



Department
of Health

Draft national minimum eligibility threshold for adult care and support

A discussion document

June 2013

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Foreword

The Government's White Paper *Caring for our future: reforming care and support* set out our long-term programme to reform care and support. The introduction of the Care Bill into Parliament is a major step in taking forward these reforms, as it will modernise social care legislation and put in place a system that promotes people's well-being.

We are establishing a system that will place a greater focus on prevention, which will mean that the care and support needs of people will be considered earlier than is currently the case. This will build on the strengths of the person and look to prevent, reduce or delay their need for care and support. To achieve this, there needs to be better integration between local authorities and the NHS to remove gaps and build services around the needs of people. We are investing £3.8 billion of pooled funding in 2015/16, including an additional £2 billion through the NHS, to deliver faster and deeper integration that will result in people receiving improved integrated services.

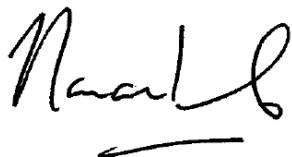
The Bill will introduce a new system that will support people to live independently and put personalisation at the heart of the process. It will help people identify their needs and the outcomes they want to achieve, and support them in planning how their care needs are met. We have also recognised the important role that carers play in supporting those who use care and support. The system would not work without the support they provide. The Bill will therefore extend existing duties on local authorities to assess carers' needs, and will for the first time ever, provide a right to support to meet their eligible needs.

One of the important new changes we are introducing through these reforms is establishing the national eligibility criteria for adult care and support. This is to be achieved through regulations to be made under a power in clause 13 of the Care Bill. These will set a minimum threshold for people's care and support needs which must be met by local authorities in all areas. Local authorities will not be able to restrict eligibility beyond this threshold. Of course, if authorities wish to do so, they can meet other needs which are below the national threshold.

In proposing the new national eligibility criteria, we are providing funding that will allow local authorities to maintain access to care and support when they move to the new system. Subject

to the passage of the Care Bill, this is expected in April 2015. We propose to set the national threshold at a level which would in terms of its practical outcome be equivalent to “substantial” in the current system. This is the level currently operated by the vast majority of local authorities. However, in designing the approach set out in these draft regulations for discussion and debate, we have endeavoured to learn from feedback around the operation of the current banding system, and ensure that eligible needs are described in the language of the Care Bill, focused around the impact on well-being. The draft regulations should not be seen merely as a continuation of the old system, but as part of the reformed care and support system.

Our aim is to continue to improve the assessment framework so that it supports personalisation, prevents and reduces needs wherever possible, and helps people connect better with their communities. A Working Group involving service users, carers, local authorities and academics will develop and test options for a possible new assessment framework. The Group will hold its first meeting later in the summer and will be looking at how the assessment framework can support the strength based approach and how this can promote independence and reduce dependency.

A handwritten signature in black ink, appearing to read 'Norman Lamb', with a horizontal line underneath.

NORMAN LAMB

Chapter 1

National eligibility criteria in the new care and support system

- 1.1** Today's care and support system often fails to live up to the expectations of those who rely on it. Whilst many people needing care and carers do have good experiences, the system can often be confusing, disempowering and not flexible enough to fit around individuals' lives.
- 1.2** In few areas can these issues be more apparent than in relation to the approach to the assessment of people's needs for care and support, and identification of "eligible" needs. "Eligible" needs are those needs for care and support which a local authority may be required to meet, and in doing so will involve the individual in developing a care and support plan which is based around their personal needs, outcomes and preferences. Although local authorities have – and will continue to have – powers to meet any other needs, the determination of "eligible" needs is therefore important in enabling people to access care and support.
- 1.3** At present, the needs which are determined to be "eligible" vary from one area to another. Local authorities are able to set their own "eligibility threshold" or "criteria", based on a framework which is set out in national guidance, *Putting People First: A whole system approach to eligibility for social care*.¹ This approach has led to perceived wide differences between areas, and inconsistency in the offer made to local people, confusion and legal challenge. Because local authorities are able to vary this threshold over time, it has also led to a fear that people may lose their care and support if "eligible needs" are reclassified locally.
- 1.4** In this context, the Government's White Paper *Caring for our future: reforming care and support* (July 2012), set out a long-term programme to reform care and support. One of the key commitments in the White Paper was to introduce a new national approach to eligibility, with a national minimum threshold for eligibility that applies in all areas in England, for both those adults needing care and carers. To enable authorities to provide a comprehensive service to everyone with care and support needs, it is important that there is a greater understanding across the country on what needs are "eligible".
- 1.5** From April 2015, subject to the passage of the Care Bill, we will specify a new national minimum threshold for eligibility, which will set a guarantee of the minimum needs which local authorities must meet in every area. This will be introduced through a provision in clause 13 of the Care Bill, which requires Secretary of State to make regulations to set out the "eligibility criteria" for all local authorities. The regulations will set the minimum threshold and local authorities will not be able to restrict their eligibility beyond this. Authorities will continue to be able to meet other needs that are below the national threshold.
- 1.6** The proposed minimum threshold for 2015/16 has been set at a level that will enable local authorities to continue to maintain the level of services they are providing when they

