Care and Support and After-care (Choice of Accommodation) Regulations 2014 and 16 related instruments

Correspondence: Rail Passengers’ Rights and Obligations (Exemptions) Regulations 2014

Includes 5 Information Paragraphs on 10 Instruments

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HL Paper 66
Secondary Legislation Scrutiny Committee (formerly Merits of Statutory Instruments Committee)

Historical Note

In January 2000, the Royal Commission on the Reform of the House of Lords said that there was a good case for enhanced Parliamentary scrutiny of secondary legislation and recommended establishing a “sifting” mechanism to identify those statutory instruments which merited further debate or consideration. The Merits of Statutory Instruments Committee was set up on 17 December 2003. At the start of the 2012–3 Session the Committee was renamed to reflect the widening of its responsibilities to include the scrutiny of Orders laid under the Public Bodies Act 2011.

The Committee has the following terms of reference:

(1) The Committee shall, with the exception of those instruments in paragraphs (3) and (4), scrutinise—
   (a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;
   (b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,
   with a view to determining whether or not the special attention of the House should be drawn to it on any of the grounds specified in paragraph (2).

(2) The grounds on which an instrument, draft or proposal may be drawn to the special attention of the House are—
   (a) that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House;
   (b) that it may be inappropriate in view of changed circumstances since the enactment of the parent Act;
   (c) that it may inappropriately implement European Union legislation;
   (d) that it may imperfectly achieve its policy objectives;
   (e) that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument’s policy objective and intended implementation;
   (f) that there appear to be inadequacies in the consultation process which relates to the instrument.

(3) The exceptions are—
   (a) remedial orders, and draft remedial orders, under section 10 of the Human Rights Act 1998;
   (b) draft orders under sections 14 and 18 of the Legislative and Regulatory Reform Act 2006, and subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001;
   (c) Measures under the Church of England Assembly (Powers) Act 1919 and instruments made, and drafts of instruments to be made, under them.

(4) The Committee shall report on draft orders and documents laid before Parliament under section 11(1) of the Public Bodies Act 2011 in accordance with the procedures set out in sections 11(5) and (6). The Committee may also consider and report on any material changes in a draft order laid under section 11(8) of the Act.

(5) The Committee shall also consider such other general matters relating to the effective scrutiny of secondary legislation and arising from the performance of its functions under paragraphs (1) to (4) as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

Members
Baroness Andrews          Lord Eames          Baroness Stern
Lord Bichard             Rt Hon. Lord Goodlad (Chairman) Lord Plant of Highfield
Lord Borwick             Baroness Hamwee         Lord Woolmer of Leeds
Lord Bowness             Baroness Humphreys

Registered interests
Information about interests of Committee Members can be found in Appendix 3.

Publications
The Committee’s Reports are published on the internet at www.parliament.uk/seclegpublications

Information and Contacts
If you have a query about the Committee’s work, or opinions on any new item of secondary legislation, please contact the Clerk of the Secondary Legislation Scrutiny Committee, Legislation Office, House of Lords, London SW1A 0PW; telephone 020–7219 8821; fax 020–7219 2571; email seclegscrutiny@parliament.uk.

Statutory instruments
The Committee has considered the following instruments and has determined that the special attention of the House should be drawn to them on the ground specified.

