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| <b>DECISION-MAKER:</b>              | HEALTH OVERVIEW AND SCRUTINY PANEL           |
| <b>SUBJECT:</b>                     | DRAFT CARE AND SUPPORT BILL                  |
| <b>DATE OF DECISION:</b>            | 10 <sup>TH</sup> OCTOBER 2012                |
| <b>REPORT OF:</b>                   | EXECUTIVE DIRECTOR OF HEALTH AND SOCIAL CARE |
| <b>STATEMENT OF CONFIDENTIALITY</b> |  |
| None                                |  |

### **BRIEF SUMMARY**

This paper summarises some of the key issues set out in the draft Care and Support Bill. It offers the scrutiny panel an opportunity to comment and raise concerns in response to the consultation process being undertaken by the Department of Health.

### **RECOMMENDATIONS:**

- (i) That the scrutiny panel identifies any comments it would wish to make in response to the consultation on the draft Care and Support Bill.

### **REASONS FOR REPORT RECOMMENDATIONS**

1. To enable the scrutiny panel to respond to the Department of Health consultation on the draft Bill.

### **DETAIL (Including consultation carried out)**

2. Over the years there has been a succession of legislation on adult social care, and some of the changes have resulted in confusion and a number of issues requiring resolution by case law. In an attempt to resolve the confusion the government appointed the Law Commission to undertake a review of the legislation covering adult social care. The Commission published its final report in 2011, and most of its proposals are now set out in a draft Care and Support Bill. The draft Bill proposes a single, modern law for adult care and support that replaces existing outdated and complex legislation. It aims to transform the social care system to focus on prevention and the needs and goals of people requiring care. It also includes a number of health measures, including the law needed to establish Health Education England and the Health Research Authority. This paper does not deal with the issues around Health Education England or the Health research Authority.

A key subject the draft Bill does not address is the future funding of adult social care. The government has accepted principles of the Dilnot report, "Fairer Care Funding". This is to be reviewed as an element in the next comprehensive spending review.

A number of issues that emerge from the Bill are now briefly commented on.

## **General responsibilities of local authorities**

The draft Bill begins by setting out a series of general duties which local authorities must fulfil when carrying out their social care duties. The first of these is a duty to promote an adult's wellbeing through consideration of:

- (a) physical and mental health and emotional well-being;
- (b) protection from abuse and neglect;
- (c) control by the adult over day-to-day life (including over the care and support provided to the adult and the way in which it is provided);
- (d) participation in work, education, training or recreation;
- (e) social and economic well-being;
- (f) domestic, family and personal relationships;
- (g) the adult's contribution to society.

The local authority would be given a duty to provide an information and advice service in relation to care and support. This should be available to everyone, including those who do not meet eligibility criteria. There is also a duty to promote diversity and quality in the market of care and support providers, including private sector organisations, not-for profit organisations and social enterprises.

There are several clauses in the draft Bill relating to duties to co-operate. Local authorities would have a duty to co-operate with relevant partners in exercising its social care responsibilities. These include the police, the NHS, the prisons' minister and the probation service. There would be a separate duty for local authorities to undertake their social care responsibilities with the aim of integrating services with the NHS or other health-related services (e.g. housing).

The draft Bill creates a legal duty for local authorities to take measures to contribute towards preventing or delaying the development of needs for care and support by adults in its area or reduce the needs for care and support of adults in its area who have such needs. This will link to the work undertaken in producing the joint strategic needs assessment and the joint health and wellbeing strategy.

## **Assessments and eligibility**

Local authority responsibilities for assessments are currently set out in a number of statutes. They tend to focus on identifying a service to be provided rather than the needs of an individual. The draft Bill creates a single duty on local authorities to determine whether an adult has needs for care and support. The assessment:

- Must be of the adult's needs and the outcomes they want to achieve;
- Must be provided to all people who appear to have some need for care and support, and therefore should not consider unrelated factors such as a person's finances;
- Must also not consider whether the local authority thinks a person will be eligible for services;

- Must be carried out with involvement from the adult and where appropriate, their carer or someone else they nominate.

