EXPLANATORY MEMORANDUM TO

THE CARE AND SUPPORT (CHILDREN'S CARERS) REGULATIONS 2014

2014 No. [XXXX]

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 To provide that provisions in Part 1 of the Act which are relevant to the provision of support to carers also apply to the provision of support to children's carers where appropriate.

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

3.1 None

4. Legislative Context

4.1 The Care Act gives local authorities the power to support carers of children in a similar way as they support carers of adults in the limited circumstances explained below. The regulations have been carefully drafted to ensure that they do not replicate the support for these carers under other legislation (most notably the Children's Act 1989 as amended by the Children and Families Act 2014) to ensure that there remains a clear division of responsibility.

4.2 This is a new power and there are no similar provisions in previous legislation.

4.3 The instrument comes into force immediately after section 62(1) of the Care Act 2014 comes into force. It is intended that section 62(1) will be brought into force, by a commencement order, in April 2015.

5. Territorial Extent and Application

5.1 This instrument extends to England and Wales but applies to England only.

6. European Convention on Human Rights

The Minister of State for Care and Support has made the following statement regarding Human Rights:

In my view the provisions of the Care and Support (Children's Carers) Regulations 2014 are compatible with the Convention rights.

7. Policy background

7.1 The Care Act places duties on local authorities to assess young people and young carers before they turn 18 in order to help them to plan for transition to adult care and support so that they have the information they need to plan for their future.

7.2 This information includes an indication of whether their needs are likely to be eligible, advice and information about what can be done to meet eligible needs, and what can be done to prevent or delay the development of needs.

7.3 The Act includes a similar duty for adults caring for a young person approaching transition, as in many cases their circumstances will change significantly as well and they will become a carer of an adult, with support needs under the Care Act (see section 10 of the Act).

7.4 Section 62 of the Act gives local authorities the power to provide services to support someone caring for a young person under the age of 18, if a transition assessment has taken place.

7.5 This power might be used for example where the norm is that a local authority provides direct payments to adults caring for adults, but not to adults caring for children – it may be helpful for a carer to receive their first direct payment while the person they care for is still not quite 18. These regulations allow for such flexibility without forcing local authorities into unnecessary broader changes to the different policies for carers of children and of adults, which often exist for good reasons.

7.6 Most support to carers of children is in the form of replacement care to the child they care for so that the carer can have a break. This is naturally provided by children's services under children's legislation and we want this to continue. That is why the regulations explicitly say that a local authority cannot support a child's carer under these regulations by providing care to the child in question.

7.7 In essence, the regulations give local authorities the power (in the narrow circumstances described above) to support a child's carer on a similar legislative basis as they would a carer of an adult – i.e. via clause 20(6) of the Care Act. The regulations simply make some technical modifications to Part 1 of the Act, and two of the sets of Regulations made under the Act, for this specific scenario (changing "carer" to "child's carer" where necessary for example). The attached Keeling Schedule indicates how Part 1 of the Act reads when the modifications in these Regulations are applied.

7.8 There are of course a number of scenarios provided for by the Care Act that could not apply to the situation of a child's carer receiving services following a transition assessment. For example, the provisions for cross-border placements into residential care are not relevant because this power would never be used in such a way. The explanatory note to the regulations explains further.

7.9 Certain provisions of Part 1 of the Act are applied by the instrument because they could be relevant to the exercise of the power to meet a child's carer's needs, but in practice rely on something more to actually affect that power. For example, the regulation-making power in section 34 (concerning deferred payment agreements and loans) would apply by virtue of the instrument, but whether the regulations themselves apply depends on their content. Regulations currently made under section 34 (S.I. 2014/2671) make clear that someone must be in a care home to be eligible for a deferred payment agreement, which is very unlikely to apply to a child's carer. However, in future the regulations could be amended so as to make children's carers eligible for deferred payments. Another example is substantive provisions of the Act (i.e. provisions other than regulation-making powers) which apply in principle to the exercise of the power to meet a child's carer's needs but not in practice because of the terms in which they are framed (examples are given below).The key sections of the Act in the Keeling Schedule that would apply in principle but are not expected to currently apply in practice are:

- Exception for the provision of health services (section 22): because support to children's carers is unlikely to overlap with health legislation
- Exception for the provision of housing etc (section 23): because support to children's carers is unlikely to overlap with housing legislation
- Deferred payment agreements (sections 34-36): because children's carers would not meet the eligibility criteria for deferred payment agreements under regulations under those sections, and a local authority would be unlikely to exercise its power to offer a deferred payment agreement
- Application of Human Rights Act 1998 (section 73): because children's carers are unlikely to receive personal care or residential accommodation together with nursing or personal care as required for the application of that section
- Prisoners and persons in approved premises (section 76(5), (11) and (12)): because children's carers are unlikely to be prisoners or person in approved premises

8. Consultation outcome

8.1 The consultation on the package of regulations relating to Part 1 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 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

8.3 The consultation did not result in any detailed comments on this instrument, although the power to which it relates was broadly welcomed. Therefore no changes were made as a result of the consultation.

9. Guidance

9.1 Statutory guidance to support implementation of Part 1 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 These regulations are not expected to represent an additional cost burden for either the public or private sector. Because they relate to a power rather than a duty, local authorities will not be under an obligation to undertake any particular action. We anticipate that this power will only be used in relatively specific circumstances where planning flexibility is required, so it is not expected to have a material impact on the social care market or any other part of the private sector.

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 Part 1 of the Act 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

Phillip Anderson at the Department of Health Tel: 0207 210 5696 or email: Phillip.anderson@dh.gsi.gov.uk can answer any queries regarding the instrument.