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The draft Care and Support Bill

A summary of consultation responses

The draft Care and Support Bill

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Contents

Contents..... 3

Executive summary 4

Introduction 6

The engagement process..... 9

What we have heard 10

 Part 1 (Care and Support) 10

 Part 2 (HEE, HRA, HFEA & HTA)..... 18

Next steps 25

Annex A: List of respondents 26

Annex B: List of engagement events and meetings 33

Executive summary

The draft Care and Support Bill was published on 11 July 2012 for public consultation and pre-legislative scrutiny in Parliament.

The draft Bill consolidates existing care and support law into a single, unified, modern statute. It refocuses the law around the person not the service, strengthens rights for carers to access support, and introduces a new adult safeguarding framework. The draft Bill also establishes Health Education England (HEE) and the Health Research Authority (HRA) as non-departmental public bodies (NDPBs).

The consultation closed on 19 October 2012. Over 1,000 written comments were received from a total of 433 unique respondents. We also held a number of engagement events with stakeholders, those who use social care services and their carers.

This document provides a summary of the views expressed during the consultation process. It does not set out the Government's view or response to the comments made. The Government will respond formally to the public consultation alongside its response to the recommendations of the joint committee carrying out pre-legislative scrutiny on the draft Bill.

What we have heard

Part 1 – Care and Support

- Respondents were on the whole very supportive of the consolidation, clarification and modernisation of existing law and the increased emphasis on outcomes.
- There was an eagerness to see the regulations and guidance that will provide further detail on the provisions and suggestions were made about what they should cover.
- Strengthened rights for carers to access support were particularly welcomed.
- Respondents were supportive of the principle of a national threshold for eligible needs but wanted to see more detail about where the threshold would be set and how it would work.
- There was a strong desire to expand the duty to provide information and advice to include more detailed requirements to help the person understand and make use of information, and to support the role of advocacy.
- Some felt that the provisions should go further in ensuring that the balance of decision-making lies with individuals rather than the local authority, so that people are supported to feel in control of their care and support in line with the wider personalisation agenda, and people's ability to challenge decisions made about them is clarified.

The draft Care and Support Bill

- Some wanted to see a stronger focus on prevention of needs and the role of communities in providing universal services.
- Concerns were raised about the pressures on local authority budgets and the consequential impact on care and support. People also expressed disappointment about the absence of clauses in the draft Bill to implement the recommendations of the Dilnot Commission.

Part 2 – HEE and HRA

- Respondents broadly welcomed the proposals to establish HEE and HRA as NDPBs and local education and training board (LETB) governing bodies as committees of HEE.
- They were keen to understand more about how HEE will ensure that the system is accountable, integrated, professionally informed, and that quality improvement underpins all education and training activity.
- They welcomed clarification of the HRA's role in promoting standardised practice in the regulation of health and social care research and in ensuring such regulation is proportionate, but wanted to see greater clarification of its role in facilitating research governance to address the complexity, duplication and delays in obtaining approval to undertake research in the NHS.

We are grateful to all those who contributed their views, and we are carefully considering the comments received. The next stage of the draft Bill is pre-legislative scrutiny by a joint committee (made up of members of the House of Commons and the House of Lords).

The Government remains committed to legislating at the earliest opportunity to enshrine these reforms into the law, taking into account public consultation and pre-legislative scrutiny.

Introduction

The draft Care and Support Bill was published on 11 July 2012 for public consultation and pre-legislative scrutiny in Parliament. The consultation closed on 19 October 2012. The Government is grateful to all those who contributed their views, and we are carefully considering the comments received.

This document provides a summary of the views expressed during the consultation process. It does not attempt to capture every comment or point of detail, but rather to give an overview of comments received in relation to particular areas, to indicate the tone of discussions. All issues raised are being considered as part of the development of the draft Bill, including any that are not explicitly referred to in this document.

This document also does not set out the Government's view or response to the comments made. The Government will respond formally to the public consultation alongside its response to the recommendations of the joint committee carrying out pre-legislative scrutiny on the draft Bill.

The draft Care and Support Bill

Part 1 - Care and Support

The draft Care and Support Bill follows the Government's White Paper *Caring for our future: reforming care and support* (July 2012), which sets out a long term programme to reform care and support. Our vision is for a modern system which promotes people's well-being by enabling them to prevent and postpone the need for care and support and to pursue opportunities, including education and employment, to realise their potential. The draft Bill is the next step in delivering that vision.

The draft Bill takes forward the recommendations of the Law Commission report on adult social care. In May 2011, following a three year review, the Commission concluded that existing care and support legislation is outdated and confusing, and recommended wholesale reform of the law; the Government agrees. As the Commission observed, the law makes it difficult for people who need care and support, and carers, to know what they are entitled to and for local authorities to understand their responsibilities.

