

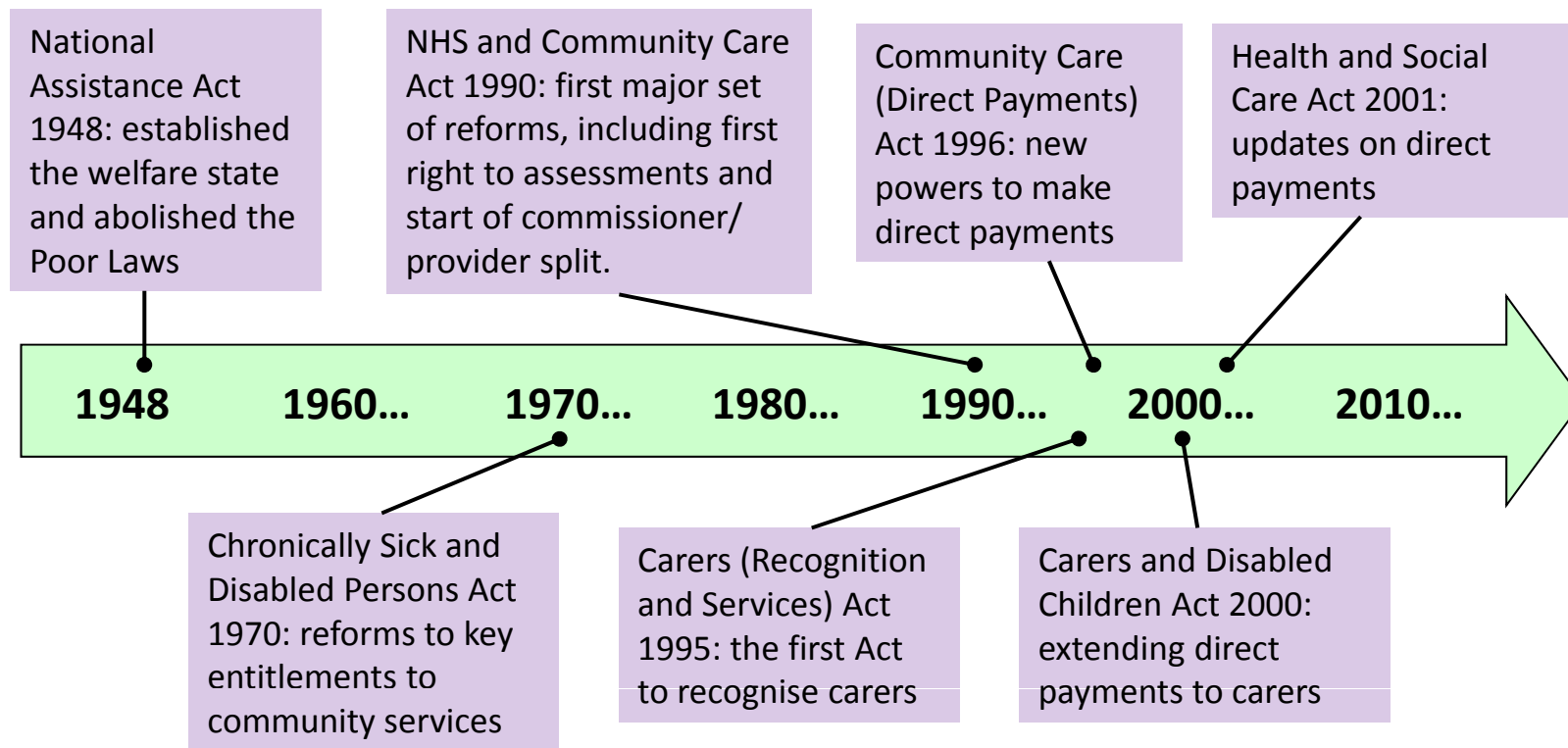


Department  
of Health

# A consultation on draft regulations and guidance for part one of the Care Act 2014

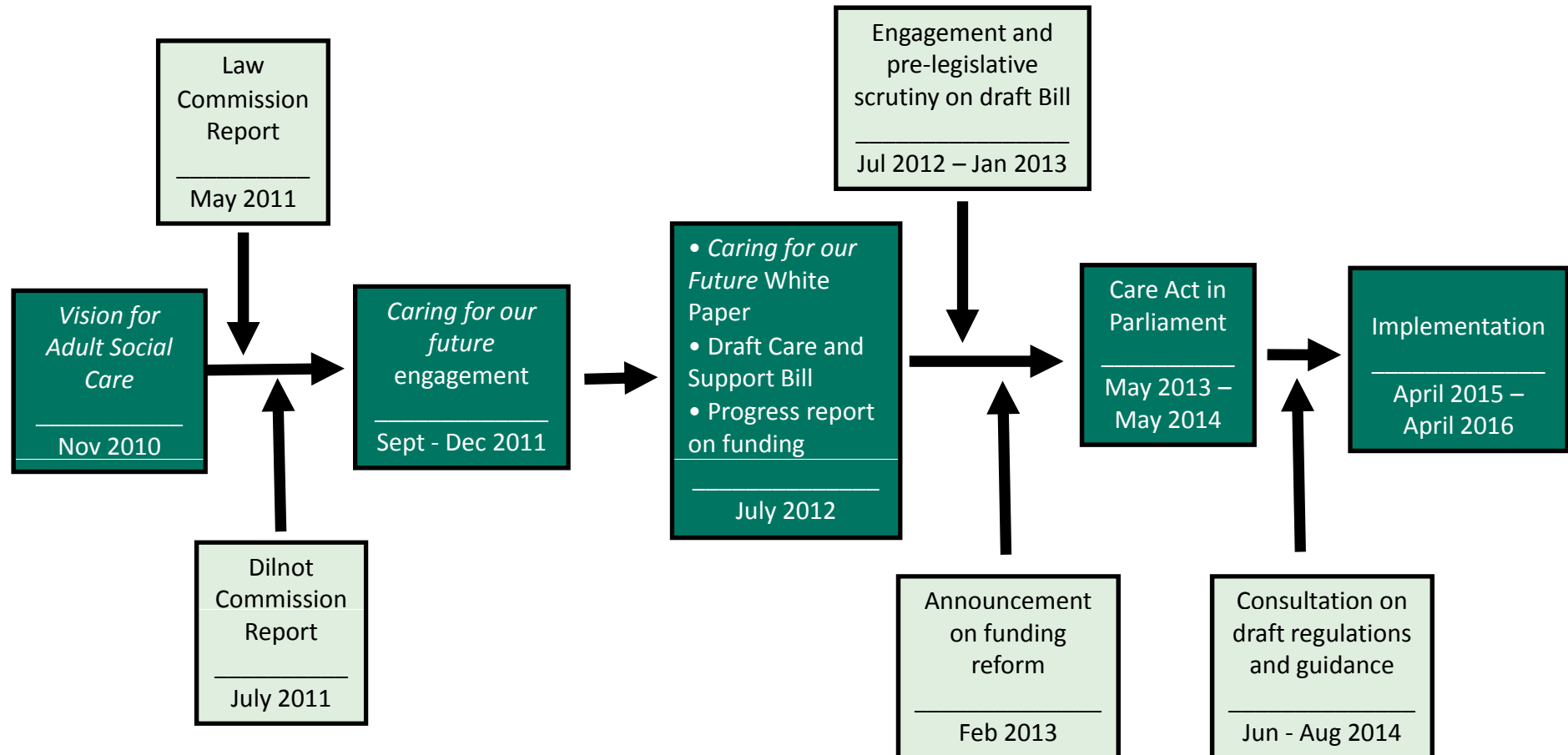
# A brief history of care and support

Social care law and policy has evolved over more than 65 years, incorporating around 30 Acts of Parliament, but reform has usually been piecemeal.

