.—**(1) A local authority<sup>(C)</sup> must not make a charge for meeting needs under section 14(1) of the Act where the care and support, or support which is provided to an adult, under section 18, 19 or 20 of the Act, is a service specified in paragraph (2)(a) or (b).

(2) The following are specified—

(a) a service which consists of the provision of community equipment (aids and minor adaptations);

(b) intermediate care and reablement support services for the first 6 weeks of the specified period or, if the specified period is less than 6 weeks, for that period.

(3) In this regulation—

“community equipment (aids and minor adaptations)” means an aid, or a minor adaptation to property, for the purpose of assisting with nursing at home or aiding daily living and for the purposes of this paragraph, an adaptation is minor if the cost of making the adaptation is £1,000 or less;

“intermediate care and reablement support services” means care and support, or support provided to an adult by the local authority under section 18, 19 or 20 of the Act which—

(a) consists of a programme of care and support, or support;

(b) is for a specified period of time (“the specified period”); and

(c) has as its purpose the provision of assistance to an adult to enable the adult to maintain or regain the ability needed to live independently in their own home.

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<sup>(A)</sup> S.I. 2006/606. Article 10 was amended by S.I. 2008/679 and 2013/630.

<sup>(B)</sup> S.I. 1983/686. Article 16 was amended by S.I. 1984/1675 and 2001/420.

<sup>(C)</sup> See section 1(4) of the Act as to the meaning of “local authority”; the definition is limited to local authorities in England.

### **Adults to whom services are to be provided free of charge**

4. A local authority must not make a charge for meeting needs under section 14(1) of the Act where the care and support is provided to an adult, under section 18, 19 or 20 of the Act, suffering from variant Creutzfeldt-Jakob disease.

### **Costs of putting in place arrangements to meet needs**

5. Where a local authority is meeting needs because Condition 2 in section 18, or Condition 2 or 4 in section 20, of the Act is met, the charge the authority may make under section 14(1)(b) of the Act may only cover the cost that the authority incurs in putting in place the arrangements for meeting those needs.

### **Personal expenses allowance for residents or temporary residents provided with accommodation in a care home**

6. The amount specified for the purposes of section 14(7) of the Act<sup>(A)</sup> in relation to a resident or temporary resident provided with accommodation in a care home is £24.40 each week.

### **Minimum income guaranteed amount for other adults and carers whose needs are being met otherwise than by the provision of accommodation in a care home**

7.—(1) Subject to paragraph (8), the amount specified for each week for the purposes of section 14(7) of the Act (“the minimum income guaranteed amount”) in relation to the adult concerned specified in paragraph (2), (3), (4), (5), (6) or, as the case may be, (7) is the aggregate of—

- (a) the amount specified in relation to that adult in that paragraph<sup>(B)</sup>;
- (b) where the adult concerned is responsible for, and a member of the same household as, a child, the amount of £82.95 in respect of each child; and
- (c) any applicable premium under paragraphs (4) to (7).

(2) Where the adult concerned is a single person and—

- (a) is aged 18 or older but less than 25, the amount of £71.70;
- (b) is aged 25 or older but less than pension credit age, the amount of £90.50;
- (c) has attained pension credit age, the amount of £185.45.

(3) Where the adult concerned is a lone parent aged 18 or over, the amount of £90.50.

(4) Where the adult concerned is a member of a couple and—

- (a) one or both are aged 18 or over, the amount of £71.05;
- (b) one or both have attained pension credit age, the amount of £141.55.

(5) Where the adult concerned is a single person who is in receipt of, or the local authority considers would, if in receipt of income support, be in receipt of—

- (a) disability premium, the amount of the applicable premium is £39.85;
- (b) enhanced disability premium, the amount of the applicable premium is £19.45.

(6) Where the adult concerned is a member of a couple and one member of that couple is in receipt of, or the local authority considers would, if in receipt of income support, be in receipt of—

- (a) disability premium, the amount of the applicable premium is £28.35;
- (b) enhanced disability premium, the amount of the applicable premium is £13.95.

(7) Where the adult concerned is in receipt of, or the local authority considers would, if in receipt of income support be in receipt of, carer premium, the amount of the applicable premium is £42.75.

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<sup>(A)</sup> Under section 14(7) of the Act, the local authority may not make a charge under section 14(1) of the Act if the income of the adult concerned would, after deduction of the charge, fall below the amount specified in regulations.

<sup>(B)</sup> A buffer of 25% has been added to each specified amount and the applicable premium.

(8) Where a local authority provides non-care related support for the adult concerned the minimum income guaranteed amount in relation to that adult is the amount calculated in accordance with paragraph (1) less an amount equal to the cost the local authority incurs in providing that non-care related support for the adult concerned.

(9) In this regulation—

“the adult concerned” means—

- (a) an adult who has needs for care and support under section 18, 19 or 20 of the Act other than the provision of accommodation in a care home;
- (b) a carer who has needs for support under section 20 of the Act;

“non-care related support” includes support which consists of services or activities such as the provision of meals on wheels, shopping or transport services or recreational activities.

### **Power of the local authority to financially assess and charge a short-term resident as if the resident is receiving care and support or support other than the provision of accommodation in a care home**

**8.** A local authority may, if it thinks fit, financially assess and charge a short-term resident as if they are receiving care and support, or support under section 18, 19 or 20 of the Act other than the provision of accommodation in a care home.

## **PART 3**

### **Assessment of financial resources**

#### **Financial assessment**

**9.** A local authority must carry out a financial assessment of the adult under section 17(1), (3) or (4) of the Act in accordance with the provisions of Parts 3 to 5 of these Regulations.

#### **Circumstances in which an authority is to be treated as having carried out a financial assessment (including light touch assessments)**

**10.**—(1) A local authority is to be treated as having carried out a financial assessment in an adult’s case and being satisfied on that basis that the adult’s financial resources exceed the financial limit<sup>(A)</sup> where—

- (a) the adult has refused a financial assessment; or
- (b) the authority has been unable to carry out a full financial assessment because of the adult’s refusal to co-operate with the assessment and the local authority nevertheless decides to meet some or all of the adult’s needs for care and support, or for support.

(2) A local authority is to be treated as having carried out a financial assessment in an adult’s case and being satisfied on that basis that the adult’s financial resources do not exceed the financial limit where—

- (a) with the consent of the adult, the authority has not carried out a financial assessment in accordance with these Regulations; and
- (b) the authority is satisfied from the evidence available to it that the adult’s financial resources do not exceed the financial limit.

(3) A local authority is to be treated as having carried out a financial assessment in an adult’s case and being satisfied on that basis that the adult’s financial resources exceed the financial limit where—

- (a) with the consent of the adult, the authority has not carried out a financial assessment in accordance with these Regulations; but
- (b) the authority is satisfied from the evidence available to it that the adult’s financial resources do exceed the financial limit.

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<sup>(A)</sup> See section 17(10) of the Act as to the meaning of “the financial limit”.

## **Rounding of fractions**

11. Where any financial assessment of the adult concerned, under section 17(1), (3) or (4) of the Act, results in a fraction of a penny, that fraction is, if it would be to that adult's advantage, to be treated as a penny, otherwise it is to be disregarded.

## **Financial limit - capital**

12.—(1) If the financial resources of an adult who is a permanent resident (in terms of capital) exceed £23,250, the local authority is not permitted to pay towards the cost of the provision of accommodation in a care home for that adult<sup>(A)</sup>.

(2) If the financial resources of an adult who has needs for care and support other than as a permanent resident (in terms of capital) exceed £23,250, the local authority may (but need not) pay towards the cost of that care and support.

(3) If the financial resources of a carer whose needs involve the provision of support (in terms of capital) exceed £23,250, the local authority may (but need not) pay towards the cost of the provision of that support for the carer<sup>(B)</sup>.

# **PART 4**

## **Treatment and calculation of income**

### **Calculation of income**

13.—(1) The income of the adult is to be calculated on a weekly basis—

- (a) by determining, in accordance with this Part, the weekly amount of the adult's total income;
- (b) by adding to that amount the adult's weekly tariff income from capital calculated in accordance with regulation 25 (calculation of tariff income from capital).

(2) For the purposes of paragraph (1) income includes capital treated as income under regulation 16 and notional income under regulation 17.

### **Earnings to be disregarded**

14.—(1) Earnings derived from employment as an employed earner or a self-employed earner are to be disregarded in the calculation of the adult's income for the purposes of the financial assessment.

(2) For the purposes of this regulation—

- (a) earnings in relation to an employed earner has the same meaning—
  - (i) as in regulation 35 of the Housing Benefit Regulations 2006<sup>(C)</sup>;
  - (ii) where the earner has attained the qualifying age for state pension credit, as in regulation 35 of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (earnings of employed earners)<sup>(D)</sup>; and

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<sup>(A)</sup> See section 17(8) of the Act as to the requirement for regulations to make provision as to cases or circumstances in which, if the financial resources of an adult exceed a specified level, a local authority is not permitted to, or may (but need not) pay towards the cost of the provision of care and support for the adult. Section 17(8) has been commenced in modified form for the purposes of making regulations by S.I. 2014/2473. See also section 17(10) of the Act as to the meaning of "the financial limit".

<sup>(B)</sup> See section 17(9) of the Act as to the requirement for regulations to make provision as to cases or circumstances in which, if the financial resources of a carer exceed a specified level, a local authority is not permitted to, or may (but need not), pay towards the cost of the provision of support for the carer. See also section 17(10) of the Act as to the meaning of "the financial limit".

<sup>(C)</sup> S.I. 2006/213. Regulation 35 was amended by S.I. 2007/2618, 2009/2655, 2012/757 and 2014/591.

<sup>(D)</sup> S.I. 2006/214. Regulation 35 was amended by S.I. 2009/2655, 2012/757 and 2014/591.

- (b) earnings in relation to a self-employed earner has the same meaning as in regulation 37 of the Income Support Regulations (earnings of self-employed earners)<sup>(A)</sup>.

### **Other sums to be disregarded**

**15.**—(1) There is to be disregarded in the calculation of the adult's total income for the purposes of the financial assessment any sum, where applicable, specified in Part 1 of Schedule 1, in accordance with Part 2 of that Schedule.

(2) In a case where the adult has needs for care and support other than the provision of accommodation in a care home, or the carer has needs for support, a local authority may in carrying out the calculation of the adult or carer's income for the purposes of the financial assessment, disregard such other sums the adult or carer may receive as the authority considers appropriate.

### **Capital treated as income**

**16.**—(1) Any capital payable to the adult by instalments which are outstanding on the date on which the adult first becomes liable to pay for their care and support, or support, is to be treated as income if the aggregate of the instalments outstanding and the amount of the adult's capital calculated in accordance with Part 5 exceed the amount specified in regulation 41(1) of the Income Support Regulations (capital treated as income)<sup>(B)</sup>.

(2) Any payment received under an annuity is to be treated as income.

(3) Any earnings to the extent that they are not a payment of income are to be treated as income.

(4) Any payment of capital made or due to be made to a local authority by a third party pursuant to an agreement between the authority and the third party in connection with the liability of the adult to pay the local authority for accommodation provided under the Act is to be treated as part of the income of the adult, unless it is a voluntary payment made for the purposes of discharging any arrears of payments required by the local authority from the adult for their accommodation.

(5) Where an agreement or court order provides that payments are to be made to the adult in consequence of any personal injury to them and that such payments are to be made wholly or partly by way of periodical payments, any such periodical payments received by the adult, to the extent that they are not a payment of income, are to be treated as income.

### **Notional income**

**17.**—(1) The adult is to be treated as possessing income of which the adult has deprived themselves for the purpose of decreasing the amount they may be liable to pay towards the cost of meeting their needs for care and support, or their needs for support.

(2) The adult is to be treated as possessing any income which would be treated as income possessed by a claimant of income support under regulation 42(2) to (4A) of the Income Support Regulations (notional income)<sup>(C)</sup>.

(3) Subject to paragraph (4), the adult is to be treated as possessing any income paid or due to be paid to a local authority by a third party pursuant to an agreement between the local authority and the third party made in connection with the liability of the adult to pay towards the cost of accommodation provided for the adult under the Act.

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<sup>(A)</sup> Regulation 37 was amended by S.I. 1991/387, 1992/2155, 1994/2139 and 1999/2165.

<sup>(B)</sup> Paragraph (1) was substituted by S.I. 1999/3178 and amended by S.I. 2005/2465.

<sup>(C)</sup> Relevant amending instruments are: S.I. 1991/1559, 1992/468, 1992/1198, 1993/315, 1994/527, 1995/2303, 1995/2792, 1996/206, 1998/563, 1998/663, 1998/1445, 1998/2117, 1999/2640, 1999/3156, 1999/3178, 1999/3324, 2001/859, 2001/1029, 2002/841, 2002/3019, 2003/455, 2005/574, 2005/2465, 2005/2687, 2005/2878, 2006/588, 2007/719, 2007/1749, 2008/698, 2008/2767, 2008/3157, 2009/2655, 2010/641, 2011/1707, 2011/2425 and 2013/276.

(4) The adult is not to be treated as possessing any voluntary payment of income made by a third party to a local authority for the purpose of discharging any arrears of the payments required by the authority from the adult for accommodation provided under the Act.

## PART 5

### Treatment and calculation of capital

#### Calculation of capital

**18.**—(1) The capital of the adult to be taken into account in a financial assessment is, subject to paragraph (2), to be the whole of the adult’s capital calculated in accordance with this Part and any income treated as capital under regulation 19.

(2) Any capital, where applicable, specified in Schedule 2 is to be disregarded in the calculation of the adult’s capital under paragraph (1).

#### Income treated as capital

**19.**—(1) Any amount by way of refund of income tax deducted from profits or emoluments chargeable to income tax under Schedule D or E is to be treated as capital.

(2) Any holiday pay which is not earnings is to be treated as capital.

(3) Except income derived from capital disregarded under paragraphs 1, 4, 9, 15, 22 and 24 of Schedule 2, any income of the adult which is derived from capital is to be treated as capital but only on the date on which it is normally due to be paid to the adult.

(4) In the case of the adult’s employment as an employed earner, any advance of earnings or any loan made by the adult’s employer is to be treated as capital.

(5) Any charitable or voluntary payment which is not made or due to be made at regular intervals, other than one made under the Fund, the Eileen Trust, the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No. 2) Trust or the Independent Living Fund, is to be treated as capital.

(6) Any voluntary payment of income made by a third party to the adult for the purpose of helping the adult to discharge any arrears of the payments required by the local authority from the adult for accommodation provided under the Act is to be treated as the capital of the adult.

(7) In this regulation, “the Fund”, “the Eileen Trust”, “the Macfarlane Trust”, “the Macfarlane (Special Payments) Trust”, “the Macfarlane (Special Payments) (No. 2) Trust” and “the Independent Living Fund” have the same meaning as in the Income Support Regulations.

#### Calculation of capital in the United Kingdom

**20.** Capital which the adult possesses in the United Kingdom is to be calculated at its current market or surrender value (whichever is the higher), less—

- (a) where there would be expenses attributable to sale, 10%; and
- (b) the amount of any encumbrance secured on it.

#### Calculation of capital outside the United Kingdom

**21.** Capital which the adult possesses outside of the United Kingdom shall be calculated in accordance with the method set out in regulation 50 of the Income Support Regulations (calculation of capital outside the United Kingdom).

## **Notional capital**

**22.**—(1) The adult is to be treated as possessing capital of which the adult has deprived themselves for the purpose of decreasing the amount that they may be liable to pay towards the cost of meeting their needs for care and support, or their needs for support, except—

- (a) where that capital is derived from a payment made in consequence of any personal injury and is placed on trust for the benefit of the adult;
- (b) to the extent that the capital which the adult is treated as possessing is reduced in accordance with regulation 23; or
- (c) any sum to which paragraph 44(1) or 45(a) of Schedule 10 to the Income Support Regulations (disregard of compensation for personal injuries which is administered by the Court)<sup>(A)</sup> refers.

(2) Subject to paragraph (3), the adult may be treated as possessing any payment of capital which would be treated as capital possessed by a claimant of income support under regulation 51(2) or (3) of the Income Support Regulations (notional capital)<sup>(B)</sup>.

(3) For the purposes of paragraph (2), regulation 51(2)(c) of the Income Support Regulations applies as if for the reference to Schedule 10 to the Income Support Regulations there were substituted a reference to Schedule 2 to these Regulations.

(4) Where the adult is treated as possessing capital under paragraph (1) or (2), the provisions of this Part apply for the purposes of calculating its amount as if it were actual capital the adult does possess.

## **Diminishing notional capital rule**

**23.**—(1) Where the adult is treated as possessing capital under regulation 22 (“notional capital”), for each week or part of a week that the local authority has determined that the adult is liable to pay towards the cost of their care and support, or support, at a higher rate than that at which the adult would have been assessed as liable to pay if the adult had had no notional capital, the amount of the adult’s notional capital is to be reduced by the method set out in paragraph (2).

(2) The local authority must reduce the amount of adult’s notional capital by the difference between—

- (a) the higher rate referred to in paragraph (1); and
- (b) the rate at which the adult would have been assessed as liable to pay towards the cost of that care and support, or support for that week or part of a week if the adult had been assessed as possessing no notional capital.

## **Capital jointly held**

**24.**—(1) Where the adult and one or more other persons are beneficially entitled in possession to any capital asset except an interest in land—

- (a) unless paragraph (2) applies, each person is to be treated as if each of them were entitled in possession to an equal share of the whole beneficial interest; and
- (b) that asset is to be treated as if it were actual capital.

(2) This paragraph applies where the local authority is satisfied that the adult is beneficially entitled in possession to a share which is less than or, as the case may be, more than an equal share of the whole beneficial estate.

(3) Where paragraph (2) applies the adult’s share of the whole beneficial interest will be the actual share (as determined by the local authority) and is to be treated as if it were actual capital.

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<sup>(A)</sup> Paragraphs 44 and 45 were inserted by S.I. 1994/2139. Paragraph 44 was substituted by S.I. 2006/2378. Paragraph 45 was amended by S.I. 1997/2197 and 2003/2279.

<sup>(B)</sup> Relevant amending instruments are: S.I. 1991/1559, 1993/315, 1995/2303, 1997/65, 1998/663, 1998/1445, 1998/2117, 1999/2640, 2001/3767, 2002/841, 2003/455, 2005/574, 2005/2465, 2005/2878, 2006/588, 2007/719, 2007/1749, 2008/3157 and 2010/641.

## Calculation of tariff income from capital

**25.**—(1) Where the adult’s capital calculated in accordance with this Part exceeds £14,250, it is to be treated as equivalent to a weekly income of £1 for each complete £250 in excess of £14,250 but not exceeding £23,250.

(2) Notwithstanding paragraph (1) where any part of the excess is not a complete £250, that part is also to be treated as equivalent to a weekly income of £1.

(3) For the purposes of paragraph (1), capital includes any income treated as capital under regulation 19 (income treated as capital).

Signed by authority of the Secretary of State for Health

Date

*Name*  
Minister of State  
Department of Health

## SCHEDULE 1

Regulation 15

### Sums to be disregarded in the calculation of income

#### PART 1

##### Sums to be disregarded

**26.** Any amount paid by way of tax on income which is taken into account under regulation 13 (calculation of income).

**27.**—(1) Subject to sub-paragraph (2), where the adult has needs for care and support other than the provision of accommodation in a care home, or is a temporary resident, any housing-related costs which the adult is liable to meet in respect of the adult’s main or only home.

(2) Sub-paragraph (1) does not apply to the extent that the housing-related costs which the adult is liable to meet are a payment or an amount which is disregarded under paragraph 3.

(3) In this paragraph, “housing-related costs” means any mortgage repayments, payments by way of rent or ground rent, council tax or service charges (other than service charges which are ineligible under Schedule 1 to the Housing Benefit Regulations 2006).

**28.**—(1) Any payment which would be disregarded under paragraph 5 of Schedule 9 to the Income Support Regulations (housing benefit)<sup>(A)</sup>.

(2) Any payment of income support towards housing costs determined in accordance with Schedule 3 to the Income Support Regulations (housing costs) or any amount that the local authority considers would be determined as a payment towards housing costs if the adult were in receipt of income support.

(3) Any payment which would be disregarded under paragraph 46 of Schedule 9 to the Income Support Regulations (reduction of liability for council tax)<sup>(B)</sup>.

**29.**—(1) Where a local authority takes into account in the calculation of income any disability benefits the adult receives, any disability-related expenditure incurred by the adult.

(2) In this paragraph—

“disability benefits” means any attendance allowance (other than severe disablement occupational allowance), disability living allowance or personal independence payment;

“disability-related expenditure” includes payment for any community alarm system, costs of any privately arranged care services required including respite care, and the costs of any specialist items needed to meet the adult’s disability.

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<sup>(A)</sup> Paragraph 5 was substituted by S.I. 2008/3157.

<sup>(B)</sup> Paragraph 46 was substituted by S.I. 2008/698 and amended by S.I. 2013/443.

**30.** Any direct payment received by the adult or in the case of an adult without capacity, the authorised person<sup>(A)</sup>, in accordance with sections 31 to 33 of the Act.

**31.** Any payment in respect of any expenses incurred by the adult who is—

- (a) engaged by a charitable or voluntary body; or
- (b) a volunteer,

if the adult derives no remuneration or profit from the employment.

**32.** Any payment which would be disregarded under paragraph 3 or 4A of Schedule 9 to the Income Support Regulations (employed earner expenses and statutory sick pay in Northern Ireland)<sup>(B)</sup>.

**33.** The mobility component of any disability living allowance or the mobility component of personal independence payment.

**34.** Any armed forces independence payment.

**35.** Any payment which would be disregarded under paragraph 8 of Schedule 9 to the Income Support Regulations (mobility supplement).

**36.** If the adult is a temporary resident—

- (a) any attendance allowance;
- (b) the care component of any disability living allowance; or
- (c) the daily living component of any personal independence payment.

**37.** Any concessionary payment made to compensate for the non-payment of—

- (a) any payment specified in paragraph 8 or 11; or
- (b) any income support.

**38.** Any amount which would be disregarded under paragraph 10 or 11 of Schedule 9 to the Income Support Regulations (payments to medal recipients and educational awards)<sup>(C)</sup>.

**39.** Any amount which would be disregarded under paragraph 13 of Schedule 9 to the Income Support Regulations (participants in training schemes)<sup>(D)</sup>.

**40.**—(1) Except where sub-paragraph (2) applies, and subject to paragraphs 45 and 46, any relevant payment made or due to be made at regular intervals other than any payment which is to be disregarded under paragraph 31.

(2) Subject to paragraph 46, any relevant payment made or due to be made at regular intervals which is intended and used for any item which was not specified in the personal budget but was specified in the care and support plan or support plan.

(3) In this paragraph, “relevant payment” means—

- (a) a charitable payment;
- (b) a voluntary payment;
- (c) a payment (not falling within sub-paragraph (a) or (b)) from a trust whose funds are derived from a payment made in consequence of any personal injury to the adult;
- (d) a payment under an annuity purchased—
  - (i) pursuant to any agreement or court order to make payments to the adult; or
  - (ii) from funds derived from a payment made, in consequence of any personal injury to the adult; or

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<sup>(A)</sup> See section 32(4) of the Act for the definition of “authorised person”.

<sup>(B)</sup> Paragraph 4A was inserted by S.I. 1988/663 and amended by S.I. 2002/2689 and 2012/757.

<sup>(C)</sup> Paragraph 11 was substituted by S.I. 2004/1708 and amended by S.I. 2008/3157 and 2011/2425.

<sup>(D)</sup> Paragraph 13 was substituted by S.I. 2004/565 and amended by S.I. 2008/1554.

- (e) a payment (not falling within sub-paragraphs (a) to (d)) received by virtue of any agreement or court order to make payments to the resident in consequence of any personal injury to the adult.

**41.**—(1) Subject to sub-paragraphs (2) and (3), where the adult—

- (a) is not residing with their spouse or civil partner; and
- (b) at least 50% of any occupational pension of the adult, or of any income from a personal pension scheme of the adult, is being paid to, or in respect of, their spouse for that spouse's maintenance or their civil partner for that civil partner's maintenance,

an amount equal to 50% of the pension, pensions or income concerned.

(2) Where the adult is entitled to pensions or income referred to in sub-paragraph (1) from more than one source, all pensions and income to which the adult is entitled are to be aggregated for the purposes of that sub-paragraph.

(3) This paragraph does not have effect in respect of that part of any pension or income referred to in sub-paragraph (1) to which the adult's spouse or civil partner is legally entitled, whether or not under a court order.

**42.** Any amount which would be disregarded under paragraph 16 of Schedule 9 to the Income Support Regulations (specified pensions)<sup>(A)</sup> save for paragraph 16(cc), but as if the reference in paragraph 16 of that Schedule to paragraphs 36 and 37 of Schedule 9 to the Income Support Regulations were a reference to paragraph 46 of this Schedule and as if the reference in paragraph 16(a) of Schedule 9 to the Income Support Regulations to paragraph 8 or 9 of Schedule 9 to the Income Support Regulations were a reference to paragraph 10 or 11 of this Schedule.

**43.** Any guaranteed income payment referred to in article 15(1)(c) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011<sup>(B)</sup>.

**44.** Subject to paragraph 46, £10 of any survivor's guaranteed income payment referred to in article 29(1)(a) of the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 and, if the amount of that payment has been abated to less than £10 by a pension falling within article 39(1)(a) of that Order, so much of that pension as would not, in aggregate with the amount of any survivor's guaranteed income payment disregarded, exceed £10.

**45.** Any payment which would be disregarded under paragraphs 17 to 20 of Schedule 9 to the Income Support Regulations (annuities, payments by third parties towards living costs, contractual payments in respect of occupation of a dwelling and payments by lodgers)<sup>(C)</sup>.

**46.** Any income in kind.

**47.**—(1) Any income derived from capital to which the adult is or is treated under regulation 24 (capital jointly held) as beneficially entitled but, subject to sub-paragraph (2), not income derived from capital disregarded under paragraph 1, 4, 9, 15 or 22 of Schedule 2.

(2) Any income derived from capital disregarded under paragraph 4, 22 or 24 of Schedule 2 but only to the extent of any mortgage repayments and payments of council tax or water charges which the adult is liable to make in respect of the dwelling or premises in the period during which that income accrued.

**48.** Any income which would be disregarded under paragraph 23 of Schedule 9 to the Income Support Regulations (income outside the United Kingdom).

**49.** Any amount which would be disregarded under paragraph 24 of Schedule 9 to the Income Support Regulations (charge or commission for converting income into sterling).