A. Care and Support and After-care (Choice of Accommodation) Regulations 2014 (SI 2014/2670)
Care and Support (Deferred Payment) Regulations 2014 (SI 2014/2671)
Care and Support (Charging and Assessment of Resources) Regulations 2014 (SI 2014/2672)
Care and Support (Preventing Needs for Care and Support) Regulations 2014 (SI 2014/2673)
Care and Support (Provision of Health Services) Regulations 2014 (SI 2014/2821)
Care and Support (Market Oversight Information) Regulations 2014 (SI 2014/2822)
Care and Support (Discharge of Hospital Patients) Regulations 2014 (SI 2014/2823)
Care and Support (Independent Advocacy Support) Regulations 2014 (SI 2014/2824)
Care and Support (Continuity of Care) Regulations 2014 (SI 2014/2825)
Care and Support (Assessment) Regulations 2014 (SI 2014/2827)
Care and Support (Ordinary Residence) (Specified Accommodation) Regulations 2014 (SI 2014/2828)
Care and Support (Disputes Between Local Authorities) Regulations 2014 (SI 2014/2829)
Care and Support (Cross-border Placements) (Business Failure Duties of Scottish Local Authorities) Regulations 2014 (SI 2014/2839)
Care and Support (Personal Budget: Exclusion of Costs) Regulations 2014 (SI 2014/2840)
Care and Support (Cross-border Placements and Business Failure: Temporary Duty) (Dispute Resolution) Regulations 2014 (SI 2014/2843)
Care and Support (Sight-impaired and Severely Sight-impaired Adults) Regulations 2014 (SI 2014/2854)
Care and Support (Direct Payments) Regulations 2014 (SI 2014/2871)

Dates laid: 24–31 October

Parliamentary Procedure: negative

Summary: To implement the provisions of the Care Act 2014 (“the Act”), the Department of Health is going to lay a suite of 21 instruments, mainly amending administrative practices to deliver the changes made by the Act. Seventeen instruments have been considered by the Committee so far. The Committee was
Concerned that the information contained in the accompanying Explanatory Memoranda was too generic. As a result, the Department has undertaken to replace the Explanatory Memoranda, giving more specific information about the costs and benefits of each instrument. The Department of Health has also produced a schedule, printed at Appendix 1 of this report, which sets out briefly the content of each of these instruments and whether it simply makes consequential changes to update current administrative arrangements or whether it introduces new policy under the Act.

**These instruments are drawn to the special attention of the House on the ground that they give rise to issues of public policy likely to be of interest to the House.**

1. These instruments are laid by the Department of Health (DH) under provisions of the Care Act 2014 (“the Act”). Each is accompanied by an Explanatory Memorandum (EM). Impact Assessments for the package are published online, but the revised EMs indicate the specific cost of each instrument in the text.

**Clear and specific explanations**

2. To implement the provisions of the Act, DH is going to lay a suite of 21 instruments, mainly amending administrative practices to deliver the changes made by the Act. Seventeen instruments have been considered by the Committee so far. The Committee was concerned that the information contained in the original EMs simply referred to generic reports about the Impact Assessment and the outcome of consultation. The Department has replaced the EMs, giving specific information about the costs and benefits of each instrument and any relevant points that were made during consultation.

3. We note from these revisions that the response to consultation has been largely positive, with comments generally aiding clarity rather than voicing objections. However as a gloss to the new sections on the costs and benefits, the Department states that all costs discussed in these EMs relating to the public sector will fall on local authorities unless otherwise specified. Although the majority of the batch largely maintain the status quo, some of the new provisions have significant implementation costs: for example, advocacy (SI 2014/2824) will cost an additional £14 million in 2015-16 and rise steadily thereafter and continuity of care (SI 2014/2825) will add £4 million in 2015-16 and £10 million thereafter. Although the deferred payment system (SI 2014/2671) will add to local authorities’ costs, this will be offset by an £85 million payment from Government that should result in the change being cost neutral.

**Key items**

4. A number of the instruments update and consolidate previous arrangements. However, some go further: for example, Regulations relating to Independent Advocacy Support are intended to standardise best practice. Others clarify the policy intention: for example, one of the sets of Regulations identifies which authority will be responsible for the care of those who are placed in

1 https://www.gov.uk/government/organisations/department-of-health
care away from their normal place of residence or when the person moves between authorities.

5. Some of the Regulations introduce new policy under the Act: for example, the instrument on market oversight lays down contingency provisions to enable authorities to check the financial stability of firms which provide care on a substantial scale. Another sets out how deferred payment schemes should be run.