¹ *Putting People First: A whole system approach to eligibility for social care*. DH February 2010

transition to the new care and support system. In publishing this discussion document and a draft of the regulations, we will continue to engage and collect evidence to ensure that:

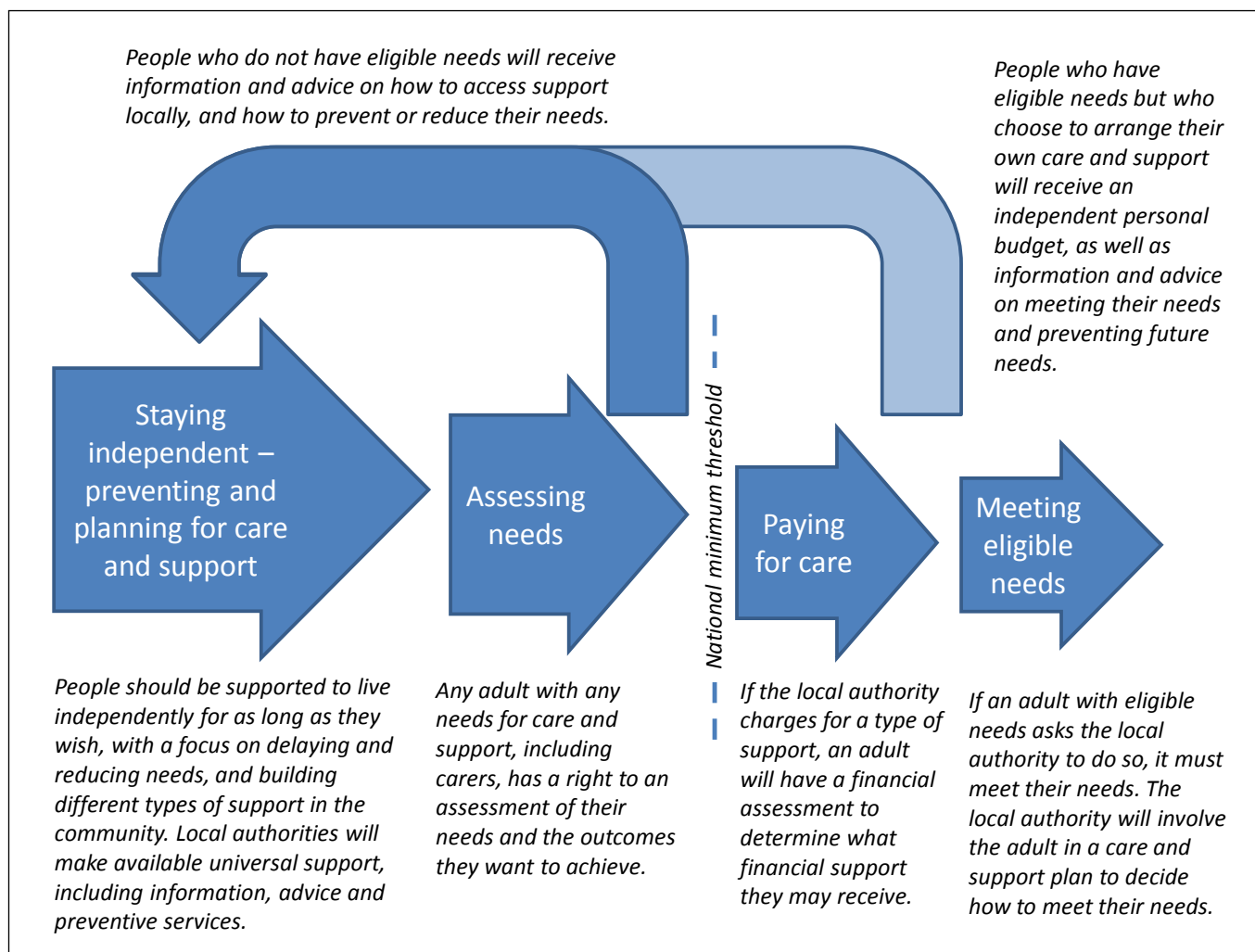
- a. The national eligibility criteria can be interpreted in a manner that offers more clarity, transparency and consistency for those who deliver care, those who receive it, their carers and families;
- b. The approach to eligibility supports our vision for the new care and support system, which places an emphasis on the person, promoting their well-being and reducing or delaying care needs, including how they connect with their community; and,
- c. The national minimum threshold is equivalent to the level operated by the vast majority of local authorities when they move to the new legal framework in April 2015 (described as “substantial” in the current guidance).