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<sup>(A)</sup> Paragraph 16 was substituted by S.I. 1995/2792 and amended by S.I. 2000/2239, 2002/841, 2005/574, 2005/2877, 2008/3157 and 2009/2655.

<sup>(B)</sup> S.I. 2011/517.

<sup>(C)</sup> Paragraph 17 was amended by S.I. 1994/2139. Paragraph 18 was substituted by S.I. 1995/516. Paragraphs 19 and 20 were substituted by S.I. 1994/527 and paragraph 19 amended by S.I. 1995/516 and 2007/2618.

**50.**—(1) Any payment made to the adult in respect of a child or young person who is a member of the adult's family—

- (a) pursuant to regulations made under section 2(6)(b) or 3 of the Adoption and Children Act 2002<sup>(A)</sup>;
- (b) in accordance with an adoption allowance scheme made under section 71 of the Adoption and Children (Scotland) Act 2007 (adoption allowances schemes)<sup>(B)</sup>;
- (c) which is a payment made by a local authority in pursuance of section 15(1) of, and paragraph 15 of Schedule 1 to, the Children Act 1989 (local authority contribution to a child's maintenance where a child is living with a person as a result of a child arrangements order)<sup>(C)</sup>.

(2) Any payment, other than a payment to which sub-paragraph (1)(a) applies, made to the adult pursuant to regulations made under section 2(6)(b) of the Adoption and Children Act 2002.

**51.** Any payment which would be disregarded under paragraph 26 or 28 of Schedule 9 to the Income Support Regulations (provision of accommodation and maintenance for children in care, and local authorities' duty to promote the welfare of children and powers to grant financial assistance to persons in or formerly in their care)<sup>(D)</sup>.

**52.** Any payment received under an insurance policy, taken out to insure against the risk of being unable to maintain repayments on a loan to acquire or retain an interest in a dwelling occupied by the adult as their main or only home, or for repairs and improvements to that home, and used to meet such repayments, to the extent that it does not exceed the aggregate of—

- (a) the amount payable, calculated on a weekly basis, of any interest on the loan;
- (b) the amount of any payment, calculated on a weekly basis, due on the loan attributable to the repayment of capital; and
- (c) the amount, calculated on a weekly basis, of the premium due on that policy.

**53.** Any payment which would be disregarded under paragraph 31 or 31A of Schedule 9 to the Income Support Regulations (social fund payments and local welfare provision)<sup>(E)</sup>.

**54.** Any payment of income which under regulation 19 (income treated as capital) is to be treated as capital.

**55.** Any payment which would be disregarded under paragraph 33 of Schedule 9 to the Income Support Regulations (pensioner's Christmas bonus)<sup>(F)</sup>.

**56.** Any payment which would be disregarded under paragraph 39 of Schedule 9 to the Income Support Regulations (the Fund, the Macfarlane Trusts and other trusts and Funds and the Independent Living Fund)<sup>(G)</sup>.

**57.** Any amount which would be disregarded under paragraphs 40, 43 and 48 to 51 of Schedule 9 to the Income Support Regulations (housing benefit compensation, juror and witness payments, travelling

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<sup>(A)</sup> 2002 c.38.

<sup>(B)</sup> 2007 asp 4.

<sup>(C)</sup> 1989 c.41. Section 15(1) was amended by paragraph 10(1) of Schedule 16 to the Courts and Legal Services Act 1990 (c.41). Paragraph 15 of Schedule 1 was amended by section 78(3) of the Civil Partnership Act 2004 (c.33) and paragraph 40(4) of Schedule 2 to the Children and Families Act 2014 (c.6).

<sup>(D)</sup> Paragraph 26 was substituted by S.I. 2010/2429. Paragraph 28 was substituted by S.I. 2008/698 and amended by S.I. 2010/2429.

<sup>(E)</sup> Paragraph 31 was substituted by S.I. 1992/468 and amended by S.I. 2008/3157. Paragraph 31A was inserted by S.I. 2013/443.

<sup>(F)</sup> Paragraph 33 was amended by S.I. 2008/3157.

<sup>(G)</sup> Paragraph 39 was inserted by S.I. 1988/663, substituted by S.I. 1991/1175 and amended by S.I. 1992/1101, 1993/963, 1993/1249, 2000/1981, 2004/2308, 2005/2877, 2005/3391, 2008/2767, 2010/641 and 2011/2425.

expenses and health service supplies, welfare food payments, prison visiting scheme payments and disabled persons' employment payments)<sup>(A)</sup>.

**58.**—(1) Any child benefit, except in circumstances where the adult is accompanied by the child or qualifying young person in respect of whom the child benefit is payable, and accommodation is provided for that child or qualifying young person under the Act.

(2) In this paragraph, “child” and “qualifying young person” have the same meaning as in section 142 of the 1992 Act<sup>(B)</sup>.

**59.** Any payment which would be disregarded under paragraph 53 of Schedule 9 to the Income Support Regulations (increases in rates of benefits etc)<sup>(C)</sup>.

**60.** Any payment which would be disregarded under paragraphs 54 to 56 of Schedule 9 to the Income Support Regulations (supplementary pensions etc)<sup>(D)</sup>.

**61.** Any payment made by a local authority to or on behalf of the adult relating to the provision of a service, where—

- (a) that service is provided to develop or sustain the capacity of the adult to live independently in the community; and
- (b) any charge for that service would be a service charge of the kind specified in Schedule 1B to the Housing Benefit (General) Regulations 1987<sup>(E)</sup> as in force immediately before the 1st April 2003.

**62.** The amount of any payment made by the adult to the local authority in payment of a charge imposed on the adult by the authority under the Local Authorities (Charges for Specified Welfare Services) (England) Regulations 2003<sup>(F)</sup>.

**63.** Any guardian's allowance.

**64.** Any child tax credit.

**65.**—(1) Where the adult is in receipt of savings credit as a person who has no partner and has qualifying income not exceeding the standard minimum guarantee—

- (a) the amount of that savings credit where the amount received is £5.75 or less; or
- (b) £5.75 of that savings credit where the amount received is greater than £5.75.

(2) Where the adult—

- (a) has no partner;
- (b) has attained the age of 65; and
- (c) has qualifying income in excess of the standard minimum guarantee,

a sum of £5.75.

(3) Where the adult is in receipt of savings credit as a person who has a partner and has qualifying income not exceeding the standard minimum guarantee—

- (a) the amount of that savings credit where the amount received is £8.60 or less; or
- (b) £8.60 of that savings credit where the amount received is greater than £8.60.

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<sup>(A)</sup> Paragraph 40 was inserted by S.I. 1988/1445. Paragraph 43 was inserted by S.I. 1988/2022. Paragraphs 48 to 50 were inserted by S.I. 1990/1776. Paragraphs 48 and 49 were substituted by S.I. 2008/3157. Paragraph 50 was amended by S.I. 2007/2128 and 2008/3157. Paragraph 51 was inserted by S.I. 1992/468 and amended by S.I. 2004/565.

<sup>(B)</sup> Section 142 was substituted by section 1(2) of the Child Benefit Act 2005 (c.6).

<sup>(C)</sup> Paragraph 53 was inserted by S.I. 1994/527 and substituted by S.I. 2008/3157.

<sup>(D)</sup> Paragraphs 54 to 56 were inserted by S.I. 1994/2139. Paragraphs 55 and 56 were amended by S.I. 2005/2877 and paragraph 56 amended by S.I. 2008/3157.

<sup>(E)</sup> S.I. 1987/1971. Schedule 1B was inserted by S.I. 1999/2734. The Regulations were revoked from 6th March 2006 by S.I. 2006/217.

<sup>(F)</sup> S.I. 2003/907.

- (4) Subject to sub-paragraph (5), where the adult—
- (a) has a partner;
  - (b) has—
    - (i) attained the age of 65; or
    - (ii) has attained pension credit age and the adult’s partner has attained the age of 65; and
  - (c) has qualifying income in excess of the standard minimum guarantee,
- a sum of £8.60.
- (5) Where—
- (a) the sum referred to in sub-paragraph (4) has been disregarded in the assessment of the adult’s partner’s income under these Regulations; or
  - (b) the adult’s partner is in receipt of savings credit,
- sub-paragraph (4) does not apply to the adult.
- (6) For the purposes of this paragraph—
- (a) the adult has a partner if the adult would be considered to have a partner for the purposes of the Pension Credit Regulations;
  - (b) “qualifying income” is to be construed in accordance with regulation 9 of the Pension Credit Regulations<sup>(A)</sup> and for the purposes of sub-paragraphs (3) and (4) the adult’s qualifying income includes any qualifying income of the adult’s partner;
  - (c) “standard minimum guarantee” means, for the purposes of—
    - (i) sub-paragraphs (1) and (2), the amount prescribed by regulation 6(1)(b) of the Pension Credit Regulations<sup>(B)</sup>; and
    - (ii) sub-paragraphs (3) and (4), the amount prescribed by regulation 6(1)(a) of the Pension Credit Regulations.

**66.** Any payment made to a temporary resident in lieu of concessionary coal pursuant to section 19(1)(b) or (c) of the Coal Industry Act 1994<sup>(C)</sup>.

**67.** Any payment made to the adult under section 63(6)(b) of the Health Services and Public Health Act 1968<sup>(D)</sup> (“the 1968 Act”) (travelling and other allowances to persons availing themselves of instruction) for the purpose of meeting childcare costs where the instruction is provided pursuant to—

- (a) section 63(1)(a) of the 1968 Act; or
- (b) section 63(1)(b) of the 1968 Act and where the adult is employed, or has it in contemplation to be employed, in an activity involved in or connected with a service which must or may be provided or secured as part of the health service.

**68.** Any payment made in accordance with regulations made pursuant to section 14F of the Children Act 1989 (special guardian support services)<sup>(E)</sup> to an adult who is a prospective special guardian or a special guardian.

**69.—(1)** Where the adult is a student, any grant or other award, student loan, income used to make repayments on a student loan or other payment received by that student for the purposes of their course of study at an educational establishment.

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<sup>(A)</sup> Regulation 9 was amended by S.I. 2008/1554 and 2013/630.

<sup>(B)</sup> The amounts in regulation 6 were up-rated by S.I. 2014/516.

<sup>(C)</sup> 1994 c.21.

<sup>(D)</sup> 1968 c.46. Section 63(1)(a) was amended by paragraph 95(2)(a) of Schedule 1 to the Health Authorities Act 1995 (c.17), paragraph 3(a) of Schedule 4 to the Health Act 1999 (c.8), paragraph 2 of Schedule 5 to the National Health Service Reform and Health Care Professions Act 2002 (c.17), paragraph 12(2) of Schedule 5 to the Health and Social Care Act 2012 (c.7) and S.I. 2007/961.

<sup>(E)</sup> Section 14F was inserted by section 115(1) of the Adoption and Children Act 2002 (c.38).

(2) In this paragraph, “course of study”, student and “student loan” have the same meaning as in the Income Support Regulations.

## PART 2

### Special provisions relating to charitable or voluntary payments and certain pensions

1. Paragraph 15 does not apply to any payment which is made or due to be made—

- (a) by the adult for the maintenance of any member of the adult’s family or of the adult’s former partner or of the adult’s children; or
- (b) by a third party pursuant to an agreement between the local authority and that third party in connection with the liability of the adult to pay the local authority for the adult’s accommodation.

2. The total income to be disregarded pursuant to paragraphs 15(2) and 17 must in no case exceed the amount per week specified in paragraph 36 of Schedule 9 to the Income Support Regulations (ceiling for aggregated disregards)<sup>(A)</sup>.

## SCHEDULE 2

Regulation 18(2)

### Capital to be disregarded

1.—(1) Where the adult is a temporary resident but not a prospective resident, the value of the adult’s main or only home in circumstances where—

- (a) the adult is taking reasonable steps to dispose of the dwelling in order that they may acquire another dwelling which they intend to occupy as their main or only home; or
- (b) the adult intends to return to occupy that dwelling as their main or only home and the dwelling is still available to them.

(2) Where the adult is a temporary resident who is a prospective resident, the value of the adult’s main or only home in circumstances where the adult intends, on being provided in fact with accommodation under the Act—

- (a) to take reasonable steps to dispose of the dwelling in order that they may acquire another dwelling which they intend to occupy as their main or only home; or
- (b) to return to occupy that dwelling as their main or only home and the dwelling to which the adult intends to return is available to them.

2.—(1) Where the adult is a permanent resident the value of the adult’s main or only home which the adult would otherwise normally occupy (“the adult’s home”) for a period of 12 weeks beginning with the day on which the adult first moves into accommodation in a care home (“the first period of residence”).

(2) Where the adult—

- (a) ceases to be a permanent resident; and
- (b) subsequently becomes a permanent resident again at any time within the period of 52 weeks from the end of the first period of permanent residence, the value of the adult’s home for such period (if any) which when added to the period disregarded under sub-paragraph (1) in respect of their first period of permanent residence does not exceed 12 weeks in total.

(3) Where the adult—

- (a) ceases to be a permanent resident and is not a person to whom sub-paragraph (2) has applied; and
- (b) subsequently becomes a permanent resident again at any time after a period of more than 52 weeks from the end of the first period of residence, the value of the adult’s home for a period of 12 weeks beginning with the day on which the second period of permanent residence begins.

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<sup>(A)</sup> Paragraph 36 was amended by S.I. 1990/1657, 1996/462, 2000/1922 and 2006/2378.

(4) In this paragraph, “the second period of permanent residence” means the period of permanent residence beginning at any time after the period of 52 weeks referred to in sub-paragraph (3)(b).

3. Where the adult is a permanent resident and there is an unexpected change in their financial circumstances the local authority may disregard the value of the adult’s main or only home which the adult would normally otherwise occupy for a period of 12 weeks.

4.—(1) The value of any premises—

(a) which would be disregarded under paragraph 2 or 4(b) of Schedule 10 to the Income Support Regulations (premises acquired for occupation, and premises occupied by a former partner)<sup>(A)</sup> but as if for the words “his home” in each provision there were substituted “his main or only home”; or

(b) which is occupied in whole or in part as their main or only home by a qualifying relative of the adult who has occupied the premises as their main or only home since before the date on which the adult was first provided with accommodation in a care home under the Act.

(2) A local authority may disregard the value of any premises which is occupied in whole or in part by a qualifying relative of the adult as their main or only home where the qualifying relative occupied the premises after the date on which the adult was first provided with accommodation in a care home under the Act.

(3) The value of any premises for a period of 12 weeks where the local authority has disregarded the value of the premises under sub-paragraph (1)(b) or (2) and that relative has died or is no longer occupying the premises because they have been provided with accommodation in a care home.

(4) The local authority may disregard the value of any premises for a period of 12 weeks where the premises were occupied in whole or in part by a qualifying relative of the adult as their main or only home and that relative is no longer occupying the premises because of an unexpected change in their circumstances.

(5) In this paragraph—

“child” is to be construed in accordance with section 1 of the Family Law Reform Act 1987<sup>(B)</sup>;

“qualifying relative” means the adult’s—

(a) partner;

(b) other family member or relative who is aged 60 or over or who is incapacitated; or

(c) child who is under 18.

5. In the case of an adult who is a resident who has ceased to occupy what was formerly the dwelling occupied by them as their main or only home following their estrangement or divorce from their former partner, the value of the adult’s interest in that dwelling where it is still occupied as the home by the former partner who is a lone parent.

6. In the case of an adult who is in receipt of care and support other than the provision of accommodation in a care home, the value of the adult’s main or only home.

7. The value of the proceeds of sale of any premises which would be disregarded under paragraph 3 of Schedule 10 to the Income Support Regulations (proceeds of sale from premises formerly occupied).

8. Any future interest in property which would be disregarded under paragraph 5 of Schedule 10 to the Income Support Regulations (future interests in property other than in certain land or premises)<sup>(C)</sup>.

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<sup>(A)</sup> Paragraph 2 was amended by S.I. 1988/1445. Paragraph 4(b) was amended by S.I. 1988/910 and 2005/2877.

<sup>(B)</sup> 1987 c.42. Section 1 was amended by paragraph 51 of Schedule 3 to the Adoption and Children Act 2002, paragraph 24 of Schedule 6 to the Human Fertilisation and Embryology Act 2008 (c.22) and S.I. 2014/560.

<sup>(C)</sup> Paragraph 5 was substituted by S.I. 1995/2303.

**9.** Any assets which would be disregarded under paragraph 6 of Schedule 10 to the Income Support Regulations (business assets)<sup>(A)</sup>, but as if in sub-paragraph (2) of that paragraph for the words from “the claim for income support” to the end of that sub-paragraph there were substituted—

- (a) in the case of the adult who is a resident other than a prospective resident the words “the accommodation was initially provided”;
- (b) in the case of the adult who is a prospective resident, the words “the local authority began to assess the adult’s ability to pay for their accommodation under these Regulations”.

**10.** Any amount which would be disregarded under paragraph 7(1) of Schedule 10 to the Income Support Regulations (arrears of specified payments)<sup>(B)</sup>, but as if the words “Subject to sub-paragraph (2)” at the beginning of that sub-paragraph were omitted and as if the reference in paragraph (a) of that sub-paragraph to paragraphs 6, 8 or 9 of Schedule 9 to the Income Support Regulations (other income to be disregarded) were a reference to paragraphs 8 to 11 of Schedule 1 to these Regulations (other income to be disregarded).

**11.** Any arrears of, or any concessionary payment made to compensate for arrears due to the non-payment of—

- (a) child tax credit;
- (b) working tax credit;
- (c) a payment which is made under any of—
  - (i) the Order in Council of 19th December 1881;
  - (ii) the Royal warrant of 27th October 1884;
  - (iii) the Order by his Majesty of 14th January 1922,

to a widow, widower or surviving civil partner under any power of Her Majesty otherwise than under an enactment to make provision about pensions for or in respect of persons who have been disabled or have died in consequence of service as members of the armed forces of the Crown and whose service in such capacity terminated before 31st March 1973,

but only for a period of 52 weeks from the date of the receipt of the arrears or the concessionary payment.

**12.** Any amount which would be disregarded under paragraph 8 or 9 of Schedule 10 to the Income Support Regulations (property repairs and amounts deposited with a housing association).

**13.** Any personal possessions except those which had or have been acquired by the adult with the intention of reducing their capital in order to satisfy a local authority that they were unable to pay towards the cost of their care and support or support.

**14.** Any amount which would be disregarded under paragraph 11 of Schedule 10 to the Income Support Regulations (income under an annuity).

**15.** Any amount which would be disregarded under paragraph 12 of Schedule 10 to the Income Support Regulations (personal injury trusts)<sup>(C)</sup>.

**16.** Any amount which would be disregarded under paragraph 12A of Schedule 10 to the Income Support Regulations (personal injury payments)<sup>(D)</sup> with the exception of any payment or any part of any payment that has been specifically identified by a court to deal with the cost of providing care.

**17.** Any amount which would be disregarded under paragraph 13 of Schedule 10 to the Income Support Regulations (a life interest or a life rent).

**18.** The value of the right to receive any income which is disregarded under paragraph 21 of Schedule 1 (income to be disregarded).

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<sup>(A)</sup> Paragraph 6 was amended by S.I. 1990/1776, 1998/1174 and 2000/2910.

<sup>(B)</sup> Paragraph 7(1) was amended by S.I. 1991/2742, 1996/1944, 2001/2333, 2002/2380, 2005/574, 2008/698, 2008/1554 and 2013/630.

<sup>(C)</sup> Paragraph 12 was substituted by S.I. 1990/1776 and amended by S.I. 2006/2378.

<sup>(D)</sup> Paragraph 12A was inserted by S.I. 2006/2378.

**19.** Any amount which would be disregarded under paragraph 15, 16, 18, 18A or 19 of Schedule 10 to the Income Support Regulations (surrender value of life insurance policy, outstanding instalments, social fund payments, local welfare provision and tax refunds on certain loan interest)<sup>(A)</sup>.

**20.** Any capital which under regulation 16 (capital treated as income) is to be treated as income.

**21.** Any amount which would be disregarded under paragraphs 21 to 24 of Schedule 10 to the Income Support Regulations (charge or commission for converting capital into sterling, the Macfarlane Trusts, the Fund and the Independent Living Fund, value of the right to receive personal or occupational pension, value of funds under personal pension scheme and rent)<sup>(B)</sup>.

**22.** The value of any premises which would be disregarded under paragraph 27 or 28 of Schedule 10 to the Income Support Regulations (premises a claimant intends to occupy)<sup>(C)</sup> but as if for the words “his home” in each provision there were substituted “his main or only home”.

**23.** Any amount which would be disregarded under paragraphs 29 to 31<sup>(D)</sup>, 34<sup>(E)</sup> and 36 to 43<sup>(F)</sup> of Schedule 10 to the Income Support Regulations (fund payments in kind, training bonuses, housing benefit compensation, juror or witness payments, reduction of liability for personal community charge, housing grants, travelling expenses and health service supplies, welfare food payments, health in pregnancy grant, prison visiting scheme payments, special war widows payments, disabled persons’ employment payments, and blind homeworkers’ payments).

**24.** The value of any premises occupied in whole or in part by a third party where the local authority considers it would be reasonable to disregard the value of those premises.

**25.** Any amount which—

- (a) falls within paragraph 44(2)(a), and would be disregarded under paragraph 44(1)(a) or (b), of Schedule 10 to the Income Support Regulations<sup>(G)</sup>; or
- (b) would be disregarded under paragraph 45(a) of that Schedule.

**26.** Any amount which would be disregarded under paragraph 61 of Schedule 10 to the Income Support Regulations (ex-gratia payment made by the Secretary of State in consequence of a person’s imprisonment or internment by the Japanese during the Second World War)<sup>(H)</sup>.

**27.** Any payment which would be disregarded under paragraph 64 of Schedule 10 to the Income Support Regulations (payments under a trust established out of funds provided by the Secretary of State in respect of persons who suffered or are suffering from variant Creutzfeldt-Jakob disease)<sup>(I)</sup>.

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<sup>(A)</sup> Paragraph 18 was substituted by S.I. 1992/468. Paragraphs 18 and 19 were amended by S.I. 2008/3157. Paragraph 18A was inserted by S.I. 2013/443.

<sup>(B)</sup> Paragraphs 22, 23 and 24 were inserted by S.I. 1988/663. Paragraph 22 was substituted by S.I. 1991/1175 and amended by S.I. 1992/1101, 1993/1249, 2000/1981, 2004/1141, 2005/2877, 2005/3391, 2008/2767, 2010/641 and 2011/2425. Paragraph 23 was amended by S.I. 1991/1559. Paragraph 23A was inserted by S.I. 1995/2303 and amended by S.I. 2007/1749. Paragraph 24 was amended by S.I. 1995/2303.

<sup>(C)</sup> Paragraphs 27 and 28 were inserted by S.I. 1988/910 and paragraph 27 substituted by S.I. 1988/2202.

<sup>(D)</sup> Paragraphs 29 to 31 were inserted by S.I. 1988/1445. Paragraph 29 was amended by S.I. 1990/127, 1992/1101, 2007/2538, 2008/2767, 2010/641 and 2011/2425. Paragraph 30 was substituted by S.I. 2004/565.

<sup>(E)</sup> Paragraph 34 was inserted by S.I. 1988/2202.

<sup>(F)</sup> Paragraphs 36 and 37 were inserted by S.I. 1990/547 and paragraph 36 amended by S.I. 1993/315, 2008/698 and 2013/443. Paragraphs 38 to 41 were inserted by S.I. 1990/1776 and paragraphs 38 and 39 substituted by S.I. 2008/3157. Paragraph 39A was inserted by S.I. 2009/583. Paragraph 40 was amended by S.I. 2007/2128 and 2008/3157. Paragraph 41 was substituted by S.I. 2008/3157. Paragraphs 42 and 43 were inserted by S.I. 1992/468 and paragraph 42 amended by S.I. 2004/565.

<sup>(G)</sup> Paragraphs 44 and 45 were inserted by S.I. 1994/2139. Paragraph 44 was substituted by S.I. 2006/2378. Paragraph 45 was amended by S.I. 1997/2197 and 2003/2279.

<sup>(H)</sup> Paragraph 61 was inserted by S.I. 2001/22 and amended by S.I. 2005/2877.

<sup>(I)</sup> Paragraph 64 was inserted by S.I. 2001/1118 and amended by S.I. 2005/2687 and 2006/718.

28. Any payment made by a local authority to or on behalf of the adult relating to the provision of a service, where—

- (a) that service is provided to develop or sustain the capacity of the adult to live independently in the community; and
- (b) any charge for that service would be a service charge of the kind specified in Schedule 1B to the Housing Benefit (General) Regulations 1987 as in force immediately before 1st April 2003.

29. Any payment made by the adult to the local authority in payment of a charge imposed on the adult by the authority under the Local Authorities (Charges for Specified Welfare Services) (England) Regulations 2003.

30. Any payment made to the adult pursuant to regulations made under section 2(6)(b) or 3 of the Adoption and Children Act 2002.

31. Any payment made to the adult under section 2 or 3 of the Age-Related Payments Act 2004 (entitlement: basic or special cases)<sup>(A)</sup>.

32. Any payment made to the adult under Part 2 (payments to persons over the age of 65) or Part 3 (payments to persons in receipt of guarantee credit) of the Age-Related Payments Regulations 2005<sup>(B)</sup>.

33. Any payment made to the adult under section 63(6)(b) of the Health Services and Public Health Act 1968 (“the 1968 Act”) (travelling and other allowances to persons availing themselves of instruction) for the purpose of meeting childcare costs where the instruction is provided pursuant to—

- (a) section 63(1)(a) of the 1968 Act; or
- (b) section 63(1)(b) of the 1968 Act and where the adult is employed, or has it in contemplation to be employed, in an activity involved in or connected with a service which must or may be provided or secured as part of the health service.

34. Any payment made in accordance with regulations made pursuant to section 14F of the Children Act 1989 (special guardian support services) to an adult who is a prospective special guardian or a special guardian.

35. Any payment made to the adult under regulations made under section 7 of the Age-Related Payments Act 2004 (power to provide future payments)<sup>(C)</sup>.

#### **EXPLANATORY NOTE**

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

These Regulations make provision under the Care Act 2014 (“the Act”) for the limitations on the local authority powers to make a charge for meeting needs under section 14 of the Act (Part 2) and in relation to financial assessments for the purposes of section 17 of the Act (Parts 3 to 5 and Schedules 1 and 2). The duty to carry out a financial assessment under section 17 of the Act applies where the local authority thinks that if it were to meet an adult’s needs for care and support, or a carer’s needs for support, it would charge the adult or carer under section 14(1) of the Act.