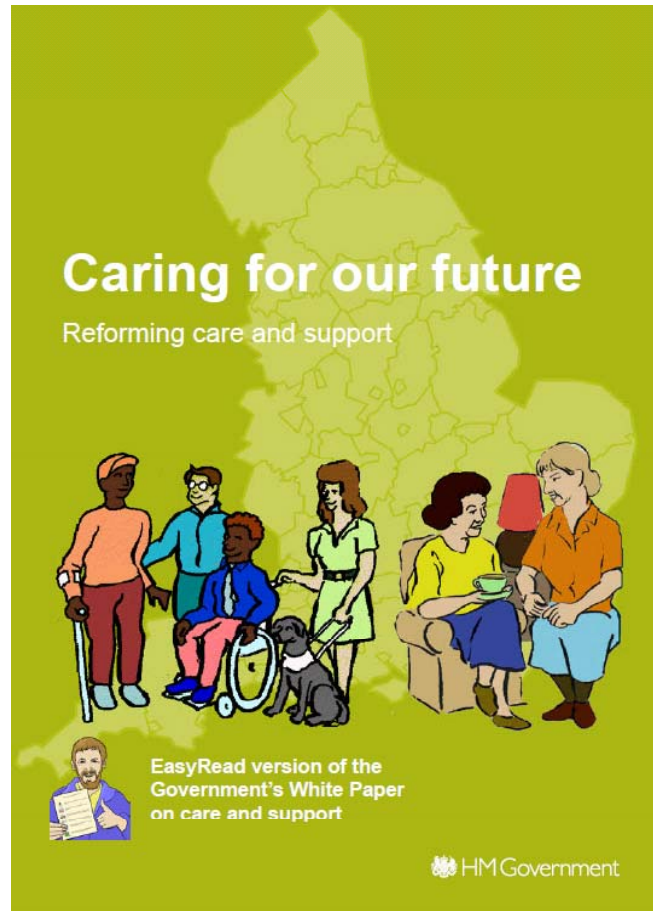


# The reform timeline

The Care Act is the latest step in the timeline for reform, and builds the Government's *Vision for Adult Social Care* document and White Paper.



# Caring for our Future



The care and support White Paper was published in July 2012 and set out the Government's vision for the future system.

If adult care and support in England is going to respond to challenges it must help people to stay well and independent:

- Promote people's **wellbeing**
- Enable people to **prevent and postpone** the need for care and support
- Put **people in control** of their lives so they can pursue opportunities to realise their potential

The Care Act 2014 underpins and implements this vision.

# What does the Care Act do?

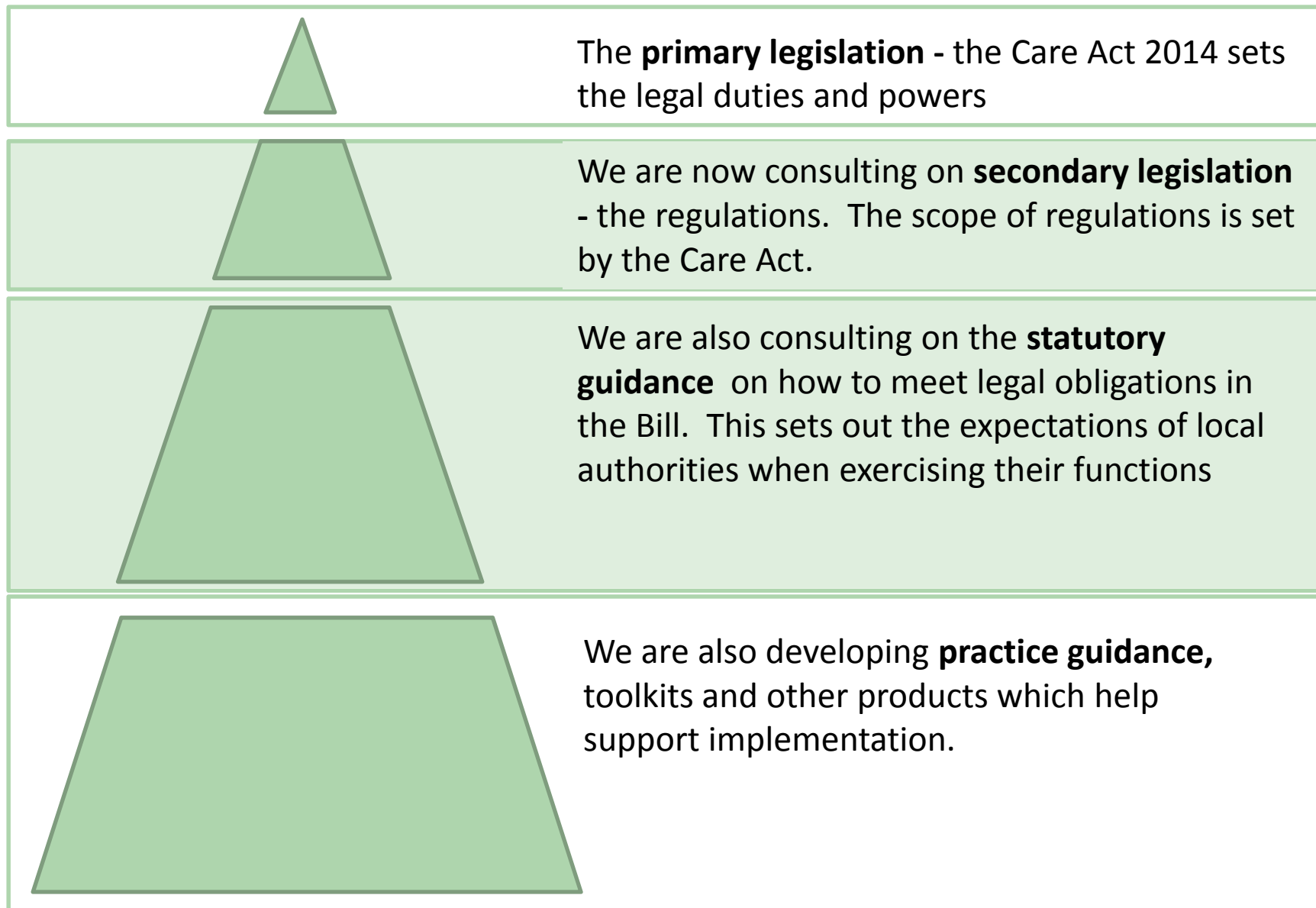
## *The Act is **built around people**, it:*