The new care and support system

- 1.7** At the centre of the White Paper is a vision for a modern system that promotes people’s well-being by enabling them to prevent and postpone the need for care and support, and puts them in control of their lives so that they can pursue opportunities, including education and employment, to realise their potential. The Care Bill will implement this vision, through the introduction of a new legal framework that will set out the responsibilities of local authorities and individuals’ rights and entitlements. Moreover, the Care Bill will also provide for reforms of how care and support is funded, including the cap on care costs.
- 1.8** Assessments will remain an integral part of the system, as they are now. However, rather than acting primarily as a gateway to the adult either receiving care and support or not, the future system will place more emphasis on the role of the assessment process in supporting people to identify their needs, understand the options available to them, plan for meeting care needs and for caring responsibilities and reduce or delay needs where possible. It will be supported by new duties on the local authority to make information and advice available for all people, and put in place universal services which are aimed at preventing, reducing or delaying care and support needs, and to ensure that services are integrated locally to remove gaps and build services around the needs of people.
- 1.9** Any adult with any level of need has a right to an assessment, including carers, for whom this is an extension of existing rights. This will see authorities having early contact with people who have low level needs. Our proposals for funding reform should also incentivise more people to engage with their local authority earlier. Assessments will identify what type of proportionate intervention the local authority might make to support the individual, depending on their needs. If the person’s needs are not “eligible” at that time, the local authority will nonetheless be under a duty to provide people with advice about how to meet the needs they do have, and information about what might be available in the community, or from other sources, to support them. This earlier contact by authorities can help to delay needs increasing, or even in some cases may prevent people from needing care and support in the future.
- 1.10** Assessment processes for both those needing care and for carers will look at what an individual wants to achieve and what they can do, not just their ‘deficits’ or what they cannot do. This is about the person receiving wider support that can prevent or delay needs from increasing, or from developing in the first place. It is critical that the system works to actively promote people’s well-being and independence, rather than just waiting for people to reach a crisis point. We want a system that promotes independence and reduces dependency, as well as supporting those who already need care and support.