Section 14 of the Act (power of local authority to charge) provides that a local authority may make a charge for meeting needs under sections 18 to 20 of the Act. Regulation 3 specifies the services which are to be provided free of charge. These are community equipment (aids and minor adaptations) and, for the first 6 weeks only, intermediate care and reablement support services. Regulation 4 provides that adults suffering from variant Creutzfeldt-Jakob disease are to be provided with any services free of charge. Regulation 5 provides that where a local authority is meeting needs because either Condition 2 in section 18 of the Act or Condition 2 or 4 in section 20 of the Act is met, a charge for putting in place the arrangements to meet needs must be no more than the cost incurred by a local authority.

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<sup>(A)</sup> 2004 c.10.

<sup>(B)</sup> S.I. 2005/1983.

<sup>(C)</sup> Section 7 was amended by S.I. 2013/1442.

Section 14(7) of the Act provides that a local authority may not make a charge for services under section 14(1) of the Act if the adult or carer's income would, after deduction of the amount of the charge, fall below the amount specified in regulations. Regulations 6 and 7 specify the personal expenses allowance for residents or temporary residents provided with accommodation in a care home and the minimum income guaranteed amount for other adults and carers provided with care and support, or support. The personal expenses allowance is £24.40 for each week. The minimum income guaranteed amount in relation to adults who have needs for care and support other than the provision of accommodation in a care home, or a carer who has needs for support, is the aggregate of the amounts set out in regulation 7(1). The amounts reflect the applicable amounts for income support and an additional amount in respect of each child for whom the adult is responsible together with any applicable premiums, in each case together with a buffer of 25%. Applicable premiums include carer premiums and disability premiums payable under the Income Support Regulations. The local authority can also include the listed premiums where it is satisfied that a person would be in receipt of the premium were they to be in receipt of income support. Regulation 8 gives local authorities a power to charge and financially assess short-term residents – persons who are provided with accommodation in a care home for a period not exceeding 8 weeks – as if they are in receipt of care and support in their own homes.

Part 3 makes provision in relation to the assessment of financial resources. Financial assessments must be carried out in accordance with Parts 3 to 5 of these Regulations. In some circumstances an authority is to be treated as having carried out a financial assessment in an adult's case and being satisfied on that basis that their financial resources exceed, or as the case may be, do not exceed the financial limit (regulation 10). This includes where the authority, with the consent of the adult, has not carried out a financial assessment but is nevertheless satisfied from the evidence available to the authority that the adult's resources do not exceed the financial limit. For example, where the adult is in receipt of income support.

Regulation 12 specifies the financial limit for the purposes of section 17 of the Act. If the financial resources of an adult who is provided with accommodation in a care home (a permanent resident) exceed (in terms of capital) £23,250, the local authority is not permitted to pay towards the cost of the provision of that accommodation. In any other case where the financial limit exceeds (in terms of capital) £23,250, the authority may (but need not) pay towards the cost of care and support.

Part 4 and Schedule 1 make provision for the treatment and calculation of income. Schedule 1 sets out the income that must or may be disregarded by the local authority.

Part 5 and Schedule 2 make provision for the treatment and calculation of capital. Schedule 2 sets out the capital sums that must or may be disregarded by the local authority.

A separate impact assessment has not been prepared for these Regulations. These Regulations are part of a package of legislative measures and the relevant impact assessment can be requested via [careactconsultation@dh.gsi.gov.uk](mailto:careactconsultation@dh.gsi.gov.uk) or the Department of Health, Richmond House, 79 Whitehall, London, SW1A 2NS and is available online at <http://www.gov.uk/government/organisations/department-of-health>.

**2014 No. XXX**

**SOCIAL CARE, ENGLAND**

**The Care and Support (Preventing Needs for Care and Support)  
Regulations 2014**

*Made* - - - - - 2014

*Laid before Parliament* 2014

*Coming into force in accordance with regulation 1*

The Secretary of State in exercise of the powers conferred by sections 2(3) and (4) and 125(7) of the Care Act 2014<sup>(A)</sup> makes the following Regulations.

**Citation and commencement**

1. These Regulations may be cited as the Care and Support (Preventing Needs for Care and Support) Regulations 2014 and come into force immediately after section 2(1) of the Care Act 2014 comes fully into force.

**Interpretation**

2. In these Regulations—

“the Act” means the Care Act 2014;

“community equipment (aids and minor adaptations)” means an aid, or a minor adaptation to property, for the purpose of assisting with nursing at home or aiding daily living and, for the purposes of these Regulations, an adaptation is minor if the cost of making the adaptation is £1,000 or less;

“intermediate care and reablement support services” means facilities or resources provided to an adult by a local authority under section 2(1) of the Act which—

- (a) consist of a programme of services, facilities or resources;
- (b) are for a specified period of time (“the specified period”); and
- (c) have as their purpose the provision of assistance to an adult to enable the adult to maintain or regain the ability needed to live independently in their own home.

**Making a charge**

3.—(1) Subject to these Regulations, a local authority<sup>(B)</sup> may make a charge for any provision made by it or arranged by it under section 2(1) of the Act.

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<sup>(A)</sup> 2014 c.23. The powers to make regulations are exercisable by the Secretary of State, see section 125(1) of the Act (“the Act”).

<sup>(B)</sup> See section 1(4) of the Act as to the meaning of “local authority”; the definition is limited to local authorities in England.

(2) A charge must not reduce the income of the adult concerned below the amount specified in regulation 7 of the Care and Support (Charging and Assessment of Resources) Regulations 2014<sup>(A)</sup> (minimum income guaranteed amount).

(3) A carer must not be charged for any provision made under section 2(1) of the Act intended to prevent or delay the development by the carer of needs for support or to reduce the carer's needs for support which consists of provision made directly to the adult needing care.

### **Services to be provided free of charge**

4. A local authority must not make a charge under regulation 3(1) where the provision made under section 2(1) of the Act is—

- (a) a service which consists of the provision of community equipment (aids and minor adaptations);
- (b) intermediate care and reablement support services for the first 6 weeks of the specified period or, if the specified period is less than 6 weeks, for that period.

### **Adults to whom services are to be provided free of charge**

5. A local authority must not make a charge under regulation 3(1) where the provision made under section 2(1) of the Act is to an adult suffering from variant Creutzfeldt-Jakob disease.

Signed by authority of the Secretary of State

Address  
Date

*Name*  
Minister of State  
Department of Health

### **EXPLANATORY NOTE**

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

These Regulations make provision under the Care Act 2014 (“the Act”) for when a local authority can make a charge for the provision of services, facilities and resources under section 2 of the Act. Section 2(1) requires a local authority to provide or arrange for the provision of services, facilities or resources (or take other steps) which it considers will contribute towards preventing, delaying or reducing the needs for care and support of adults or for support in relation to carers. Section 2(3) provides the power to make regulations permitting a local authority to charge and prohibiting a local authority from making a charge. Section 2(5) provides that a charge may only cover the cost that the local authority incurs in providing or arranging for the provision of the service, facility or resource.

Regulation 3 provides that a local authority can make a charge subject to these Regulations. Regulation 3(2) provides that a charge must not reduce the adult's income to below the minimum income guarantee specified in the Care and Support (Charging and Assessment of Resources) Regulations 2014. Regulation 3(3) provides that a carer must not be charged for any provision intended to prevent or delay the development by the carer of needs for support or to reduce the carer's needs for support which consists of provision made directly to the adult needing care.

Regulations 4 and 5 respectively specify the services which must always be provided free of any charge and the persons to whom services must always be provided free of any charge.

A separate impact assessment has not been prepared for these Regulations. These Regulations are part of a package of legislative measures and the relevant impact assessment can be requested via careactconsultation@dh.gsi.gov.uk or from the Department of Health, Richmond House, 79 Whitehall, London SW1A 2NS and is available online at <https://www.gov.uk/government/organisations/department-of-health>.

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<sup>(A)</sup> S.I. 2014/2672.

**2014 No. 0000**

**MENTAL HEALTH, ENGLAND**

**SOCIAL CARE, ENGLAND**

**The Care and Support and After-care (Choice of Accommodation)  
Regulations 2014**

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

*Laid before Parliament* \*\*\*

*Coming into force in accordance with regulation 1(2)*

The Secretary of State makes these Regulations in exercise of the powers conferred by section 117A(1), (2) and (4) of the Mental Health Act 1983<sup>(A)</sup> and sections 30(1) and (2) and 125(7) and (8) of the Care Act 2014<sup>(B)</sup>.

**Citation, commencement and interpretation**

**1.**—(1) These Regulations may be cited as the Care and Support and After-care (Choice of Accommodation) Regulations 2014.

(2) These Regulations come into force as follows—

- (a) for the purposes of a case to which regulation 4(1)(a) applies, immediately after section 75(6) of the Care Act 2014 comes fully into force<sup>(C)</sup>; and
- (b) for all other purposes, immediately after section 30 of the Care Act 2014 comes fully into force<sup>(D)</sup>.

(3) In these Regulations—

“the 1983 Act” means the Mental Health Act 1983;

“the Act” means the Care Act 2014;

“personal care” means—

- (a) physical assistance given to a person in connection with—
  - (i) eating or drinking (including the administration of parenteral nutrition),
  - (ii) toileting (including in relation to the process of menstruation),
  - (iii) washing or bathing,
  - (iv) dressing,

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<sup>(A)</sup> 1983 c.20. Section 117A is inserted by section 75(6) of the Care Act 2014.

<sup>(B)</sup> 2014 c.23; see section 125(1) for the powers to make regulations.

<sup>(C)</sup> Section 75(6) was commenced for the purpose of making regulations by S.I. 2014/2473.

<sup>(D)</sup> Section 30 was commenced for the purpose of making regulations by S.I. 2014/2473.

- (v) oral care,
  - (vi) the care of skin, hair and nails (with the exception of nail care provided by a chiropodist or podiatrist); or
  - (b) the prompting, together with supervision, of a person in relation to the performance of any of the activities listed in paragraph (a), where that person is unable to make a decision for themselves in relation to performing the activity without such prompting or supervision;
- “preferred accommodation” means the accommodation for which the person for whom it is to be provided expresses a preference in accordance with—
- (c) in a case to which regulation 4 applies, regulation 4(1)(b);
  - (d) in any other case, regulation 2(1)(b).

### **Choice of accommodation**

#### **2.—(1) Where—**

- (a) a local authority<sup>(A)</sup> is going to meet needs under sections 18 to 20 of the Act by providing or arranging for the provision of accommodation of a specified type in England;
- (b) the adult<sup>(B)</sup> for whom the accommodation is to be provided expresses a preference for particular accommodation (identifiable by reference to its address or provider) of a specified type; and
- (c) the conditions in regulation 3 are met,

the local authority must provide or arrange for the provision of the preferred accommodation in accordance with these Regulations.

#### **(2) The specified types of accommodation are—**

- (a) care home accommodation (see regulation 6);
- (b) shared lives scheme accommodation (see regulation 7); or
- (c) supported living accommodation (see regulation 8).

### **Conditions for provision of preferred accommodation**

**3.—(1)** The following conditions must be met for the provision of preferred accommodation under regulation 2—

- (a) the care and support plan<sup>(C)</sup> for the adult specifies that the adult’s needs are going to be met by the provision of accommodation of a specified type;
- (b) the preferred accommodation is of the same type as that specified in the adult’s care and support plan;
- (c) the preferred accommodation is suitable to the adult’s needs;
- (d) the preferred accommodation is available; and
- (e) where the preferred accommodation is not provided by the local authority, the provider of the accommodation agrees to provide the accommodation to the adult on the local authority’s terms.

(2) If the cost to the local authority of providing or arranging for the provision of the preferred accommodation is greater than the amount specified in the adult’s personal budget<sup>(D)</sup> that relates to the provision of accommodation of that type, the additional cost condition in regulation 5 must also be met<sup>(E)</sup>.

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<sup>(A)</sup> See section 1(4) of the Act for the meaning of “local authority”; the definition is limited to local authorities in England.

<sup>(B)</sup> See section 2(8) of the Act for the meaning of “adult”.

<sup>(C)</sup> See section 25 of the Act for the meaning of “care and support plan”.

<sup>(D)</sup> See section 26 of the Act for the meaning of “personal budget”.

<sup>(E)</sup> See section 30(3) of the Act for the meaning of “additional cost”.

## **Application to after-care**

### **4.—(1) Where—**

- (a) a local authority is, in discharging its duty under section 117(2) of the 1983 Act, providing or arranging for the provision of accommodation in England for a person;
- (b) the person expresses a preference for particular accommodation (identifiable by reference to its address or provider); and
- (c) the conditions in paragraph (2) are met,

the local authority must provide or arrange for the provision of the preferred accommodation in accordance with these Regulations.

### **(2) The following conditions must be met for the provision of preferred accommodation under paragraph (1)—**

- (a) the person must be aged 18 or over;
- (b) the accommodation which the local authority is providing or arranging must be of a specified type;
- (c) the preferred accommodation must be of the same type that the local authority has decided to provide or arrange;
- (d) the preferred accommodation must be suitable to meet the person's needs;
- (e) the preferred accommodation must be available;
- (f) where the preferred accommodation is not provided by the local authority, the provider of the accommodation must agree to provide the accommodation to the person on the local authority's terms; and
- (g) where the cost to the local authority of providing or arranging for the provision of the preferred accommodation is greater than the amount that the local authority would expect to be the usual cost of providing or arranging for the provision of accommodation of that kind, the additional cost conditions in paragraph (3) must also be met.

### **(3) The additional cost conditions referred to in paragraph (2)(g) are that—**

- (a) the local authority is satisfied that the person for whom the accommodation is to be provided or another person ("the payer"), is willing and able to pay the additional cost of the preferred accommodation for the period during which the local authority expects to meet needs by providing or arranging for the provision of that accommodation; and
- (b) the payer enters into a written agreement with the authority in which the payer agrees to pay the additional cost.

(4) In a case to which paragraph (3) applies, the local authority must comply with the requirements of regulation 5(2), (3)(a) and (c) to (f), and (4).

(5) For the purposes of this regulation the additional cost that is to be met by the payer may be less than the full amount of the additional cost referred to in section 117A(3) of the 1983 Act, if the local authority agrees that a lesser amount should be paid.

(6) The specified types of accommodation are those referred to in regulation 2(2) but for the purposes of this regulation any reference to "an adult" in regulations 7 and 8 should be read as a reference to "a person".

## **The additional cost condition**

### **5.—(1) The additional cost condition is met if—**

- (a) the local authority is satisfied that—
  - (i) a person other than the adult, or
  - (ii) in a case to which paragraph (5) applies, the adult,

(“the payer”) is able and willing to pay the additional cost of the preferred accommodation for the period during which the local authority expects to meet the adult’s needs by providing or arranging for the provision of that accommodation; and

(b) the payer enters a written agreement with the local authority in which the payer agrees to pay the additional cost.

(2) The local authority must provide the payer with access to sufficient information and advice to enable the payer to understand the terms of the proposed written agreement before entering into it.

(3) The written agreement must include—

- (a) the additional cost;
- (b) the amount specified in the adult’s personal budget in relation to the provision of accommodation;
- (c) the frequency of payments;
- (d) details of the person to whom the payments are to be made;
- (e) provision for review of the agreement;
- (f) provisions about the matters specified in paragraph (4).

(4) The specified matters are—

- (a) the consequences of ceasing to make payments;
- (b) the effect of increases in charges made by the provider of the preferred accommodation;
- (c) the effect of changes in the payer’s financial circumstances.

(5) The local authority may not agree with the adult for whom the accommodation is to be provided for that adult to pay the additional cost unless—

- (a) paragraph 2 of Schedule 2 to the Care and Support (Charging and Assessment of Resources) Regulations 2014<sup>(A)</sup> (the 12 week property disregard) applies to that adult; or
- (b) the adult and the local authority agree to enter into a deferred payment agreement in accordance with the Care and Support (Deferred Payment) Regulations 2014<sup>(B)</sup> in respect of the additional cost.

(6) For the purposes of this regulation the additional cost that is to be met by the payer may be less than the full amount of the additional cost referred to in section 30(3) of the Act, if the local authority agrees that a lesser amount should be paid.

### **Care home accommodation**

**6.** For the purposes of these Regulations, “care home accommodation” means accommodation in a care home within the meaning given by section 3 of the Care Standards Act 2000<sup>(C)</sup>.

### **Shared lives scheme accommodation**

**7.** For the purposes of these Regulations, “shared lives scheme accommodation” means accommodation which is provided for an adult by a shared lives carer, and for this purpose—

“shared lives carer” means an individual who, under the terms of a shared lives agreement, provides, or intends to provide, personal care for adults together with, where necessary, accommodation in the individual’s home;

“shared lives agreement” means an agreement entered into between a person carrying on a shared lives scheme and an individual for the provision, by that individual, of personal care to an adult together with, where necessary, accommodation in the individual’s home; and

“shared lives scheme” means a scheme carried on (whether or not for profit) by a local authority or other person for the purposes of—

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<sup>(A)</sup> S.I. 2014/2672.

<sup>(B)</sup> S.I. 2014/2671.

<sup>(C)</sup> 2000 c.14; section 3 was amended by the Health and Social Care Act 2008 (c.14), section 95 and paragraph 4 of Schedule 5.

- (a) recruiting and training shared lives carers;
- (b) making arrangements for the placing of adults with shared lives carers; and
- (c) supporting and monitoring placements.

### **Supported living etc**

**8.**—(1) For the purposes of these Regulations, “supported living accommodation” means—

- (a) accommodation in premises which are specifically designed or adapted for occupation by adults with needs for care and support to enable them to live as independently as possible; and
- (b) accommodation which is provided—
  - (i) in premises which are intended for occupation by adults with needs for care and support (whether or not the premises are specifically designed or adapted for that purpose), and
  - (ii) in circumstances in which personal care is available if required.

(2) The accommodation referred to in paragraph (1)(a) does not include adapted premises where the adult had occupied those premises as their home before the adaptations were made.

(3) For the purposes of paragraph (1)(b)(ii) personal care may be provided by a person other than the person who provides the accommodation.

### **Refusal to provide preferred accommodation**

**9.** A local authority must give the adult its written reasons for a refusal to provide or arrange for the provision of preferred accommodation.

Signed by authority of the Secretary of State for Health

Date

*Name*  
Minister of State  
Department of Health

### **EXPLANATORY NOTE**

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

Under Part 1 of the Care Act 2014 (“the Act”) a local authority may meet care and support needs by providing accommodation, for example in a care home. Regulations under section 30 of the Act may provide that where an adult’s needs are to be met by the provision of specified types of accommodation, and the adult has expressed a preference for particular accommodation of that type, the local authority must meet the adult’s preference, provided that specified conditions are met. These Regulations make such provision.

Regulations 2, 6, 7 and 8 of these Regulations specify the types of accommodation to which the obligation to meet the adult’s preference applies.

Regulation 3 specifies the conditions which must apply in order for the local authority to be required to meet the adult’s preference for accommodation.

Regulation 4 requires a local authority, which in discharging its duty to provide or arrange for the provision of mental health after-care under section 117 of the Mental Health Act 1983, is providing or arranging for the provision of a specified type of accommodation to an adult, to provide or for arrange the provision of the adult’s preferred accommodation of that type, if specified conditions are met.

Regulation 5 sets out the “additional cost condition”. Where the cost of an adult’s preferred accommodation is more than the amount specified for the accommodation in the adult’s personal budget

(under section 26 of the Act), the local authority is not required to provide that accommodation unless the additional cost condition is met.

Regulation 9 provides that a local authority must give written reasons for a refusal to provide preferred accommodation.

A separate impact assessment has not been prepared for these Regulations. These Regulations are part of a package of legislative measures and the relevant impact assessment can be requested via [careactconsultation@dh.gsi.gov.uk](mailto:careactconsultation@dh.gsi.gov.uk) or from the Department of Health, Richmond House, 79 Whitehall, London SW1A 2NS and is available online at <https://www.gov.uk/government/organisations/department-of-health>.

**2014 No. \*\*\***

**SOCIAL CARE, ENGLAND**

**The Care and Support (Deferred Payment) Regulations 2014**

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

*Laid before Parliament* \*\*\*

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

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 34(1), (2) and (4) to (8), 35 and 125(7) and (8) of the Care Act 2014<sup>(A)</sup>.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Care and Support (Deferred Payment) Regulations 2014 and come into force immediately after sections 34(1) and 35(1) of the Care Act 2014 are both fully in force<sup>(B)</sup>.

(2) In these Regulations—

“the Act” means the Care Act 2014 and a reference to a section is a reference to a section of the Act;

“care home” means a care home, within the meaning given in section 3 of the Care Standards Act 2000<sup>(C)</sup>, in respect of which a person is registered under the Health and Social Care Act 2008<sup>(D)</sup> for the regulated activity of the provision of accommodation together with nursing or personal care;

“long tenancy” is a tenancy granted for a term of years certain exceeding twenty one years, whether or not the tenancy is, or may become, terminable before the end of that term by notice given by or to the tenant or by re-entry, forfeiture or otherwise and includes a lease for a term fixed by law under a grant with a covenant or obligation for perpetual renewal unless it is a lease by sub-demise from one which is not a long tenancy;

“specified time” means the time specified in regulation 7;

“supported living accommodation” has the meaning in regulation 3(2);

“the 2011 Act” means the Budget Responsibility and National Audit Act 2011<sup>(E)</sup>.

**Local authority required to enter into a deferred payment agreement**

2.—(1) A local authority<sup>(F)</sup> is required to enter into a deferred payment agreement with an adult if—

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<sup>(A)</sup> c.23. The powers to make regulations are exercisable by the Secretary of State; see section 125(1).

<sup>(B)</sup> Sections 34(1) and 35(1) have been commenced for the purpose of making regulations by S.I. 2014/2473.

<sup>(C)</sup> 2000 c.14.

<sup>(D)</sup> 2008 c.14.

<sup>(E)</sup> 2011 c.4.

<sup>(F)</sup> See section 1(4) of the Act as to the meaning of “local authority”; the definition in section 1(4) is limited to local authorities in England.

- (a) paragraph (2) applies to the adult;
- (b) the condition in regulation 4 is met; and
- (c) the adult agrees to all the terms and conditions included in the agreement in accordance with regulation 11.

(2) This paragraph applies to an adult if—

- (a) the adult’s needs for care and support—
  - (i) are being met or are going to be met under section 18 or section 19(1) or (2) and the care and support plan<sup>(A)</sup> for the adult specifies that the local authority is going to meet the adult’s needs by the provision of accommodation in a care home; or
  - (ii) are not being or going to be met by the local authority and the local authority considers that if it had been asked to meet the adult’s needs it would have done so under section 18 or section 19(1) or (2) and it would have met the adult’s needs by the provision to the adult of accommodation in a care home; and
- (b) the local authority is satisfied that the adult has a legal or beneficial interest in a property which is the adult’s main or only home, and
  - (i) where a financial assessment within the meaning of section 17(5) has been carried out in respect of the adult, that—
    - (aa) the value of that interest has not been disregarded for the purposes of calculating the amount of the adult’s capital<sup>(B)</sup>; and
    - (bb) the adult’s capital less the value of that interest does not exceed £23,250; or
  - (ii) where such a financial assessment has not been carried out in respect of the adult that sub-paragraph (i) would be satisfied if such an assessment were carried out.

(3) But a local authority is only required to enter into a deferred payment agreement with an adult for amounts due from the adult to the authority under section 14, or for costs of care and support the provision of which the local authority considers to be necessary to meet the adult’s needs.

### **Local authority permitted to enter into a deferred payment agreement**

3.—(1) A local authority is permitted to enter into a deferred payment agreement with an adult if—

- (a) the adult’s needs for care and support—
  - (i) are being met or are going to be met under section 18 or section 19(1) or (2) and the care and support plan for the adult specifies that the local authority is going to meet the adult’s needs by the provision to the adult of accommodation in a care home or supported living accommodation; or
  - (ii) are not being or going to be met by the local authority and the local authority considers that if it had been asked to meet the adult’s needs it would have done so under section 18 or section 19(1) or (2) and it would have met the adult’s needs by the provision to the adult of accommodation in a care home or supported living accommodation;
- (b) the condition in regulation 4 is met; and
- (c) the adult agrees to all the terms and conditions included in the agreement in accordance with regulation 11.

(2) For the purpose of paragraph (1), “supported living accommodation” means accommodation which is not a care home and is—

- (a) in premises which are specifically designed or adapted for occupation by adults with needs for care and support to enable them to live as independently as possible; or
- (b) provided—

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<sup>(A)</sup> See section 25 for the definition of “care and support plan”.

<sup>(B)</sup> See section 17(11)(b) which provides that regulations under that section must make provision for calculating capital.

- (i) in premises which are intended for occupation by adults with needs for care and support (whether or not the premises are specifically designed or adapted for that purpose); and
- (ii) in circumstances in which personal care is available if required.

(3) For the purposes of paragraph (2)(b)(ii), personal care may be provided by a person other than the person who provides the accommodation.

(4) The accommodation referred to in paragraph (2) does not include premises—

- (a) in respect of which the adult is for the time being entitled to dispose of the fee simple, whether or not with the consent of other joint owners; or
- (b) which the adult occupies other than under a licence or tenancy agreement.

(5) In paragraph (4) “tenancy” means a tenancy which is not a long tenancy.

### **Adequate security**

4.—(1) The local authority must obtain—

- (a) adequate security for the payment of the adult’s deferred amount<sup>(A)</sup> and any interest or administration costs which are treated in the same way as the adult’s deferred amount; and
- (b) the consent referred to in paragraph (4), if the authority considers it is necessary to do so.

(2) For the purposes of regulation 2, “adequate security” is a charge by way of legal mortgage for an amount which is at least equal to the deferred amount and any interest or administration costs which are to be treated in the same way as the adult’s deferred amount and which is capable of being registered as a first legal charge in favour of the local authority in the land register<sup>(B)</sup>.

(3) For the purposes of regulation 3, “adequate security” is—

- (a) a charge by way of legal mortgage for an amount which is at least equal to the adult’s deferred amount and any interest or administration costs which are to be treated in the same way as the adult’s deferred amount and which is capable of being registered as described in paragraph (2); or
- (b) any other security which the local authority considers is sufficient to secure payment of the deferred amount and any interest and administration costs which are to be treated in the same way as the adult’s deferred amount.

