

EXPLANATORY MEMORANDUM TO
THE CARE ACT 2014 (ISLES OF SCILLY) ORDER 2015

2015 No. 642

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 instrument provides for certain provisions of the Care Act 2014 (“the Act”), in their application to the Isles of Scilly, to have effect with specified modifications and makes an amendment to an existing Order relating to the Isles of Scilly.

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

3.1. None.

4. Legislative Context

4.1. The Act makes provision, amongst other things, to reform the law in England relating to care and support for adults and to support for carers and to establish and make provision about the Health Research Authority. Section 128(1) of the Act provides that the Act extends to England and Wales. The reference to “England” includes the Isles of Scilly^a.

4.2. Section 128(3) of the Act provides for certain provisions of the Act, including those relating to the Health Research Authority to extend also to Scotland and Northern Ireland^b.

4.3. Section 128(4) of the Act provides a power for the Secretary of State, by order, to provide that specified provisions of the Act, in their application to the Isles of Scilly, have effect with such modifications as may be specified. The instrument provides for Part 1 (care and support) and Chapter 2 of Part 2 (Health Research Authority) (“the relevant provisions”), in their application to the Isles of Scilly, to have effect as if the definition of “local authority” in section 1(4) of the Act included a reference to the Council of the Isles of Scilly. Accordingly, the relevant provisions will apply in relation to the Council of the Isles of Scilly as they apply in relation to other local authorities in England.

^a See Schedule 1 to the Interpretation Act 1978.

^b Section 128(1) is also subject to section 128(2) of the Act which provides for an amendment, repeal or revocation to have the same extent as the enactment being amended, repealed or revoked (but the amendment made by section 66(3) of the Act to the Chronically Sick and Disabled Persons Act 1970 extends to England and Wales only).

Part 3 of the National Health Service and Community Care Act 1990 (“Part 3”) concerns community care in England and Wales and related functions of local authorities. The Isles of Scilly (Community Care) Order 1993 (“the 1993 Order”) provides for Part 3 to apply to the Isles of Scilly with the modification that in its application to those Isles, any reference to a local authority is to be construed as including a reference to the Council of the Isles of Scilly. The 1993 Order also provides for section 1 of the Community Care (Residential Accommodation) Act 1992 (“the 1992 Act”) to apply to the Isles of Scilly with an identical modification. In relation to Part 3, the instrument amends the reference to a local authority so that it refers to a local authority in England. Accordingly, it is a reference to a local authority in England (and not a local authority in Wales) in Part 3 that is to be construed as including the Council of the Isles of Scilly. The instrument also amends the 1993 Order to omit the reference to section 1 of the 1992 Act.

5. Territorial Extent and Application

5.1. The instrument applies in relation to England. The definition of “local authority” modified by the instrument is limited to local authorities in England.

6. European Convention on Human Rights

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

7. Policy background

7.1. Part 1 of the Act is a crucial step in delivering the commitments in the Government’s white paper *Caring for our future: reforming care and support*, which set out our vision for a modern system which promotes people’s well-being by enabling them to prevent and postpone the need for care and support and to pursue opportunities, including education and employment, to realise their potential. It takes forward the recommendations of the Law Commission to consolidate existing care and support law into a single, unified, modern statute. It refocuses the law around the person not the service, strengthens rights for carers to access support, and introduces a new adult safeguarding framework. It is intended that the bulk of these provisions will substantively come into force from April 2015. The Act also provides for the proposals of the Commission on the Funding of Care and Support to introduce a cap on the care costs that people will spend in their lifetime, although these provisions will not come into force in April 2015. The Council of the Isles of Scilly provides social services to persons in need of assistance, and the Department of Health’s policy objective is that Part 1 of the Act should apply in relation to the Council as it applies in relation to other local authorities. Similarly, it is the Department’s policy objective that provisions of Part 3 of the National Health Service and Community Care Act 1990 (which concerns community care in England and Wales and related functions of local authorities), as they apply to

English local authorities, should apply in relation to the Council. The amendment to the 1993 Order to omit the reference to section 1 of the 1992 Act reflects the fact that, following the reforms under the Care Act 2014, this reference will no longer be necessary.

7.2. Chapter 2 of Part 3 of the Act establishes a new body known as the Health Research Authority with functions relating to health and social care research, including the duty under section 111(6) to publish guidance on principles of good practice in the conduct and management of health and social care research. Under section 111(7), a local authority in England must have regard to this guidance and the intention is for this to include the Council of the Isles of Scilly.

8. Consultation outcome

8.1. The instrument makes a technical modification to the definition of “local authority” in the Act in order to ensure that the Act applies effectively in relation to the Isles of Scilly and makes technical amendments to other legislation to reflect that modification and the reforms under the Act generally. The instrument has therefore not been subject to public consultation.

9. Guidance

9.1 No guidance is planned to accompany the instrument. Statutory guidance to support implementation of Part 1 of the Act was subject to public consultation as part of the consultation on regulations under that part. The guidance is published at <https://www.gov.uk/government/topics/social-care> and will be relevant to the Council of the Isles of Scilly as it is relevant to other local authorities in England. This guidance is not itself the subject of parliamentary scrutiny.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument. An impact assessment relating to Part 1 of the Care Act 2014 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>

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 No monitoring or review of the instrument as such is planned. The Government has committed to keeping the impact of Part 1 of the Act under review. We will monitor the impacts of implementation of the policies contained within the Act and secondary legislation 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 Phillip Anderson at the Department of Health Tel: 0207 210 5696 or e-mail: phillip.anderson@dh.gsi.gov.uk can answer any queries regarding the instrument.