- ensures that people's **well-being**, and the outcomes which matter to them, will be at the heart of every decision that is made;
- puts **carers** on the same footing as those they care for;
- creates a new focus on **preventing and delaying needs for care and support**, rather than only intervening at crisis point, and building on the strengths in the community;
- embeds rights to choice, through care plans and **personal budgets**, and ensuring a range of high quality services are available locally.

## *The Act makes care and support **clearer and fairer**, it:*

- extends financial support to those who need it most, and protects everyone from catastrophic care costs through a **cap on the care costs** that people will incur.
- will ensure that people do not have to sell their homes in their lifetime to pay for residential care, by providing for a new **deferred payments** scheme;
- provides for a **single national threshold for eligibility** to care and support;
- supports people with **information, advice and advocacy** to understand their rights and responsibilities, access care when they need it, and plan for their future needs;
- gives new guarantees to ensure **continuity of care** when people move between areas, to remove the fear that people will be left without the care they need;
- includes new protections to ensure that **no one goes without care if their provider fails**, regardless of who pays for their care.

# This consultation



## This consultation

- Covers guidance and regulations for all elements of care and support reform that take effect in April 2015.
- It does not cover reforms for 2016/17 (including the cap on care costs) – there will be a separate consultation later this year.
- Runs from 6 June to 15 August 2014.

## We want to hear what you think about the draft guidance and regulations

- We welcome views on anything included (or omitted) from the draft guidance and regulations.
- We are also asking specific questions in some areas.
- Do you have examples of best practice to help support delivery?

# A quick note on our approach

- We haven't produced these drafts on our own! They were developed with a great deal of collaboration and stakeholder engagement – just like the Act itself.
- Within the guidance we've used examples and case studies to illustrate the guidance. Tell us if you think they're helpful or if you have better examples.
- We have tried to capture cross cutting issues throughout the guidance - have we succeeded?



# The Care Act: Part One

## draft guidance and regulations

# The guidance: chapter by chapter

Ch	Topic
1	Promoting wellbeing
2	Preventing, reducing or delaying needs ☆
3	Information and advice
4	Market shaping and commissioning
5	Managing provider failure ☆
6	Assessment and eligibility ☆
7	Independent advocacy ☆
8	Charging and financial assessment ☆
9	Deferred payment agreements ☆
10	Care and support planning
11	Personal budgets ☆

Ch	Topic
12	Direct payments ☆
13	Review of care and support plans
14	Safeguarding
15	Integration, cooperation and partnerships ☆
16	Transition to adult care and support ☆
17	Prisons and approved premises
18	Delegation of local authority functions
19	Ordinary residence ☆
20	Continuity of care ☆
21	Cross-border placements ☆
22	Sight registers ☆
23	Transition to the new legal framework

☆ Areas with related draft regulations

# General responsibilities and universal services

## 1. The wellbeing principle

- The wellbeing principle underpins the entire legal framework, and influences the way all functions are carried out in relation to individuals.
- How to define wellbeing – and how it relates to other areas in the Act.
- Duties and powers to “meet needs” replace previous entitlements to services.