(4) The consent required by paragraph (1) is consent which in the opinion of the local authority is genuine and informed consent given in writing to the matters specified in paragraph (5) by any person—

- (a) who the authority considers has an interest in the land or other asset in respect of which a charge will be obtained; and
- (b) whose interest the authority considers may prevent it from exercising a power of sale of the land or asset or recovering the deferred amount.

(5) The matters specified are—

- (a) the creation of a charge; and
- (b) the charge taking priority to and ranking before any interest the person has in the land or other asset which will be the subject of the charge.

### **Deferred amount and equity limit**

5.—(1) Subject to paragraph (3), the deferred amount is the sum which is specified or determined in accordance with paragraph (2).

(2) The sum is—

- (a) The lower of—

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<sup>(A)</sup> See section 34(6) for the meaning of “deferred amount”.

<sup>(B)</sup> See the Land Registration Act 2002 (c.9), section 132(1) for the meaning of “charge”, “legal mortgage”, “register”.

- (i) 100% of the amount due from the adult under section 14 or, as the case may be, section 30(2) for the provision of care and support in a care home or supported living accommodation, less any amount which the local authority requires the adult to contribute under regulation 6;
- (ii) such lesser part of the amount due under section 14, or as the case may be, section 30(2) as the adult requests, less any amount which the local authority requires the adult to contribute under regulation 6;
- (iii) the amount deferred in accordance with sub-paragraphs (i) or (ii), less any amount which, during the time the agreement is in force and in accordance with the terms and conditions of the agreement, the authority does not agree to defer payment of until the specified time; or
- (b) 100% of the loan made for the purpose of assisting the adult to obtain care and support in a care home or, as the case may be, supported living accommodation.

(3) But—

- (a) the deferred amount and any interest and administration costs which have been treated in the same way as the deferred amount must not exceed the equity limit and the authority must not agree to defer payment of an amount if to do so would exceed the equity limit; unless
- (b) at the relevant time, the deferred amount and any interest and administration costs which have been treated in the same way as the deferred amount exceeds the equity limit, in which case the local authority must defer payment of those amounts if paragraph (4) applies.

(4) This paragraph applies if the equity limit was not exceeded at the time when payment of an amount due to the authority under section 14 or 30(2) was last deferred or an instalment under the loan agreement was last advanced to the adult.

(5) The equity limit is 90% of the value of the asset (that is, its current market or surrender value at the relevant time) which the local authority obtains as security for the deferred amount and any interest and administration costs which are to be treated in the same way as the deferred amount, less £14,250 and the amount of any encumbrance secured on it which ranks in priority to the authority's charge.

(6) For the purposes of paragraphs (3) and (5), the relevant time is the time that—

- (a) an amount under section 14 or 30(2) is due to the authority; or
- (b) the local authority is due to advance an instalment of the loan to the adult under the loan agreement.

(7) Any interest and administration costs may continue to be treated in the same way as the deferred amount even after the equity limit is reached.

### **Adult's contribution**

**6.—**(1) If in any week during which the agreement is in force the adult's weekly income exceeds £144, a local authority is permitted not to—

- (a) defer an amount due to the authority under section 14 or 30(2) for meeting the adult's needs for that week by the provision of accommodation in a care home or supported living accommodation; or
- (b) advance an instalment or part of an instalment under the loan agreement for the purpose of assisting the adult to obtain for that week the provision of care and support in a care home or supported living accommodation.

(2) But the amount which under this regulation the local authority may decide not to defer or advance in respect of that week may not exceed the amount by which the adult's income in that week exceeds £144.

(3) Where the local authority decides not to defer an amount or advance an instalment or part of an instalment under paragraph (1), it may include a term in the agreement to require the adult to pay or ensure payment of the amount due to the authority or the provider of the care and support in a care home or supported living accommodation.

(4) In paragraph (3) the amount due to the authority or provider of care and support is the amount which, in accordance with this regulation, the authority decides not to defer.

(5) The amount of the adult's weekly income must be calculated in accordance with regulations made under section 17.

### **Time for repayment of the deferred amount**

7. The specified time for repayment of the deferred amount and any interest and administration costs which have been treated in the same way as the deferred amount is the sooner of—

- (a) the date of sale or disposal of the land or other asset in respect of which the authority has a charge; or
- (b) 90 days after the date of the death of the adult with whom the agreement is made or such longer time as the authority may permit.

### **Termination**

8. The adult may terminate the deferred payment agreement at any time prior to the specified time by giving the authority reasonable notice in writing and paying to the local authority the deferred amount and any interest and administration costs which have been treated in the same way as the deferred amount.

### **Interest**

9.—(1) A local authority may charge interest on an adult's deferred amount and any amounts which are treated in the same way as the deferred amount provided that, before entering into the agreement, it informs the adult that it proposes to do so and of the rate at which interest will be charged.

(2) The interest may be treated in the same way as the adult's deferred amount, unless the adult requests to pay the interest separately.

(3) The interest rate is a rate that does not exceed the relevant rate for the relevant period plus 0.15%.

(4) The relevant rate is the weighted average interest rate on conventional gilts specified for the financial year in which the relevant period starts in the most recent report published before the start of the relevant period by the Office of Budget Responsibility<sup>(A)</sup> under section 4(3) of the 2011 Act<sup>(B)</sup>.

(5) The relevant period is the period starting on—

- (a) 1st January and ending on 30th June in any year; or
- (b) 1st July and ending on 31st December in any year.

(6) "Financial year" has the meaning given in section 25(2) of the 2011 Act.

### **Administration costs**

10.—(1) The local authority may charge the adult its administration costs in accordance with paragraph (3) or (4) provided that it informs the adult that it proposes to do so, before entering into the agreement, and complies with sub-paragraphs (a) to (c) of paragraph (5).

(2) The administration costs may be treated in the same way as the adult's deferred amount, unless the adult requests to pay them separately.

(3) In this paragraph the administration costs are the total of any costs incurred by the authority in relation to the adult's deferred payment agreement including but not limited to—

- (a) the costs of postage, printing and photocopying;
- (b) the costs of time spent by persons in relation to the agreement;
- (c) the costs of overheads, such as computer equipment and utility charges (to the extent that they are not already included in the costs of time spent by persons in relation to the agreement);

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<sup>(A)</sup> The Office of Budget Responsibility is established by section 3 of the 2011 Act.

<sup>(B)</sup> A copy of the report can be requested via [careactconsultation@dh.gsi.gov.uk](mailto:careactconsultation@dh.gsi.gov.uk) or the Department of Health, Richmond House, 79 Whitehall, London SW1A 2NS and is available at <http://budgetresponsibility.org.uk/>.

- (d) the costs incurred for the purpose of ascertaining the value of the adequate security;
  - (e) the costs incurred in registering the charge on the land or land charges register;
  - (f) the costs incurred in perfecting the security obtained in respect of the deferred amount;
  - (g) the costs incurred in discharging or redeeming the security obtained in respect of the deferred amount; and
  - (h) the costs which are incurred by the authority for the purpose of ensuring compliance by the parties of the terms and conditions in the agreement.
- (4) In this paragraph the administration costs are—
- (a) the average cost to the local authority incurred in relation to deferred payment agreements generally, having regard to the costs and fees referred to in sub-paragraphs (a) to (c) of paragraph (3), and for these purposes the local authority may provide for different average costs for different situations;
  - (b) the costs incurred for the purpose of ascertaining the value of the adequate security;
  - (c) the costs incurred in registering the charge on the land or land charges register;
  - (d) the costs incurred in perfecting the security obtained in respect of the deferred amount;
  - (e) the costs incurred in discharging or redeeming the security obtained in respect of the deferred amount; and
  - (f) the costs which are incurred by the authority for the purpose of ensuring compliance by the parties of its terms and conditions.
- (5) But the local authority must—
- (a) before entering into the agreement, give the adult an estimate of the amount of any charge it envisages levying in respect of making the agreement and registering any charge;
  - (b) before entering into the agreement give the adult an indication of its current charges for, and the matters in respect of which, it considers it may impose a charge under the agreement and information to enable the adult to ascertain the charges if they change during the period during which the agreement is in force;
  - (c) before requesting payment of any charge, or treating it in the same way as the deferred amount, provide the adult with a statement which sets out the amount of the charge—
    - (i) which, in a case where the administration costs are calculated in accordance with paragraph (3), is attributable to each of the items referred to in paragraph (3); or
    - (ii) which, in a case where the costs are calculated in accordance with paragraph 4, is attributable to the costs referred to in paragraph (4)(a) and each of the items referred to in sub-paragraphs (b) to (f) of that paragraph.

### **Terms, conditions and information**

**11.—**(1) The deferred payment agreement must include any terms, conditions and information, without which the adult is unable to ascertain his or her rights and obligations under the agreement including—

- (a) in the case of an agreement under which a local authority agrees to defer until the specified time the repayment of the part of the loan specified in regulation 5, a term to make clear that the local authority will make advances of that loan to the adult in instalments and when those instalments will be made;
- (b) a term to explain that the local authority must cease to defer amounts due to the authority under section 14 or 30(2) or advance instalments under the loan agreement if the adult is no longer receiving care and support in a care home or supported living accommodation or if the local authority no longer considers that the adult's needs should be met by the provision of such accommodation;
- (c) a term to explain any other circumstances in which the local authority will or may cease to defer amounts due to it under sections 14 or 30(2) or advance instalments under the loan agreement;
- (d) a term which requires the local authority to produce a written statement—

- (i) which is provided to the adult—
  - (aa) at the end of the period of six months beginning with the date on which the agreement is entered into;
  - (bb) every six months after that; and
  - (cc) within 28 days of a request made by the adult; and
- (ii) which shows—
  - (aa) the amount that the adult would have to pay to the local authority in order to terminate the agreement on the date on which the statement is sent by the authority to the adult or such later date as is requested by the adult; and
  - (bb) the amount of interest and administration charges which have accrued on the amounts deferred under section 14 or 30(2) or the loan instalments since the commencement of the loan;
- (e) a term which requires the local authority to give the adult 30 days written notice of the date on which the equity limit and, if different, the amount which the parties have agreed to defer is likely to be reached;
- (f) if the interest is to be treated in the same way as the adult's deferred amount, a term to explain how the interest will compound;
- (g) information as to administration costs which the authority may charge under the agreement;
- (h) in the case of a loan, a term to make clear that its purpose is to pay the costs of care and support in a care home or supported living accommodation, as the case may be, and that the adult must pay those costs as and when they fall due;
- (i) a term which explains that, subject to regulation 5(3), the maximum amount which may be deferred is the equity limit in regulation 5(5), and that this is likely to vary over the term of the agreement;
- (j) a term which describes the adequate security accepted by the local authority;
- (k) a term requiring the adult to obtain the consent of the local authority for any person to occupy the property; and
- (l) a term to explain how the adult may exercise his or her right to terminate the agreement.

(2) The deferred payment agreement may include such other terms and conditions as the local authority considers appropriate.

Signed by authority of the Secretary of State for Health

Date

*Name*  
Parliamentary Under Secretary of State  
Department of Health

### **EXPLANATORY NOTE**

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

These Regulations make provision for local authorities to enter into a deferred payment agreement with an adult and specify the amount of the agreement and conditions which relate to the agreement.

Regulation 2 sets out the circumstances in which a local authority must enter into a deferred payment agreement.

Regulation 3 sets out the circumstances in which a local authority may enter into a deferred payment agreement.

Regulation 4 provides that a local authority must not enter into a deferred payment agreement unless it obtains adequate security for the payment of the deferred amount. It sets out that, for cases where a local

authority is required to enter into a deferred payment agreement, the adequate security must be a charge by way of legal mortgage for an amount which is at least equal to the adult's deferred amount and any interest and administration costs which are treated in the same way as the adult's deferred amount and which is capable of being registered as a first legal charge in favour of the local authority in the land register. In the case of a deferred payment agreement which the authority is permitted to enter into, paragraph (3) provides that adequate security is such a charge or such other security as the authority considers will secure payment of the deferred amount.

The regulation also provides that if the authority considers that it is necessary to do so it must also obtain written consent to the matters specified in paragraph (5) from a person who has an interest in the asset over which it has obtained the charge.

Regulation 5 makes provision as to the amount which is deferred under the agreement. Regulation 5(1) provides that, subject to paragraph (3), the deferred amount is the sum in paragraph (2).

Regulation 5(2) provides in effect that, in cases where the adult is required to pay charges for the costs of their care and support to the authority, the amount is 100% of the amount due to the authority from the adult under section 14 (power of local authority to charge) or the amount due to the authority under section 30(2) (additional costs in cases where the adult expresses a preference for particular accommodation) or such lesser amount as the adult requests. In either case these amounts may be reduced by the amount by which the local authority is permitted not to defer under regulation 6 or in accordance with terms and conditions of the agreement.

In the case of a loan, regulation 5(2)(b) provides that the deferred amount is the whole of the loan made to the adult to obtain accommodation in a care home or supported living accommodation.

Regulation 5(3)(a) provides in effect that apart from in the circumstance described in sub-paragraph (b) the deferred amount and interest and costs which have been added to it must not exceed the equity limit specified in paragraph (5). Paragraph (b) of regulation 5(3) requires the authority to defer payment of an amount which exceeds the equity limit if regulation 5(4) applies. Regulation 5(4) applies if the equity limit was not exceeded when amounts were last deferred. This may arise if the value of the adequate security has fallen since the date of the last deferral. Regulation 5(7) makes clear that interest and administration costs can continue to be added to the deferred amount even after the equity limit is reached.

Regulation 6(1) and (2) provides in effect that the local authority does not have to defer an amount, where, after payment by the adult of the amounts due to the authority, or payment by the adult of the charges due to the provider of care and support in a care home or supported living accommodation, the adult would retain at least £144 of his or her weekly income.

It also provides, by paragraphs (3) and (4), that the local authority may include a term in the agreement to require the adult to pay, or ensure payment of, the amounts which in accordance with the regulation the adult has decided not to defer.

Regulations 7 and 8 make provision as to the time for repayment of the deferred amount and the adult's right to terminate the deferred payment agreement.

Regulations 9 and 10 make provision as to the payment of interest and administration costs.

Regulation 11 details terms and conditions which must or may be in the agreement.

A separate impact assessment has not been prepared for these Regulations. These Regulations are part of a package of legislative measures and the relevant impact assessment can be requested via [careactconsultation@dh.gsi.gov.uk](mailto:careactconsultation@dh.gsi.gov.uk) or the Department of Health, Richmond House, 79 Whitehall, London SW1A 2NS and is available online at <https://www.gov.uk/government/organisations/department-of-health>.

**2014 No. 0000**

**SOCIAL CARE, ENGLAND**

**The Care and Support (Personal Budget: Exclusion of Costs)  
Regulations 2014**

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

*Laid before Parliament* \*\*\*

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

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 26(4) and 125(7) of the Care Act 2014<sup>(A)</sup>.

**Citation, interpretation and commencement**

1.—(1) These Regulations may be cited as the Care and Support (Personal Budget: Exclusion of Costs) Regulations 2014 and come into force immediately after section 26(4) of the Care Act comes fully into force.

(2) In these Regulations—

“the Act” means the Care Act 2014;

“intermediate care and reablement support services” means care and support or support provided to an adult by a local authority<sup>(B)</sup> under section 18, 19 or 20 of the Act which—

- (a) consists of a programme of care and support or support;
- (b) is for a specified period of time; and
- (c) has as its purpose the provision of assistance to an adult to enable the adult to maintain or regain the ability needed to live independently in their own home.

**Costs excluded from a personal budget**

2.—(1) The costs to which paragraph (2) applies are costs which must be excluded from a personal budget<sup>(C)</sup>.

(2) This paragraph applies to the costs to a local authority of meeting needs where it meets those needs by the provision of intermediate care and reablement services if—

- (a) by regulations under section 14 of the Act it is not permitted to make a charge for meeting needs by the provision of such services; or
- (b) it is permitted to make a charge but nevertheless it does not make a charge to any adult to whom it provides such services.

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<sup>(A)</sup> 2014 c.23. The powers to make regulations are exercisable by the Secretary of State; see section 125(1) of the Act (“the Act”).

<sup>(B)</sup> See section 1(4) of the Act for the meaning of “local authority”; the definition is limited to local authorities in England.

<sup>(C)</sup> See section 26 of the Act for the meaning of “personal budget”.

Signed by authority of the Secretary of State for Health

Address  
Date

*Name*  
Minister of State  
Department of Health

### **EXPLANATORY NOTE**

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

These Regulations provide that a local authority must exclude costs of meeting needs from a person's personal budget in certain circumstances if the costs are incurred in meeting needs by the provision to the person of intermediate care and reablement support services.

Regulation 2 provides that in cases where intermediate care and reablement support services are provided, the costs of doing so must be excluded from the adult's personal budget if the local authority is not permitted to make a charge for providing the services by regulations made under section 14 of the Care Act 2014, or, if it is permitted to make a charge, it does not do so.

A separate impact assessment has not been prepared for these Regulations. These Regulations are part of a package of legislative measures and the relevant impact assessment can be requested via [careactconsultation@dh.gsi.gov.uk](mailto:careactconsultation@dh.gsi.gov.uk) or the Department of Health, Richmond House, 79 Whitehall, London SW1A 2NS and is available online at <https://www.gov.uk/government/organisations/department-of-health>.

**2014 No.**

**SOCIAL CARE, ENGLAND**

**The Care and Support (Direct Payments) Regulations 2014**

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

*Laid before Parliament* \*\*\*

*Coming into force in accordance with regulation 1*

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 33(1) and (2), 75(7), and 125(7) and (8) of the Care Act 2014<sup>(A)</sup>.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Care and Support (Direct Payments) Regulations 2014 and, subject to paragraphs (2) and (3), come into force immediately after section 33(1) of the Care Act 2014 comes fully into force<sup>(B)</sup>.

(2) Regulation 11 comes into force immediately after section 33(1) of the Care Act 2014 comes fully into force or, if later, immediately after section 75(7) of that Act comes fully into force.

(3) Paragraph (c)(iii) of Schedule 1 and regulation 2 in so far as it relates to that paragraph come into force immediately after section 33(1) of the Care Act 2014 comes fully into force or, if later, immediately after section 12(1) of the Offender Rehabilitation Act 2014<sup>(C)</sup> comes fully into force.

(4) In these Regulations—

“the Act” means the Care Act 2014;

“care home” has the meaning given by section 3 of the Care Standards Act 2000<sup>(D)</sup>.

**Cases where a local authority must not meet needs by making a direct payment**

2. A local authority<sup>(E)</sup> must not meet needs by making a direct payment<sup>(F)</sup> if the adult<sup>(G)</sup> whose needs are to be met is a person to whom Schedule 1 applies.

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<sup>(A)</sup> 2014 c.23. The powers to make regulations are exercisable by the Secretary of State, see section 125(1). Section 75(7) of the Act provides that a local authority may discharge its duty under section 117 (after care) of the Mental Health Act 1983 (c.20) by making direct payments and that section of, and paragraph 1(10) of Schedule 4 to, the Act modify section 33(2) accordingly.

<sup>(B)</sup> Section 33(1) was commenced for the purpose of making regulations by S.I. 2014/2473.

<sup>(C)</sup> Section 12(1) inserts a new section 64A in the Criminal Justice and Courts Services Act 2000 (c.43).

<sup>(D)</sup> 2000 c.14. Section 3 was amended by the Health and Social Care Act 2008 (c.14), Schedule 5(1), paragraph 4(2) and (3).

<sup>(E)</sup> See section 1(4) of the Act as to the meaning of “local authority”; the definition is limited to local authorities in England.

<sup>(F)</sup> Sections 31(3) and 32(3) interpret the expression “direct payment”.

<sup>(G)</sup> See section 2(8) for the meaning of “adult”.

### Conditions which must apply to the making of direct payments

3.—(1) Direct payments must be made subject to the condition that they must not be used to pay any person mentioned in paragraph (3) to meet the needs of the adult in respect of whose needs the direct payment is made.

(2) Except that, if the local authority considers it is necessary to do so, direct payments may be used to pay a person mentioned in paragraph (3)—

- (a) to meet the care needs of the adult; or
- (b) to provide administrative and management support or services for the purpose of enabling a person to whom the direct payments are made to—
  - (i) comply with legal obligations arising from the making of and use of the direct payment, or
  - (ii) monitor the receipt and expenditure of the direct payment.

(3) The persons referred to in paragraph (1) are—

- (a) the spouse or civil partner of the adult;
- (b) a person who lives with the adult as if their spouse or civil partner;
- (c) a person living in the same household as the adult who is the adult's—
  - (i) parent or parent-in-law,
  - (ii) son or daughter,
  - (iii) son-in-law or daughter-in-law,
  - (iv) stepson or stepdaughter,
  - (v) brother or sister,
  - (vi) aunt or uncle, or
- (vii) grandparent;
- (d) the spouse or civil partner of any person specified in sub-paragraph (c) who lives in the same household as the adult; and
- (e) a person who lives with any person specified in sub-paragraph (c) as if that person's spouse or civil partner.

(4) A direct payment made under section 32 must be made subject to the condition that the authorised person<sup>(A)</sup> must—

- (a) notify the local authority if the authorised person reasonably believes that the adult no longer lacks the capacity to request the making of direct payments; and
- (b) if paragraph (5) applies, obtain—
  - (i) an enhanced criminal record certificate issued under section 113B (enhanced criminal record certificate) of the Police Act 1997<sup>(B)</sup>, or
  - (ii) verification that a satisfactory certificate of that type under that Act has been obtained, in respect of any person from whom a service in respect of which a direct payment is made is secured.

(5) This paragraph applies if the authorised person is—

- (a) a body corporate;

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<sup>(A)</sup> See section 32(4) of the Act for the meaning of “authorised person”.

<sup>(B)</sup> 1997 c.50; section 113B was inserted by section 163(2) of the Serious Organised Crime and Police Act 2005 (c.15) and was amended by the Safeguarding Vulnerable Groups Act 2006 (c.47), Schedule 9, paragraph 14(1) and (3); the Armed Forces Act 2006 (c.52), Schedule 16, paragraph 149; the Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14), sections 79(1) and 80; the Policing and Crime Act 2009 (c.26), sections 97(2) and 112(2) and Schedule 8, Part 8; the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), section 108(1) and (2); the Protection of Freedoms Act 2012 (c.9), sections 79(2)(b), 80(1), 82(1), 82(2) and (3) and Schedule 9, paragraphs 35 and 37 and Schedule 10, Parts 5 and 6; the Crime and Courts Act 2013 (c.22), Schedule 8, Part 2, paragraphs 55 and 60; and by S.I. 2009/203, S.I. 2010/1146 and 2012/3006.

- (b) an unincorporated body of persons;
- (c) an individual who is not a person mentioned in paragraph (3); or
- (d) an individual who is not a friend of the adult who is involved in the provision of care for the adult.

#### **Conditions which may apply to the making of direct payments**

- 4.**—(1) A local authority may make a direct payment subject to other conditions.
- (2) The conditions referred to in paragraph (1) may, in particular, require that—
- (a) the needs may not be met by a particular person;
  - (b) the adult or authorised person (in the case of direct payments made under section 32 of the Act) must provide information to the authority.
- (3) The conditions referred to in paragraph (1) may not require—
- (a) the needs of the adult to be met by any particular person; or
  - (b) information to be provided to the authority—
    - (i) more frequently and in more detail than is reasonably required by the authority for the purpose of enabling it to ascertain that—
      - (aa) making direct payments is an appropriate way to meet the needs in question, or
      - (bb) the conditions upon which it is made are complied with, or
    - (ii) in a format which is not reasonably practicable for the adult or authorised person to provide.

#### **Steps which a local authority must take before making a direct payment under section 32 of the Act**

- 5.**—(1) A local authority must take the steps in paragraph (2) before it can be satisfied that condition 5 in section 32 of the Act is met (the local authority to be satisfied that making direct payments to the authorised person is an appropriate way to meet the needs in question).
- (2) The steps referred to in paragraph (1) are that the authority must—
- (a) so far as is reasonably practicable and appropriate, consult and take into account the views of—
    - (i) anyone named by the adult as someone to be consulted on the matter of whether direct payments should be made to the authorised person;
    - (ii) anyone engaged in caring for the adult or interested in the adult’s welfare; and
    - (iii) any person who is authorised under the Mental Capacity Act 2005<sup>(A)</sup> to make decisions about the adult’s needs for care and support; and
  - (b) so far as is reasonably ascertainable, consider—
    - (i) the adult’s past and present wishes and feelings (and, in particular, any relevant written statement made by the adult when the adult had capacity<sup>(B)</sup> to request the local authority to meet his or her needs by making direct payments);
    - (ii) the beliefs and values that would be likely to influence the adult’s decision if the adult had such capacity; and
    - (iii) other relevant factors that the adult would be likely to consider if he or she were able to do so; and
  - (c) obtain an enhanced criminal record certificate issued under section 113B of the Police Act 1997—

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<sup>(A)</sup> 2005 c.9.

<sup>(B)</sup> Section 80(2) of the Act provides that a reference in Part 1 to having or lacking capacity is to be interpreted in accordance with the Mental Capacity Act 2005.

- (i) in respect of the authorised person if he or she is an individual who is neither a person mentioned in regulation 3(3) nor a friend of the adult who is involved in the provision of care for the adult; and
- (ii) (in a case where the authorised person is a body corporate or an unincorporated body of persons) in respect of the individual who will, on behalf of that body, have overall responsibility for the day to day management of the adult's direct payments.

**Maximum periods of accommodation in a care home which may be secured by means of a direct payment**

6.—(1) A local authority may not make a direct payment for the provision of accommodation in a care home for an adult for a period of more than 4 consecutive weeks in any 12 month period, unless the local authority is one that is mentioned in Schedule 2.

(2) In calculating the period of 4 weeks mentioned in paragraph (1), a period of accommodation in a care home of less than 4 weeks shall be added to any succeeding period in such accommodation where the two periods are separated by a period of less than 4 weeks but not otherwise.

**Review of direct payments**

7.—(1) A local authority must conduct a review for the purpose of ascertaining whether the making of direct payments is an appropriate way to meet the adult's needs—

- (a) at least once within the first 6 months of the direct payment being made and at intervals not exceeding 12 months thereafter;
- (b) if it considers that there has been a breach of a condition and that it may exercise its discretion under section 33(5) of the Act (power to terminate payments or require repayment) in respect of that breach;
- (c) in the case of a direct payment made to meet the needs of an adult under section 31 of the Act, whenever the local authority considers that—
  - (i) that adult no longer has the capacity to request it to meet any of those needs by the making of direct payments to the adult; or
  - (ii) condition 3 (adult or nominated person is capable) or 4 (making direct payments to adult or nominated person is appropriate) of section 31 of the Act is no longer met;
- (d) in the case of a direct payment made to meet the needs of an adult under section 32 of the Act, whenever the local authority—
  - (i) considers that the adult no longer lacks the capacity to request the local authority to meet any of those needs by the making of direct payments to the adult; or
  - (ii) is notified by any person of concerns that the direct payment may not have been used to meet the needs for which the payment was made; or
  - (iii) considers, or is notified by any person of concerns, that condition 3, 4 or 5 of section 32 of the Act is no longer met.