In summary, the draft Bill:

- modernises care and support law so that the system is built around people's needs and what they want to achieve in their lives;
- clarifies entitlements to care and support to give people a better understanding of what is on offer, helps them plan for the future and ensures they know where to go for help when they need it;

The draft Care and Support Bill

- supports the broader needs of local communities as a whole, by giving them access to information and advice, and promoting prevention and earlier intervention to reduce dependency, rather than just meeting existing needs;
- simplifies the care and support system and processes to provide the freedom and flexibility needed by local authorities and care professionals to innovate and achieve better results for people; and
- consolidates existing legislation, replacing law in a dozen Acts which still date back to the 1940s with a single, clear statute, supported by new regulations and a single bank of statutory guidance.

The draft Bill therefore includes the following key provisions:

- new statutory principles which embed the promotion of individual well-being as the driving force underpinning the provision of care and support;
- population-level duties on local authorities to provide information and advice, prevention services and shape the market for care and support services. These will be supported by duties to promote co-operation and integration to improve the way organisations work together;
- clear legal entitlements to care and support, including giving carers a right to support for the first time to put them on the same footing as the people for whom they care;
- set out in law that everyone, including carers, should have a personal budget as part of their care and support plan, and give people the right to ask for this to be made as a direct payment;
- new duties to ensure that no-one's care and support is interrupted when they move home from one local authority area to another; and
- a new statutory framework for adult safeguarding, setting out the responsibilities of local authorities and their partners, and creating Safeguarding Adults Boards in every area.

Part 2 - Health measures

Part 2 of the draft Bill includes a small number of critical health measures that:

- establish Health Education England (HEE) as a non-departmental public body (NDPB) to provide the necessary independence and stability to empower local healthcare providers and professionals to take responsibility for planning and commissioning education and training;
- establish the Health Research Authority (HRA) as an NDPB to strengthen its ability to protect and promote the interests of patients and the public in health and social care

research, as well as providing assurance that the HRA will continue streamlining the research approvals process and encouraging investment in research; and

- allow for the abolition of the Human Fertilisation and Embryology Authority (HFEA) and Human Tissue Authority (HTA) by amending the Public Bodies Act 2011; this is subject to a separate public consultation.

The engagement process

The draft Bill and supporting documents (including impact assessments and equality analyses) were made available on the DH website¹ and a dedicated website². The introduction to the draft Bill explained the legislative proposals, the consultation process and how to respond, and the clauses are written in plain English. We produced an EasyRead version of the draft Bill itself³, as well as fact sheets and Q&A⁴. All documents were available to download or purchase from The Stationary Office.

On publication, we wrote to stakeholder organisations encouraging them to respond. To raise awareness and encourage debate, the Department used Twitter to summarise the care and support clauses and provide updates on the engagement process⁵.

Comments were invited by 19 October 2012 either by email, post or via the dedicated website which invited responses to individual clauses and to a series of thematic questions. Over 1,000 written comments were received from a total of 433 unique respondents, including 246 organisations and 187 individuals. A list of the organisations that responded is at Annex A.

The consultation process included extensive engagement activity to facilitate meaningful discussion and dialogue with identified stakeholder groups and to encourage those who use care and support, their carers and families and health and social care professionals to contribute their views. Where possible, we made use of existing events, meetings and networks. The engagements events we attended and meetings we held are listed at Annex B.

¹ <http://www.dh.gov.uk/health/2012/07/careandsupportbill/>

² <http://careandsupportbill.dh.gov.uk/home/>

³ <http://www.dh.gov.uk/health/files/2012/07/2900021-Care-and-Support-Bill-EasyRead-12.07.2012-WEB-ACC.pdf>

⁴ <http://www.dh.gov.uk/health/2012/07/cs-bill-factsheets/>

⁵ <http://twitter.com/CareSupportBill>

What we have heard

Part 1

Care and Support

Individuals and organisations that responded to the consultation were on the whole very supportive of Part 1 of the draft Bill. Certain themes were prominent throughout the responses. Almost all respondents, including those who were supportive of the draft Bill, raised concerns about the pressures on local authority budgets and the consequent impact on care and support. People also expressed disappointment about the absence of clauses in the draft Bill to implement the recommendations of the Dilnot Commission.

Some respondents thought that, although the consolidation and clarification of existing law was successful, the Bill did not do enough to support a stronger focus on prevention of needs and the role of communities in providing universal services. It was felt that the Bill still encouraged a focus on “eligible” needs, rather than considering how other needs could be met.

In several areas where regulations are required, respondents felt that without seeing the detail intended for secondary legislation it was difficult to comment specifically. Examples include the development of a national threshold for eligible needs, and deferred payments. However, in these cases, people were overall in favour of the changes proposed.