- 1.11** The assessment process in the Bill also provides for joint assessments between local authorities and other bodies such as the NHS. Improved integration will ensure that the person does not have to undergo separate assessments and will support better care planning to meet the individual's overall health and care needs, or to join up whole-family assessments which look at an adult needing care alongside those who care for them.
- 1.12** Within this context, the function of the eligibility threshold is to determine which of a person's needs are of a nature or level which should be met by the local authority. Although many people will have eligible needs, this will by no means account for all people who have an assessment. Local authorities currently support 1.5 million adults needing care and have over 2 million new approaches from people each year for an initial assessment of their care needs. Around 176,000 carers receive 'carer-specific' services and around 430,000 are offered an assessment or review each year². It is critical to our new approach that people who do not have eligible needs at the time of the assessment also receive personalised information and advice, and are supported to access care and support and other services available in their local community.
- 1.13** The introduction of our proposals for a cap on the care costs people should have to pay to meet their eligible needs will likely see more people approaching their local authority. In this context, the role of the assessment, and the opportunity to engage more effectively with people at this crucial interaction, is even more pronounced. The eligibility threshold will also act as the gateway to the cap on care costs, and people, including those who arrange their own care, are likely to want to have an assessment to see if their needs meet the national eligibility criteria so that they can ensure their care costs will count towards the cap. We will be publishing a consultation on Funding Reform soon which will provide more detail on our proposals in this area.
- 1.14** For those people who do have needs, it is important that they know which needs are eligible to allow them to have an informed discussion with the local authority during the assessment process. This will support them in thinking through what their care and support needs are, what outcomes they want to achieve and what options are available to them. Having clarity at this stage of the process will empower people to decide how much support they want from the local authority and, if they want the local authority to arrange their care or support, will inform the planning process and ensure that it is personalised to their needs and outcomes and, where relevant, those of their families.
- 1.15** The diagram below shows in simple form how the new system will work, and the position of the national eligibility threshold within that system:

² *Community Care Statistics, Social Services Activity - England, 2011-12, Final release* - The Information Centre for health and social care. Published February 2013



1.16 The White Paper *Caring for our future: reforming care and support* also set out our plans to develop and test potential new assessment and eligibility models. Although the new system described above will involve many changes to care and support, including reforms to the assessment framework, broader questions will remain about how assessments are carried out, and whether the current assessment framework should be improved or indeed replaced. Although this work is of a longer-term nature, given the potential change involved, we intend to consider it in parallel. This will take account of how assessment has evolved in the UK and consider what other models are available internationally. The outcome of these deliberations will be tested before proposals are considered.

1.17 A Working Group will be established in the summer to take this work forward and advise Government. This was a recommendation made by the Dilnot Commission, and as it recognised, this is a longer piece of work which will take three to four years to develop and evaluate. Notwithstanding this more strategic piece of work it is important to introduce national eligibility criteria sooner to provide clarity to people on what needs are eligible.

Why we are introducing a national minimum threshold

1.18 In the current system, the eligibility framework can be confusing for people, as local authorities set their local eligibility threshold at different levels, and interpretation of the guidance can differ markedly between authorities. This can cause uncertainty for people as they are not clear about their entitlements for care and support, and can be seen to be

unfair if people with similar needs are assessed differently. It can also be a deterrent for people who want to move to live in another authority but are uncertain whether they will receive care and support or not, if the local approach is not the same as their current area.

1.19 At present, local authorities have the ability to adjust their local eligibility criteria or threshold, and can do so for a variety of reasons, for instance to respond local need or to budget pressures. Local authorities should look to more innovative ways to provide the same level of care and support before tightening the eligibility criteria, which can sometimes be seen as a solution to meeting these budget demands. This increases uncertainty and can lead to a fear that local authorities will remove the care and support which people need.

1.20 From April 2015, all local authorities will have to meet a person's needs which meet the national minimum threshold. In setting the criteria for what are eligible needs, we will reduce the level of uncertainty by reducing the variation in what local authorities consider to be eligible needs. A national threshold will set out a clear statement of the needs which must be met in every area. They will act as a standard which local authorities can add to – by meeting other types or levels of need – but cannot take away from.

The draft regulations

1.21 Chapter 2 includes a draft of the regulations which will provide for the national minimum threshold. Although these draft regulations have been subject to some early testing with local authorities and others, they have not been subject to detailed analysis. They are published now in order to support further engagement and to gather evidence over the coming months.

