

EXPLANATORY MEMORANDUM TO
THE CARE AND SUPPORT (CONTINUITY OF CARE) REGULATIONS 2014
2014 No. 2825

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 The provisions in the Care Act 2014 require local authorities to take steps to ensure continuity in meeting a person's care and support needs where that person is moving to live in a different local authority area. Where a local authority has not already carried out an assessment before the person moves and put in place a care and support plan, the second authority must meet the needs that were being met by the first authority until it carries out its own assessment.
 - 2.2 The instrument sets out what matters the second local authority must consider in meeting needs when a person moves who they have not assessed before they moved. Local authorities are required to consider any existing care and support plan for the individual, their views and preference with respect to their care and support, the outcomes they wish to achieve as well as changes in the individual's circumstances that arise as a result of the move, which could have a significant impact on the person. In order for the person's needs to be adequately provided for in the new setting, the local authority is required to have regard to these matters when meeting the individual's needs.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Context**
 - 4.1 The Care Act 2014 sets out a new legal framework which is intended to provide continuity of care when a person chooses to move home from one area in England to another.
 - 4.2 Sections 37 and 38 of the Care Act provide for the continuity of care and support when a person moves between local authority areas. Section 37 sets out the duties on the authorities concerned, which include the requirement for the second authority (in the area to which the person proposes to move) to carry out appropriate assessments and other steps set out in the Act in relation to the person, where appropriate. Assessments should be carried out and arrangements put in place to meet needs before the move takes place, but if that is not done, section 38 imposes on the second authority an interim duty to meet needs once the person has moved into its area.

- 4.3 Section 38(1) requires the second authority to meet the person's needs on the basis of the needs that were being met by the first authority. It must do this until it has carried out all the requirements under Part 1 of the Act in respect of the person. This ensures that there is no gap in the provision of care and support in the period before the second authority carries out its assessments and meets any eligible needs. Section 38(8) provides a power to make regulations specifying matters to which the second authority must have regard in deciding how to perform this interim duty. These regulations specify those matters.

5. Territorial Extent and Application

- 5.1 This instrument applies to England.

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 There is currently no legislation or policy guidance around continuity of care when people move between local authority areas. This means that people with care and support needs who wish to move to a new area under the current system depend on local authorities' own practice to protect them from the risk of discontinuity of care.
- 7.2 Feedback from people who need care and support has shown that such local policies can be variable, and that there have over a number of years been concerns about moving, because of the uncertainty over whether they would have eligible needs in the new authority, and whether their care needs might not be met during the move, risking them falling into crisis. Such concerns in part led to the recommendation of the Law Commission in its report on adult social care law (Law Com 326, HC 941, May 2011) to propose new rights which were intended to guard against such gaps in care (see in particular recommendation 50).
- 7.3 The Care Act already goes some way to reducing the risks associated with local variation in which needs are met, by introducing national eligibility criteria to set a minimum threshold of needs which must be met in all areas (under Section 13 of the Act). However, there remains the risk that people moving areas may risk a gap in the care they need, for example where local authorities do not respond quickly enough to assess their needs or put care in place. Sections 37 and 38 are intended to protect people from such potential discontinuity, by putting in place a framework of duties for both the originating ("first") local authority and the area to which the person is moving (the "second" local authority) which ensure that the person's intention to move is recorded, and that specified steps are taken to plan and prepare.
- 7.4 The Act requires local authorities to assess a person once they have been informed of the individual's intention to move to the authority's area, and the authority in question has assured itself that the person's intention to

move is genuine. Both the first and second authorities have to work together to support planning for the move, including sharing relevant information. They both also have to keep the person moving informed of progress about how their needs will be met in the new area.

7.5 The second authority should carry out an assessment of needs in advance of the person moving where possible, in order to be able to put in place arrangements to meet their needs from the day of their arrival. However, if this has not proved possible, and no arrangements are in place, the Act requires the second authority, from the day of arrival, to meet any needs which the first authority was meeting immediately prior to the move. This duty provides continuity of care during the move, by ensuring that the second authority meet the person's needs on an interim basis, until it has carried out its own assessment and taken whatever steps are required by the Act.

