

**EXPLANATORY MEMORANDUM TO**  
**THE CARE AND SUPPORT (PERSONAL BUDGET EXCLUSION OF COSTS)**  
**REGULATIONS 2014**

**2014 No. 2840**

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 purpose of this instrument is to require local authorities to exclude from an adult's personal budget the costs to the local authority of providing the adult with intermediate care and reablement services in circumstances where those services are provided free of charge.

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

3.1. None.

**4. Legislative Context**

4.1. Section 26 of the Care Act 2014 ("the Act") provides that a personal budget is a statement of the costs to the local authority of meeting those of the adult's needs which it is required or decides to meet as mentioned in section 24(1) of the Act. The Care Act places personal budgets into legislation for the first time, as a mandatory element of the care and support plan, or support plan for carers.

4.2. Section 26(4) of the Act confers regulation making powers for the purpose of excluding costs to a local authority from a personal budget if the costs are incurred in meeting needs for which the authority does not make a charge, or is not permitted to make a charge.

4.3. Personal budgets are not currently defined in law, and although there is a common understanding of what they are, this lack of a legal definition gives flexibility for individual local authorities to approach them differently. The Care Act places the personal budget on a clear legislative footing for the first time as part of the care and support plan. This instrument excludes the costs of reablement from the personal budget where it is provided as a free service and there are currently no equivalent or similar provisions.

**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. Personal budgets are central to the Government's personalisation agenda. The *Vision for Adult Social Care* (2010) first set out the Government's aim that everyone who is eligible for a personal budget should have access to one, preferably as a direct payment, by April 2013. However, pace of delivering this goal has been uneven across the country, and the national objective was not met. Recent data for 2013/14 shows that 62% of eligible users received self-directed support (a personal budget and/or direct payment) at a national level. However, at an individual local authority level and between client groups, this rate of provision varies. There is anecdotal evidence that people using care and support have found it very difficult to get a personal budget in some places and there are still too many barriers, including how information and advice is provided.
- 7.2. The Care Act addresses these deficiencies in delivery by enshrining entitlements to personal budgets for the first time, as part of the care and support plan. The personal budget statement in the plan will set out the costs of meeting the person's needs, and will break this down into what the local authority will pay, and what the individual may have to contribute by way of charges, if appropriate. The personal budget is therefore intended to be a clear statement of the costs to the local authority, to help people plan and exercise choice and control over how their needs are met by giving them information to help them decide whether they wish to take a direct payment in lieu of services.
- 7.3. However, in a few limited circumstances, there may be reasons why certain costs should not be included in the personal budget. This instrument sets out the circumstances in which that is the case. It states that a local authority must exclude costs of meeting needs from the personal budget if the costs are incurred in meeting needs by the provision of intermediate care and reablement support services for which the authority does not charge.
- 7.4. These types of services are usually provided under Section 2 of the Care Act for the purpose of preventing or delaying the development by the adult of needs for care and support. Usually, this would mean that such services are provided on a more "universal" basis (i.e. not subject to a formal needs assessment under the Act) and targeted at specific populations. In order for such universal services to be viable and economically sustainable, the local authority will often need to arrange them at scale.
- 7.5. Whilst these types of support would ordinarily be provided under Section 2 of the Act, in a small number of cases people with eligible needs may receive intermediate care and/or reablement services as part of a package of care to meet their needs under Sections 18 to 20 of the Act.
- 7.6. Intermediate care and reablement support services are designed to be implemented quickly, and to be flexible in nature. They therefore are not appropriate to be developed in the same way as longer term care packages (i.e. the establishment of a personal budget and discussion about how the needs will be met during the care planning process). In addition, if individuals were to take a direct payment in lieu of receiving the service, this may reduce the viability of the offer and the ability to provide such services for a larger group of the local population. This may also introduce a disparity, whereby individuals receiving that type of support under

certain provisions in the Act would have an entitlement to a direct payment, whereas others receiving the same services under other provisions would not.

- 7.7. A further disparity may also otherwise occur from April 2016, when the Government's funding reforms for adult care and support are implemented. Under the provisions for those reforms, the cost to the local authority of meeting the adult's eligible needs would count towards the cap on care costs. If adults under some circumstances were able to count the costs of intermediate care and reablement, but were not able to similarly count them when received in other circumstances, this may create unequal outcomes.
- 7.8. The Care and Support (Preventing Needs for Care and Support) Regulations 2014 prohibit a local authority from making a charge for such services where they are provided for a period of less than six weeks under Section 2 of the Act. Similarly, the Care and Support (Charging and Assessment of Resources) Regulations 2014 prohibit a local authority from charging for the provision of such services if they are provided for less than six weeks under Sections 18 to 20. In both cases, therefore, the local authority may not charge, and the cost to the individual of the services would be zero. Therefore, regardless of the impact on the amount in the personal budget, the individual will not have been required to pay towards the cost of these services, so will not be financially disadvantaged.
- 7.9. Therefore, this instrument provides that the costs of the intermediate care and reablement services must be excluded from the personal budget amount. This ensures consistency in application between different provisions under the Act.

## **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 The consultation asked specific questions to clarify whether the guidance and regulations were clear on the exclusion of costs from the personal budget. There was consensus from respondents that this aspect of the guidance was clear. However, respondents also asked for clarification in the guidance with more case studies and examples. Therefore the guidance was amended with more examples of use of personal budgets in practice to accompany the guidance.
- 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>

## **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 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](mailto: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. The Department have consistently set out that there may be some aspects of care and support provision where personal budgets are not appropriate. Reablement/intermediate care should usually be provided as a free, universal service under Section 2 of the Act, and therefore would not contribute to the personal budget amount (and in future to the cap on care costs). However, in some circumstances, a local authority may choose to combine reablement/intermediate care with aspects of care and support to meet eligible or ongoing needs, which would require a personal budget to be developed.

10.3. Removing the cost of provision of these services from the personal budget in these scenarios ensures that the allocation of reablement/intermediate care is applied uniformly across all local authorities, and in future people progress towards the cap on care costs in a fair and consistent way. This represents current practice. The ASCOF definition of personal budgets sets out the reablement should not be incorporated. Therefore, the Department does not view this as an additional impact on local authorities.

## **11. Regulating small business**

11.1. The Order will have no bearing on the regulation of existing small businesses.

## **12. Monitoring and 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**

Kevin Kitching at the Department of Health Tel: 0113 254 6745 or e-mail: [Kevin.kitching@dh.gsi.gov.uk](mailto:Kevin.kitching@dh.gsi.gov.uk) can answer any queries regarding the instrument.