1.22 The draft regulations set the minimum threshold by specifying needs meeting the national eligibility criteria (as provided for in the Care Bill). As noted above, these draft regulations are intended to reflect current practice in the vast majority of local authorities (on the basis that 86% of authorities currently meet “substantial” needs). They will require local authorities who have a higher threshold at April 2015 to bring this down to the national level. Those local authorities who provide care and support to meet “moderate” needs (as described in the current scale), of which 12% do at present, will be free to decide to continue to do so. For carers, this will be the first time that local authorities have been required to meet eligible needs.

1.23 The draft regulations:

- Set out a minimum threshold on what needs are eligible for care and support in local authorities across England, for people needing care and carers respectively. These are the needs which must be met, provided the person needing care is ordinarily resident in the local authority area, and the person needing care or the carer as appropriate wants the local authority to meet them. Drawing on existing practice, the regulations aim to capture the most important needs in a high-level description which local authorities have to interpret and implement;
- Focus on the adult needing care or carer's needs for care and support, the impact of those needs of their well-being, and the level of risk to the individual if the needs are not met. In particular, the regulations are intended to reflect the requirements of the local authority duty to promote well-being in Clause 1 of the Care Bill;

- Make it clear for people what their entitlements are, and will introduce a level of consistency about the threshold that will give people more confidence that if they want to move to another local authority, their eligibility for care and support will continue;
- Clarify that the decision about whether a person has eligible needs is made on the basis that it does not take into account any support that is being provided by a carer. Instead, where a person receives support from a carer, this will be taken into account during the development of the care and support plan;
- Remove inconsistency and anomalies in the way in which the law currently determines entitlements to care and support, so that all people are assessed equally regardless of the setting or other circumstances; and,
- Prevent local authorities from tightening their local eligibility criteria beyond those set out in the regulations.

1.24 The new national approach will replace the eligibility framework set out in the *Putting People First* guidance. It will remove the current banding system described in that guidance, which is open to wide interpretation across local authorities, and replace this with a single set of criteria to describe a minimum threshold for eligible needs of those needing care, and a single set of criteria for carers. In our view, this approach is the most suitable for the task of defining a national standard for eligible needs. Research suggests that the different bandings in the current system have led to misunderstanding, since the relationship between the bandings can be unclear. A framework which more simply describes those needs which are eligible will bring further clarity for those who manage and deliver care and support, for those needing care and support and for carers. We will produce statutory guidance to replace *Putting People First*, which will include more detail about assessment and eligibility processes, and will be consulted on during 2014.

Impact on costs to local authorities

1.25 In preparing the draft regulations, we have worked with the Personal Social Services Research Unit (PSSRU) to estimate the additional cost to the system of introducing a national minimum threshold for those needing care which is similar to “substantial” in the current guidance. In considering the impact of the draft regulations, PSSRU used a population-based method to estimate the costs of the policy. They estimated that the additional cost of local authorities meeting the national eligibility criteria is likely to be around £23 million.

1.26 Costs in relation to the new approach for carers, which included extended rights to assessment and the first ever entitlement to support from the local authority to meet eligible needs, were included in the impact assessment published alongside the Care Bill. This estimates new costs rising to £175 million per year.

1.27 Further information on costs, and on the approach taken to testing the draft regulations to date, is included in Chapter 3. All new costs to local authorities will be funded in full by Government.

How can you help?

1.28 In developing the regulations we have tested whether setting the criteria in regulations will work in practice, and whether the draft accurately describes our policy intention. We held two workshops, in Birmingham and in London, involving users, carers and local authorities; invited 37 local authorities to take part in a short survey to test how the draft regulations match with the current system; and discussed the draft regulations with a number of

voluntary organisations. Our findings indicate that the approach taken by the draft regulations can work in practice, and this work has allowed us to refine the draft regulations to more closely match current practice across local authorities. The draft regulations published here take account of these comments so far, but we recognise that they need to be tested and further changes may be needed both to take account of feedback and for technical drafting reasons.

1.29 The purpose of publishing early draft regulations at this stage is to encourage further feedback, and to allow engagement and testing with a wider range of local authorities, stakeholders and others with an interest and experience. Formal public consultation is proposed for a later stage. In considering the draft regulations, the following areas are of particular interest:

1. What are the implications of the draft regulations?

a. Are any groups currently eligible for care and support not covered by the regulations?

