

# Get in on the Act

The Care Act 2014



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### Background

The Care Act was first published as a Bill in the House of Lords on 9 May 2013, following pre-legislative scrutiny. The legislation, which aims to modernise adult social care law, received Royal Assent on the 14 May 2014, becoming the Care Act (the Act).

The Act is divided into three main parts. Part One deals with the reform of adult social care and support legislation and is structured around an individual's journey through the reformed system (be they someone in need of care, or their carer).

The Act will put a limit on the amount those receiving care will have to pay towards the costs of their care, with a cap on care costs beginning in April 2016. The remainder of Part One of the Act, such as national eligibility criteria and universal deferred payments, will come into force in April 2015.

In summary, Part One covers a number of areas, including:

- the general responsibility of local authorities as enshrined in Section 1, 'wellbeing principle'
- assessment of needs and defining eligible need
- charging and the cap on care costs
- paying for care
- safeguarding
- provider failure
- transition for children to adult services.

Part Two of the Act seeks to improve care standards by putting people and their carers in control of their care and support. It also provides a legislative response to the Francis Inquiry by increasing transparency and openness. The intention is to enhance the quality of care.

Part Three of the Act establishes Health Education England and the Health Research Authority.

The LGA has actively promoted the need for a fully funded and reformed care system for a number of years. That is why we engaged closely with the Law Commission's inquiry on adult social care (2008-2011), the resulting Draft Care and Support Bill and the Care Bill itself. The Care Act is many years in the making and the LGA has worked closely with Government, Parliament and partner organisations throughout the process.

### Influencing the legislation

For a number of years local government has been at the forefront of making the case for changing the way that care and support is designed, commissioned and delivered. The LGA broadly supported the proposals set out in the legislation and worked constructively with Government, parliamentarians and stakeholders. This included working closely with Parliament on the draft Care and Support Bill in 2012 which laid the foundations of this Act and was an important milestone in the process of reform.

## **Fair funding**

The LGA worked with our network of parliamentary supporters in the House of Lords and the House of Commons to highlight that all the reforms need to be adequately and fairly funded. This means ensuring that the reforms do not cost more than the fixed envelope for 2015-16. Funding for the on-going costs of the reforms from 2016 onwards will be set out in the Spending Review following the 2015 General Election. The LGA, working with its partners, will influence that process to ensure there is sufficient money to finance the reformed system of care and support.

As part of our parliamentary engagement, we supported amendments to the Act which sought further assurances that the reforms being implemented were fully costed and funded as new burdens. This meant adequate funding both in terms of implementation in 2015/16 (for which £335 million was allocated in the June 2013 Spending Round, with a further £135 million of Care Act costs to be met through the Better Care Fund) and for supporting on-going running costs (money for which will be allocated through future Spending Reviews).

We worked closely with the Association of Directors of Adult Social Services (ADASS) and the Care and Support Alliance, a consortium of over 70 organisations that represent and support older and disabled people, to make the case for a reformed system of care that is fully and fairly funded. There was cross party support for our proposal to create a new mechanism to provide further reassurance on funding. A number of parliamentarians quoted the LGA's analysis about the challenging funding position councils are facing and the impact of this on a reformed system of care.

Whilst our proposals were opposed by Government and therefore did not pass into law, local government's lobbying did garner the support of politicians from across the political divide. In the House of Commons the Care Minister, Norman Lamb MP, responded

to our amendment by highlighting that the Government has "allocated significant additional funding to local authorities for adult care and support, including a transfer from the NHS of £1.1 billion a year by 2014-15 to be spent on social care with a health benefit".<sup>1</sup> He also noted that the Better Care Fund "includes £135 million of additional funding for implementing the Bill in 2015-16."<sup>2</sup>

We also successfully briefed against a proposal that sought to impose a duty on the Secretary of State to use the Care Quality Commission (CQC) to conduct thematic reviews of local authority commissioning regardless of whether there was a particular failure in care that needed investigating. This has prevented a potentially onerous burden being placed on councils.

## **Deferred payment agreements**

In addition to lobbying on funding, the LGA and ADASS proposed a national body to oversee and administer the reformed universal deferred payment agreements scheme. Deferred payments allow people to borrow money from councils to pay for their care and repay it upon the sale of their home. Our proposal sought to prevent local government from being exposed to the financial and reputational risk inherent in this. It would also have benefited those accessing care, by creating a simpler and more consistent system.

Despite the obvious benefits of a national system, the Government opposed the proposal and it does not form part of the legislation. However, by engaging with central government and Parliament, the LGA has been able to highlight the concerns local government has with the planned extension of the system of deferred payment agreements.