6. The most significant of the current batch, however, appears to be SI 2014/2827 which requires local authorities to assess not only to the needs of the sick but also of the carer, particularly young carers. We note, that the content of this instrument was influenced by the recommendations of the Law Commission that the role of self-assessment for adults with care needs should be clarified and enhanced.

7. To assist the House, DH has produced a schedule, printed at Appendix 1 to this Report, which sets out briefly the content of each of these instruments and whether the content simply makes consequential changes to current administrative arrangements to reflect the Act or whether it introduces new policy.

CORRESPONDENCE

Rail Passengers’ Rights and Obligations (Exemptions) Regulations 2014 (SI 2014/2793)

8. In our 12th Report of this Session, we drew these Regulations to the special attention of the House on the ground that they may inappropriately implement European Union legislation because potential benefits to passengers continue to be delayed. Noting that five years after the previous Regulations were considered and seven years after the European Union legislation was agreed, the Department for Transport has still not obtained sufficient information to make a decision on which exemptions should be allowed to lapse, the Committee wrote to Claire Perry MP, Parliamentary Under Secretary of State at the Department for Transport. This correspondence is published at Appendix 2.

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INSTRUMENTS OF INTEREST

Corrections
Draft Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1) (Advocacy Exceptions) Order 2014
Draft Misuse of Drugs Act 1971 (Amendment) (No. 2) Order 2014
Care and Support (Independent Advocacy Support) No 2) Regulations 2014 (S1 2014/2889)

9. The Committee has recently raised concerns over the higher than usual number of correcting instruments being laid before Parliament. Today’s list includes:

- SI 2014/2889 which corrects SI 2014/2824, an instrument laid only a week previously, because the Department of Health has had second thoughts about the policy;
- a Home Office instrument that corrects the omission of immigration officers from the scope of the codes of practice issued under the Crime and Courts Act 2013;
- a revised draft instrument laid by the Home Office to correct a misprint in a formula in a Misuse of Drugs Act 1971 instrument; and
- a revised draft instrument laid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 because the Ministry of Justice failed to take into account subsequent amendments made to that Act by the Crime and Courts Act 2013. That error was only found after the debates in both Houses had happened and so it must go through the whole process again.

This list illustrates the range of defects we are currently seeing, covering all aspects of the secondary legislation process: the policy consideration, the legal drafting and mechanical aspects such as proof reading of scripts. The Committee has drawn its concern to the attention of both the Treasury Solicitor and the Cabinet Office and expects to see rapid improvement in the quality of secondary legislation laid before Parliament. We know a better standard is possible, statistics in our end of session reports from the early years of the Committee show the correction rate was routinely below 5%.

Draft Contracting Out (Vehicle Certification and Related Functions) Order 2014

10. This Order would enable the Secretary of State for Transport to delegate to non-civil servants his statutory functions under European and domestic legislation on road vehicle engineering and safety standards. These functions involve the type approval of road vehicles (and vehicle components) and non-road mobile machinery which are currently performed in the United Kingdom by the Vehicle Certification Agency, an executive agency of the Department for Transport (DfT). The DfT plans to set up instead a joint venture company, in which the Government will hold 20% of the shares and a single private sector partner the other 80% (but with provision for the Secretary of State’s shareholding to be sold to the partner in due course).
There will be a services contract between the Secretary of State and the company, setting out the tasks to be done using the delegated authority. It is expected that this company will be classified as in the private sector. DfT published a notice in the Official Journal of the European Union in March 2014 to start the procurement process and are expecting to sign the deal at the end of January 2015.