Under the current system, adults could be entitled to care and support under different legislation, and current guidance on eligibility does not always apply directly in every case. For example, case law has demonstrated that residential accommodation provided under Section 21 of the National Assistance Act 1948 may be provided to some individuals who may not have needs which would usually meet the local eligibility criteria. Our intention in developing national criteria is to include all people in a single framework, and to remove anomalies in the current statute that cause confusion, and too often lead to legal challenge. The draft regulations provide for a single description of eligible needs, but may not include all circumstances which would currently lead to an entitlement. During this period of engagement, we would be grateful for evidence on where particular issues may arise for certain groups, and whether anything is needed to provide for them in the regulations.

b. Do the national eligibility criteria effectively describe the equivalent of “substantial” as set out in current guidance and interpreted by local authorities?

It would be helpful to understand whether the draft regulations work in practice and whether they effectively describe current practice. It would be helpful to understand:

- The draft regulations can be used in practice?
- Do the consequences in each of the criteria adequately describe the level of need so that it describes current practice
- Which regulations work well and which may need to be improved and the reasons why?
- Are there any needs missing from the current draft of the regulations?

The Department will also engage a research unit to work with users of care services, carers and local authorities to test how the regulations will work in practice. This will involve testing the regulations in real situations and building on the initial testing carried out using the vignettes. We will be seeking local authorities to volunteer to help test the draft regulations.

c. How will the regulations affect different groups?

Do the regulations effectively cover people with fluctuating needs? Are there other groups that need to be considered?

2. **What are the practical implications for implementing the regulations?**
 - a. *Are the regulations easy to understand and use?*
 - b. *What training and support will be needed to support local authorities in implementing the regulations?*
 - c. *What areas should be included in statutory guidance?*

3. **What other issues should be considered when finalising the regulations?**
 - a. *What information would you find helpful to explain the regulations?*
 - b. *Is the wording of the regulations appropriate or can it be improved?*
 - c. *Are there any unintended consequences?*

Next steps on engagement

- 1.30** The Care and Support Transformation Group has been established as the key forum for engagement between the Department of Health and the care and support sector during the implementation of the care and support reform agenda. The Transformation Group has established a Task and Finish Group to support the work on assessment and eligibility. The Group will be a key way the Department will engage stakeholders in the discussion and continued development of the regulations.
- 1.31** The Assessment and Eligibility Group will not be the only way stakeholders can engage, as we want to get the views from people and organisations with a range of interests and viewpoints.
- 1.32** To achieve this:
- We encourage all stakeholders and those with an interest to express their views on the regulations and provide evidence direct to the mailbox scp-eligibility@dh.gsi.gov.uk up to **29 November 2013**.
 - We will arrange regional workshops during **September** and **October 2013** to test the draft regulations, and continue to engage with stakeholder organisations and other interested parties.
 - We will identify a body to carry out further analysis to test the draft regulations and determine the impact on local authorities, in order to inform the impact assessment to be published alongside the final regulations in 2014.
- 1.33** Following this period of engagement, and subject to the passage of the Care Bill, we will revise the eligibility regulations, and publish a new version for public consultation from spring 2014. Following this consultation, the regulations will be laid before Parliament under the affirmative procedure (which means that Parliament will debate and vote on the regulations) in autumn 2014, and will come into effect from April 2015.

Chapter 2

Draft Regulations laid before Parliament under section 109(4) of the Care Act 201, for approval by resolution of each House of Parliament.*

DRAFT STATUTORY INSTRUMENTS

201x No. 000

CARE AND SUPPORT, ENGLAND

The Care and Support (Eligibility Criteria) Regulations 201x

Made - - - - - ***

Coming into force - - - - - ***

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 13(7) and (8) and 109(6) of the Care Act 201x⁽³⁾.

A draft of this instrument has been laid before and approved by a resolution of each House of Parliament in accordance with section 109(4) of that Act.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Care and Support (Eligibility Criteria) Regulations 201x and shall come into force on xx.