Royal Assent does not mark the end of the work required to bring about a new and reformed care and support system. The LGA, working with councils, central government and stakeholders, will continue to influence this agenda. We will respond to the consultation on the regulations and guidance accompanying

the Act and support local authorities as they prepare for implementation. The reassurances the LGA received during the Act's passage through the House of Lords and House Commons will be vital in helping us ensure that local government is properly supported to deliver a reformed care and support system.

## A note of thanks

The LGA would like to place on record its thanks to our Vice Presidents and all those parliamentarians who supported local government during the passage of this Act. We would also like to thank our colleagues at ADASS and the Care and Support Alliance who we worked closely with as we sought to influence the legislation.

## Key features of the Act for local government

The analysis set out below is based on information provided by the joint Programme Management Office for Care Act implementation, a partnership between the LGA, ADASS and the Department of Health. For a more detailed section by section commentary on the Care Act, please refer to the joint Programme Office analysis.<sup>3</sup>

Sections 15, 16, 28, 29 and 72 will take effect from April 2016; the remainder will take effect from April 2015.

### **Wellbeing principle: section 1**

Section 1 creates a new statutory principle which applies to all the functions under Part One of the Act (including care and support and safeguarding), and means that whenever a local authority makes a decision about an adult, they must promote that adult's wellbeing.

### **Prevention: section 2**

Section 2 requires local authorities to ensure the provision of preventative services - that is services which help prevent, delay or reduce

the development of care and support needs (including carers' support needs).

### **Integration: section 3**

Section 3 places a duty on local authorities to carry out their care and support functions with the aim of integrating services with those provided by the NHS or other health-related services.

### **Information and advice: section 4**

Section 4 creates a duty on local authorities to provide an information and advice service which is available to all people in the local authority's area. This service must include information on how to access independent financial advice, regardless of whether or not a resident has eligible care needs.

### **Diversity and Quality of provision (Market Shaping): section 5**

Section 5 creates a general duty for local authorities to promote diversity and quality in the market of care and support providers for people in their local area.

### **Cooperation: sections 6-7**

Sections 6-7 create a general duty to cooperate between the local authority and other organisations which have functions relevant to care and support. This includes a duty on the local authority itself to ensure cooperation between its adult care and support, housing, public health and children's services.

### **How to meet needs: section 8**

Section 8 gives examples of the ways in which a local authority may meet a person's needs under the Care Act. It relates to adults who need care and carers.

### **Assessment: section 9, 10 and 11**

Sections 9-11 set out when a local authority must carry out an assessment of need and what the assessment should cover.

### **Assessment regulations: section 12**

Section 12, which also applies to carers,

enables regulations to specify further detail about the assessment process, including requiring the assessment to be appropriate and proportionate.

### **Eligibility: section 13**

Section 13 requires local authorities to determine whether a person has eligible needs after they have carried out a needs assessment or a carer's assessment. It provides for regulations which will set out the eligibility criteria, including the national minimum level of eligibility at which local authorities must meet a person's care and support needs.

### **Charging: section 14**

Section 14 gives local authorities a general power to charge for certain types of care and support, at their discretion.

### **Cap on Care Costs: sections 15-16**

Sections 15-16 allows for regulations to establish a limit on the amount that adults can be required to pay towards the costs of meeting their eligible needs over their lifetime, and prevents local authorities from making a charge for meeting needs (other than for daily living costs) once an adult's care costs have reached that limit.

### **Financial assessment: section 17**

Section 17 requires a local authority to carry out a financial assessment if they have chosen to charge for a particular service under the power in section 14.

### **Duty to meet needs: section 18**

Section 18 sets out the circumstances establishing an entitlement to public care and support for adults who need care (carers are covered in a separate section). It describes the conditions which must be met for there to be a duty on local authorities to meet their eligible needs.

Section 18 creates a new duty on local authorities to arrange care and support if requested, when the adult would otherwise not be entitled, but could afford to pay for their

care, or if the adult's accrued costs exceed the cap on care costs.

### **Power to meet needs: section 19**

Section 19 provides a broad power for the local authority to meet care and support needs in circumstances where the duty in section 18 does not arise. It also allows for local authorities to temporarily bypass carrying out an assessment of needs, where care and support is needed urgently.

### **Duty and power to meet carers' needs: section 20**

Section 20 establishes a legal obligation to meet a carer's needs for support, on a similar basis to those needing care in section 18. The key conditions for a carer's entitlement are that they have assessed eligible needs for support and that the person for whom they care is ordinarily resident in the local authority area (or present there but of no settled residence).

### **Exception for immigration: section 21**

Section 21 applies to adults who are subject to immigration control. The section provides that local authorities may not meet the care and support needs of such adults solely because they are 'destitute' or because of the physical effects or anticipated physical effects of being destitute. If their needs have arisen for other reasons (e.g. because of a disability, rather than solely because they are destitute), then the prohibition does not apply.