## 2. Preventing, reducing and delaying needs

- Universal duty: applies equally to those not receiving services and their carers.
- Primary, Secondary and Tertiary prevention.
- Strategic approaches and working with partners and voluntary services.
- Regulations cover charging for prevention: limits and specific free provision.

# General responsibilities and universal services

## 3. Information and advice

- Universal duty, but tailored information and advice for specific groups will be vital.
- Sets out how to provide information and advice, and to whom.
- Role of financial information and advice and how to help people benefit.

## 4. Market shaping and commissioning

- Commissioning focused on outcomes and promoting wellbeing.
- Promoting choice to drive quality and sustainability.
- Importance of workforce development and pay.

## 5. Managing provider failure

- Local authorities' responsibilities to meet needs in cases of provider failure. Emphasis on contingency planning and early warning. Regulations set out when there is a “business failure” to trigger local authority duty.
- New CQC oversight regime of financial health of “difficult to replace” providers. Regulations set out criteria for which providers are in regime.

# First contact and identifying needs

## 6. Assessment and eligibility

- Duty to assess on appearance of need – for people who use care and carers.
- Must involve the person, and focus on their desired outcomes alongside needs.
- Must be proportionate to the person’s needs, goals and circumstances.
- Consider how to prevent or delay needs, and whether other types of support available locally may also benefit, alongside the assessment.
- Regulations set out requirements around assessment, including training/expertise.
- New **national minimum eligibility threshold** ensures more consistency, designed to maintain existing levels of access. Local authorities can meet other needs.
- Regulations set out eligibility criteria, based on “significant impact on wellbeing”.

## 7. Independent advocacy

- Duty to provide an independent advocate where someone has substantial difficulty being involved in the process and there is no one to act on their behalf.
- Regulations define “substantial difficulty” in involvement, requirements for an advocate, and what their role looks like.

# Charging and financial assessment

## 8. Charging for care and support

- Charging framework clarified for 2015/16 but largely unchanged. Questions on small changes to 12-week disregard of property after entering a care home; and treatment of investment bonds/pre-paid funeral plans.
- Includes right to **choice of accommodation** and ability to make top-up payments. Question extension to other types of accommodation (e.g. extra care housing).
- Regulations set out process of financial assessment (including monies to be disregarded), limitations on power to charge and choice of accommodation.

## 9. Deferred payment agreements

- A person can 'defer' paying the costs of their care and support, so they do not have to sell their home at a point of crisis. New duty to offer to certain people.
- Amount that can be deferred usually based on loan-to-value ratio of home.
- Power to charge interest to offset risk and make cost-neutral.
- Questions on interest rate; extending scheme to extra care housing and supported living; and allowing people to keep some rental income.
- Regulations set out the criteria for DPAs, and other conditions.

# Care and support planning

## 10. Care and support planning

- Duty to prepare a care and support plan for all those whose needs are being met, including carers. Must involve people in the planning process.
- Legal framework for combining or integrating plans for different people where appropriate.

## 11. Personal budgets

- Sets out what it will cost the local authority to meet the person's needs.
- Must be included with each plan.
- Process for calculating budget must be transparent.
- Can be combined with other public money, e.g. personal health budgets.
- Regulations specify that intermediate care and reablement are not included in a personal budget.

# Care and support planning

## 12. Direct payments

- Right to request the amount identified in a personal budget as a cash payment, which people can use to purchase their own care and support.
- Direct payments must have proper oversight and be reviewed regularly, without being too burdensome.
- Questions on having first review after 6 months instead of 12; and easing restriction on paying family members to manage.
- Regulations set out situations where a local authority must not, or may not, offer a direct payment; and other conditions.

## 13. Reviews

- Review must be ongoing to ensure needs continue to be met over time.
- Planning and sharing timescales for regular reviews, and responding to a request for a review.
- Proportionality and timeliness of reviews.



