

# CARE ACT 2014

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## EXPLANATORY NOTES

### TERRITORIAL EXTENT AND APPLICATION

34. The Act extends to England and Wales save where specified otherwise.

#### *Territorial extent and application: Wales*

35. **Part 1** (Care and Support) in general extends to England and Wales but applies to local authorities in England only. This is because social care is a devolved matter for Wales. However, the provisions in relation to cross-border placements (section 39(8) and Schedule 1), certain provisions on provider failure (sections 49 to 52) and the Human Rights Act 1998 provision (section 73) also apply to Wales. The Law Commission's report on adult social care makes recommendations in relation to both England and Wales, but the National Assembly for Wales has passed its own legislation, the Social Services and Well-being (Wales) Act 2014.
36. **Part 2** (Care Standards) also extends to England and Wales but applies to England only. This Part amends provisions in the 2008 Act relating to the Care Quality Commission (CQC) and provisions in the National Health Service Act 2006 (the 2006 Act) and the Health and Social Care Act 2012 relating to regulation of NHS foundation trusts. The CQC's functions only apply in England by virtue of the fact that the "regulated activities" which it regulates must involve, or be connected with, the provision of health or social care in, or in relation to, England: section 8(2)(a) of the 2008 Act. NHS foundation trusts are established under section 30 of the 2006 Act to provide goods and services for the purposes of the health service in England only.
37. In Part 3 (Health), the majority of provisions relating to Health Education England (HEE) extend to England and Wales and those relating to the Health Research Authority (HRA) extend to the whole of the United Kingdom. The functions of HEE only affect England, by virtue of the fact that they are derived from the Secretary of State's functions to do with the planning and delivery of education and training for persons connected with the provision of health services in England (section 1F of the 2006 Act). However, while neither HEE nor the HRA will take on any devolved functions, there are some implications for the devolved administrations in relation to the establishment of these bodies as non-departmental public bodies.
38. HEE will have a power to exercise any of its education and training functions on behalf of a devolved authority, but only when it is asked to do so: paragraph 17 of Schedule 5.
39. The Act places the HRA and each of the devolved administrations under a duty to co-operate with one another with a view to co-ordinating and standardising the regulation of health and social care research in the UK: section 111(4). The HRA and certain specified bodies which carry out some devolved functions in relation to health and social care research will also be under a duty to co-operate with each other with a view to co-ordinating and promoting regulatory practice: section 111(1) In relation to Wales, this is the Human Tissue Authority.
40. In relation to England and Wales, the HRA will now also undertake the Secretary of State's power to approve the processing of confidential patient information for the

purposes of medical research. HRA's committee established under paragraph 8(1) of Schedule 7 will advise HRA and the Secretary of State in respect of their respective functions under the [Health Service \(Control of Patient Information\) Regulations 2002 \(S.I. 2002/1438\)](#) ("Control of Patient Information Regulations") which extend to England and Wales: see section 117.

41. The HRA will also be able to take on related functions from any of the devolved administrations where the parties agree: paragraph 15 of Schedule 7. Steps will also be taken to harmonise the legislation relating to ethics committees across the UK.
42. [Section 120](#) on Trust Special Administration remit extends to England and Wales but applies to England only.
43. [Section 121](#) (Integration Fund) extends to England and Wales but applies to England only. This section amends and inserts a new provision in the National Health Service Act 2006 relating to the National Health Service Commissioning Board and clinical commissioning groups, both of which exercise functions in relation to the health service in England only.
44. Regarding section 122 (Information), subsections concerning the functions of the Health and Social Care Information Centre (HSCIC) under the Health and Social Care Act 2012 apply to England only, as HSCIC currently has functions in relation only to England. However the provisions for the advice to be given to HSCIC by the committee to be appointed by the HRA under paragraph 8(1) of Schedule 7 apply to England and Wales, as further functions may be conferred on HSCIC in regulations under section 251 of the National Health Service Act 2006. Any implications for Wales in relation to the function described at paragraph 8(1)(c)(i) of Schedule 7 would arise in the context of making of regulations, rather than as a result of this provision, and would therefore be agreed at that point. The implications for Wales would arise as a result of the extent of section 251 of the 2006 Act and the Control of Patient Information Regulations.

### ***Territorial extent and application: Northern Ireland***

45. Social care is a devolved matter for Northern Ireland so Part 1 in general applies to local authorities in England only. However, the provisions in relation to cross-border placements (section 39(8) and Schedule 1), certain provisions on provider failure (sections 49 to 52) and the Human Rights Act 1998 provision (section 73) extend to Northern Ireland. Certain provider failure duties also apply to Health and Social Care trusts in Northern Ireland.
46. In Part 3, while neither Health Education England nor the Health Research Authority will take on any devolved functions, there are some implications for the devolved administrations in relation to the establishment of these bodies as non-departmental public bodies.
47. Health Education England (HEE) will have a power to exercise any of its education and training functions on behalf of Northern Ireland, but only when it is asked to do so: paragraph 17 of Schedule 5.
48. The provisions on Health Research Authority (HRA) extend to the whole of the United Kingdom. The Act places the HRA and each of the devolved administrations under a duty to co-operate with one another with a view to co-ordinating and standardising the regulation of health and social care research in the UK: section 111(4). The HRA and certain specified bodies which carry out some devolved functions in relation to health and social care research will also be under a duty to co-operate with each other with a view to co-ordinating and promoting regulatory practice: section 111(1) In relation to Northern Ireland, this is the Human Tissue Authority, the licensing authority for the purposes of the Medicines Act 1968 and the Administration of Radioactive Substances Advisory Committee.

49. The HRA will also be able to take on related functions from Northern Ireland where the parties agree: paragraph 15 of Schedule 7. Steps will also be taken to harmonise the legislation relating to ethics committees across the UK.

***Territorial extent and application: Scotland***

50. Social care is a devolved matter for Scotland so Part 1 in general applies to local authorities in England only. However, the provisions in relation to cross-border placements (section 39(8) and Schedule 1), certain provisions on provider failure and the Human Rights Act 1998 provision (section 73) extend to Scotland.
51. In Part 3, while neither Health Education England nor the Health Research Authority will take on any devolved functions, there are some implications for the devolved administrations in relation to the establishment of these bodies as non-departmental public bodies.
52. Health Education England (HEE) will have a power to exercise any of its education and training functions on behalf of Scotland, but only when it is asked to do so: paragraph 17 of Schedule 5.
53. The provisions on Health Research Authority (HRA) extend to the whole of the United Kingdom. The Act places the HRA and each of the devolved administrations under a duty to co-operate with one another with a view to co-ordinating and standardising the regulation of health and social care research in the UK: section 111(4). The HRA and certain specified bodies which carry out some devolved functions in relation to health and social care research will also be under a duty to co-operate with each other with a view to co-ordinating and promoting regulatory practice: section 111(1) In relation to Scotland, this is the Human Tissue Authority.
54. The HRA will also be able to take on related functions from Scotland where the parties agree: paragraph 15 of Schedule 7. Steps will also be taken to harmonise the legislation relating to ethics committees across the UK.