Immigration (Residential Accommodation) (Prescribed Cases) Order 2014 (SI 2014/2873)
Immigration (Residential Accommodation) (Prescribed Requirements and Codes of Practice) Order 2014 (SI 2014/2874)

11. These two Orders implement provisions of the Immigration Act 2014 which require landlords to check the immigration status of prospective tenants before each new tenancy to see if they have the right to reside in the UK. From 1 December landlords will be required to conduct a check on all adults wishing to live in their premises (not just whoever signs the lease). The process is modelled on the checks that employers are required to make and a similar list of appropriate documents is included in SI 2014/2874. The other Order clarifies the definition of a “new” tenancy and the actions that the landlord can take to provide evidence that the check has been made. In response to questions raised during the consultation exercise, the Order specifically sets out actions for the landlord to take when a foreign student wishes to arrange accommodation in the UK in advance of their arrival. Two associated Codes set out the process in more detail.4

12. Although the Orders relate to the whole of England, the scheme will be trialled initially in the Birmingham area. The initial implementation of the scheme is being monitored by a Panel comprising representatives from within Government and from key areas of the housing sector and local government. The scheme will be formally evaluated prior to decisions on whether to roll it out more widely.

Universal Credit (Digital Service) Amendment Regulations 2014 (SI 2014/2887)
Universal Credit and Miscellaneous Amendments (No.2) Regulations 2014 (SI 2014/2888)

13. Currently, Universal Credit may only be claimed by a person who meets specified criteria and who lives in one of the specified postcode districts. SI 2014/2887 sets out proposals for a more sophisticated version of the Universal Credit pilot scheme, which will be trialled in a different area, Sutton in the SM5 2 postcode area, and make provision for the full range of claimants’ circumstances. This “Digital Service” will enable households to report changes online and to make changes to their Claimant Commitment to-do list online. DWP states that that people without access to services online, will still have the option to claim Universal Credit by telephone or in

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4 Draft Code of Practice on illegal immigrants and private rented accommodation – Civil penalty scheme for landlords and their agents and Draft Code of Practice for Landlords – Avoiding unlawful discrimination when conducting “right to rent” checks in the private rented residential sector.
The Digital Service will also incorporate some additional flexibilities based on lessons learned from the operation of the original pilot (“the Live Service”). SI 2014/2888 also applies some of these lessons learned to the Live Service and makes some further consequential changes to both systems.

Audiovisual Media Services Regulations 2014 (SI 2014/2916)

14. The Department for Culture, Media and Sport (DCMS) has laid these Regulations with an Explanatory Memorandum (EM) and impact assessment. They ensure that video-on-demand material that has been or would be rated R18 by the British Board of Film Classification (BBFC) is put behind access controls, and ban the provision of video-on-demand material that has been or would be refused a classification by the BBFC.

15. In the EM, DCMS says that the statutory framework for the regulation of on-demand programme services (i.e. video-on-demand) is set out in Part 4A of the Communications Act 2003 (“the 2003 Act”). In 2010 the Department raised concerns about whether the relevant provisions of the 2003 Act (section 368E(2)) would provide sufficient safeguards to protect children from sexually explicit material. Pending legislative changes, the co-regulators (Ofcom and the Authority for Television On Demand (ATVOD)) adopted a precautionary approach, interpreting those provisions as requiring R18 material to be behind access controls.

16. These Regulations amend the 2003 Act to impose the controls described above. DCMS says that this removes any uncertainty from the regulatory framework, providing clarity to consumers and providers of video-on-demand services. In relation to such services, the Regulations provide the same level of protection that exists on the high street in relation to the sale of hard-copy DVDs.

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5 Government’s statement on assisted digital services, December 2013: https://www.gov.uk/government/publications/government-approach-to-assisted-digital
INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

The Committee has considered the instruments set out below and has determined that the special attention of the House need not be drawn to them.