7.6 Where the second authority is subject to the duty to meet the person's needs in such circumstances, it must take into consideration certain matters in determining how to do so. This is to support continuity in how those needs are met during this interim period, to reduce the potential impact on the person concerned. The Continuity of Care Regulations sets out what matters the second authority should take into consideration. For example, the Regulations require the authority to consider whether the adult has a carer who is moving with him/her, or whether they will be closer to family and friends. Support from a carer or family may change the person's circumstances and mean that their needs also change, meaning that different services or types of support may be needed in the new area.

7.7 While the second authority is required to meet the care and support needs identified by the first authority until it has carried out its own assessment and taken further steps as necessary, it is recognised that the second authority might meet these needs in a different way. This could be for various reasons, such as having different providers in the second authority compared with the first authority.

8. Consultation outcome

8.1 The detail of the policy has been informed by a Private Members Bill brought by Baroness Campbell of Surbiton, and consultations on the White Paper, *Caring for Our Future*, and on the Draft Care and Support Bill. There was general support across all stakeholders about these proposals as they will give adults confidence that their care and support would continue if they decided to move home to a different authority in England.

8.2 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.

- 8.3 The Government response to the consultation was published on 23 October and can be found here:

<https://www.gov.uk/government/consultations/updating-our-care-and-support-system-draft-regulations-and-guidance>

- 8.4 The continuity of care process was widely seen as aligning with good current practice. The Department asked whether there were further circumstances to which a local authority should have regard in deciding how to discharge their duty in relation to continuity of care under section 38(1) of the Act. The majority of respondents replied that the proposals for the instrument and guidance were comprehensive and useful.
- 8.5 Some respondents commented on the level of detail provided in the guidance arrangements for dealing with equipment when a person is moving. The Department has reflected these comments in the re-drafted guidance.
- 8.6 Other stakeholders reflected on the need to specify timescales. Recognising that a single timeframe would not be appropriate to all cases, the Department has amended the guidance in relation to the importance of timely actions and collaboration between the local authorities with the person who is moving.
- 8.7 Lastly, many respondents felt continuity of support for carers should be reflected better. The Department has accordingly amended the guidance to better reflect the fact that carers who will continue to care for the adult when they move are also covered by the provisions of the Act on continuity of support.

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 was published at <https://www.gov.uk/government/publications/care-act-2014-statutory-guidance-for-implementation> on 23 October. This guidance is not itself the subject of parliamentary scrutiny.

10. Impact

- 10.1 A separate impact assessment has not been prepared for this instrument. The instrument is 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.legislation.gov.uk/ukpga/2014/23/resources>

10.2 That assessment concludes that the instrument does not have an impact on business, charities or voluntary bodies.

10.3 There is expected to be some impact on the public sector, as people who receive care and support become more confident that they can move without the care and support being disrupted. The impact assessment assumes that it may take a couple of years for people to gain this confidence in the system and that from then people with care and support needs will move at similar levels of migration to the rest of the population. The impact assessment assumes that most people will need a full needs assessment in their new local authority owing to the change in circumstances, and that the majority of those moving will require domiciliary care. Based on these assumptions the costs to local authorities using 2015/2016 prices should rise from £4.4m in 2015/16 to £9.9m in 2016/17 and then plateau at £13.4m annually from 2017/2018.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Government has committed to keeping the impact of the package of regulations under review. We will monitor the impacts of implementation of the policies contained within the Act and regulations under it on an ongoing basis. This will include continuing to work closely with local government to understand the impact of implementation of the reforms.

13. Contact

13.1 Julie Sorensen at the Department of Health Tel: 0207 210 4944 or email: Julie.Sorensen@dh.gsi.gov.uk can answer any queries regarding the instrument.