### **Exception for NHS: section 22**

Section 22 provides that in meeting an adult's needs for care and support, a local authority may not provide any healthcare services which are the responsibility of the NHS. However, a local authority may provide some healthcare services in certain circumstances, as long as the service provided is minor and it accompanies some other care and support service which the local authority is permitted to provide.

**Exception for housing: section 23**

Section 23 provides that local authorities may not meet an adult's care and support needs by providing general housing, or anything else required under other legislation specified in regulations. It forms the boundary in law between adult social care and housing.

**Steps to take: section 24**

Section 24 sets out the steps local authorities must take after carrying out the needs assessment or carer's assessment (and the financial assessment where relevant). This includes the preparation of a care and support plan for the individual, confirmation to the individual of which needs will be met by direct payments, and help to the individual to decide how needs will be met.

**Care and support plans: section 25**

Section 25 details requirements for inclusion in the care and support plans and carers' support plans.

**Personal budget: section 26**

Section 26 define a personal budget as a statement of the cost of meeting an individual's needs and the amount the individual and the council must pay towards these costs. It also sets out the financial information to be included in the statement. The definition of the personal budget reflects current policy and practice.

**Review of care and support plan: section 27**

Section 27 requires local authorities to keep care and support plans and carers' support plans under review generally, and to carry out an assessment where they are satisfied that the person's circumstances have changed. The adult can also make a reasonable request to have a review.

**Independent Personal Budget: section 28**

Section 28 establishes independent personal budgets for adults who have eligible needs, and who choose not to have those needs met by their local authority. The independent

personal budget is a statement recording how much of the adult's spending on care will count towards the cap.

**Care account: section 29**

Section 29 requires local authorities to maintain a record ('care account') of an individual's progress toward the cap on the cost of care.

**Choice of accommodation: section 30**

Section 30 provides a framework and powers to set regulations regarding the choice of accommodation, and other matters.

Regulations will broadly maintain current practice. They will set out factors to be considered when it has been determined that an individual's needs would be best met through the provision of care and support in a care home or other type of accommodation, and the adult expresses a preference for particular accommodation.

**Direct payments: sections 31-33**

Sections 31-33 consolidate the existing legislation on direct payments. People with capacity can request a direct payment, and where they meet the conditions set out in this section the local authority must provide direct payments to meet their assessed eligible needs.

It also places a duty on local authorities for adults who lack capacity. It requires local authorities to make a direct payment to an authorised person who requests one, provided five conditions set out in the section are met.

**Deferred payments: sections 34-36**

Sections 34-36 allows regulations to be made to state when a local authority may or must enter into a deferred payment agreement which will allow people to defer paying their care fees by taking out a loan from their council (secured against their property) to pay for care and support. The loan will be repaid upon the sale of the person's home.

Section 35 contains further provisions for deferred payment agreements to help local

authorities recover the costs involved in their provision and to ensure adequate protections for residents and their families. It includes powers to set out what administration costs and interest payments local authorities can charge people, and the information or other consumer protection measures that must be provided to the resident.

### **Continuity of care: section 37-38**

Section 37 sets out the duties that local authorities are under when an individual, and potentially their carer, notifies them that they intend to move from one local authority area to another.

Section 38 applies when the second receiving authority has not carried out the assessment before the person moves. It requires the second authority to provide services based on the care and support plan provided by the first authority. The second authority must continue to provide this care until it has undertaken its own assessment.

### **Ordinary residence: sections 39-41**

Sections 39-41 help local authorities identify a person's ordinary residence (usually based on where they live) for the purposes of providing care and support.

It also provides a mechanism for local authorities to reclaim money they have spent providing care and support to someone for whom they were not in fact responsible.

### **Adult safeguarding: sections 42-47/S2**

Sections 42-47/S2 set out the local authority's responsibility for adult safeguarding for the first time in primary legislation. This includes:

- responsibility to ensure enquiries into cases of abuse and neglect
- establishment of Safeguarding Adults Boards on a statutory footing
- information sharing.

### **Provider Failure: sections 48-52**

Sections 48-52 set out the duty on English local authorities when providers fail. Authorities will be required to temporarily meet those of an adult's needs for care and support which are no longer being met as a result of the provider failing. This specific duty will apply to all individuals present in the authority's area whose needs the local authority is not already meeting, for example those who are self-funders, and those whose services are funded by another local authority.

### **Market Oversight: sections 53-57**

Sections 53-57 set out duties on the CQC to:

- assess the financial sustainability of the most difficult to replace provider.
- support local authorities to ensure continuity of care when providers fail, by informing them where it deems that it is likely that a provider will fail and providing authorities with information they need, including details of the individuals receiving services from the provider in the authority's area.

To support the CQC in doing this, the Act gives the CQC powers to engage providers in mitigation planning by requiring them to develop a sustainability plan or commissioning an independent review of the provider's business.