(2) In these Regulations—

“basic personal care activities” means essential personal care tasks that a person carries out as part of normal daily life including eating and drinking, maintaining personal hygiene, toileting, getting dressed, and taking medication; and

“basic household activities” means essential household tasks that a person carries out as part of normal daily life including preparing meals, shopping, cleaning and laundry, and managing household finances.

Needs which meet the eligibility criteria: adults who need care and support

2. An adult’s needs meet the eligibility criteria if those needs are due to a physical or mental impairment or illness and the effect of such needs is that the adult—

- (a) is unable to carry out one or more basic personal care activities and as a consequence there is a significant risk to any aspect of the adult’s well-being;
- (b) is unable to carry out one or more basic household activities and as a consequence there is a significant risk to any aspect of the adult’s well-being;

⁽³⁾ 201x c.xx.

- (c) is unable to fully carry out any caring responsibilities the adult has for a child;
 - (d) needs support to maintain family or other personal relationships, and a failure to sustain such relationships has or is likely to have a significant impact on the adult's well-being;
 - (e) is unable to access and engage in work, training, education or volunteering and as a consequence there is a significant risk to any aspect of the adult's well-being; or
 - (f) is unable to access necessary facilities or services in the local community and as a consequence there is a significant risk to any aspect of the adult's well-being.
- (2) For the purposes of paragraph (1) an adult is to be regarded as being unable to carry out a task if the adult—
- (a) is unable to complete the task without assistance;
 - (b) is able to complete the task without assistance but doing so causes the adult significant pain, distress or anxiety;
 - (c) is able to complete the task without assistance but doing so endangers or is likely to endanger the health or safety of the adult, or of others; or
 - (d) is able to complete the task without assistance but takes significantly longer than would normally be expected.
- (3) Where an adult's needs fluctuate, in determining whether the adult's needs meet the eligibility criteria, the local authority shall take into account the adult's circumstances over such period as it considers necessary to establish an accurate indication of the adult's ongoing level of need.

Needs which meet the eligibility criteria: carers

3. A carer's needs meet the eligibility criteria if the effect of those needs is that any of circumstances specified in regulation 4 apply to the carer, or are expected to apply at an identifiable point in the future.

- 4.—(1) The circumstances referred to in regulation 3 are as follows:
- (a) the carer is unable or unwilling to provide some of the necessary care to the adult needing care;
 - (b) as a consequence of providing care, the carer is unable to carry out some or all basic household activities in the carer's home (whether or not this is also the home of the adult needing care);
 - (c) as a consequence of providing care, the carer's physical or mental health is, or is at risk of, significantly deteriorating;
 - (d) as a consequence of providing care the carer is, or is likely to be—
 - (i) unable fully to care for any child for whom the carer is responsible,
 - (ii) unable fully to provide care to other persons for whom the carer provides care, or
 - (iii) unable fully to maintain other family or personal relationships;
 - (e) as a consequence of providing care, the carer is, or is likely to be, unable to obtain or remain in employment, education or training;
 - (f) as a consequence of providing care, the carer is unable to access necessary facilities or services in the local community; or
 - (g) as a consequence of providing care, the carer is unable to participate in recreational activities.
- (2) For the purposes of paragraph (1) a carer is to be regarded as being unable to provide the necessary care if the carer—
- (a) is unable to provide the care without assistance;
 - (b) is able to provide the care without assistance but doing so—
 - (i) causes or is likely to cause either the carer or the adult needing care significant pain, distress or anxiety; or
 - (ii) endangers or is likely to endanger the health or safety of the carer or the adult needing care.

Signed by authority of the Secretary of State for Health

Address

Name
Parliamentary Under Secretary of State

Date

Department of Health

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations specify the eligibility criteria for the purposes of Part 1 of the Care Act 201x (“the Act”). When an adult is found to have care and support needs following a needs assessment under section 9 of the Act (or in the case of a carer, support needs following a carer’s assessment under section 10), the local authority must determine whether those needs are at a level sufficient to meet the “eligibility criteria” under section 13 of the Act.

Regulation 2 sets out the eligibility criteria for adults who need care and support, and regulations 3 and 4 set out the eligibility criteria for carers who need support.