After conducting the needs assessment the local authority will then be required to determine whether the person has eligible needs, using the eligibility framework set out in regulations. These regulations will be a national threshold for eligibility which is to be consistent across all areas in England.

The draft Bill contains a new requirement for local authorities to provide assessments for people intending to move to their area or to continue providing care based on the original care plan in their previous authority's area. This is intended to provide continuity and consistency of care when people move home, and will be of particular benefit to people re-locating to be near families in other local authority areas. In practice this means local authorities will continue to meet the assessed needs of people who have moved into their area immediately, until they carry out a new assessment of their own. If the outcome of the receiving authority's assessment is different to that from the previous local authority a written explanation will be required.

### **Charging and Financial Assessments**

The draft Bill aims to create a comprehensive and consistent framework for charging. After completing a needs or carer's assessment and deciding whether the person has eligible needs, the local authority will then think about what type of care and support they might benefit from to meet those needs. The draft Bill gives local authorities power to charge for any type of care and support, except for those will regulations say must stay free. If the local authority thinks that an adult's needs might call for a type of care and support for which it charges, it must carry out a financial assessment to determine whether or not they can afford to pay. The rules on financial assessments, including how to calculate a person's income and capital will be set out in regulations to it is determined in the same way for everyone. The regulations will set a financial limit, and if the adult's total finances are above this limit then the local authority will not be required to contribute towards the cost of their care and support and the person will have to pay the full cost. If they have less than this, then will still have to pay for some of the cost, but the local authority will also contribute.

The draft Bill also provides for deferred payment arrangements. The local authority will pay the adult's care charges on condition they are repaid at a later date, and the local authority secures a charge on the person's interest in their home. New provisions allow local authorities to charge interest on deferred payments for the first time.

### **Who is entitled to care and support?**

The draft Bill aims to create a single, consistent route to establishing an entitlement to care and support for all adults. It also creates entitlement to support for carers. The core entitlement is for an adult's eligible needs to be

met by the local authority, subject to their financial circumstances. Their eligible needs are those which are determined after an assessment. Having an entitlement to “meet needs”, rather than in the past to receive a particular service, means there is more flexibility to focus on what that the person needs and what they want to achieve and to design a package of care and support that suits them.

If the person is going to receive one or more types of care and support for which the local authority makes a charge, then one of 3 conditions also needs to be satisfied. Either:

- The person cannot afford to pay any charge for their care and support and this ensures people without the means to pay do not go without care;
- The person does not have the mental capacity and has no-one else to help them and this ensures people who cannot arrange care themselves do not go without; or
- In other cases the person asks the local authority to meet their eligible needs, and this entitles anyone, regardless of their finances, to get the local authority to arrange their care and support for them, and ensure people who are uncertain about the system lack confidence to arrange their care, do not go without.

### **Personalising care and support planning**

The draft Bill proposes a new duty on the local authority to provide a care and support plan (or a support plan in the case of a carer). In providing this plan they must work with the adult to help them decide how to meet their needs and produce a plan which details what was agreed. As part of the planning process, the local authority must tell people about their ability to take a direct payment for some or all of their needs. For the first time the draft Bill creates a legal entitlement to a personal budget. This is to help people to understand the costs of meeting their needs and what public funding is available to help them. This is complemented by a right to request a direct payment to meet some or all of those needs to maximise the control people have over how that money is spent. The draft Bill also requires local authorities to give information to people to help them support themselves. The local authority also has a duty to review the plan ensure the person’s needs and outcomes continue to be met over time.