(2) When complying with its duty in paragraph (1) the local authority must involve—

- (a) the adult;
- (b) any carer<sup>(A)</sup> that the adult has;
- (c) the authorised person to whom the direct payment is being made (in the case of direct payments made under section 32 of the Act);
- (d) any person who is providing administrative or management support or services in accordance with regulation 3(2)(b); and
- (e) either—
  - (i) any person whom the adult asks the authority to involve, or

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<sup>(A)</sup> See section 10(3) of the Act as to the meaning of “carer”.

- (ii) if the adult lacks the capacity to do that—
    - (aa) the person who is authorised under the Mental Capacity Act 2005 to make decisions about the adult’s needs for care and support (if different to the person in paragraph (c)), or
    - (bb) if there is no such person, any person who appears to the authority to be interested in the adult’s welfare.
- (3) The local authority must take all reasonable steps to reach agreement as to the outcome of the review with—
- (a) the adult concerned; or
  - (b) if the adult lacks capacity to reach such agreement—
    - (i) the person who is authorised under the Mental Capacity Act 2005 to make decisions about the adult’s needs for care and support, or
    - (ii) where there is no such person, any person who appears to the authority to be interested in the adult’s welfare.

**Making of direct payments for an adult who no longer has capacity to request the making of direct payments**

**8.**—(1) For the purpose of ascertaining whether section 33(4) (termination of direct payments) of the Act applies, an adult who lacks capacity to request the making of direct payments may nonetheless be regarded by a local authority as having capacity to do so in the circumstances in paragraph (2).

(2) The circumstances are that—

- (a) the authority is satisfied that the adult’s lack of capacity to make the request is temporary; and
- (b) another person who appears to the authority to be capable of managing a direct payment is prepared to accept and manage such payments on behalf of the adult during the period of the adult’s incapacity.

**Making of direct payments for an adult who no longer lacks capacity to request the making of direct payments**

**9.**—(1) For the purpose of ascertaining whether section 32(1)(b) of the Act ceases to apply, an adult who no longer lacks capacity to request the making of direct payments may nonetheless be regarded by a local authority as lacking capacity to do so in the circumstances in paragraph (2).

(2) The circumstances are that—

- (a) the authority is satisfied that the adult’s capacity to request the authority to meet the needs to which the adult’s personal budget<sup>(A)</sup> relates by making a direct payment is temporary; and
- (b) the direct payments made during the period that the adult has the capacity to make such a request are made subject to an additional condition that the authorised person shall allow the adult to manage the direct payments themselves for any period in respect of which the authority is satisfied that the adult has the capacity to request the making of direct payments.

**Harmonisation with payments made under other legislation**

**10.** Where a direct payment is made for an adult for whom payments are made under section 12A (direct payments for health care) of the National Health Service Act 2006<sup>(B)</sup> (“the 2006 Act”), the local authority must take reasonable steps to co-ordinate the systems, processes and requirements which it applies or imposes in relation to the direct payment with those which apply in relation to the payments made under the 2006 Act with a view to minimising the administrative or other burdens which they place on the adult for whom, or the nominated or authorised person to whom, the local authority makes the direct payment.

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<sup>(A)</sup> See section 26 of the Act as to the meaning of “personal budget”.

<sup>(B)</sup> 2006 c.41; section 12A was inserted by the Health Act 2009 (c.21), section 11 and amended by the Health and Social Care Act 2012 (c.7), Schedule 4, paragraph 10 and S.I. 2013/1563.

## Direct payments in respect of after-care under the Mental Health Act 1983

11. –(1) In respect of a direct payment to discharge the duty of a local authority under section 117 (after-care) of the 1983 Act<sup>(A)</sup>, these Regulations apply with the following modifications—

- (a) in regulation 2 for “meet needs” substitute “discharge its duty under section 117 of the 1983 Act”;
- (b) in regulation 3—
  - (i) in paragraph (1), for “meet the needs of the adult in respect of whose needs the direct payment is made” substitute “provide after-care services to the adult to discharge the duty under section 117 of the 1983 Act”, and
  - (ii) in paragraph (2)(a), for “meet the care needs of the adult” substitute “provide after-care services to the adult to discharge the duty under section 117 of the 1983 Act”;
- (c) in regulation 4—
  - (i) in paragraph (2)(a), for “needs may not be met” substitute “after-care services may not be provided”,
  - (ii) in paragraph (3)(a), for “needs of the adult to be met” substitute “after-care services to be provided”, and
  - (iii) in paragraph (3)(b)(i)(aa), for “meet the needs in question” substitute “discharge its duty under section 117 of the 1983 Act”;
- (d) in regulation 5, in paragraph (2)(b)(i), for “meet his or her needs by making direct payments” substitute “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 section 117 of the 1983 Act”;
- (e) in regulation 7—
  - (i) in paragraph (1), for “meet the adult’s needs” substitute “discharge its duty under section 117 of the 1983 Act”,
  - (ii) in paragraph (1)(c), for “to meet the needs of an adult under section 31 of the Act” substitute “discharge its duty under section 117 of the 1983 Act”,
  - (iii) in paragraph (1)(c)(i), for “meet any of those needs” substitute “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 section 117 of the 1983 Act”,
  - (iv) in paragraph (1)(d), for “to meet the needs of an adult under section 32 of the Act” substitute “under section 32 of the Act to discharge its duty under section 117 of the 1983 Act”,
  - (v) in paragraph (1)(d)(i), for “meet any of those needs” substitute “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 section 117 of the 1983 Act”,
  - (vi) in paragraph (1)(d)(ii), for “to meet the needs” substitute “only to pay for arrangements under which after-care services for the adult are provided under section 117 of the 1983 Act”,
  - (vii) in paragraph (2)(e)(ii)(aa) and (3)(b)(i), for “the adult’s needs for care and support” substitute “the provision of after-care services under section 117 of the 1983 Act”; and
- (f) in regulation 9, in paragraph (2), for “meet the needs to which the adult’s personal budget relates” substitute “make payments to the adult or a person nominated by the adult that are

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<sup>(A)</sup> 1983 c.20; section 117 was amended by the Health Authorities Act 1995 (c.17) Schedule 1, paragraphs 107(1) and (8)(b); the Mental Health (Patients in the Community) Act 1995 (c.52), Schedule 1, paragraph 15; the Crime (Sentences) Act 1997 (c.43), Schedule 4, paragraph 12(17); the National Health Service Reform and Health Care Professions Act 2002 (c.17), Schedule 2, paragraphs 42 and 47; the Mental Health Act 2007 (c.12), Schedule 3, paragraphs 1 and 24 and Schedule 11, Part 5; the Health Act 2009 (c.21), Schedule 1, paragraph 3; the Health and Social Care Act 2012 (c.7), section 40(1) to (4); and by S.I. 2007/961 and is prospectively amended by section 75 of the Act.

equivalent to the cost of providing or arranging for the provision of after-care services for the adult under section 117 of the 1983 Act”.

(2) In this regulation “the 1983 Act” means the Mental Health Act 1983.

Signed by the Secretary of State for Health

Date

*Name*  
Minister of State  
Department of Health

### SCHEDULE 3

Regulation 2

## Adults Whose Needs the Local Authority Must Not Meet By Making Direct Payments

This Schedule applies to a person if they are—

- (a) subject to a drug rehabilitation requirement, as defined by section 209 (drug rehabilitation requirement) of the Criminal Justice Act 2003 (“the 2003 Act”)<sup>(A)</sup>, specified in a community order (as defined by section 177 (community orders) of that Act<sup>(B)</sup>, or a suspended sentence order (as defined by section 189<sup>(C)</sup> of that Act);
- (b) subject to an alcohol treatment requirement, as defined by section 212 of the Criminal Justice Act 2003<sup>(D)</sup>, specified in a community order (as defined by section 177 of that Act), or a suspended sentence order (as defined by section 189 of that Act);
- (c) released from prison on licence under Chapter 6 of Part 12 (sentencing: release, licenses and recall) of the 2003 Act<sup>(E)</sup> or Chapter 2 of Part 2 (effect of custodial sentences: life sentences) of the Crime (Sentences) Act 1997 (“the 1997 Act”)<sup>(F)</sup>—

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<sup>(A)</sup> 2003 c.44; section 209 was amended by the Criminal Justice and Immigration Act 2008 (c.4) (“the 2008 Act”), Schedule 4 paragraphs 71 and 88 and the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10) (“the 2012 Act”), section 74(1).

<sup>(B)</sup> Section 177 was amended by the 2008 Act, Schedule 4, paragraphs 71 and 82; the 2012 Act, sections 66(1) and (2), 70(1), 72(1) and (2) and 76(2) and (3); the Crime and Courts Act 2013 (c.22), Schedule 16, paragraphs 1, 2, 11 and 12.

<sup>(C)</sup> Section 189 was amended by the 2012 Act, section 68(1) to (5) and S.I. 2005/643.

<sup>(D)</sup> Section 212 was amended by the 2012 Act, section 75(1).

<sup>(E)</sup> Section 245 was repealed by the 2012 Act, Schedule 10, paragraph 22. Section 246 was amended by the Armed Forces Act 2006 (c.52) (“the 2006 Act”), Schedule 16, paragraph 221; the 2008 Act, section 24; the 2012 Act, sections 110 to 112, Schedule 10, paragraph 23, Schedule 20, paragraph 5 and Schedule 14, paragraph 7; Section 246A was inserted by the 2012 Act, section 125. Section 247 was amended by the 2008 Act, Schedule 28(2), paragraph 1 and the 2012 Act, Schedule 17, paragraph 3. Section 248 was amended by the 2012 Act, section 116. Section 149 was amended by the 2012 Act, Schedule 10, paragraph 24, Schedule 14, paragraph 8 and Schedule 17, paragraph 4. Section 250 was amended by the 2012 Act, sections 111 and 117, Schedule 10, paragraph 25, Schedule 14, paragraph 9, Schedule 20, paragraph 6; the Offender Management Act 2007 (c.21), section 28; the Domestic Violence Crime and Victims Act 2004 (c.28) Schedule 6, paragraph 5. Section 252 was amended by the 2006 Act, Schedule 16, paragraph 224 of the 2012 Act, Schedule 10, paragraph 27. Section 253 was amended by the 2012 Act, section 114 and Schedule 10, paragraph 28 and S.I. 2008/912.

<sup>(F)</sup> 1997 c.43. Section 31 was amended by the Crime and Disorder Act 1998 (c.37), Schedule 8, paragraph 131 and Schedule 10, paragraph 1; the Criminal Justice and Courts Services Act 2000 (c.43), Schedule 7, paragraph 4(1); the 2003 Act, Schedule 18, paragraph 1, Schedule 32, paragraph 83 and Schedule 37, paragraph 1; the Children Act 2004 (c.31), Schedule 5; the 2008 Act, Schedule 28; S.I. 2005/886 ;and 2008/91.

- (i) subject to a non standard licence condition requiring the offender to undertake offending behaviour work to address drug or alcohol related behaviour;
- (ii) subject to a drug testing requirement under section 64 (release on licence etc: drug testing) of the Criminal Justice and Courts Services Act 2000<sup>(A)</sup> (“the 2000 Act”); or
- (iii) subject to a drug appointment requirement under section 64A (release on licence etc: drug appointment) of the 2000 Act<sup>(B)</sup>;
- (d) required to comply with a drug testing or a drug appointment requirement specified in a notice given under section 256AA (supervision after end of sentence of prisoners serving less than 2 years) of the 2003 Act<sup>(C)</sup>;
- (e) required to submit to treatment for their drug or alcohol dependency by virtue of a community rehabilitation order within the meaning of section 41 of the Powers of Criminal Courts (Sentencing) Act 2000<sup>(D)</sup> or a community punishment and rehabilitation order within the meaning of section 51 of that Act;
- (f) subject to a drug treatment and testing order imposed under section 52 of the Powers of Criminal Courts (Sentencing) Act 2000<sup>(E)</sup>;
- (g) required to submit to treatment for their drug or alcohol dependency by virtue of a requirement of a community payback or probation order within the meaning of sections 227 to 230 of the Criminal Procedure (Scotland) Act 1995<sup>(F)</sup> or subject to a drug treatment and testing order within the meaning of section 234B<sup>(G)</sup> of that Act; or
- (h) released on licence under section 22 or section 26 of the Prisons (Scotland) Act 1989 (release on licence etc)<sup>(H)</sup> or under section 1 (release of short-term, long-term and life prisoners) or 1AA (release of certain sexual offenders) of the Prisoners and Criminal Proceedings (Scotland) Act 1993<sup>(I)</sup> and subject to a condition that they submit to treatment for their drug or alcohol dependency.

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Section 31A was inserted by the 2003 Act, Schedule 18, paragraph 2 and amended by the 2003 Act, Schedule 18, paragraph 2; the 2006 Act, Schedule 16, paragraph 141; the 2012 Act, section 117. Section 32 was amended by the 2003 Act, Schedule 32, paragraph 84 and the 2008 Act, section 31. Sections 32A and 32B were inserted by the 2012 Act, section 119.

<sup>(A)</sup> Section 64 is prospectively amended by the Offender Rehabilitation Act 2014 (c.11), section 11(2), Schedule 3, paragraph 13.

<sup>(B)</sup> 2000 c.43. Section 64A is prospectively inserted by section 12 of the Offender Rehabilitation Act 2014 which comes into force on a date to be appointed.

<sup>(C)</sup> Section 256AA is prospectively inserted by section 2 of the Offender Rehabilitation Act 2014.

<sup>(D)</sup> 2000 c.6. Sections 41 and 51 were repealed, with savings, by Schedule 37 to the 2003 Act.

<sup>(E)</sup> Section 52 was repealed, with savings, by Schedule 37 to the 2003 Act.

<sup>(F)</sup> 1995 c.46. Sections 227A to 227ZN (community payback orders) were inserted by section 14 of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) (“the 2010 Act”). Sections 228 to 230 were repealed, with savings, by Schedule 2(1), paragraph 17 of the 2010 Act.

<sup>(G)</sup> Section 234B was inserted by section 89 of the Crime and Disorder Act 1998 (c.37).

<sup>(H)</sup> 1989 c.45. Section 22 was amended by the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9), section 47(3), Schedule 7, Part 1; the Criminal Justice and Public Order Act 1994 (c.33), section 134(5); the Criminal Justice (Scotland) Act 2003 (asp 7), sections 27(2) and 34(2). It was modified by the Crime (Sentences) Act 1997 (c.43), Schedule 5, paragraph 11 and S.I. 1995/910. Section 26 was repealed, with savings, by section 47(3), Schedule 7, Part 1 to the Prisoners and Criminal Proceedings (Scotland) Act 1993.

<sup>(I)</sup> 1993 c.9. Section 1 was amended by paragraph 98 of Schedule 8 to the Crime and Disorder Act 1998, section 1(2) of the Convention Rights (Compliance) (Scotland) Act 2001 (asp 7) and section 15(2) of the Management of Offenders etc (Scotland) Act 2005 (asp 14) (“MOSA”). Section 1AA was inserted by section 15(3) of MOSA.

## SCHEDULE 4

Regulation 6(1)

### List Of Local Authorities Who Are Not Prohibited From Making A Direct Payment For The Purpose Of Securing Long Term Care In A Care Home

Bristol City Council  
Cornwall Council  
Dorset County Council  
Gateshead Council  
Hertfordshire County Council  
Hull City Council  
Lincolnshire County Council  
London Borough of Enfield  
London Borough of Havering  
London Borough of Redbridge  
Manchester City Council  
Milton Keynes Council  
Norfolk County Council  
North Lincolnshire Council  
Nottinghamshire County Council  
Staffordshire County Council  
Stockport Council  
Surrey County Council

#### **EXPLANATORY NOTE**

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

These Regulations make provision for local authorities to meet a person's needs by the making of a direct payment in accordance with sections 31 to 33 of the Care Act 2014 ("the Act").

Regulation 2 prohibits a local authority from meeting needs by making a direct payment in the case of a person to whom Schedule 1 applies.

Regulations 3 and 4 set out conditions which may or must be imposed in respect of direct payments.

Regulation 5 sets out steps which a local authority must take in order to be satisfied that making direct payments under section 32 of the Act to an authorised person is an appropriate way to meet the needs in question.

Regulation 6 sets out the maximum periods of accommodation in a care home which may be secured by means of a direct payment in cases where the needs are met by a local authority that is not a local authority in Schedule 2.

Regulation 7 requires the authority to review the making of direct payments in certain circumstances.

Regulations 8 and 9 provide for the circumstances where a local authority is not required to terminate the making of direct payments in respect of people who no longer have capacity or no longer lack capacity to request a direct payment.

Regulation 10 applies in cases where a direct payment is made to a person who is in receipt of direct payments under section 12A of the National Health Service Act 2006 (“the 2006 Act”) and requires local authorities to take reasonable steps to co-ordinate its systems and processes in respect of the direct payment with those in place for the direct payment made under the 2006 Act.

Regulation 11 applies these Regulations with modifications to cases where a direct payment is made under section 117 of the Mental Health Act 1983.

A separate impact assessment has not been prepared for these Regulations. These Regulations are part of a package of legislative measures and the relevant impact assessment can be requested via [careactconsultation@dh.gsi.gov.uk](mailto:careactconsultation@dh.gsi.gov.uk) or the Department of Health, Richmond House, 79 Whitehall, London SW1A 2NS and is available online at <https://www.gov.uk/government/organisations/department-of-health>

**2014 No. 0000**

**SOCIAL CARE, ENGLAND**

**The Care and Support (Provision of Health Services) Regulations  
2014**

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

*Laid before Parliament* \*\*\*

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

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 22(4)(a), 22(6) and 125(7) and (8) of the Care Act 2014<sup>(A)</sup>.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Care and Support (Provision of Health Services) Regulations 2014 and come into force immediately after section 22(1) of the Care Act 2014 comes fully into force.

(2) In these Regulations—

“the Act” means the Care Act 2014;

“the Board” means the National Health Service Commissioning Board<sup>(B)</sup>;

“healthcare profession” means a profession which is concerned (wholly or partly) with the physical or mental health of individuals (whether or not a person engaged in that profession is regulated by, or by virtue of, any enactment);

“health service” means the health service continued under section 1(1) of the National Health Service Act 2006<sup>(C)</sup>;

“local authority member” means a person appointed by the Board pursuant to regulation 23(1)(b)(ii) of the Standing Rules Regulations;

“multi-disciplinary team” means a team consisting of at least—

- (a) two professionals who are from different healthcare professions, or
- (b) one professional who is from a healthcare profession and one person who is responsible for assessing persons who may have needs for care and support under Part 1 of the Care Act 2014;

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<sup>(A)</sup> 2014 c.23. The powers to make regulations are exercisable by the Secretary of State, see section 125(1).

<sup>(B)</sup> The National Health Service Commissioning Board is established by section 1H of the National Health Service Act 2006 (c.41) (“the 2006 Act”). Section 1H was inserted by section 9(1) of the Health and Social Care Act 2012 (c.7) (“the 2012 Act”).

<sup>(C)</sup> Section 1 of the 2006 Act was substituted by section 1 of the 2012 Act.

“National Framework” means the National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care issued by the Secretary of State and dated 28th November 2012<sup>(A)</sup>;

“NHS Continuing Healthcare” means a package of care arranged and funded solely by the health service in England for a person aged 18 or over to meet physical or mental health needs which have arisen as a result of disability, accident or illness;

“relevant body” means the Board or a clinical commissioning group<sup>(B)</sup>;

“review panel” means the panel of members referred to in regulation 23(4) of the Standing Rules Regulations;

“Standing Rules Regulations” means the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012<sup>(C)</sup>.

### **Arrangements for the provision of nursing care by a registered nurse: responsible clinical commissioning group**

2.—(1) For the purposes of section 22(4) of the Act, the clinical commissioning group from which a local authority<sup>(D)</sup> must obtain consent for it to arrange for the provision of nursing care by a registered nurse in respect of any person is the responsible clinical commissioning group.

(2) The responsible clinical commissioning group in respect of any person is the clinical commissioning group which has responsibility for arranging for the provision of nursing care by a registered nurse in respect of that person, pursuant to the provisions of section 3(1), (1A) and (1E) of the National Health Service Act 2006 and any regulations made under section 3(1B) or (1D) of that Act<sup>(E)</sup>.

### **Requirements on local authorities: joint working with relevant bodies**

3.—(1) A local authority must, as far as is reasonably practicable, provide advice and assistance to a relevant body which consults it pursuant to regulation 22(1)(a) of the Standing Rules Regulations (duty of relevant bodies: joint working with social services authorities).

(2) A local authority must, when requested to do so by a relevant body, co-operate with that body in arranging for a person or persons to participate in a multi-disciplinary team for the purposes of that body fulfilling its duty under regulation 21(5) of the Standing Rules Regulations (duty of relevant bodies: assessment and provision of NHS Continuing Healthcare).

(3) Nothing in this regulation affects a local authority’s duty to carry out an assessment of a person’s needs for care and support pursuant to section 9 of the Act (assessment of an adult’s needs for care and support), and if it has carried out such an assessment, it must use the information obtained as a result of that assessment, so far as it is relevant, to comply with its duty under paragraph (1).

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<sup>(A)</sup> The National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care can be found at <https://www.gov.uk/government/publications/national-framework-for-nhs-continuing-healthcare-and-nhs-funded-nursing-care>. A copy can be obtained from the following address: Department of Health, Quarry House, Leeds, LS2 7UE.

<sup>(B)</sup> A clinical commissioning group is a body established under section 14D of the 2006 Act. Section 14D was inserted by section 25(1) of the 2012 Act. See also section 11 of the 2006 Act, inserted by section 10 of the 2012 Act.

<sup>(C)</sup> S.I. 2012/2996. Regulation 21 and Schedule 5 (which relates to regulation 23) have been amended by the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) Regulations 2013 (S.I. 2013/2891, regulation 2) and Schedule 5 has been further amended by the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) (Amendment) (No. 3) Regulations 2014 (S.I. 2014/1611, regulation 6).

<sup>(D)</sup> See section 1(4) of the Act as to the meaning of “local authority”; the definition is limited to local authorities in England.

<sup>(E)</sup> The National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 (S.I. 2012/2996) have been made under, inter alia, the provisions in section 3(1B) of the 2006 Act. The National Health Service (Clinical Commissioning Groups – Disapplication of Responsibility) Regulations 2013 (S.I. 2013/350) have been made under the provisions of section 3(1D) of the 2006 Act.

(4) In complying with its obligations under this regulation, a local authority must have due regard to the need to promote and secure the continuity of appropriate services for persons—

- (a) whose care and support needs are being met under Part 1 of the Act or who are being provided with aftercare under section 117 of the Mental Health Act 1983<sup>(A)</sup> on the date on which they are found to be eligible to receive NHS Continuing Healthcare;
- (b) who have been in receipt of NHS Continuing Healthcare but are determined to be no longer eligible for NHS Continuing Healthcare; or
- (c) who are otherwise determined to be ineligible for NHS Continuing Healthcare.

(5) Where, pursuant to regulation 24(1) of the Standing Rules Regulations (appointment and term of appointment), the Board requests that a local authority nominates a person to be appointed as a local authority member of a review panel, the local authority—

- (a) must nominate such a person as soon as is reasonably practicable; and
- (b) must ensure that local authority members are, so far as is reasonably practicable, available to participate in review panels.

#### **Requirements on local authorities: dispute resolution**

4. Where there is a dispute between a relevant body and a local authority about—

- (a) a decision as to eligibility for NHS Continuing Healthcare; or
- (b) the contribution of a relevant body or local authority to a joint package of care for a person who is not eligible for NHS Continuing Healthcare,

the local authority must, having regard to the National Framework, agree a dispute resolution procedure with the relevant body, and resolve the dispute in accordance with that procedure.

#### **Transitional provisions**

5.—(1) This paragraph applies in a case where, immediately before the coming into force of these Regulations, a local authority—

- (a) was, in accordance with any directions issued in exercise of the powers conferred by section 7A of the Local Authority Social Services Act 1970<sup>(B)</sup>—
  - (i) providing advice and assistance to a relevant body which had consulted it pursuant to regulation 22(1)(a) of the Standing Rules Regulations (duty of relevant bodies: joint working with social services authorities); or
  - (ii) cooperating with a relevant body in arranging for a person to participate in a multi-disciplinary team for the purposes of that body fulfilling its duty under regulation 21(5) of the Standing Rules Regulations (duty of relevant bodies: assessment and provision of NHS Continuing Healthcare);
- (b) was in receipt of a request from the Board, pursuant to regulation 24(1) of the Standing Rules Regulations (appointment and term of appointment), that it nominate a person to be appointed as a local authority member of a review panel but had not yet nominated such a person; or
- (c) was in dispute with a relevant body about—
  - (i) a decision as to eligibility for NHS Continuing Healthcare; or
  - (ii) the contribution of a relevant body or local authority to a joint package of care for a person who is not eligible for NHS Continuing Healthcare,

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<sup>(A)</sup> 1983 c.20. Section 117 is prospectively amended from a date to be appointed by section 75 of the Act.

<sup>(B)</sup> 1970 c.42. Section 7A was inserted by the National Health Service and Community Care Act 1990 (c.19) section 50. The NHS Continuing Healthcare (Responsibilities of Social Services Authorities) Directions 2013 were issued by the Secretary of State for Health under the powers conferred by section 7A of the Local Authority Social Services Act 1970 on 27th March 2013.

and had either not yet agreed a dispute resolution procedure with the relevant body, in accordance with any directions issued in exercise of the powers conferred by section 7A of the Local Authority Social Services Act 1970, or had agreed such a dispute resolution procedure with the relevant body but had not yet resolved the dispute in accordance with that procedure.

(2) Where—

- (a) paragraph (1)(a) applies, the local authority is required to continue providing advice and assistance to the relevant body or cooperating with the relevant body as though such obligation had arisen under these Regulations;
- (b) paragraph (1)(b) applies, the local authority is required to nominate a person to be appointed as a local authority member of a review panel as though the obligation to nominate such a person had arisen under these Regulations;
- (c) paragraph (1)(c) applies, the local authority is required to—
  - (i) if necessary, agree a dispute resolution procedure, and
  - (ii) resolve the dispute in accordance with any procedure agreed with the relevant body,as though the obligation to agree such procedure and to resolve the dispute had arisen under these Regulations.

