

Draft Regulations laid before Parliament under section 125(4)(i) of the Care Act 2014, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2014 No. 0000

SOCIAL CARE, ENGLAND

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

Made - - - - *xxxx*

Coming into force in accordance with regulation 1(1)

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

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

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Care and Support (Children's Carers) Regulations 2014 and come into force immediately after section 62(1) of the Care Act 2014 comes into force.

(2) In these Regulations, "the Act" means the Care Act 2014.

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

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

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

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

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

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

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- (a) 2014 c.23. The powers to make regulations are exercisable by the Secretary of State, *see* section 125(1). Section 62 was brought into force on 1 October 2014 by S.I. 2014/2473 for the purposes of making regulations.
 - (b) *See* section 60(7) to (9) of the Act for the meaning of "carer" in relation to a child.
 - (c) *See* section 10(3) of the Act for the meaning of "carer".

- (a) the Care and Support (Independent Advocacy Support) (No. 2) Regulations 2014^(a);
- (b) the Care and Support (Charging and Assessment of Resources) Regulations 2014^(b);
- (c) the Care and Support (Personal Budget: Exclusion of Costs) Regulations 2014^(c); and
- (d) the Care and Support (Direct Payments) Regulations 2014^(d).

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

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

Modification of section 8 (how to meet needs)

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

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

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

Modification of section 17 (assessment of financial resources)

6. Section 17 of the Act applies as if, after subsection (3), there were inserted—

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

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

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

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

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

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

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

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

Modification of section 25 (support plan)

10. Section 25 of the Act applies as if—

- (a) in subsection (1), after “in the case of a carer”, there were inserted “or child’s carer”;

(a) S.I. 2014/2889.

(b) S.I. 2014/2672.

(c) S.I. 2014/2840.

(d) S.I. 2014/2871.

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

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

Modification of section 27 (review of support plan)

11. Section 27 of the Act applies as if—

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

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

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

Modification of regulations on charging and assessment of resources

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

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

Modification of regulations on personal budgets

14. The Care and Support (Personal Budget: Exclusion of Costs) Regulations 2014 apply as if, in regulation 1(2), in the definition of “intermediate care and reablement support services”, after “or 20”, there were inserted “or 62(1)”.

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)

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

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

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

Regulation 3 prohibits a local authority, in exercising the power under section 62(1) of the Act, from meeting the needs of the child’s carer by providing care and support to the child in question. As a result, for example, section 14(3) (prohibition on charging carers for meeting their needs by providing care and support to the person cared for) does not apply to the exercise of the power under section 62(1).

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

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

The more complex modifications are explained below.

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

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

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

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