### **Transition from childhood: sections 58-66**

Sections 58-66 provide local authorities with a duty to assess a child, young carers or child's carer before they turn 18, in order to help them plan if they are likely to have needs once they (or the child they care for) turn 18 and if it will be of 'significant benefit'. It gives local authorities a power to meet the needs of an adult caring for a child with needs for care and support and allows regulations to be made in relation to the exercise of this power.

The sections also include a power to make regulations about assessment for young carers. This is designed to provide continuity so that, where a young person is receiving

children's services, those services will not stop abruptly when the person turns 18, but must continue until adult services have a plan in place.

**Independent advocacy support:  
sections 67-68**

Sections 67-68 place a duty on local authorities, in certain specified circumstances, to arrange an independent advocate to be available to facilitate the involvement of an adult or carer who is the subject of an assessment, care or support planning or review.

**Recovery of charges, Transfer of assets:  
sections 69-70**

Sections 69-70 allow local authorities to recover debt incurred providing care services.

**Five-yearly review: section 71**

Section 71 requires the Secretary of State for Health to review how the capped cost system is operating every five years, the results of which can be used to inform decisions on whether to change the level of the cap, or other parameters, such as general living costs, in the system.

**Part 1 Appeals: section 72**

Section 72 allows for regulations to establish a process through which appeals may be made against decisions taken by a local authority in respect of individuals under Part 1 of the Act. Amongst other things, the regulations may specify the type of decision that may be appealed and the details of the process that must be followed.

The regulations made under the section would provide for investigations to be carried out into things done or not done by the person or body with power to consider the appeal. This would enable overview of the appeals process itself and would, for example, enable the Secretary of State to provide for the involvement of the Local Government Ombudsman in the overall appeal process.

The section also aims to establish a flexible and proportionate appeals system which will

have an element of independence from local authority decision-making. The final form of regulations and guidance will be developed with stakeholders and consulted upon in late 2014 alongside other elements of the reforms that come into effect from April 2016.

**Human Right Act – application to  
provision of regulated care or support:  
Section 73**

Section 73 makes it explicit that care providers regulated by the Care Quality Commission in England (or by equivalent bodies in the rest of the United Kingdom) are bound by the Human Rights Act when providing care and support.

**Delayed discharges: section 74/S3**

Section 74/S3 re-enact and update the provisions which relate to delayed discharges from acute hospitals. They set out the process for notification of discharge when an adult has care needs, requirement for assessment, and amends the mandatory system of fining ("reimbursement"), where the local authority has not carried out its duties by the day of discharge, to a discretionary one.

**Mental health after-care: section 75/S4**

Section 75/S4 clarifies that after-care services provided under section 117 of the Mental Health Act 1983 are to meet a need arising from or related to the mental disorder of the person concerned. They aim to reduce the likelihood of a deterioration in the person's mental disorder (and, accordingly, reducing their risk of requiring admission to hospital for treatment).

**Prisoners: section 76**

Section 76 sets out the responsibilities for provision of care and support for adult prisoners and people residing in approved premises. Where it appears that adults in prison or approved premises have needs for care and support, they should have their needs assessed by local authorities and where they meet eligibility criteria, have services provided by the local authority in question. Prisoners' non-eligible needs will be met by the prison.

**Registers: section 77**

Section 77 requires local authorities to continue to establish and maintain a register of people living in their area who are sight impaired. It also enables local authorities to establish and maintain a similar register of people living in their area who need care and support or are likely to do so in the future.

**Guidance: section 78**

Section 78 gives the Secretary of State a power to issue guidance to local authorities on how they exercise functions under the Act. Before issuing any such guidance the Secretary of State must consult such people as he or she considers appropriate.

**Delegation: section 79**

Section 79 provides for a new power for local authorities to delegate certain care and support functions to a third party. This is a new discretion for local authorities, to be determined locally.

**Cross border placements: section S1**

Section S1 makes provision for a person ordinarily resident in England, who has care and support needs and requires residential accommodation to meet those needs, to be provided with that accommodation in another part of the UK.

It also allows for such placements to be made in England for people who are ordinarily resident in Wales, or whose care and support is provided under the relevant Scottish or Northern Irish legislation.

<sup>1</sup> Hansard, House of Commons, column 86, 10 March 2014, available at: <http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140310/debtext/140310-0003.htm>

<sup>2</sup> Ibid.

<sup>3</sup> For a full analysis from the Joint Care and Support Reform Programme Office: [http://www.local.gov.uk/web/guest/care-support-reform/-/journal\\_content/56/10180/5761381/ARTICLE](http://www.local.gov.uk/web/guest/care-support-reform/-/journal_content/56/10180/5761381/ARTICLE)





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