

EXPLANATORY MEMORANDUM TO
**THE CARE AND SUPPORT (SIGHT-IMPAIRED AND SEVERELY SIGHT-
IMPAIRED ADULTS) REGULATIONS 2014**

2014 No. 2854

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument specifies the persons who are to be treated as being sight-impaired and severely sight-impaired for the purpose of registration with local authorities.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Section 77(1) of the Care Act 2014 sets out a 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. Subsection (2) allows for regulations to specify the persons who are to be treated as sight-impaired or severely sight-impaired for the purpose of that section.

4.2 This provision replaces and updates the requirement on local authorities under Section 29(4)(g) of the National Assistance Act 1948 to compile and maintain registers of the adults to whom Section 29(1) of that Act relates.

5. Territorial Extent and Application

5.1 This instrument applies to England only.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Sight Registers

7.1.1 Under Section 29(4)(g) of the National Assistance Act (NAA) 1948, local authorities are required to compile and maintain classified registers of the persons to whom Section 29(1) of the Act relate (that

is, adults who are blind, deaf or dumb, or who suffer from mental disorder, or who are substantially and permanently disabled). The purpose of such provision was to enable local authorities to plan services for certain groups of people.

- 7.1.2 Whilst the scope of the existing requirement is broad and potentially includes a wide range of disability, in practice local authorities have rarely used registers for most groups of individuals, in part because registration has been optional for the person concerned. However, there is evidence that registers for sight impaired and severely sight impaired people are more complete and accurate, and that ophthalmology services are more accustomed to recording and informing people for inclusion in local authority registers. There are also greater incentives for the individual, since being registered as sight impaired by the local authority can act as a passport to other non-social care benefits including travel concessions, TV licence exemptions, Blind Person's Allowance etc.
- 7.1.3 Responding to feedback as to effectiveness and completeness of most current registers, the Law Commission recommended in its review of adult social care law (Law Com 326, HC 941, May 2011) that local authorities should retain the requirement to hold a register of sight impaired people, but should only have a power, rather than a duty, to hold registers in all other cases.

7.2 **Registers Regulation**

- 7.2.1 Local authorities must keep a register of adults who are severely sight impaired and sight impaired in their local areas. The Certificate of Vision Impairment (CVI) form is used by the consultant ophthalmologist to formally certify someone as sight impaired, and also acts as a referral for an assessment of care and support needs, if the individual is not yet known to social services. Its secondary purpose is to record data to be used by Moorfields Eye Hospital for research at the Royal College of Ophthalmologists into the underlying causes and the effects of visual impairment.
- 7.2.2 If the person receiving a CVI has given his or her consent to be registered, then the local authority is able to add them to their register. However if consent has not been given, this should not stop the person being assessed for their care and support needs. Local authorities must undertake an assessment for any adult who appears to have any level of needs for care and support. When carrying out the assessment, local authorities must identify the person's needs and the impact these have on the individual's wellbeing, and the outcomes the adult wishes to achieve in their day-to-day life. The assessment must be appropriate and proportionate, so that people have as much contact with the authority as they need.

7.2.3 Whether a person is certified as sight-impaired or severely sight impaired depends on the individual's visual acuity and the extent to which their field of vision is restricted.

7.2.4 There are two levels of certification: severely sight impaired and sight impaired:

1. Severely sight impaired

“Severely sight impaired” is now the preferred terminology used instead of “blind”. The Department of Health's *Explanatory Notes for Consultant Ophthalmologists and Hospital Eye Clinic Staff* states that people who are severely sight impaired can be classified into three groups:

Group 1: People whose eyesight is below 3/60 Snellen: most people who have visual acuity below 3/60 Snellen.

Group 2: People who are 3/60 but below 6/60 Snellen: people who have a very contracted field of vision.

Group 3: People who are 6/60 Snellen or above: people in this group who have a contracted field of vision especially if the contraction is in the lower part of the field.

Vision acuity is measured using the Snellen test. A Snellen test usually consists of a number of rows of letters which get smaller as you read down the chart.