Signed by authority of the Secretary of State for Health

Date

*Name*  
Minister of State  
Department of Health

#### **EXPLANATORY NOTE**

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

These Regulations make provision in respect of three different issues, all of which concern the relationship between, on the one hand, local authorities and, on the other, clinical commissioning groups or, in certain cases, the National Health Service Commissioning Board (“NHS bodies”) at the boundary between their respective areas of responsibilities: the issue of consent to arranging the provision of nursing care by a registered nurse; the issue of joint working between local authorities and NHS bodies and the issue of resolving disputes between local authorities and NHS bodies.

Local authorities are prohibited by section 22 of the Care Act 2014 from meeting needs under the Act by providing or arranging for the provision of services or facilities that it is the responsibility of the National Health Service to provide. However, local authorities are permitted, despite this prohibition, to arrange for the provision of accommodation together with the provision of registered nursing care by a registered nurse if they have obtained consent to arrange for the provision of such nursing care from whichever clinical commissioning group (“CCG”) regulations require.

Regulation 2 imposes a requirement to obtain such consent from the CCG which has the responsibility for arranging for the provision of nursing care by a registered nurse in respect of the person concerned.

That responsibility is established by reference to certain provisions of the National Health Service Act 2006 (“the 2006 Act”) and regulations made under the 2006 Act.

Regulation 3 makes provision about how local authorities must work with NHS bodies in the processes for assessing a person’s needs for health care and for deciding how those needs must be met. It includes requirements regarding participation in review panels. These provisions mirror similar requirements regarding joint working that are imposed on such NHS bodies by the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012 (as amended) (“the Standing Rules Regulations”).

Regulation 4 imposes requirements on local authorities to make arrangements for determining any disputes between themselves and NHS bodies about whether or not something should be provided by the NHS as

part of the health service. Again, these requirements mirror similar requirements imposed on NHS bodies by the Standing Rules Regulations.

Regulation 5 makes transitional provisions to provide for continuity in those cases where (in accordance with directions issued under the provisions of section 7A of the Local Authority Social Services Act 1970) the local authority is already working jointly with NHS bodies in a particular case, or is already in receipt of a request to nominate a member to a review panel or is already working with an NHS body to settle a dispute.

A separate impact assessment has not been prepared for these Regulations. These Regulations are part of a package of legislative measures and the relevant impact assessment can be requested via [careactconsultation@dh.gsi.gov.uk](mailto:careactconsultation@dh.gsi.gov.uk) or Department of Health, Richmond House, 79 Whitehall, London SW1A 2NS and is available online at <https://www.gov.uk/government/organisations/department-of-health>.

**2014 No. XXXX**

**NATIONAL HEALTH SERVICE, ENGLAND**

**SOCIAL CARE, ENGLAND**

**The Care and Support (Discharge of Hospital Patients) Regulations  
2014**

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

*Laid before Parliament* \*\*\*

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

The Secretary of State makes these Regulations in exercise of the powers conferred by paragraphs 2(5)(b), 4(6), 6 and 8 of Schedule 3 to, and section 125(7) of, the Care Act 2014<sup>(A)</sup>.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Care and Support (Discharge of Hospital Patients) Regulations 2014 and come into force immediately after section 74 of the Care Act 2014 comes fully into force<sup>(B)</sup>.

(2) In these Regulations—

“the Act” means the Care Act 2014;

“delayed discharge period” means the period determined in accordance with regulation 9;

“NHS continuing health care” means a package of care arranged and funded solely by the health service for a person aged 18 or over to meet physical or mental health needs which have arisen as a result of disability, accident or illness.

(3) For the purposes of these Regulations, a reference to a section or a Schedule is a reference to that section of, or Schedule to, the Act, unless indicated otherwise.

**Form of notices**

2.—(1) This regulation applies to the following—

(a) an assessment notice<sup>(C)</sup>;

(b) a discharge notice<sup>(D)</sup>; and

(c) a withdrawal notice<sup>(E)</sup> given by an NHS body<sup>(A)</sup> to a local authority<sup>(B)</sup> under—

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<sup>(A)</sup> 2014 c.23 (“the Act”). The powers to make regulations are exercisable by the Secretary of State, see section 125(1).

<sup>(B)</sup> Section 74 was commenced for the purpose of making regulations by S.I. 2014/2473.

<sup>(C)</sup> See paragraph 1(2) of Schedule 3 for the meaning of “assessment notice”.

<sup>(D)</sup> See paragraph 2(2) of Schedule 3 for the meaning of “discharge notice”.

<sup>(E)</sup> See paragraph 1(5)(c) of Schedule 3 for the meaning of “withdrawal notice”.

- (i) paragraph 1(5)(c) of Schedule 3; or
- (ii) paragraph 2(4)(b) of Schedule 3.

(2) The notice must—

- (a) be in writing; and
- (b) contain the date on which it is given.

### **Assessment notice: contents**

**3.**—(1) An assessment notice must contain—

- (a) the name of the patient to whom the notice relates;
- (b) the patient's NHS number;
- (c) if given before the patient's admission, the expected date of admission and the name of the hospital to which the patient is expected to be admitted;
- (d) if given after the patient's admission, the name of the hospital in which the patient is being accommodated;
- (e) an indication of the likely date of the patient's discharge, if known;
- (f) a statement—
  - (i) that the NHS body responsible for the patient has complied with its duty under paragraph 1(4) of Schedule 3 (duty to consult patient and any carer<sup>(C)</sup> that the patient has);
  - (ii) that the NHS body has considered whether or not to provide the patient with NHS continuing health care, and the result of that consideration; and
  - (iii) as to whether the patient or (where applicable) the patient's carer has objected to the giving of the assessment notice; and
- (g) the contact details of the person at the hospital who will be responsible for liaising with the relevant authority<sup>(D)</sup>.

(2) In paragraph (1)(g), the reference to contact details in relation to that person means—

- (a) their full name; and
- (b) either or both of the following—
  - (i) their telephone number;
  - (ii) their electronic mail address.

### **Assessment notice: withdrawal**

**4.** A notice withdrawing an assessment notice must be given where—

- (a) the NHS body responsible for the patient considers that it is likely to be safe to discharge the patient without arrangements for meeting the patient's needs for care and support or (where applicable) the carer's needs for support being put in place;
- (b) the NHS body considers that the patient needs NHS continuing health care;
- (c) the NHS body, having received the information specified in paragraph 3(1)(d) of Schedule 3 (how local authority plans to meet needs), still considers that it is unlikely to be safe to discharge the patient from hospital unless further arrangements are put in place for meeting the patient's needs for care and support or (where applicable) the patient's carer's needs for support;
- (d) the patient's proposed treatment is cancelled or postponed;

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<sup>(A)</sup> See paragraph 7(4) of Schedule 3 for the definition of "NHS body".

<sup>(B)</sup> See section 1(4) for the definition of "local authority"; the definition is limited to local authorities in England.

<sup>(C)</sup> See section 10(3) for the meaning of "carer".

<sup>(D)</sup> See paragraph 1(2) of Schedule 3 for the meaning of "relevant authority".

- (e) the NHS body has been informed by the relevant authority that it is not required to carry out an assessment because the patient has refused a needs assessment<sup>(A)</sup> or (where applicable) the patient's carer has refused a carer's assessment<sup>(B)</sup>; or
- (f) the NHS body becomes aware that—
  - (i) the patient's ordinary residence has changed since the assessment notice was given; or
  - (ii) the notice was given to a local authority other than the one in whose area the patient is ordinarily resident.

**Discharge notice: minimum period of service**

5. A discharge notice may not be given less than one day in advance of the proposed discharge date.

**Discharge notice: contents**

6.—(1) A discharge notice must contain—

- (a) the name of the patient to whom the notice relates;
- (b) the patient's NHS number;
- (c) the name of the hospital in which the patient is being accommodated;
- ~~(d)~~ the contact details of the person at the hospital who will be responsible for liaising with the relevant authority;
- (e) the date on which it is proposed that the patient be discharged;
- (f) a statement confirming that the patient and, where applicable, the patient's carer has been informed of the date on which it is proposed that the patient be discharged; and
- (g) a statement that the discharge notice is given under paragraph 2(1)(b) of Schedule 3.

(2) In paragraph (1)(d), contact details in relation to that person means—

- (a) their full name; and
- (b) either or both of the following—
  - (i) their telephone number;
  - (ii) their electronic mail address.

**Discharge notice: withdrawal**

7.—(1) Subject to paragraph (2), a notice withdrawing a discharge notice must be given where the NHS body responsible for the patient considers that it is no longer likely to be safe to discharge the patient on the proposed discharge date.

(2) Paragraph (1) does not apply where the only reason that the NHS body considers that it is no longer likely to be safe to discharge the patient on the proposed discharge date is that the relevant authority has—

- (a) not discharged its duty to carry out a needs assessment or (where applicable) a carer's assessment in relation to the patient; or
- (b) not put in place arrangements for meeting some or all of those needs that it proposes to meet under sections 18 to 20 in the case of the patient or (where applicable) the patient's carer.

**Relevant day**

8. The period specified for the purposes of paragraph 2(5)(b) of Schedule 3 (relevant day in relation to discharge notice)<sup>(C)</sup> is the period—

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<sup>(A)</sup> See section 9(2).  
<sup>(B)</sup> See section 10(2).  
<sup>(C)</sup> See also paragraph 2(6) of Schedule 3.

- (a) beginning with the day after that on which the assessment notice is given or treated as given in accordance with regulation 11; and
- (b) ending two days after that date.

### **Delayed discharge period**

**9.**—(1) The specified period for the purposes of paragraph 4(6) of Schedule 3 is to be determined in accordance with this regulation.

(2) The specified period begins on the day after the day which is the relevant day<sup>(A)</sup> in relation to that discharge notice.

(3) The specified period ends with the earliest of the days on which any of the following first occur—

- (a) the NHS body responsible for the patient withdraws the assessment notice or discharge notice relating to that patient;
- (b) the relevant authority gives notice to the NHS body responsible for the patient that it has—
  - (i) carried out a needs assessment and (where applicable) a carer’s assessment in relation to the patient to whom the notice relates; and
  - (ii) put in place arrangements for meeting some or all of those needs that it proposes to meet under sections 18 to 20 in the case of the patient or (where applicable) the carer;
- (c) the relevant authority is no longer required to put in place arrangements to meet the needs of the patient and (where applicable) the carer under sections 18 to 20 because—
  - (i) the patient informs the relevant authority that they have arranged their own care or other care is arranged for the patient; and
  - (ii) where applicable the carer informs the relevant authority that they have arranged their own support or other support is arranged for the carer;
- (d) the patient discharges themselves;
- (e) the NHS body responsible for the patient decides that the patient needs to remain in hospital for a further course of treatment; or
- (f) the patient dies.

(4) A day is not to be treated as a day of the specified period in the following circumstances—

- (a) the relevant authority has by 11am on that day put in place arrangements for meeting some or all of the needs that it proposes to meet under sections 18 to 20 in the case of the patient or (where applicable) the carer; or
- (b) the NHS body responsible for the patient considers that the patient is not able to be discharged due to a deterioration on that day.

### **Delayed discharge payment**

**10.** For the purposes of paragraph 4(6) of Schedule 3 (amount to be paid for each day of delayed discharge period), the amount specified is—

- (a) £155 where the relevant authority is—
  - (i) a London borough council, or
  - (ii) the Common Council of the City of London; and
- (b) £130 in any other case.

### **Day on which assessment and discharge notice is to be regarded as given**

**11.** An assessment notice or a discharge notice which is given after 2pm on any day is to be treated as having been given on the following day.

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<sup>(A)</sup> See paragraph 2(5) of Schedule 3 for the definition of “relevant day”.

## Ordinary residence

12.—(1) Subject to paragraph (2), a local authority to which an assessment notice has been given must accept that notice and carry out the duties of a relevant authority arising from it even though it may wish to dispute that it was the correct authority to which to give the notice.

(2) Where for a reason set out in paragraph (3), it is agreed or determined that the patient to whom the notice relates is ordinarily resident in the area of another local authority then that local authority is to become the relevant authority in the patient's case.

(3) The reasons referred to in paragraph (2) are that—

- (a) the other local authority agrees that it is the correct authority; or
- (b) a determination is made under section 40 to the effect that the patient is ordinarily resident in the area of the other local authority.

(4) Where paragraph (2) applies, the local authority to which the notice was given may recover from the local authority which is the correct authority in relation to that case any expenditure it has incurred in relation to making a payment under paragraph 4 of Schedule 3 (delayed discharge payment) in that case.

Signed by authority of the Secretary of State for Health

*Name*  
Minister of State  
Department of Health

Date

### EXPLANATORY NOTE

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

These Regulations make provision for the details of the scheme for the discharge of hospital patients with care and support needs set out in section 74 of, and Schedule 3 to, the Care Act 2014 (“the Act”). Schedule 3 to the Act makes provision for co-operative working to secure the safe discharge of patients in England from NHS, or NHS arranged, hospital care to local authority care and support and enables a relevant NHS body to seek reimbursement from a relevant local authority where a patient's discharge has been delayed due to a failure of the local authority either to arrange for relevant assessments or meet a patient's or (where applicable) that patient's carer's needs which the local authority proposes to meet.

Regulation 2 requires that all notices which the NHS body gives the local authority under Schedule 3 to the Act must be in writing and contain the date upon which it is given.

Regulation 3 sets out the details which an assessment notice must contain and regulation 4 sets out the circumstances under which an NHS body must withdraw an assessment notice.

Regulation 5 specifies that a discharge notice may not be given less than one day in advance of the proposed discharge date. Regulation 6 sets out the details which a discharge notice must contain and regulation 7 sets out the circumstances under which an NHS body must withdraw a discharge notice. Regulation 8 specifies that the minimum period for which a discharge notice may remain in force (unless withdrawn by the local authority) is two days after the date on which an assessment notice is given or treated as being given in accordance with regulation 11.

Regulation 9 sets out how the period for which the local authority may be liable to the NHS for reimbursement for the costs of the patient's care is to be determined and regulation 10 specifies the daily amount the local authority may be required to pay the NHS body in the event that the local authority has not assessed the patient and put in place arrangements to meet some or all of those needs that it proposes to meet.

Regulation 11 provides for the day on which an assessment and discharge notice is to be regarded as given.

Regulation 12 requires a local authority to which an assessment notice is given to accept that notice and be required to undertake the duties in relation to that patient notwithstanding that it may dispute that patient's

ordinary residence. It also allows a local authority which has wrongly been given an assessment notice to claim reimbursement for any delayed discharge payment it has paid in that case from the local authority in whose area the patient is later agreed or determined to be ordinarily resident.

A separate impact assessment has not been prepared for these Regulations. These Regulations are part of a package of legislative measures and the relevant impact assessment can be requested via [careactconsultation@dh.gsi.gov.uk](mailto:careactconsultation@dh.gsi.gov.uk) or the Department of Health, Richmond House, 79 Whitehall, London SW1A 2NS and is available online at <https://www.gov.uk/government/organisations/department-of-health>.

**2014 No.**

**SOCIAL CARE, ENGLAND**

**The Care and Support (Ordinary Residence) (Specified  
Accommodation) Regulations 2014**

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

*Laid before Parliament* \*\*\*

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

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 39(1) and 125(7) of the Care Act 2014<sup>(A)</sup>.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Care and Support (Ordinary Residence) (Specified Accommodation) Regulations 2014 and come into force immediately after section 39(1) of the Care Act 2014 comes fully into force<sup>(B)</sup>.

(2) In these Regulations—

“the Act” means the Care Act 2014;

“personal care” means—

(a) physical assistance given to a person in connection with—

(i) eating or drinking (including the administration of parenteral nutrition),

(ii) toileting (including in relation to the process of menstruation),

(iii) washing or bathing,

(iv) dressing,

(v) oral care,

(vi) the care of skin, hair and nails (with the exception of nail care provided by a chiropodist or podiatrist); or

(b) the prompting, together with supervision, of a person in relation to the performance of any of the activities listed in paragraph (a), where that person is unable to make a decision for themselves in relation to performing the activity without such prompting or supervision.

**Specified types of accommodation**

2. The following types of accommodation are specified for the purposes of section 39(1) of the Act (where a person is treated as ordinarily resident)—

(a) care home accommodation (see regulation 3);

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<sup>(A)</sup> 2014 c.23; see section 125(1) for the powers to make regulations.

<sup>(B)</sup> Section 39(1) was commenced for the purpose of making regulations by S.I. 2014/2473.

- (b) shared lives scheme accommodation (see regulation 4); and
- (c) supported living accommodation (see regulation 5).

### Care home accommodation

3. For the purposes of these Regulations “care home accommodation” means accommodation in a care home within the meaning given by section 3 of the Care Standards Act 2000<sup>(A)</sup>.

### Shared lives scheme accommodation

4. For the purposes of these Regulations “shared lives scheme accommodation” means accommodation which is provided for an adult<sup>(B)</sup> by a shared lives carer, and for this purpose—

“shared lives carer” means an individual who, under the terms of a shared lives agreement, provides, or intends to provide, personal care for adults together with, where necessary, accommodation in the individual’s home;

“shared lives agreement” means an agreement entered into between a person carrying on a shared lives scheme and an individual for the provision, by that individual, of personal care to an adult together with, where necessary, accommodation in the individual’s home; and

“shared lives scheme” means a scheme carried on (whether or not for profit) by a local authority<sup>(C)</sup> or other person for the purposes of—

- (a) recruiting and training shared lives carers,
- (b) making arrangements for the placing of adults with shared lives carers, and
- (c) supporting and monitoring placements.

### Supported living etc

5.—(1) For the purposes of these Regulations “supported living accommodation” means—

- (a) accommodation in premises which are specifically designed or adapted for occupation by adults with needs for care and support to enable them to live as independently as possible; and
- (b) accommodation which is provided—
  - (i) in premises which are intended for occupation by adults with needs for care and support (whether or not the premises are specifically designed or adapted for that purpose); and
  - (ii) in circumstances in which personal care is available if required.

(2) For the purposes of paragraph (1)(b) personal care may be provided by a person other than the person who provides the accommodation.

Signed by authority of the Secretary of State for Health

Date

*Name*  
Minister of State  
Department of Health

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<sup>(A)</sup> 2000 c.14; section 3 was amended by the Health and Social Care Act 2008 (c.14), section 95 and paragraph 4 of Schedule 5.

<sup>(B)</sup> See section 2(8) of the Act for the meaning of “adult”.

<sup>(C)</sup> See section 1(4) of the Act for the meaning of “local authority”; the definition is limited to local authorities in England.

## **EXPLANATORY NOTE**

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

Section 39 of the Care Act 2014 (“the Act”) makes provision for establishing an adult’s ordinary residence. Section 39(1) makes provision about an adult’s ordinary residence in a case where an adult is living in accommodation of a specified type.

These Regulations specify and define three types of accommodation for these purposes: care home accommodation, shared lives scheme accommodation and supported living accommodation.

Where an adult has needs for care and support which can be met only by living in accommodation of a specified type and is living in accommodation of a specified type in England, the adult is to be treated (by virtue of section 39(1) of the Act) as ordinarily resident in the area in which the adult was ordinarily resident immediately before the adult began to live in the specified type of accommodation. If the adult was of no settled residence immediately before beginning to live in a specified type of accommodation, the adult is treated as ordinarily resident in the area in which the adult was present at that time.

A separate impact assessment has not been prepared for these Regulations. These Regulations are part of a package of legislative measures and the relevant impact assessment can be requested via [careactconsultation@dh.gsi.gov.uk](mailto:careactconsultation@dh.gsi.gov.uk) or from the Department of Health, Richmond House, 79 Whitehall, London SW1A 2NS and is available online at <https://www.gov.uk/government/organisations/department-of-health>.

**2014 No. XXXX**

**SOCIAL CARE, ENGLAND**

**The Care and Support (Disputes Between Local Authorities)  
Regulations 2014**

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

*Laid before Parliament* \*\*\*

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

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 40(4) and 125(7) and (8) of the Care Act 2014<sup>(A)</sup>.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Care and Support (Disputes Between Local Authorities) Regulations 2014 and come into force immediately after section 40(1) of the Care Act 2014 comes fully into force.

(2) In these Regulations—

“the Act” means the Care Act 2014;

“the appropriate person” means the person by whom a dispute is to be determined pursuant to section 40(1) of the Act;

“dispute” means a dispute—

- (a) about where an adult<sup>(B)</sup> is ordinarily resident for the purposes of Part 1 of the Act;
- (b) between local authorities<sup>(C)</sup> under section 37 of the Act (continuity of care) about the application of that section; or
- (c) between local authorities about the application of section 48 of the Act (provider failure: temporary duty on local authority);

“the lead authority” means, in relation to a dispute, the local authority which—

- (d) is meeting the needs of the adult or carer<sup>(D)</sup> to whom the dispute relates at the date on which the dispute arises; or
- (e) if no local authority is meeting those needs at that date, is required to do so by regulation 2(3);

“referred” means referred for determination by the appropriate person, and “refer” and “referral” are to be construed accordingly.

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<sup>(A)</sup> 2014 c.23; see section 125(1) for the powers to make regulations.

<sup>(B)</sup> See section 2(8) of the Act for the meaning of “adult”.

<sup>(C)</sup> See section 1(4) of the Act for the meaning of “local authority”; the definition is limited to local authorities in England.

<sup>(D)</sup> See section 10(3) of the Act for the meaning of “carer”.

(3) References in these Regulations to the date on which a dispute arises are references to the first date on which a written communication is sent by one of the local authorities (“the first authority”) to another of the local authorities (“the second authority”) which (as the case may be)—

- (a) asserts that, in the first authority’s view, the adult to whom the dispute relates is not ordinarily resident in its area for the purposes of Part 1 of the Act, or that that adult is ordinarily resident in the second authority’s area for those purposes;
- (b) raises an issue about the application of section 37 of the Act; or
- (c) raises an issue about the application of section 48 of the Act.

(4) In these Regulations, a reference to “the authorities” is a reference to the local authorities who are parties to a dispute and includes (where different) a reference to the lead authority in relation to that dispute.

### **Responsibility for meeting needs whilst dispute is unresolved**

**2.—**(1) The authorities must not allow the existence of the dispute to prevent, delay, interrupt or otherwise adversely affect the meeting of the needs of the adult or carer to whom the dispute relates.

(2) The local authority which is meeting the needs of the adult or carer on the date on which the dispute arises must continue to meet those needs until the dispute is resolved.

(3) If no local authority is meeting the needs on the date on which the dispute arises—

- (a) the local authority in whose area the adult needing care is living; or
- (b) if the adult needing care is not living in the area of any local authority, the local authority in whose area that adult is present,

must, until the dispute is resolved, perform the duties under Part 1 of the Act in respect of the adult or carer as if the adult needing care was ordinarily resident in its area.

(4) If the duty under paragraph (3) falls to be discharged by a local authority (“A”) which is not one of the authorities already party to the dispute, those authorities must, without delay, bring to A’s attention—

- (a) A’s duty under that paragraph; and
- (b) A’s status as the lead authority for the purposes of these Regulations.

(5) A is not under the duties in these Regulations until the date on which it is aware of, or could reasonably be expected to have been aware of, its status as the lead authority.

(6) Where the dispute is about the application of section 37 (continuity of care), the authorities must perform their duties under sections 37 and 38 notwithstanding the existence of the dispute.

### **Steps to be taken prior to referral of a dispute**

**3.—**(1) The authorities must, prior to the referral of the dispute, take the steps specified in this regulation.

(2) As soon as reasonably practicable after the date on which the dispute arises—

- (a) the lead authority must seek to identify all the other authorities concerned in the dispute and co-ordinate discussions between those authorities in an attempt to resolve the dispute; and
- (b) each of the authorities must nominate an individual who will act as the point of contact within that authority in relation to the dispute, and provide the other authorities with the contact details of that individual.

(3) The lead authority must—

- (a) co-ordinate the discharge, by the authorities, of their duties under this regulation;
- (b) take steps to obtain from the other authorities information which may be relevant to the determination of the dispute;
- (c) disclose that information to the other authorities; and
- (d) disclose to the other authorities any information the lead authority itself holds that may help to resolve the dispute.

- (4) The authorities must—
- (a) take all reasonable steps to resolve the dispute between themselves; and
  - (b) co-operate with each other in the discharge of their duties under this regulation.
- (5) Each of the authorities must—
- (a) engage in a constructive dialogue with the other authorities, with a view to bringing about the speedy resolution of the dispute;
  - (b) comply, without delay, with any reasonable request for relevant information made by the lead authority; and
  - (c) keep the other authorities informed of any developments which appear to it to be relevant to the determination of the dispute.
- (6) The lead authority must provide to the adult or carer to whom the dispute relates, or to that person's representatives, such information as appears to it to be appropriate about progress in resolving the dispute.
- (7) If the authorities cannot resolve the dispute between themselves within four months of the date on which it arose, the lead authority must refer it to the appropriate person.

**Referral: disputes about ordinary residence or continuity of care**

- 4.—(1) The referral must include the following documents—
- (a) a letter signed by the lead authority in relation to the dispute, stating that the dispute is being referred;
  - (b) a statement of facts signed on behalf of each of the authorities which includes the information specified in paragraph (2); and
  - (c) copies of all correspondence between the authorities which relates to the dispute.
- (2) The specified information is—
- (a) an explanation of the nature of the dispute;
  - (b) a chronology of the events leading up to the referral of the dispute, including the date on which the dispute arose;
  - (c) details of the needs of the adult (“the relevant adult”) or carer to whom the dispute relates from the beginning of the period to which the dispute relates;
  - (d) a statement as to which local authority has met those needs since then, how those needs have been met and the statutory provisions under which they have been met;
  - (e) details of the relevant adult's place of residence, and of any former places of residence which are relevant to the dispute;
  - (f) where the person to whom the dispute relates is a carer, details of the place of residence of the adult needing care, and of any former places of residence that are relevant to the dispute;
  - (g) in a case where the relevant adult's capacity to decide where to live is relevant to the dispute, either—
    - (i) a statement that the authorities agree that the adult has, or lacks, such capacity; or
    - (ii) information which appears to any of the authorities to be relevant to the question of whether the adult has, or lacks, such capacity;
  - (h) a statement as to any other steps taken by the authorities in relation to the relevant adult or carer which may be relevant to the dispute;
  - (i) details of the steps that the authorities have taken to resolve the dispute between themselves; and
  - (j) any other information which appears to any of the authorities to be relevant to the determination of the dispute.
- (3) The authorities must submit any legal arguments they rely on in relation to the dispute within 14 days of the date on which the dispute is referred.
- (4) If a local authority submits legal arguments, it must—

- (a) send a copy of those arguments to the other authorities; and
- (b) provide evidence to the appropriate person that it has done so.