Draft instruments subject to affirmative approval

- Compensation (Claims Management Services) (Amendment) Regulations 2015
- Contracting Out (Vehicle Certification and Related Functions) Order 2014
- Crime and Courts Act 2013 (Consequential Amendments) Order 2014
- Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1) (Advocacy Exceptions) Order 2014
- Legal Services Act 2007 (Claims Management Complaints) (Fees) Regulations 2014
- Misuse of Drugs Act 1971 (Amendment) (No. 2) Order 2014

Draft instruments subject to annulment

- Poole (Electoral Changes) Order 2015
- Stafford (Electoral Changes) Order 2015

Instruments subject to annulment

- SI 2014/2873 Immigration (Residential Accommodation) (Prescribed Cases) Order 2014
- SI 2014/2874 Immigration (Residential Accommodation) (Prescribed Requirements and Codes of Practice) Order 2014
- SI 2014/2883 Human Tissue (Quality and Safety for Human Application) (Amendment) Regulations 2014
- SI 2014/2884 Human Fertilisation and Embryology (Quality and Safety) Regulations 2014
- SI 2014/2885 Food Safety and Hygiene (England) (Amendment) Regulations 2014
- SI 2014/2887 Universal Credit (Digital Service) Amendment Regulations 2014
- SI 2014/2888 Universal Credit and Miscellaneous Amendments (No.2) Regulations 2014
- SI 2014/2889 Care and Support (Independent Advocacy Support) (No. 2) Regulations 2014
SI 2014/2897  Electricity and Gas (Energy Companies Obligation) (Determination of Savings) (Amendment) Order 2014

SI 2014/2904  Diffuse Mesothelioma Payment Scheme (Levy) Regulations 2014


SI 2014/2916  Audiovisual Media Services Regulations 2014

SI 2014/2924  Child Benefit (General) and Tax Credits (Miscellaneous Amendments) Regulations 2014


SI 2014/2932  Export Control (Russia, Crimea and Sevastopol Sanctions) (Amendment) Order 2014

SI 2014/2934  Statutory Paternity Pay and Statutory Adoption Pay (Parental Orders and Prospective Adopters) Regulations 2014
APPENDIX 1: CARE AND SUPPORT REGULATIONS 2014

Further information provided to the Committee to give an overview of which instruments are essentially maintaining the status quo and which are introducing innovations to the care system. References to “the Act” are to the Care Act 2014.

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<th>Regulations subject to negative procedure</th>
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paragraph 3 of the Explanatory Memorandum to the second instrument.

The second instrument details the duty on local authorities to provide independent advocacy to support a person's involvement in their care and support needs assessment, care and support and support planning, and in any review of their care and support needs. It sets out the considerations that the authority will have to make on deciding if a person would experience substantial difficulty in that involvement. The instrument also establishes the requirements and attributes that must be met by an advocate for them to be used by a local authority and the manner in which advocates should carry out their functions.

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<td>The Act places a duty on local authorities, in certain specified circumstances, to arrange an independent advocate to be available to facilitate the involvement of an adult or carer who is the subject of an assessment, care or support planning or review. These Regulations relate to a new duty to provide an independent advocate in specified circumstances. This reflects best practice in local authorities, but will extend practice in many areas to require the advocate to be provided.</td>
<td>These Regulations are new insofar as they relate to the resolution of disputes about provisions of the Act concerning cross border residential care placements and business failure of care providers. The provisions on cross border placements are themselves new save for certain provisions deeming the position as regards “ordinary residence” as between England and Wales which are reflected in current legislation (the National Assistance Act 1948). The provisions on business failure are new insofar as they impose explicit duties on local authorities to meet needs in business failure situations although existing functions of authorities would generally extend to meeting needs in such situations.</td>
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<td><strong>The Care and Support (Cross-border Placements and Business Failure: Temporary Duty) (Dispute Resolution) Regulations 2014</strong></td>
<td><strong>The Care and Support (Cross-border Placements) (Business Failure Duties) (Scotland) Regulations 2014</strong></td>
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<td>The instrument makes provision about the resolution of disputes between local authorities in England, Wales and Scotland, and Health and Social Care trusts in Northern Ireland about the application of certain provisions of the Care Act 2014. Certain of those provisions seek to ensure that, in general, where a person is placed by a local authority or trust in residential accommodation in another UK country this does not result in the transfer of responsibility for that person. The rest of those provisions impose duties on local authorities in England and Wales and on trusts to meet care and support needs of adults or support needs of carers, in circumstances where care providers are unable to carry on because of “business failure”.</td>
<td>This instrument specifies circumstances in which, in a case where</td>
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arrangements for the provision of residential accommodation in Scotland have been made by a local authority in England or Wales or a Health and Social Care trust in Northern Ireland, specified duties of Scottish local authorities under the Social Work (Scotland) Act 1968 (“the 1968 Act”) apply in the case of the adult concerned notwithstanding that they are “switched off” under Schedule 1 to the Care Act.