Chapter 3

Possible impact of draft regulations

Introduction

- 3.1** Today's care and support system often fails to live up to the expectations of those who rely on it. Whilst many people needing care and carers do have good experiences, the system can often be confusing, disempowering and not flexible enough to fit around individuals' lives.
- 3.2** This note provides a summary of cost estimates in relation to the draft regulations in Chapter 2. A full impact assessment will be prepared and published when regulations are subject to public consultation in spring 2014.
- 3.3** Information provided by the Association of Directors of Adult Social Services show that under the current eligibility framework, local authorities have set their local eligibility criteria as follows:

Banding	2013
Critical	3
Substantial	130
Moderate	16
Low	3

Estimates

People who use care and support

- 3.4** The impact assessment for the White Paper estimated that there would be additional annual costs (to local authorities) of **£17.9m** in moving to a national minimum threshold.
- 3.5** This was based on data from a local authority that had changed eligibility thresholds. This move, from "substantial" to "critical", released savings of approximately 2% of its annual budget. If we assume that moving the other way, from "critical" to "substantial", would increase the costs of the six local authorities (three authorities at "critical" and three at "upper substantial") by a similar 2-5%, then the costs from this change would range between **£10 million to £25 million** per annum. These costs arise from increasing access to care and the costs of the additional care provided.
- 3.6** Following the White Paper, the Department asked the Personal Social Services Research Unit (PSSRU) at the London School of Economics to provide a further estimate of the impact of the national eligibility criteria, based on the draft regulations.

- 3.7** In the PSSRU draft paper presented to the Department of Health⁴, estimates are based on local authority responses to a 2011 survey of eligibility criteria conducted by PSSRU. In this study, local authorities were asked to provide estimates of the distribution of clients and expenditure by banding within each client group.
- 3.8** The researchers used two different methods for estimating the impact. The first was based on a distribution-based method, i.e. it reflects the level of adjustment necessary to bring client and expenditure distributions (by banding) among councils with criteria currently above the proposed national threshold in line with councils already at the proposed national level. The second method used a population-based approach, using the relative levels of coverage and expenditure per capita between authorities with different policies in place to calculate adjustments.
- 3.9** PSSRU proposed that the population and actual expenditure approach was a more accurate reflection of current practice and the estimate for the additional cost of moving all LAs to the new eligibility criteria is around **£23 million per year**.

Carers

- 3.10** These costs do not include additional support for carers. The impact assessments for the White Paper and for the Care Bill estimated that implementing these proposals would generate additional assessments of carers, at a cost rising to **£25 million per year**. In addition, demand for support for carers would also increase, both as a consequence of there being more assessments and additionally (independently of the increase of assessments) through a new duty to provide support for carers. Costs arising from these changes are estimated to be in the region of **£125 to £150 million per year**.

Testing the draft regulations

Workshops

- 3.11** The Department held consultation events in Birmingham and London in May 2013, involving service users, carers and local authorities. Attendees were invited to test the draft regulations and consider how they would work in practice and whether they described national eligibility criteria accurately.
- 3.12** Participants were asked for responses regarding the potential eligibility for different “vignettes”, which are short descriptions of people who use care and support and carers. These were subsequently analysed by PSSRU.

DH Survey May 2013

- 3.13** The Department also carried out a short survey in the first week of June 2013 of the draft regulations. The survey was sent to 37 LAs, with the draft regulations and a number of vignettes (23 for users across four categories, and five for carers). Despite the short time scale, there was a good response rate (143 responses). Again, the results must be treated with caution due to a number of factors.
- 3.14** The results of the workshops and the survey are not sufficiently robust to provide an estimate of the cost impact. They did, however, assist with the drafting of the regulations. Feedback highlighted that the regulations do work in practice, but that earlier versions of

⁴ “Minimum eligibility criteria based on current Fair Access to Care Services thresholds” (PSSRU, 2nd May 2013)

the draft regulations tested did not describe accurately current practice. These findings informed the draft of the regulations published here. Discussion with people who use care and support, carers and local authorities will continue as the regulations are refined in advance of formal consultation in spring 2014.