(5) If the appropriate person asks any of the authorities to provide further information, the local authority to which the request is made must comply without delay.

(6) This regulation does not apply in a case to which regulation 5 or 6 applies.

**Referral: disputes about co-operation under section 48 (temporary duty)**

**5.**—(1) This regulation applies to a dispute which is solely about the application of section 48(7)(a) or (b) of the Act (duty to co-operate).

(2) The referral must include the following documents—

- (a) a letter signed by the lead authority in relation to the dispute, stating that the dispute is being referred;
- (b) a statement of facts signed on behalf of each of the authorities which includes the information specified in paragraph (3); and
- (c) copies of all correspondence between the authorities which relates to the dispute.

(3) The specified information is—

- (a) an explanation of the nature of the dispute;
- (b) a chronology of the events leading up to the referral of the dispute, including the date on which the dispute arose;
- (c) details of the steps that the authorities have taken to resolve the dispute between themselves; and
- (d) any other information which appears to any of the authorities to be relevant to the determination of the dispute.

(4) The authorities must submit any legal arguments they rely on in relation to the dispute within 14 days of the date on which the dispute is referred.

(5) If a local authority submits legal arguments, it must—

- (a) send a copy of those arguments to the other authorities; and
- (b) provide evidence to the appropriate person that it has done so.

(6) If the appropriate person asks any of the authorities to provide further information, the local authority to which the request is made must comply without delay.

**Referral: disputes about costs incurred under section 48 (temporary duty)**

**6.**—(1) This regulation applies to a dispute which is solely about the application of section 48(7)(c) of the Act (recovery of costs).

(2) The referral must include the following documents—

- (a) a letter signed by the lead authority in relation to the dispute, stating that the dispute is being referred;
- (b) a statement of facts signed on behalf of each of the authorities which includes the information specified in paragraph (3); and
- (c) copies of all correspondence between the authorities which relates to the dispute.

(3) The specified information is—

- (a) an explanation of the nature of the dispute;
- (b) a chronology of the events leading up to the referral of the dispute, including the date on which the dispute arose;
- (c) details of the needs of the adult or carer to whom the dispute relates from the beginning of the period to which the dispute relates;
- (d) a statement as to which local authority has met those needs since then, how those needs have been met and the statutory provisions under which they have been met;

- (e) information about the costs being sought to be recovered, including a breakdown of those costs;
- (f) details of the steps that the authorities have taken to resolve the dispute between themselves; and
- (g) any other information which appears to any of the authorities to be relevant to the determination of the dispute.

(4) The authorities must submit any legal arguments they rely on in relation to the dispute within 14 days of the date on which the dispute is referred.

(5) If a local authority submits legal arguments, it must—

- (a) send a copy of those arguments to the other authorities; and
- (b) provide evidence to the appropriate person that it has done so.

(6) If the appropriate person asks any of the authorities to provide further information, the local authority to which the request is made must comply without delay.

### **Substituted determinations**

7. Where—

- (a) a review of a determination has been carried out under section 40(2) of the Act and a different determination substituted;
- (b) in consequence of the first determination a local authority (“A”) has paid an amount to another local authority (“B”); and
- (c) the effect of the second determination is that some or all of the amount paid by A to B was not required to have been paid,

B must repay to A the sum that was not required to have been paid.

Signed by authority of the Secretary of State for Health

Date

*Name*  
Minister of State  
Department of Health

### **EXPLANATORY NOTE**

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

These Regulations set out the procedures to be followed when disputes arise between local authorities regarding a person’s ordinary residence under Part 1 of the Care Act 2014, or about the application of sections 37 (continuity of care and support – notification and assessment) or 48 (provider failure – temporary duty on local authority) of that Act. By virtue of section 117(4)(a) of the Mental Health Act 1983<sup>(A)</sup>, the procedures applying to disputes regarding a person’s ordinary residence under Part 1 of the Care Act 2014 also apply to disputes between local authorities about a person’s ordinary residence for the purposes of section 117 of the Mental Health Act.

Regulation 2 sets out which authority is responsible for meeting an individual’s needs until the dispute is resolved. Regulation 3 provides for the steps to be taken by local authorities to try to resolve the dispute prior to referring it for determination by the Secretary of State under section 40 of the Act. Regulation 4 sets out the documentation that is to be supplied by local authorities when making a referral. Regulations 5 and 6 set out slightly modified versions of these provisions for specific cases arising solely under section 48 of the Act. Regulation 7 provides for reimbursement between authorities when the effect of a revised determination is that sums paid under a previous determination were not owed.

A separate impact assessment has not been prepared for these Regulations. These Regulations are part of a package of legislative measures and the relevant impact assessment can be requested via

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<sup>(A)</sup> 1983 c.20; subsection (4) is inserted by section 75(4) of the Care Act 2014.

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- (f) the views and preferences of any relevant carer of that adult as to how the authority should meet that carer’s needs for support;
- (g) any relevant difference between the relevant adult’s circumstances before and after the day of the adult’s intended move, including in relation to—
  - (i) access to a carer;
  - (ii) suitability of living accommodation;
  - (iii) location of living accommodation in terms of its proximity and accessibility to necessary facilities or services in the local community including—
    - (aa) medical services,
    - (bb) public transport,
    - (cc) educational facilities, and
    - (dd) recreational facilities or services; and
  - (iv) the availability of support from family members, friends, neighbours and the wider community.

(2) For the purposes of paragraph (1)(g), a difference is relevant if it is likely to have a significant effect on the well-being of the relevant adult during the period when that adult’s needs for care and support are being met under section 38(1) of the Act.

Signed by authority of the Secretary of State for Health

Date

*Name*  
Minister of State  
Department of Health

### **EXPLANATORY NOTE**

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

These Regulations set out matters to which a local authority must have regard when carrying out its duty under section 38(1) of the Care Act 2014 (“the Act”). Sections 37 and 38 of the Act set out procedures to be followed when an individual who is receiving care and support from a local authority (“the first authority”) wishes to move to the area of another local authority (“the second authority”).

Under section 38(1) of the Act, where a person has moved into the second authority’s area but that authority has not yet carried out a full assessment of the person’s needs, the second authority must meet the person’s care and support needs from the date of the move; it must do this on the same basis as the first authority until it has carried out its own assessment. When carrying out this duty, the second authority must have regard to the matters set out in regulation 2 of these Regulations.

A separate impact assessment has not been prepared for these Regulations. These Regulations are part of a package of legislative measures and the relevant impact assessment can be requested via [careactconsultation@dh.gsi.gov.uk](mailto:careactconsultation@dh.gsi.gov.uk) or from the Department of Health, Richmond House, 79 Whitehall, London SW1A 2NS and is available online at <https://www.gov.uk/government/organisations/department-of-health>.

**2014 No. XXXX**

**SOCIAL CARE**

**The Care and Support (Cross-border Placements and Business Failure: Temporary Duty) (Dispute Resolution) Regulations 2014**

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

*Laid before Parliament* \*\*\*

*Coming into force in accordance with regulation 1(2)*

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 39(8) and 125(7) and (8) of, and paragraph 5(9) to (11) of Schedule 1 to, the Care Act 2014<sup>(A)</sup>.

In accordance with paragraph 11 of Schedule 1 to the Care Act 2014, the Secretary of State has obtained the consent of the Welsh Ministers, the Scottish Ministers and the Northern Ireland Department<sup>(B)</sup> to the making of these Regulations.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Care and Support (Cross-border Placements and Business Failure: Temporary Duty) (Dispute Resolution) Regulations 2014.

(2) These Regulations come into force as follows—

- (a) in so far as they make provision for the resolution of a dispute about the application of section 50 of the Act (temporary duty on local authority in Wales), these Regulations come into force—
  - (i) on the date that section 50 of the Act comes fully into force, or
  - (ii) if later, immediately after paragraph 5(9) of Schedule 1 comes fully into force<sup>(C)</sup>;
- (b) in so far as they make provision for the resolution of a dispute about the application of paragraph 2(2) to (8) of Schedule 1 (placements from Wales to England, Scotland or Northern Ireland under the Social Services and Well-being (Wales) Act 2014<sup>(D)</sup>), these Regulations come into force—
  - (i) on the date that Part 4 of the Social Services and Well-being (Wales) Act 2014 comes fully into force, or
  - (ii) if later, immediately after paragraph 5(9) of Schedule 1 comes fully into force; and

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<sup>(A)</sup> 2014 c.23 (“the Act”). The powers to make regulations are exercisable by the Secretary of State, see section 125(1). See also sections 49(4), 50(5) and 51(5) of the Act. Pending the commencement of Part 4 of the Social Services and Well-being (Wales) Act 2014 (2014 anaw 4), paragraph 2 of Schedule 1 to the Act has effect with the modifications set out in paragraph 14 of that Schedule.

<sup>(B)</sup> See paragraph 12(9) of Schedule 1 to the Act as to the meaning of “the Northern Ireland Department”.

<sup>(C)</sup> Paragraph 5(9) was commenced for the purposes of making regulations by S.I. 2014/2473.

<sup>(D)</sup> 2014 anaw 4 (“the 2014 Act”).

- (c) for all other purposes, these Regulations come into force immediately after paragraph 5(9) of Schedule 1 comes fully into force.

(3) In these Regulations—

“accommodation” means accommodation in England, accommodation in Wales, accommodation in Scotland or accommodation in Northern Ireland<sup>(A)</sup>;

“the Act” means the Care Act 2014;

“authority” means local authority in England, local authority in Wales, local authority in Scotland or HSC trust<sup>(B)</sup>;

“dispute” means dispute about the application of—

- (a) section 48 (temporary duty on local authority in England) or 49 (section 48: cross-border cases) of the Act to the case of an adult<sup>(C)</sup> or a carer<sup>(D)</sup>, in so far as the dispute is between a local authority in England and a local authority in Wales, a local authority in Scotland or an HSC trust;
- (b) section 50 (temporary duty on local authority in Wales) or 51 (temporary duty on Health and Social Care trust in Northern Ireland) of the Act to the case of an adult or a carer; or
- (c) any of paragraphs 1 to 4 of Schedule 1 (cross-border placements) to the case of an adult;

“HSC trust” means Health and Social Care trust established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991 (Health and Social Care trusts)<sup>(E)</sup>;

“lead authority” has the meaning given in regulation 3;

“needs” (except in regulation 5(3) and (5)) means—

- (a) in respect of duties falling on local authorities in England, in relation to an adult, needs for care and support and in relation to a carer, needs for support;
- (b) in respect of duties falling on local authorities in Scotland, needs which must be met under section 12 or 13A of the Social Work (Scotland) Act 1968 (social welfare services and residential accommodation with nursing)<sup>(F)</sup> or section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (care and support services etc.)<sup>(G)</sup>;
- (c) in respect of duties falling on local authorities in Wales, needs which must be met or are to be met under section 35, 36, 40 or 45 of the Social Services and Well-being (Wales) Act 2014 (meeting care and support needs of adults and support needs of a carer);

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<sup>(A)</sup> See paragraph 12 of Schedule 1 to the Act as to the meaning of “accommodation in England”, “accommodation in Wales”, “accommodation in Scotland” and “accommodation in Northern Ireland”. The meaning of “accommodation in Wales” has been modified by paragraph 14(5) of that Schedule pending the commencement of Part 4 of the 2014 Act.

<sup>(B)</sup> See paragraph 12 of Schedule 1 to the Act as to the meaning of “local authority in England”, “local authority in Wales” and “local authority in Scotland”. The meaning of “local authority in Wales” has been modified by paragraph 14(6) of that Schedule pending the commencement of Part 4 of the 2014 Act. See also sections 49(5), 50(6) and 51(6) of the Act.

<sup>(C)</sup> See section 2(8) of the Act as to the meaning of “adult”. See also section 80.

<sup>(D)</sup> See section 10(3) of the Act as to the meaning of “carer”. See also section 80.

<sup>(E)</sup> S.I. 1991/194 (N.I. 1). Article 10 has been amended by paragraphs 1 and 13 of Schedule 6 to the Health and Social Care (Reform) Act (Northern Ireland) 2009 (c.1) (“the 2009 Act”).

<sup>(F)</sup> 1968 c.49. Section 12 has been amended by paragraph 10(5) of Schedule 9 to the National Health Service and Community Care Act 1990 (c.19) (“the 1990 Act”), paragraph 15(11) of Schedule 4 to the Children (Scotland) Act 1995 (c.36), section 120(1) of the Immigration and Asylum Act 1999 (c.33) (“the 1999 Act”) and section 3 of the Community Care and Health (Scotland) Act 2002 (asp 5) (“the CCHSA 2002”), and is prospectively amended (from a date to be appointed) by section 46(1) of the Nationality, Immigration and Asylum Act 2002 (c.41) (“the 2002 Act”). Section 13A was inserted by section 56 of the 1990 Act and amended by section 120(2) of the 1999 Act, section 72 of, and paragraph 4(3) of Schedule 3 to, the Regulation of Care (Scotland) Act 2001 (asp 8) and paragraph 1(4) of Schedule 2 to the CCHSA 2002, and by S.S.I. 2011/211, and is prospectively amended (from a date to be appointed) by section 46(2) of the 2002 Act.

<sup>(G)</sup> 2003 asp 13. Section 25 was amended by S.S.I. 2011/211.

- (d) in respect of duties falling on HSC trusts, needs which must be met under Article 15 of the Health and Personal Social Services (Northern Ireland) Order 1972 (general social welfare)<sup>(A)</sup> or which may be met under section 2 of the Carers and Direct Payments Act (Northern Ireland) 2002 (services for carers)<sup>(B)</sup>;

“referred” in relation to a dispute, means referred for determination under paragraph 5 of Schedule 1 (dispute resolution), and “referral” is to be construed accordingly;

“Responsible Person” means the Secretary of State, the Welsh Ministers, the Scottish Ministers or the Northern Ireland Department;

“Schedule 1” means Schedule 1 to the Act.

(4) For the purposes of these Regulations, the following are Responsible Persons in relation to authorities—

- (a) in relation to a local authority in England, the Secretary of State;
- (b) in relation to a local authority in Wales, the Welsh Ministers;
- (c) in relation to a local authority in Scotland, the Scottish Ministers;
- (d) in relation to an HSC trust, the Northern Ireland Department.

(5) References in these Regulations to the date on which a dispute arises (however expressed) are references to the first date on which a written communication is sent by one of the authorities which are parties to the dispute to another of those authorities raising an issue about—

- (a) the application of any of sections 48 to 51 of the Act to the case of an adult or a carer; or
- (b) the application of any of paragraphs 1 to 4 of Schedule 1 to the case of an adult.

(6) In regulations 6 and 7 and for the purposes of the duty in regulation 8, a reference to the authorities which are parties to a dispute includes (where different) a reference to the lead authority in relation to that dispute, but this does not apply in relation to regulation 6(2)(a), (4)(a) or (5)(b) or to regulation 7(3)(h).

(7) In a case where a person is homeless, references in these Regulations (however expressed) to a person living in an area or a place are to be read as references to that person being physically present in that area or place.

## **Responsibility for determination of disputes**

**2.—**(1) The Responsible Person which is to determine a dispute between authorities is to be determined as follows.

(2) Where the authorities which are parties to the dispute (“the authorities in dispute”) include a local authority in England, and the adult or carer to whom the dispute relates (“the relevant person”) is living in England as at the date the dispute is referred (“the relevant date”), the dispute is to be determined by the Secretary of State.

(3) Where the authorities in dispute include a local authority in Wales, and the relevant person is living in Wales as at the relevant date, the dispute is to be determined by the Welsh Ministers.

(4) Where the authorities in dispute include a local authority in Scotland, and the relevant person is living in Scotland as at the relevant date, the dispute is to be determined by the Scottish Ministers.

(5) Where the authorities in dispute include an HSC trust, and the relevant person is living in Northern Ireland as at the relevant date, the dispute is to be determined by the Northern Ireland Department.

(6) In any other case, the dispute is to be determined by whichever of the persons who are Responsible Persons in relation to the authorities in dispute, those persons agree is to do so.

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<sup>(A)</sup> S.I. 1972/1265 (N.I. 14). Article 15 has been amended by section 121 of the 1999 Act, section 32 of, and paragraphs 1 and 3 of Schedule 6 to, the 2009 Act and by S.I. 1992/3204 (N.I. 20) and 1991/194 (N.I. 1); and is prospectively amended (from a date to be appointed) by section 46 of the 2002 Act.

<sup>(B)</sup> 2002 c.6. Section 2 has been amended by section 32 of, and paragraph 1 of Schedule 6 to, the 2009 Act.

### **Lead authority in relation to disputes**

3.—(1) For the purposes of these Regulations, the lead authority in relation to a dispute is the authority in whose area the adult or carer to whom the dispute relates is living as at the date on which the dispute arises.

- (2) If that authority (“A”) is not one of the authorities which are parties to the dispute—
- (a) those authorities must, without delay, bring to A’s attention A’s duties under these Regulations; and
  - (b) A is not under those duties until the date on which A is aware of, or could reasonably be expected to have been aware of, those duties.

### **Notification etc**

4.—(1) This regulation applies where a referral is—

- (a) made to a Responsible Person by authorities in accordance with regulation 8; or
- (b) sent to a Responsible Person by another Responsible Person pursuant to paragraph (4).

(2) In the following provisions of this regulation, the Responsible Person to whom the referral is made or sent is referred to as the “Relevant Responsible Person”.

(3) If the dispute falls to be determined by the Relevant Responsible Person, that person must—

- (a) in determining the dispute, consult all persons who are Responsible Persons in relation to the authorities which are parties to the dispute (“the authorities in dispute”); and
- (b) prior to notifying those authorities of the outcome of the determination, notify those Responsible Persons of that outcome.

(4) If the dispute does not fall to be determined by the Relevant Responsible Person, that person must—

- (a) as soon as reasonably practicable after receiving the referral, send the referral to the Responsible Person by whom it appears to the Relevant Responsible Person the dispute falls to be determined or, in a case within regulation 2(6), to all persons who are Responsible Persons in relation to the authorities in dispute; and
- (b) notify the authorities in dispute of the action taken pursuant to sub-paragraph (a).

(5) For the purposes of this regulation, a reference to a dispute falling, or appearing to fall, to be determined by a Responsible Person (however expressed) is a reference to that dispute so falling, or appearing to fall, to be determined pursuant to regulation 2.

### **Responsibility for meeting needs pending determination of dispute etc**

5.—(1) The authorities which are parties to a dispute must not allow the existence of the dispute to prevent, delay, interrupt or otherwise adversely affect the meeting of the needs of the adult (“the adult”) or carer to whom the dispute relates.

(2) This paragraph applies where a dispute concerns—

- (a) section 48(2), 50(3) or 51(3) of the Act (temporary duty to meet needs); or
- (b) any of paragraphs 1 to 4 of Schedule 1.

(3) Where paragraph (2) applies—

- (a) the authority which is meeting any needs for accommodation of the adult on the date on which the dispute arises must continue to meet those needs; and
- (b) if no authority is meeting those needs as at that date, the authority in whose area the adult is living as at that date must do so from that date.

(4) The duty under paragraph (3) must be discharged until the dispute in question is resolved.

(5) The meeting of an adult’s needs by an authority pursuant to paragraph (3) does not affect the liability of that authority or any other authority for the meeting of those needs in respect of the period during which those needs are met.

### **Steps to be taken prior to referral of a dispute including steps to try to resolve a dispute**

**6.—**(1) The authorities which are parties to a dispute (“authorities in dispute”) must, prior to the referral of the dispute, take the steps specified in this regulation.

- (2) As soon as reasonably practicable after the date on which the dispute arises—
  - (a) the authority which is the lead authority in relation to the dispute must identify all the authorities which are parties to the dispute and co-ordinate discussions between those authorities in an attempt to resolve the dispute; and
  - (b) each of the authorities in dispute must—
    - (i) nominate an individual who will act as the point of contact within that authority in relation to the dispute; and
    - (ii) provide the other authorities in dispute with the contact details of that individual.
- (3) The lead authority must—
  - (a) co-ordinate the discharge, by the authorities in dispute, of their duties under this regulation;
  - (b) take steps to obtain, from the other authorities in dispute, information which may be relevant to the determination of the dispute;
  - (c) disclose that information to the other authorities in dispute (if any); and
  - (d) disclose to the other authorities in dispute any information the lead authority itself holds that may help to resolve the dispute.
- (4) The authorities in dispute must—
  - (a) take all reasonable steps to resolve the dispute between themselves; and
  - (b) co-operate with each other in the discharge of their duties under this regulation.
- (5) Each of the authorities in dispute must—
  - (a) engage in a constructive dialogue with the other authorities in dispute, with a view to bringing about the speedy resolution of the dispute;
  - (b) comply, without delay, with any reasonable request for relevant information made by the lead authority; and
  - (c) keep the other authorities in dispute informed of information which appears to it to be relevant to the determination of the dispute.
- (6) The lead authority in relation to the dispute must provide to the adult or carer to whom the dispute relates (“the relevant person”), or to the relevant person’s representatives, such information as appears to it to be appropriate about progress in resolving the dispute.

### **Contents of referral etc**

**7.—**(1) Where a referral is made in accordance with regulation 8, the authority which is the lead authority in relation to the dispute which is the subject of the referral, must send a copy of the referral to all persons who are Responsible Persons in relation to the authorities which are parties to the dispute.

- (2) Subject to paragraphs (8) and (9), the referral must include the following documents—
  - (a) a letter signed by the lead authority stating that the dispute is being referred and identifying the provision of the Act, the application of which the dispute is about;
  - (b) a statement of facts signed by each of the authorities which are parties to the dispute (“the authorities in dispute”) which includes the information specified in paragraph (3); and
  - (c) copies of all correspondence between the authorities in dispute which relates to the dispute.
- (3) The information referred to in paragraph (2)(b) is—
  - (a) an explanation of the nature of the dispute;
  - (b) a chronology of the events leading up to the referral of the dispute, including the date on which the dispute arose;

- (c) details of the needs of the adult (“the relevant adult”) or carer (“the relevant carer”) to whom the dispute relates since the beginning of the period to which the dispute relates;
  - (d) a statement as to which authority has met those needs since then, how those needs have been met and the statutory provisions under which they have been met;
  - (e) a statement as to any other steps taken by the authorities in dispute in relation to the relevant adult or the relevant carer and which may be relevant to the dispute;
  - (f) details of the relevant adult’s place of residence, and of any former places of residence which are relevant to the dispute;
  - (g) in a case where the relevant adult’s capacity to decide where to live is relevant to the dispute, either—
    - (i) a statement that the authorities in dispute agree that the adult has, or lacks, such capacity; or
    - (ii) information which appears to any of the authorities in dispute to be relevant to the question of whether the adult has, or lacks such capacity;
  - (h) details of the steps that the authorities in dispute have taken to resolve the dispute between themselves; and
  - (i) any other information which appears to any of the authorities in dispute to be relevant to the determination of the dispute.
- (4) The authorities in dispute may submit legal arguments they are relying on in relation to the dispute provided that this is done within 14 days of the date on which the documents referred to in paragraph (2) are sent.
- (5) If an authority submits legal arguments, it must—
- (a) send a copy of those arguments to the other authorities in dispute; and
  - (b) provide evidence to the Responsible Person determining the dispute that it has done so.
- (6) If the Responsible Person determining the dispute asks any of the authorities in dispute to provide further information, that authority must comply without delay.
- (7) For the purposes of this regulation—
- (a) a reference to lacking capacity (however expressed) is a reference to—
    - (i) lacking capacity within the meaning of section 2 of the Mental Capacity Act 2005<sup>(A)</sup>;
    - (ii) being incapable within the meaning of section 1 of the Adults with Incapacity (Scotland) Act 2000<sup>(B)</sup>; or
    - (iii) being incapable by reason of mental disorder within the meaning of Article 3(1) of the Mental Health (Northern Ireland) Order 1986<sup>(C)</sup>;
  - (b) a reference to having capacity (however expressed) is a reference to not lacking capacity.
- (8) Where the dispute is solely about the application of section 49(3)(c), 50(4)(c) or 51(4)(c) of the Act (recovery of costs), paragraph (3) is to be read as if sub-paragraphs (e), (f) and (g) were omitted and as if after sub-paragraph (i) there was inserted—
- “(j) information as to the costs being sought to be recovered and a breakdown of those costs.”.
- (9) Where the dispute is solely about the application of section 49(3)(a) or (b), 50(4)(a) or (b) or 51(4)(a) or (b) of the Act (duty to co-operate), paragraph (3) is to be read as if sub-paragraphs (c) to (g) were omitted.

### **Stage at which dispute must be referred**

**8.** If the authorities which are parties to a dispute cannot resolve the dispute between themselves within four months of the date on which it arose, they must refer it for determination to the appropriate

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<sup>(A)</sup> 2005 c.9.  
<sup>(B)</sup> 2000 asp 4.  
<sup>(C)</sup> S.I. 1986/595 (N.I. 4).

Responsible Person or, in a case within regulation 2(6), to all persons who are Responsible Persons in relation to the authorities in dispute.

### Transitory provision

9. Pending the commencement of Part 4 of the Social Services and Well-being (Wales) Act 2014, in paragraph (c) of the definition of “needs” in regulation 1(3)—

- (a) the reference to section 35 or 36 of that Act is to be read as a reference to—
  - (i) Part 3 of the National Assistance Act 1948<sup>(A)</sup>,
  - (ii) section 45 of the Health Services and Public Health Act 1968<sup>(B)</sup>,
  - (iii) section 117 of the Mental Health Act 1983<sup>(C)</sup>, or
  - (iv) Schedule 15 to the National Health Service (Wales) Act 2006<sup>(D)</sup>;
- (b) the reference to section 40 or 45 of that Act is to be read as a reference to section 2 of the Carers and Disabled Children Act 2000<sup>(E)</sup>.

Signed by authority of the Secretary of State for Health

*Name*  
Minister of State  
Department of Health

Date

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<sup>(A)</sup> 1948 c.29. Functions of a Minister of the Crown under the National Assistance Act 1948 were, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) (“the TOFO”). Functions of the National Assembly for Wales were transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c.32) (“the GOWA”).