Is this new policy?  Insofar as the duties under the 1968 Act already exist, the duties are not new. Schedule 1 to the Care Act, however, is mainly new insofar as it sets out deeming provisions in respect of ordinary residence or otherwise makes provision to ensure that generally, where a cross border residential placement is made, responsibility for individuals is not transferred. (Certain of the provisions concerning the position as between England and Wales are reflected in current legislation as mentioned above).

Description  The Care and Support (Continuity of Care) Regulations 2014

The Care Act 2014 requires local authorities to take steps relating to ensuring continuity of care and support where a person intends to move to a different local authority’s area. Where a local authority has not already carried out an assessment of needs as of the date of the intended move, the second authority must meet the needs that were being met by the first authority until it carries out its own assessment and takes certain other steps. The instrument sets out what matters the second local authority must have regard to when carrying out this duty.

Is this new policy?  These Regulations relate to new legal duties to provide for notification, information-sharing and assessment, when a person intends to move between areas. The new duties relating to ensuring continuity of care will impact on local authorities when a person intends to move to/from their area.

Description  The Care and Support (Market Oversight Information) Regulations 2014

The Care Act 2014 introduces an oversight regime in respect of the financial sustainability of certain providers of social care who are registered with the Care Quality Commission (CQC) (care providers). This instrument makes provision for the CQC to obtain information from persons other than care providers to assist it in making the assessments of financial sustainability.

Is this new policy?  These Regulations are new insofar as they relate to new legal duties on Care Quality Commission to assess the financial sustainability of certain providers.

Description  The Care and Support (Assessment) Regulations 2014

The Care Act requires local authorities to carry out a needs assessment where it appears to them that an individual may have needs for care and support. This instrument specifies further matters about the carrying out of an assessment.

Is this new policy?  Insofar as assessment is already a fundamental part of the current care and support, the policy, in the main, is not new. The threshold
for assessment is broadly the same as at present but certain aspects of the assessment process have been updated, for instance to include a focus on outcomes, on the basis of best practice, existing policy and consultation.