### **The law for carers**

The draft Bill creates a single duty for local authorities to undertake a “carer’s assessment”. It would remove the existing requirement that the carer must be providing “ a substantial amount of care on a regular basis”. The stated aim is that more carers would be able to access an assessment. The assessment would aim to consider the impact on the carer and determine whether they have any support needs and what those needs may be. If both the carer and the person they care for agree, a joint assessment of both their needs can be undertaken. When the assessment is complete, the local authority will then

determine what those support needs are and whether those needs are eligible for public support. For the first time carers are entitled to public support on the same footing as the people for whom they care. The key conditions for a carer's entitlement is that they have assessed eligible needs, and that the person for whom they care is ordinarily resident in the local authority area.

### **Safeguarding**

The draft Bill would require the local authority to establish a Safeguarding Adults Board (SAB) to develop shared strategies for safeguarding and report to their local communities on progress. Core membership of the Board is set out in the Bill and includes the local authority, police and the NHS. The Board would publish a safeguarding plan and report annually on its progress against the plan.

The proposed legislation will require local authorities to make enquiries, or to ask others to make enquiries, where they believe an individual with care and support needs is at risk of abuse or neglect. It does not provide power for local authorities to enter a person's property or take other similar action to carry out the enquiry. However, the Department of Health is proposing to undertake a separate consultation exercise to look at whether a specific power of entry is required alongside the duty to make enquiries.

Safeguarding Adults Boards will have to arrange for a safeguarding review to take place in certain circumstances, where an adult dies or there is concern about how one of the members of the SAB conducted itself in the case. The aim would be to ensure that lessons are learnt, not to allocate blame, but to improve future practice and partnership working to minimise the possibility of it happening again.

### **Consultation questions posed by the Department of Health**

The department of health has posed a number of general questions on the draft Bill, and the scrutiny panel may wish to comment on some or all of them.

*The role of the local authority: Do the opening clauses sufficiently reflect the local authority's broader role and responsibilities towards the local community?*

*Individual rights to care and support: Does the draft Bill clarify individual rights to care and support in a way that is helpful?*

*Carers: The law for carers has always been separate to that for the people they care for. Is it helpful to include carers in all the main provisions of the draft Bill, alongside the people they care for, rather than place them in a separate group?*

The wellbeing principle and care and support planning: *Does the new wellbeing principle, and the approach to needs and outcomes through care and support planning, create the right focus on the person in the law?*

Portability of care: *Do the “portability” provisions balance correctly the intention to empower the citizen to move between areas with the processes which are necessary to make the system fair and workable?*

## **ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

3. The scrutiny panel may determine whether or not it would wish to respond to the draft Bill.

## **RESOURCE IMPLICATIONS**

### **Capital/Revenue**

4. There are no financial implications in choosing whether or not to respond to the draft Bill. However, the major issue of the funding for social care will not be changed in the lifetime of the current Parliament.

### **Property/Other**

5. None

## **LEGAL IMPLICATIONS**

### **Statutory Power to undertake the proposals in the report:**

6. The power to undertake scrutiny activities is set out in the Local Government Act 2000.

### **Other Legal Implications:**

7. None.

## **POLICY FRAMEWORK IMPLICATIONS**

8. None.

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## **SUPPORTING DOCUMENTATION**

### **Appendices**

|    |      |
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| 1. | None |
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### **Documents In Members’ Rooms**

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| 1. | Draft Care and Support Bill<br><a href="http://careandsupportbill.dh.gov.uk/home">http://careandsupportbill.dh.gov.uk/home</a>                         |
| 2. | White Paper<br><a href="http://www.dh.gov.uk/health/2012/07/careandsupportwhitepaper">http://www.dh.gov.uk/health/2012/07/careandsupportwhitepaper</a> |

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**Integrated Impact Assessment**

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| Do the implications/subject/recommendations in the report require an Integrated Impact Assessment to be carried out. | No |
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**Other Background Documents**

| Title of Background Paper(s) | Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable) |
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| 1. | None |  |
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**Integrated Impact Assessment and Other Background documents available for inspection at:**

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| <b>WARDS/COMMUNITIES AFFECTED:</b> | All |
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