# Adult safeguarding

## 14. Safeguarding

- Definitions of “abuse” and “neglect”.
- The local authority role: new duty to carry out **enquiries** where risk of abuse or neglect. May require independent advocate.
- Requirement for all areas to establish a **Safeguarding Adults Board (SAB)**: to coordinate activity of partners to protect adults from abuse and neglect.
- Multi-agency working: roles, responsibilities and information-sharing.
- LA, NHS and police as core members of SAB: local discretion for others?
- SABs to carry out **safeguarding adults reviews** into cases of concern, to ensure lessons are learned.
- New ability for SABs to require information sharing from other partners to support reviews or other functions,

# Integration and partnership working

## 15. Integration, cooperation and partnerships

- Promoting **integration** with NHS and other services (including housing).
- Requirement to work collaboratively and cooperate with other public authorities, both generally and in specific cases.
- **Working with the NHS** and managing the legal boundary with local authority responsibilities. Regulations set out details and the process for dispute resolution.
- Managing delayed transfers of care out of hospitals. Largely replicates existing scheme, but discretionary not mandatory. Regulations set out processes to follow.
- **Working with housing** to integrate provision and ensure focus on suitability of living accommodation. Considers how housing supports core responsibilities in the other parts of the guidance.
- **Working with employment and welfare services** – also often highly relevant to care and support and JobCentre Plus is “relevant partner” for cooperation.

# Integration and partnership working

## 16. Transition to adult care and support

- Duty to assess young people and their carers in advance of transition from children's to adult services, where likely to need care and support as an adult.
- How to determine where there is "significant benefit" for timing of assessment.
- Regulations set out process for providing services to adult carers of children.

## 17. Prisons and approved premises

- Each local authority responsible for prisoners in custodial settings in its area.
- Principle of equivalence with those in the community, however complicated in some areas, e.g. aids & adaptations. Some rights do not apply.

## 18. Delegation of local authority functions

- New power for authorities to delegate certain functions to another organisation.
- Local authorities retain ultimate responsibility for how functions are carried out, so people always have redress. Good contract management and avoiding conflicts of interest essential.

# Moving between areas

## 19. Ordinary residence

- Local authority responsible for meeting the eligible needs of all those ordinarily resident in their area (who may be living elsewhere some or all of the time).
- Example scenarios to help decisions and aid dispute resolution between areas.
- Regulations set out the types of accommodation where ordinary residence applies in relation to “out of area” placements and the process for dispute resolution.

## 20. Continuity of care

- When someone moves area, current local authority must share the care and support plan and other information relating to the person and their carer.
- Information before the move, assessment and arranging to meet the needs on the day of arrival, based on the previous care and support plan.
- Regulations set out the requirements on the day of the move.

## 21. Cross-border placements

- New power ability to arrange care home placements across the UK.

# Other areas

## 22. Sight registers

- Local authorities must keep a register of adults who are severely sight impaired and sight impaired in their area. Regulations define who should be treated as sight-impaired or severely sight-impaired.
- Local authorities may also maintain registers of other people with disabilities.

## 23. Transition to the new legal framework

- Transition in 2015/16: passporting people currently in the system under the new legal framework in the Care Act.
- No automatic need for re-assessment or new eligibility determination; will depend on previous local policies
- Preparing for 2016/17: steps to take in 15/16 to prepare for funding reform: understanding likely demand, awareness-raising, capacity-building, and early assessments

# The consultation: more information

[www.careandsupportregs.dh.gov.uk](http://www.careandsupportregs.dh.gov.uk)

- Consultation document
- Draft guidance and regulations
- Easy Read document
- Factsheets
- Impact assessment and equality analysis

# Implementing the reforms: more information

[www.local.gov.uk/care-support-reform](http://www.local.gov.uk/care-support-reform)

- Clause-by-clause summary of Care Act and implications for implementation
- Details of networks to plug into
- Shared tools and guidance used by local authorities
- Regular bulletins

# What happens next?

- Finalise 2015/16 regulations and guidance **October 2014**
- Ongoing work to develop practice guides, toolkits and implementation support **Over summer/autumn 2014**
- Separate consultation later this year on those elements of the Act that come into force in April 2016 (e.g. funding reform). **Late 2014**
- New statute comes into force **April 2015**
- Funding reforms come into effect **April 2016**



# Please respond to the consultation

Comment online [www.careandsupportregs.dh.gov.uk](http://www.careandsupportregs.dh.gov.uk)

E-mail us at [careactconsultation@dh.gsi.gov.uk](mailto:careactconsultation@dh.gsi.gov.uk)

Share your thoughts #careact2014

Write to  
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London, SW1A 2NS

Please make sure all consultation responses are received  
by **15 August 2014**