

## Transitional / corrective guidance

The Department of Health in March 2015 issued a [guidance / clarification note](#) accompanying the Care Act 2014 (Transitional Provision) Order 2015.<sup>1</sup>

The note has two functions. Firstly to explain the legal position of people who are receiving services when the new Act comes into force; and secondly to explain what is being done to resolve a number of problems that have been identified in the hectic over speedy implementation of the Act. Other points detailed in the note have either been flagged up already and are covered elsewhere in this briefing, or are of very specific /limited import (eg concerning charging details / choice of accommodation requirements) and outside the general scope of this briefing. Of more general relevance are:

### 1. Transitional rights under pre-care Act regime

The note (para 1) explains the effect of the Order (para 2) that people who are receiving support when the Act comes into force on the 1 April 2015

will continue to receive such support and services under the old law until the local authority completes a review of that person's case, at which point the new law will apply in respect of that person.

The note advises local authorities that it 'will usually be most pragmatic for the transition under the Care Act to take place at the point of the planned, regular review' and in this respect the [Statutory Guidance](#) at should be born in mind – namely that the 'review must not be used as a mechanism to arbitrarily reduce the level of a person's personal budget' (para 13.4).

Local authorities must however have undertaken all reviews by the 1<sup>st</sup> April 2016. If they fails to do this, then (a) the Care Act will apply as of that date and 'anyone who has not been reviewed will be treated as having their eligible needs met under the Care Act' until they are reviewed; and (b) the Department of Health consider that a failure of review in this period would risk increasing the 'violation of their duty to review regularly' – and this will be made cler in the revised guidance that is to be issued (see below).

### 2. New (revised) Statutory Guidance

The note suggests that the statutory guidance issued in October will be updated to reflect the detail of the temporary legislative framework (and the other associated changes detailed below). No date is given for when this will be issued.

### 3. Ordinary residence

A number of drafting problems have been identified concerning the ordinary residence provisions in the Act and regulations. These are partially addressed by the Order para 6 which stipulates (the note advises para 14(iv)) that the:

deeming principles' only apply only from the date a person living in specified accommodation receives care and support under the Act ... [they] do not apply when a person is living in a specified type of accommodation (such as a care home) before they begin to receive care and support from the local authority.

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<sup>1</sup> Accessible at [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/413386/Guidance\\_and\\_Orders\\_Note\\_-\\_final.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/413386/Guidance_and_Orders_Note_-_final.pdf)

Another ordinary residence problem concerns the Acts stipulation that the deeming rule only applies where a person's needs "can only be met" by a specified form of accommodation. In reality a person's needs will often be capable of being provided in the community (but at great expense) and so the note advises that the revised statutory guidance will 'make clearer that an absence of evidence that needs can *only* be met in a certain way is not the same as proof that there are other viable options'. We wait to see how this is achieved. The problem of course is that until the revised guidance is issued local authorities may well context individual's ordinary residence cases on the basis that a literal reading of the Act does not produce such a meaning.