| Description | **The Care and Support (Personal Budget Exclusion of Costs) Regulations 2014**  
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. |
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<td>Is this new policy?</td>
<td>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. Furthermore under section 15 of the Care Act, a local authority may not make a charge under section 14 for meeting an adult’s needs under section 18 if the total of the costs to the local authority in meeting the adult’s needs after the commencement of section 15 exceeds the cap on care costs. The total of those costs is calculated from the costs specified in the personal budget. For the reasons stated in the Explanatory Memorandum, the instrument excludes the costs of reablement from the personal budget because reablement where it is provided as a free service and there are currently no equivalent or similar provisions.</td>
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| Description | **The Care and Support (Direct Payments) Regulations 2014**  
This instrument replaces existing legislation on social care direct payments. These are cash payments given to people in lieu of care and support that would otherwise have been arranged for them by local authorities. |
<p>| Is this new policy? | The Care Act consolidates the existing legislation on direct payments. People with capacity can request a direct payment, and where they meet the conditions set out in section 31 the local authority must provide direct payments to meet their assessed eligible needs. Section 32 places a duty on local authorities for adults who lack capacity. It requires local authorities to make a direct payment to an authorised person who requests one, provided five conditions set out in the section are met. Broadly, the 2014 Act and these regulations make the same provision for the making of direct payments as currently exist under the Community Care, Services (Direct Payments) (England) Regulations 2009 (S.I. 2009/1887) and the Health and Social Care Act 2001. This instrument mainly replicates the 2009 framework, minus aspects that are now in primary legislation, and updating several areas to align with Government policy on direct payments and self-directed support. Where there are differences in substance to the current regime, these are explained in paragraph 7 of the Explanatory Memorandum. |</p>
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<th>Description</th>
<th><strong>The Care and Support (Preventing Needs for Care and Support) Regulations 2014</strong></th>
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<td>The instrument makes provision for when a local authority can and when it cannot make a charge for the provision of services, facilities and resources under section 2 of the Care Act 2014.</td>
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| Is this new policy? | These Regulations maintain the existing position where local authorities may charge for preventative services unless otherwise specified and where local authorities must provide intermediate care, (for up to 6 weeks) minority aids and adaptations (up to £1000) free of charge. |

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<th>Description</th>
<th><strong>The Care and Support and After-care (Choice of Accommodation) Regulations 2014</strong></th>
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<td>This instrument makes provision to require a local authority, in certain circumstances, to provide or arrange for the provision of accommodation in respect of which an adult expresses a preference, including provision to specify the types of accommodation to which the obligation to meet the adult’s preference applies.</td>
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| Is this new policy? | The concept of choice of accommodation is not new and the Regulations broadly maintain the status quo as currently reflected in directions and regulations but with an expansion to certain settings such as “shared lives” and “supported living” settings. |

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<th>Description</th>
<th><strong>The Care and Support (Deferred Payment) Regulations 2014</strong></th>
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<td>These relate to local authorities’ powers to implement deferred payment schemes. These schemes allow individuals to enter into an agreement with their local authority to defer paying the costs of their care and support until a later date so that they should not be forced to sell their home during their lifetime to pay for care.</td>
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<p>| Is this new policy? | The Act allow regulations to be made to state when a local authority may or must enter into a deferred payment. These provisions will replace the existing deferred payments powers under the Health and Social Care Act 2001. Under the 2001 powers (section 55), local authorities have discretion to enter into a deferred payment agreement to take charges on land instead of contributions. The 2014 Deferred Payment regulations introduce a requirement on local authorities to offer deferred payment agreements in circumstances specified in the regulations (and also provide discretionary powers to do so in other circumstances). Although section 55(5) of the 2001 Act set out that the provisions of the agreement and charge shall be determined by the authority in accordance with any directions given by the Secretary of State, no directions have been made, and so local authorities have been broadly left to decide the provisions of the agreement and charge and the circumstances in which they will offer a deferred payment agreement. The 2014 Deferred Payment regulations make provision about the agreement, the charge and when authorities must offer deferred payments, which is almost entirely new. |</p>
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<th>Description</th>
<th>The Care and Support (Charging and Assessment of Resources) Regulations 2014</th>
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<td>This regulation sets out how a local authority must conduct a financial assessment when seeking to calculate what a person can afford to contribute towards the cost of their care and support.</td>
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<td>Is this new policy?</td>
<td>The Act gives local authorities a general power to charge for certain types of care and support, at their discretion but subject to ensuring the individual is left with a minimum amount of income after charging. This replicates existing policy but now puts the minimum income requirement on a regulatory basis for those in non care home accommodation. Currently it is found in regulations relating to residential care. The power for local authorities to charge for care and support replaces existing provisions, albeit that in respect of residential care there is currently a duty to charge. The regulations specify services that must be provided free, on the same basis as the current requirements.</td>
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APPENDIX 2: CORRESPONDENCE ON RAIL PASSENGERS’ RIGHTS AND OBLIGATIONS (EXEMPTIONS) REGULATIONS 2014 (SI 2014/2793)

Letter from Lord Goodlad, Chairman of the Secondary Legislation Scrutiny Committee, to Claire Perry MP, Parliamentary Under Secretary of State at the Department for Transport

In our latest report we have drawn these Regulations to the special attention of the House on the grounds that they may imperfectly implement European Union legislation because potential benefits to passengers continue to be delayed.

