EXPLANATORY MEMORANDUM TO

THE CARE AND SUPPORT (PREVENTING NEEDS FOR CARE AND SUPPORT) REGULATIONS 2014

2014 No. 2673

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 makes provision to permit a local authority to make a charge for the provision of services, facilities or resources or the taking of other steps under section 2 of the Care Act 2014 ("the Act") in relation to preventing needs for care and support.

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

3.1 None.

4. Legislative Context

4.1 Section 2(1) of the Act requires a local authority to provide or arrange for the provision of services, facilities or resources or to take other steps which it considers will contribute towards preventing, delaying or reducing the needs for care and support of adults or the needs for support of carers.

4.2 Section 2(3) enables regulations to permit a local authority to charge for providing or arranging for the provision of services, facilities or resources or for taking other steps under section 2. It also enables regulations to prohibit local authority from making a charge. Section 2(5) provides that a charge under the regulations may only cover the cost that the local authority incurs in providing or arranging provision of the service, facility, resource or for taking the other step.

4.3 This is part of the broader reforms of existing adult social care law through the Act based on recommendations of the Law Commission.

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 the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Requirements on local authorities to provide or arrange preventative services, facilities or resources

7.1.1. One of the key aims of the Act and the reforms to the care and support system is to encourage a greater focus on prevention, to ensure earlier intervention so that a person's needs may be prevented, reduced or delayed and so to maximise the person's independence and wellbeing for as long as possible. Feedback from people who use care and support has consistently shown that too often the offer of support only comes at a crisis point, when earlier action could have reduced the impact of a person's needs.

7.1.2 The Act, therefore, makes provision about the principle of preventing needs. Section 2 of the Act requires local authorities to provide or arrange for services, facilities or resources or take other steps which would prevent, delay or reduce a person's needs for care and support or (in the case of a carer) needs for support. This is separate to the provisions on meeting people's needs (under sections 18 to 20 of the Act).

7.1.2. It is anticipated that local authorities will need to take steps to identify current and future demand for preventative support and in doing so will need to consider what is already available in their area. Accordingly, section 2(2) of the Act requires local authorities to have regard to matters such as the importance of identifying services, facilities and resources already available in the area and the extent to which the authority could involve or make use of them. The duty under section 2 is aimed at benefitting the local population in general. .

7.1.3. It is also anticipated that local authorities will need to cooperate with relevant organisations such as service providers in relation to the provision of preventative services, facilities or resources. Section 6 of the Act imposes a duty of co-operation on local authorities with "relevant partners" (these include health and social care providers). Many types of preventative support may additionally benefit needs other than care and support or support needs, and therefore certain services may benefit from being arranged in a joined up way with partners such as those in the NHS.

7.2 Charging for preventative support

7.2.1 The meeting of care and support needs under the Act is not necessarily free and therefore people may have to pay a charge for services provided. This is also true in relation to preventative services, and with certain exceptions the instrument allows local authorities to make a charge for the provision of services, facilities or resources or the taking of steps under section 2 of the Act. Local authorities may exercise their discretion to not charge, but it is anticipated that they may choose do so in particular where charges are essential to making the service economically viable. Where local authorities charge for a particular service it is anticipated that they will need to consider how to balance the affordability and viability of the activity with the likely impact that charging may have on uptake, and therefore on the benefits realised.

7.2.2 The instrument imposes certain conditions on the power to charge such as those relating to the reduction of an adult's income below a certain amount. In addition some services must be provided free of charge namely intermediate care and reablement support services for the first six weeks, and aids and minor adaptations (adaptions up to the value of £1000). Certain adults must not be charged, namely those suffering from variant Creutzfeldt-Jakob disease.

8. Consultation outcome

8.1 The consultation on the package of regulations relating to Part One of the 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; 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 A consultation response document will be published at: https://www.gov.uk/government/topics/social-care

9. Guidance

9.1 Statutory guidance to support implementation of Part One of the Act was subject to public consultation as part of the consultation on regulations under that part. The guidance will be published at https://www.gov.uk/government/topics/social-care. 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. This 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 https://www.gov.uk/government/organisations/department-of-health

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 impact 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

Sarah Cromwell at the Department of Health Tel: 0113 254 5498 or email: sarah.cromwell@dh.gsi.gov.uk can answer any queries regarding the instrument.