In addition to the 3 groups, a person is likely to be certified severely sight impaired in the following circumstances:

- How recently the person's eyesight has failed? A person whose eyesight has failed recently may find it more difficult to adapt than a person with same visual acuity whose eyesight failed a long time ago. This applies particularly to people who are in group 2 and 3 above.
- How old the person was when their eyesight failed? An older person whose eyesight has failed recently may find it more difficult to adapt than a younger person with the same defect. This applies particularly to people in group 2 above.

2. Sight impaired

The *Explanatory Notes for Consultant Ophthalmologists and Hospital Eye Clinic Staff* states that a person can be certified as sight impaired if they are ‘*substantially and permanently handicapped by defective vision caused by congenital defect or illness or injury*’.

People who are certified as sight impaired are entitled to the same help from their local social services as those who are certified as severely sight impaired, for example, being registered as severely sight impaired by the local authority acts as a passport to other non-social care benefits including travel concessions, TV licence exemptions, Blind Person's Allowance etc. However, they may not be eligible for certain social security benefits and tax concessions for people who are certified as severely sight impaired.

8. Consultation outcome

- 8.1 The consultation on the package of regulations relating to Part One of the Care Act was published on 5 June 2014, and ran for ten weeks to 15 August. In order to reach a comprehensive and varied pool of experience and expertise, the consultation contained a mix of digital and face-to-face meetings and events with the full spectrum of stakeholders, including: people receiving care and support and their carers; social workers and other frontline practitioners; local authority finance managers, commissioners and elected members; voluntary and private social care providers; national representative groups and other charities and trusts; and NHS agencies, housing departments, DWP Job Centre Plus and other key partners involved in the reforms. In total, the consultation drew over 4,000 responses from many different sources. Responses were carefully analysed and, where appropriate, changes were made to regulations.
- 8.2 A consultation response document will be published at: <https://www.gov.uk/government/topics/social-care>
- 8.3 There was one specific consultation questions relating to this instrument:
Question 79: Should certification of CVIs be extended to senior ophthalmologists, or should this continue to be carried out by consultant ophthalmologists as is currently the case?
- 8.4 There were six responses to Q79 that showed support of ANY ophthalmologist being able to certify and some expressed that there is a case for this function to be undertaken by suitably trained optometrists too.
- 8.5 The Association of Directors of Adult Social Services, the Royal College of Ophthalmologists, the Royal National Institute of Blind People and the Moorfields Eye Hospital have all been supportive of the proposed approach on sight registers.
- 8.6 The Department is in discussion with the Royal College of Ophthalmologists, NHS Employers and Health Education England about exploring the idea of other suitably qualified non consultant grades being able to certify. In the light of consultation responses, the Department will be considering further whether and how we might make this change in future, in conjunction with the relevant

professional and patient groups and ensuring consistency with other legislation, such as the Equality Act. At the current time, the regulation is based on continuation of current practice whereby the function is carried out by a consultant ophthalmologist.

9. Guidance

- 9.1 Statutory guidance to support implementation of Part One of the Care Act was subject to public consultation as part of the consultation on regulations under that part. The guidance will be published at <https://www.gov.uk/government/topics/social-care> . This guidance is not itself the subject of parliamentary scrutiny.
- 9.2 A section on Sight Registers is contained in the guidance which is intended to provide local authorities with the information they need about how they should meet the legal obligations placed on them by the Act.

10. Impact

- 10.1 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 <https://www.gov.uk/government/organisations/department-of-health>

11. Regulating small business

- 11.1 The legislation does not apply to small businesses.

12. Monitoring & review

- 12.1 The Department of Health, working with the relevant professional and patient groups will be considering further whether other suitably qualified non consultant grades should be able to certify CVIs.

13. Contact

Kim Dhadda at the Department of Health Tel: 0207 210 5356 or email: kim.dhadda@dh.gsi.gov.uk. can answer any queries regarding the instrument.