<sup>(B)</sup> 1968 c.46. Section 45 was amended by Schedule 3 to the Local Authority Social Services Act 1970 (c.42), paragraph 15 of Schedule 23 to the Local Government Act 1972 (c.70), Part 12 of Schedule 1 to the Statute Law (Repeals) Act 1978 (c.45), Schedule 2 to the Residential Homes Act 1980 (c.7), Part 1 of Schedule 10 to the Health and Social Services and Social Security Adjudications Act 1983 (c.41), section 42(7) of, and Schedule 10 to, the 1990 Act, paragraph 5(1) of Schedule 10 to the Local Government (Wales) Act 1994 (c.19), section 117(1) of the 1999 Act and paragraphs 33 and 34 of Schedule 1 to the National Health Service (Consequential Provisions) Act 2006 (c.43), and by S.I. 1968/1699, and is prospectively amended (from a date to be appointed) by section 45(6) of the Nationality, Immigration and Asylum Act 2002. Section 45 has been repealed in relation to Scotland by section 14(4) of, and Part 1 of Schedule 9 to, the Social Work (Scotland) Act 1968 (c.49). The functions of the Secretary of State under section 45 were, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by Schedule 1 to the TOFO. Functions of the National Assembly for Wales were transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to, the GOWA.

<sup>(C)</sup> 1983 c.20. Section 117 was amended by paragraph 107 of Schedule 1 to the Health Authorities Act 1995 (c.17), paragraph 15 of Schedule 1 to the Mental Health (Patients in the Community) Act 1995 (c.52), paragraph 12(17) of Schedule 4 to the Crime (Sentences) Act 1997 (c.43), paragraphs 42 and 47 of Schedule 2 to the National Health Service Reform and Health Care Professions Act 2002 (c.17), paragraphs 1 and 24 of Schedule 3 and Part 5 of Schedule 11 to the Mental Health Act 2007 (c.12), paragraph 3 of Schedule 1 to the Health Act 2009 (c.21), section 40 of the Health and Social Care Act 2012 (c.7) and by S.I. 2007/961. The functions of the Secretary of State under section 117 were, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by Schedule 1 to the TOFO. Functions of the National Assembly for Wales were transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to, the GOWA.

<sup>(D)</sup> 2006 c.42.

<sup>(E)</sup> 2000 c.16.

## EXPLANATORY NOTE

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

Schedule 1 to the Care Act 2014 (“the Act”) makes provision to ensure that where a local authority in England, Wales or Scotland, or a Health and Social Care trust in Northern Ireland (“an HSC trust”) places an adult in residential accommodation in another of those territories, in general, this does not result in the transfer of that authority’s responsibility for that adult. The relevant provisions are to be found in paragraphs 1 to 4 of Schedule 1.

Sections 48 to 52 of the Act impose duties on local authorities in England and Wales, and on HSC trusts, to meet needs of individuals in circumstances where registered providers of care are unable to carry on because of business failure.

These Regulations make further provision in relation to the resolution of disputes between authorities about the application of paragraphs 1 to 4 of Schedule 1, or of sections 48 to 51 of the Act (save for disputes between English local authorities about the application of section 48 which are not dealt with in these Regulations).

Regulation 2 sets out who is to determine disputes. The effect of this is that where the adult or carer in question (“the relevant person”) is living (or, in a case where the adult is homeless, is physically present) in the same territory as that in which an authority which is party to a dispute is situated, the dispute is to be determined by the Responsible Person in relation to that authority. In other cases, regulation 2(6) provides for the relevant Responsible Persons (i.e. persons who are Responsible Persons in relation to the authorities in dispute) to agree between themselves as to who is to determine the dispute. The Responsible Person in relation to an authority is: in relation to a local authority in England, the Secretary of State, in relation to a local authority in Wales, the Welsh Ministers, in relation to a local authority in Scotland, the Scottish Ministers and in relation to an HSC trust, the Department of Health, Social Services and Public Safety in Northern Ireland.

Regulation 3 sets out who the “lead authority” is for the purposes of duties imposed on such an authority under the Regulations. The lead authority is the authority in whose area the relevant person is living (or physically present) as at the date on which the dispute arises.

Regulation 4 imposes duties to be discharged by Responsible Persons upon receipt of a referral of a dispute. This includes a duty to consult other persons who are Responsible Persons in relation to the authorities in dispute when determining the dispute and to send on a referral to the appropriate Responsible Person where this has not been sent to the correct Responsible Person.

Regulation 5 sets out duties on authorities in dispute in relation to the meeting of needs until a dispute is determined. This includes a requirement, in the case of certain disputes, for the authority in whose area the person is living (or physically present) to meet an adult’s needs for accommodation in circumstances where no authority is meeting such needs as at the date on which the dispute arises. This does not affect the liability of that authority or any other authority for meeting those needs.

Regulation 6 sets out steps which authorities in dispute have to take before referring a dispute for determination.

Regulation 7 requires the lead authority to send a copy of the referral of a dispute to relevant Responsible Persons and sets out what must or may be included with a referral. The documents to be included are a letter from the lead authority, a statement of facts and copies of relevant correspondence. The authorities may also submit supporting legal arguments. Where a dispute solely concerns the recovery of costs or a duty to co-operate, regulation 7 omits the requirement to submit certain information and, in the case of a dispute solely concerning the recovery of costs, includes a requirement to submit information concerning the costs being sought to be recovered.

Regulation 8 sets out a duty to refer disputes if they cannot be resolved within a specified time.

Regulation 9 makes transitory provision in respect of the period before Part 4 of the Social Services and Well-being (Wales) Act 2014 is commenced.

A separate impact assessment has not been prepared for these Regulations. These Regulations are part of a package of legislative measures and the relevant impact assessment can be requested via [careactconsultation@dh.gsi.gov.uk](mailto:careactconsultation@dh.gsi.gov.uk) or Department of Health, Richmond House, 79 Whitehall, London SW1A 2NS and is available online at <https://www.gov.uk/government/organisations/department-of-health>.

**2014 No. 000**

**SOCIAL CARE, ENGLAND**

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

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

*Laid before Parliament* \*\*\*

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

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 55(5), 125(7) and (8) of the Care Act 2014<sup>(A)</sup>.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Care and Support (Market Oversight Information) Regulations 2014 and come into force immediately after section 55(5) of the Care Act 2014 comes fully into force<sup>(B)</sup>.

(2) In these Regulations—

“the Act” means the Care Act 2014;

“the Commission” means the Care Quality Commission<sup>(C)</sup>;

“group undertaking” has the meaning given by [section 1161\(5\)](#) of the [Companies Act 2006](#)<sup>(D)</sup> and “undertaking” (except in the case of an information undertaking) has the meaning given by section 1161(1) of that Act;

“information” means any information, documents, records or other material;

“information undertaking” is to be construed in accordance with regulation 2.

**Undertaking to provide information**

2.—(1) This regulation applies where a registered care provider<sup>(E)</sup> to whom section 55 of the Act applies is an undertaking.

(2) The Commission may require the registered care provider to obtain from a group undertaking of the provider an “information undertaking” to provide the Commission with such information as the Commission requests.

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<sup>(A)</sup> 2014 c. 23 (“the Act”). The powers to make regulations are exercisable by the Secretary of State. See section 125(1) of the Act.

<sup>(B)</sup> Section 55(5) was commenced for the purpose of making regulations by S.I. 2014/2473.

<sup>(C)</sup> Established by section 1(1) of the Health and Social Care Act 2008 (c. 14).

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

<sup>(E)</sup> See section 48(1) of the Act for the meaning of “registered care provider”.

(3) An information undertaking must be in a form which is legally enforceable by the registered care provider.

### **Form of the information undertaking**

3. The Commission may specify the form of an information undertaking and may provide in particular that—

- (a) information must be provided at such times and such places as may be specified by the Commission;
- (b) an explanation of any information must be provided at such times and such places as may be specified by the Commission;
- (c) information and explanations must be provided in such manner or format as may be specified by the Commission;
- (d) the group undertaking must co-operate with the Commission in connection with providing information and explanations; and
- (e) information and explanations must be complete and accurate.

### **Time for provision of information undertaking, etc.**

4.—(1) The registered care provider must obtain the information undertaking within such period as the Commission specifies.

(2) The registered care provider must send to the Commission a copy of the information undertaking within such period as the Commission specifies.

(3) The information undertaking must remain in force for as long as—

- (a) the person required to provide information remains a group undertaking of the registered care provider; and
- (b) section 55 of the Act continues to apply to the registered care provider.

### **Breach, etc.**

5.—(1) The registered care provider must inform the Commission immediately in writing if it becomes aware that—

- (a) the information undertaking has ceased to be in force;
- (b) the information undertaking has ceased to be legally enforceable; or
- (c) any terms of the information undertaking have been breached.

(2) The registered care provider must comply with any request made by the Commission to enforce the information undertaking.

Signed by authority of the Secretary of State for Health

Date

*Name*  
Minister of State  
Department of Health

### **EXPLANATORY NOTE**

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

Section 55(1) of the Care Act 2014 (c.23) imposes a duty on the Care Quality Commission to assess the financial sustainability of a registered care provider subject to the market oversight regime. These Regulations make provision for the Commission to obtain information from persons other than the registered care provider to assist it in making this assessment.

Regulation 2 provides that the Commission may require a registered care provider to obtain from a group undertaking, a legally enforceable undertaking to provide information. Regulations 3 to 5 make further provision in relation to the information undertaking.

A separate impact assessment has not been prepared for these Regulations. These Regulations are part of a package of legislative measures and the relevant impact assessment can be requested via [careactconsultation@dh.gsi.gov.uk](mailto:careactconsultation@dh.gsi.gov.uk) or the Department of Health, Richmond House, 79 Whitehall, London, SW1A 2NS and is available online at <https://www.gov.uk/government/organisations/department-of-health>.

**2014 No. 0000**

**SOCIAL CARE**

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

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

*Laid before Parliament* \*\*\*

*Coming into force in accordance with regulation 1(2)*

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 39(8) and 125(7) and (8) of, and paragraphs 1(6) and (7), 2(9) and (10) and 4(5) and (6) of Schedule 1 to, the Care Act 2014<sup>(A)</sup>.

In accordance with paragraph 11 of Schedule 1 to the Care Act 2014, the Secretary of State has obtained the consent of the Welsh Ministers, the Scottish Ministers and the Northern Ireland Department<sup>(B)</sup> to the making of these Regulations.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Care and Support (Cross-border Placements) (Business Failure Duties of Scottish Local Authorities) Regulations 2014.

(2) These Regulations come into force—

- (a) immediately after paragraph 1(6) of the Schedule comes fully into force<sup>(C)</sup> in so far as they relate to a case within paragraph 1(3) (cross-border placements from England to Scotland) of the Schedule;
- (b) in so far as they relate to a case within paragraph 2(3) or (4) of the Schedule (cross-border placements from Wales to Scotland)—
  - (i) on the date that Part 4 of the Social Services and Well-being (Wales) Act 2014<sup>(D)</sup> comes fully into force, or
  - (ii) if later, immediately after paragraph 2(9) of the Schedule comes fully into force<sup>(E)</sup>; and

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<sup>(A)</sup> 2014 c.23 (“the Act”). The powers to make regulations are exercisable by the Secretary of State – see section 125(1). Pending the commencement of Part 4 of the Social Services and Well-being (Wales) Act 2014 (2014 anaw 4), paragraphs 1, 2 and 4 of Schedule 1 to the Act have effect with the modifications set out in paragraph 14 of that Schedule.

<sup>(B)</sup> See paragraph 12(9) of Schedule 1 to the Act as to the meaning of “the Northern Ireland Department”.

<sup>(C)</sup> Paragraph 1(6) was commenced for the purposes of making regulations by S.I. 2014/2473.

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

<sup>(E)</sup> Paragraph 2(9) was commenced for the purposes of making regulations by S.I. 2014/2473.

(c) immediately after paragraph 4(5) of the Schedule comes fully into force<sup>(A)</sup> in so far as they relate to a case within paragraph 4(3) of the Schedule (cross-border placements from Northern Ireland to Scotland).

(3) In these Regulations—

“the 1968 Act” means the Social Work (Scotland) Act 1968<sup>(B)</sup>;

“the 1985 Act” means the Bankruptcy (Scotland) Act 1985<sup>(C)</sup>;

“the 1986 Act” means the Insolvency Act 1986<sup>(D)</sup>;

“the 2010 Act” means the Public Services Reform (Scotland) Act 2010<sup>(E)</sup>;

“care provider” means a person registered under section 59 of the 2010 Act in respect of a care service;

“care service” has the meaning given in section 47 of the 2010 Act (care services);

“company” means an entity, other than a partnership, in respect of which a winding up order may be made in accordance with the procedures for winding up set out in the 1986 Act (with or without modification);

“local authority” means a local authority for the purposes of the 1968 Act<sup>(F)</sup>;

“partnership” does not include a limited liability partnership (within the meaning of the Limited Liability Partnerships Act 2000<sup>(G)</sup>);

“relevant adult” means an adult in respect of whom relevant arrangements have been made; “relevant arrangements” means arrangements for the provision of accommodation within paragraph 1(3), 2(3) or (4) or (as the case may be) 4(3) of the Schedule;

“relevant care provider” means the care provider with whom relevant arrangements have been made;

“the Schedule” means Schedule 1 to the Care Act 2014.

### **Regulations 3 to 5 – application**

2. Regulations 3 to 5 apply to a case within paragraph 1(3), 2(3) or (4) or 4(3) of the Schedule.

### **Temporary duty on local authority in Scotland**

3.—(1) In the circumstances specified in paragraph (2)—

(a) the duties on local authorities specified in regulation 5 are to apply in the case of a relevant adult; and

(b) the discharge of any such duties is to continue for so long as the local authority discharging the duty considers necessary.

(2) The circumstances referred to in paragraph (1) are that—

(a) the relevant care provider is unable to continue to provide the care service in respect of which relevant arrangements have been made; and

(b) such inability arises following any of the events specified in regulation 4.

### **Circumstances in which a local authority is required to discharge specified duties**

4.—(1) In relation to a care provider which is a company, the events specified for the purposes of regulation 3(2)(b) are—

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<sup>(A)</sup> Paragraph 4(5) was commenced for the purposes of making regulations by S.I. 2014/2473.

<sup>(B)</sup> 1968 c.49.

<sup>(C)</sup> 1985 c.66.

<sup>(D)</sup> 1986 c.45.

<sup>(E)</sup> 2010 asp 8.

<sup>(F)</sup> See section 1(2) of the Social Work (Scotland) Act 1968 as to the local authorities for the purposes of that Act.

<sup>(G)</sup> 2000 c.12.

- (a) the nominee in relation to a proposal for a voluntary arrangement under Part 1 of the 1986 Act submits a report to the court under section 2 (procedure where nominee is not the liquidator or administrator) of that Act<sup>(A)</sup> which states that in the nominee's opinion meetings of the company and its creditors should be summoned to consider the proposal;
- (b) the directors of the company lodge with the court documents and statements in accordance with paragraph 7(1) of Schedule A1 (moratorium where directors propose voluntary arrangement) to the 1986 Act<sup>(B)</sup>;
- (c) an administrative receiver within the meaning of section 251 of the 1986 Act<sup>(C)</sup> is appointed in relation to the company;
- (d) the company enters administration within the meaning of paragraph 1(2)(b) of Schedule B1 to the 1986 Act<sup>(D)</sup>;
- (e) a resolution is passed for a voluntary winding up of the company without a declaration of solvency under section 89 of the 1986 Act;
- (f) a meeting of creditors is held in relation to the company under section 95 (creditors' meeting which has the effect of converting a members' voluntary winding up into a creditors' voluntary winding up) of the 1986 Act<sup>(E)</sup>;
- (g) an order for the winding up of the company is made by the court under Part 4 or 5 of the 1986 Act;
- (h) an administration order is made by the court in respect of the company by virtue of any enactment which applies Part 2 (administration orders) of the 1986 Act (with or without modification);
- (i) a notice from an administrator under paragraph 83(3) of Schedule B1 (moving from administration to creditors' voluntary liquidation) to the 1986 Act in relation to the company is registered by the registrar of companies in accordance with paragraph 83(4) of that Schedule;
- (j) the company moves from administration to winding up pursuant to an order of the court under rule 2.132 (conversion of administration to winding up - power of court) of the Insolvency Rules 1986<sup>(F)</sup>;
- (k) an administrator or liquidator of the company, being the nominee in relation to a proposal for a voluntary arrangement under Part 1 of the 1986 Act (company voluntary arrangements), summons meetings of the company and of its creditors, to consider the proposal, in accordance with section 3(2) (summoning of meetings) of the 1986 Act.

(2) In relation to a care provider who is an individual, the events specified for the purposes of regulation 3(2)(b) are—

- (a) the individual is adjudged bankrupt or sequestration of the individual's estate has been awarded under section 12 of the 1985 Act<sup>(G)</sup>;
- (b) the nominee in relation to a proposal for a voluntary arrangement under Part 8 of the 1986 Act submits a report under section 256(1) or 256A(3) of that Act<sup>(H)</sup> which states that in the nominee's

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<sup>(A)</sup> Section 2 was amended by paragraphs 1 and 3 of Schedules 1 and 2 to the Insolvency Act 2000 (c.39) ("the 2000 Act").

<sup>(B)</sup> Schedule A1 was inserted by paragraphs 1 and 4 of Schedule 1 to the 2000 Act.

<sup>(C)</sup> Section 251 was amended by S.I. 2009/1941.

<sup>(D)</sup> Schedule B1 was inserted by section 248(2) of, and Schedule 16 to, the Enterprise Act 2002 (c.40).

<sup>(E)</sup> Section 95 was amended by S.I. 2009/864 and 2010/18.

<sup>(F)</sup> S.I. 1986/1925. Rule 2.132 was substituted by S.I. 2003/1730 and amended by S.I. 2010/686.

<sup>(G)</sup> Section 12 was amended by section 4(2) to (5) of the Bankruptcy (Scotland) Act 1995 (c.36), sections 14(8), 27(2) and (3) of, and paragraph 10 of Schedule 1 and paragraph 1 of Schedule 6 to, the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) ("the 2007 Act") and section 9(3) of the Home Owner and Debtor Protection (Scotland) Act 2010 (asp 6) and is prospectively amended (from a date to be appointed) by section 11(4)(a) and 47 of, and paragraph 9 of Schedule 3 and paragraph 1 of Schedule 4 to, the Bankruptcy and Debt Advice (Scotland) Act 2014 (asp 11).

<sup>(H)</sup> Section 256 was amended by paragraphs 1 and 6 of Schedule 3 to the 2000 Act. There are other amendments to section 256 but none is relevant. Section 256A was inserted by paragraphs 1 and 7 of Schedule

opinion a meeting of the creditors of the debtor (being the individual) should be summoned to consider the debtor's proposal;

- (c) a deed of arrangement made by or in respect of the affairs of the individual is registered in accordance with the Deeds of Arrangement Act 1914<sup>(A)</sup>;
- (d) the individual executes a trust deed for the individual's creditors or enters into a composition contract.

(3) In relation to a care provider which is a partnership, the events specified for the purposes of regulation 3(2)(b) are—

- (a) an order for the winding up of the partnership is made by the court under any provision of the 1986 Act (as applied by an order under section 420 (insolvent partnerships) of that Act<sup>(B)</sup>);
- (b) sequestration is awarded on the estate of the partnership under section 12 of the 1985 Act or the partnership grants a trust deed for its creditors;
- (c) the nominee in relation to a proposal for a voluntary arrangement under Part 1 of the 1986 Act (as applied by an order under section 420 of that Act) submits a report to the court under section 2 (procedure where nominee is not the liquidator or administrator) of that Act which states that in the nominee's opinion meetings of the members of the partnership and the partnership's creditors should be summoned to consider the proposal;
- (d) the members of the partnership lodge with the court documents and statements in accordance with paragraph 7(1) of Schedule A1 (moratorium where directors propose voluntary arrangement) to the 1986 Act (as applied by an order under section 420 of that Act);
- (e) the partnership enters administration within the meaning of paragraph 1(2)(b) of Schedule B1 to the 1986 Act (as applied by an order under section 420 of that Act).

(4) In relation to any other care provider, the event specified for the purpose of regulation 3(2)(b) is an award of sequestration of the provider's estate made under section 12 of the 1985 Act or the Scottish Charitable Incorporated Organisations (Removal from Register and Dissolution) Regulations 2011<sup>(C)</sup>.

### Specified duties

5.—(1) The duties specified for the purposes of regulation 3(1)(a) are the duties under sections 12 and 13A of the 1968 Act (social welfare services and residential accommodation with nursing)<sup>(D)</sup> in so far as the discharge of the duties would involve meeting the relevant adult's needs by taking the following steps—

- (a) providing or securing the provision of accommodation; or
- (b) providing, maintaining and making such arrangements as a local authority considers appropriate and adequate for the provision of suitable accommodation where nursing is provided for persons who are or appear to be in need of such accommodation by reason of infirmity, age, illness or

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3 to the 2000 Act. Subsection (3) was amended by paragraphs 1 and 4 of Schedule 19 to the Enterprise and Regulatory Reform Act 2013 (c.24) and by S.I. 2010/18.

<sup>(A)</sup> 1914 c.47.

<sup>(B)</sup> Section 420 was amended by paragraphs 185 and 191 of Schedule 4 to the Constitutional Reform Act 2005 (c.4) and by S.I. 2002/1037. As to orders under section 420, see S.I. 1994/2421 as amended by S.I. 1994/2421, 1996/1308, 2001/767, 2002/1308, 2005/1516 and 2006/622.

<sup>(C)</sup> S.S.I. 2011/237 as amended by S.S.I. 2013/362.

<sup>(D)</sup> 1968 c.49. Section 12 was amended by paragraph 10(5) of Schedule 9 to the National Health Service and Community Care Act 1990 (c.19) ("the 1990 Act"), paragraph 15(11) of Schedule 4 to the Children (Scotland) Act 1995 (c.36), section 120(1) of the Immigration and Asylum Act 1999 (c.33) ("the 1999 Act") and section 3 of the Community Care and Health (Scotland) Act 2002 (asp 5) ("the CCHSA 2002"), and is prospectively amended (from a date to be appointed) by section 46(1) of the Nationality, Immigration and Asylum Act 2002 (c.41) ("the 2002 Act"). Section 13A was inserted by section 56 of the 1990 Act and amended by section 120(2) of the 1999 Act, section 72 of, and paragraph 4(3) of Schedule 3 to, the Regulation of Care (Scotland) Act 2001 (asp 8), paragraph 1(4) of Schedule 2 to the CCHSA 2002 and by S.S.I. 2011/211, and is prospectively amended (from a date to be appointed) by section 46(2) of the 2002 Act.

mental disorder, dependency on drugs or alcohol or being substantially handicapped by any deformity or disability.

(2) In paragraph (1), “needs” means, in relation to an adult, the needs of the adult which were being met by the relevant care provider under relevant arrangements immediately before the provider became unable to continue to provide the care service in question as mentioned in regulation 3(2)(a).

Signed by authority of the Secretary of State for Health

Address  
Date

*Name*  
Minister of State  
Department of Health

### **EXPLANATORY NOTE**

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

Schedule 1 to the Care Act 2014 makes provision to ensure that where a local authority in England, Wales or Scotland, or a Health and Social Care trust in Northern Ireland makes arrangements for the provision to an adult of residential accommodation in another of those territories, in general, this does not result in the transfer of that authority’s responsibility for that adult. The relevant provisions are to be found in paragraphs 1 to 4 of Schedule 1.

These Regulations make provision to specify circumstances in which, in the case of arrangements for the provision of accommodation in Scotland, specified duties of Scottish local authorities under Part 2 of the Social Work (Scotland) Act 1968 (“the 1968 Act”) are nonetheless to apply in the case of the adult concerned.

Regulation 3 sets out that the circumstances are that the care provider with whom the arrangements have been made is unable to continue to provide the care service in respect of which those arrangements have been made and this inability arises following any of the events set out in regulation 4. The duties are to continue to be discharged for so long as the local authority considers necessary.

Regulation 5 sets out the duties under the 1968 Act which are to apply.

A separate impact assessment has not been prepared for these Regulations. These Regulations are part of a package of legislative measures and the relevant impact assessment can be requested via [careactconsultation@dh.gsi.gov.uk](mailto:careactconsultation@dh.gsi.gov.uk) or Department of Health, Richmond House, 79 Whitehall, London SW1A 2NS and is available online at <https://www.gov.uk/government/organisations/department-of-health>.

**2014 No. 0000**

**SOCIAL CARE, ENGLAND**

**The Care and Support (Sight-impaired and Severely Sight-impaired Adults) Regulations 2014**

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

*Laid before Parliament* \*\*\*

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

The Secretary of State makes these Regulations in exercise of the power conferred by section 77(2) of the Care Act 2014<sup>(A)</sup>.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Care and Support (Sight-impaired and Severely Sight-impaired Adults) Regulations 2014 and come into force immediately after section 77(1) of the Care Act 2014 comes fully into force.

(2) In these Regulations “consultant ophthalmologist” means a consultant or honorary consultant appointed in the medical speciality of ophthalmology, who is employed for the purposes of providing any service as part of the health service<sup>(B)</sup>.

**Persons to be treated as sight-impaired or severely sight-impaired**

2.—(1) For the purposes of section 77 of the Care Act 2014, a person is to be treated as being sight-impaired if the person is certified as such by a consultant ophthalmologist.

(2) For the purposes of that section, a person is to be treated as being severely sight-impaired if the person is certified as such by a consultant ophthalmologist.

Signed by authority of the Secretary of State for Health

Address  
Date

*Name*  
Minister of State  
Department

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<sup>(A)</sup> 2014 c. 23. The power to make regulations is exercisable by the Secretary of State - see section 125(1).

<sup>(B)</sup> This is defined in section 126 of the Care Act 2014.

## **EXPLANATORY NOTE**

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

Section 77(1) of the Care Act 2014 sets out the requirement on local authorities to establish and maintain a register of adults who are ordinarily resident in their area and are sight-impaired or severely sight-impaired. These Regulations specify the persons who are to be treated as being sight-impaired and severely sight-impaired for the purposes of that section.

A separate impact assessment has not been prepared for these Regulations. These Regulations are part of a package of legislative measures and the relevant impact assessment can be requested via [careactconsultation@dh.gsi.gov.uk](mailto:careactconsultation@dh.gsi.gov.uk) or Department of Health, Richmond House, 79 Whitehall, London SW1A 2NS and is available online at <https://www.gov.uk/government/organisations/department-of-health>.