The Committee noted strong similarities between the explanation provided with this instrument and that provided with the previous instrument, which it considered in 2009: both argued that a decision on which exemptions may be allowed to lapse is not currently possible due to a lack of information on the consequences. Seven years after the EU legislation was agreed, the Committee considers that position unacceptable.

We have been informed that your Department is in the process of collecting information to fill that lacuna and aims to produce regulations in autumn 2015 that may allow up to two thirds of the current exemptions to be removed. However, we were given similar assurances by the then Secretary of State in 2009, which were later overturned allowing the blanket exemption to run for the full five years. That policy was justified on the grounds of the cost to the industry, but, as your current Impact Assessment states, implementation costs on industry transfer directly as benefits to passengers, and some measures such as improved information are not particularly costly.

The Committee would therefore be grateful to receive a progress report from your officials in six months’ time to reassure us that, this time, regulations will be made, based on appropriate, evidence-based decisions, that also give the interests of passengers sufficient priority.

5 November 2014

Letter from Claire Perry MP to Lord Goodlad

I note that the Committee has drawn these Regulations to the attention of the House on grounds that it considers that they may imperfectly implement European Union legislation because potential benefits to passengers continue to be delayed.

I can assure the Committee that we continue to hold the interests of rail passengers at heart, and that there is no cause for considering that European legislation is being imperfectly implemented in this case. As the Committee will be aware, Member States are entirely within their rights to exempt domestic rail services from certain provisions of the EU Regulation on rail passengers’ rights and obligations until 2024. This is also consistent with the Government’s overarching approach to the implementation of European legislation, which is to avoid “gold plating”. By consulting in parallel on the scope for removing certain exemptions from the EU Regulation in a subsequent statutory instrument to be made in 2015, we are in fact going significantly beyond a “do minimum” approach.
Nonetheless, we cannot ignore the potential for the EU Regulation to impose costs on the rail industry, which in some cases could be considerable. Because of the way in which the rail industry is funded within Great Britain, a substantial proportion of those costs are likely to flow back to the taxpayer, either directly or indirectly.

It is therefore of critical importance that the costs and benefits of removing any exemptions are fully understood, if we are to do this ahead of the 2024 final implementation date. Nonetheless, I note the concerns that the Committee has raised, and agree that it would have been preferable to have a clear picture of the benefits and costs of doing so, before the expiry of the current exemptions in December 2014.

As we have made clear in our Explanatory Memorandum, it became clear to us during the pre-consultation stage that further time would be required to carry out a more detailed examination of the issues and to gather the information needed to support a decision. As a result of the work undertaken by my Department over the past year, we were able to launch a detailed consultation in October which means we will be in a much better position to take an informed decision in 2015.

I welcome the Committee’s continued interest in the implementation of this EU Regulation and would be happy for my officials to provide you with a report on progress during the first half of 2015.

13 November 2014
APPENDIX 3: INTERESTS AND ATTENDANCE

Committee Members’ registered interests may be examined in the online Register of Lords’ Interests at www.publications.parliament.uk/pa/ld/ldreg.htm. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 18 November 2014 Members declared no interests.

Attendance:

The meeting was attended by Baroness Andrews, Lord Bichard, Lord Borwick, Lord Bowness, Lord Eames, Lord Goodlad, Baroness Hamwee, Baroness Humphreys, Baroness Stern and Lord Woolmer of Leeds.