Well-being principle and general responsibilities of local authorities

People were broadly supportive of clauses 1-3. In particular there was consensus around the general duty on a local authority to promote an adult’s well-being (clause 1).

“The Care and Support Alliance (CSA) welcomes the fact that the well-being clause (clause 1 on 'Promoting individual well-being') is placed right at the heart of the statute. By placing such welcome emphasis on an individual's well-being local authorities will be better placed to fulfil their other duties and powers under the new legal framework.” – Care and Support Alliance

However, there was a strong desire to expand the duty to provide information and advice (clause 2), to include more detailed requirements to help the person understand and make use of information, and to support the role of advocacy. Furthermore, respondents remarked that it is essential that information is provided in a variety of formats that are appropriate to the needs of the person.

“Accessing information and then feeling supported and empowered to use it are closely related. We would suggest that section 2(1) also makes provision for advocacy. This can be a helpful mechanism in enabling carers to exercise their rights and in clarifying responsibilities towards the supported person.” – ADASS Carers Policy Network

Opinion varied considerably around the duty on the local authority to promote diversity and quality in the provision of services (clause 3). Whilst most were supportive, a significant minority of respondents questioned the ability of a local authority to fulfil this duty, and were unsure as to how this role related to that of the Care Quality Commission for ensuring quality standards in care and support providers.

Integration, cooperation and prevention

There was consensus about the benefit of including duties on local authorities about integration, cooperation and prevention.

“We strongly welcome this clause, having repeatedly highlighted the challenges of providing integrated care throughout a patient’s journey across the health and social care systems.” – Royal College of Nursing

Several people commented on situations in which the duties around integration and cooperation are particularly important, for example in relation to safeguarding. Respondents also sought clarification about the nature of integration and suggested additions to the list of “relevant partners”. Others felt that the clauses could be strengthened and that the Bill could go much further in terms of focussing more on prevention and much less on process.

There was almost universal support for the principle of having a duty relating to prevention (clause 7), and recognition that this is a critical focus of modern social care. Many expressed a desire for the Bill to go further, and provide clearer rights to preventive services on a universal basis. People also felt that it was important to be clear that local authorities could carry out this function jointly with other partners. Particular concern was expressed about the ability of local authorities to charge for preventative services in some circumstances, and whether this would act as a disincentive for people to take up the support. Respondents also pointed to the importance of information sharing in relation to these clauses, but wanted clarity about what information can be shared.

Assessment of needs and eligibility

These clauses drew a large number of responses. Respondents were pleased with an increased focus upon outcomes in the assessment process. However, people would like a number of other conditions to be met as part of the assessment, foremost that:

- assessments must be undertaken by appropriately qualified people;

- people should be actively engaged and involved, not just consulted, in the assessment process.

Respondents particularly welcomed the extension of rights to assessments for carers, and the creation of parity with the people for whom they care (clause 10).

There was a great deal of support for the removal of the “regular and substantial test”, which limits entitlement to carer’s assessments in the current law.⁶ However, some responses included questions about the remaining differences between the assessment of those with care needs and their carers, including the suggestion that a carer’s assessment should focus more clearly on the impact of caring and on the outcomes that a carer wants to achieve. Some respondents called for a consistent single definition of a carer.

Clause 13, which deals with eligibility criteria, also drew a large number of responses. Respondents from all backgrounds were overwhelmingly supportive of the intention to introduce a national threshold for eligibility for care and support. This was widely seen as an equitable and progressive move, which will end the perceived “postcode lottery”.

“We welcome the introduction of a national minimum eligibility criteria and an end to the postcode lottery that currently operates.” – Herefordshire Carers

Many respondents expressed the need to see more detailed regulations before being able to fully comment. Many other people made a case for where the threshold for eligibility should be set in the future – some arguing it should be set at the equivalent of the current “moderate” level, others that it should not be below “substantial”. Local authorities commented on the need to take resources into account when setting the threshold.

Charging and assessment of resources

Some felt that using the word “impose” in relation to charging was inappropriately strong given that charging is a power and not a duty, and thought that the language did not reflect the fact that, as now, charging will be at the council’s discretion.

Above all, people wanted more detail about the assessment of resources, what can be charged for and the application of charges in different settings. Some people also set out their views about particular services that should not be charged for.

“It is essential that anyone who is to be required to pay a charge understands how that charge has been calculated, so charging regulations need to be transparent.” – The Law Society

⁶ At present the law says that anyone who provides or intends to provide a substantial amount of care on a regular basis can have a carer’s assessment.

Particular concern was expressed about charging and assessment of resources in relation to carers, with many pointing out the significant contribution that carers make. Although this replicates the current position in law, some people thought that the draft Bill may create new incentives for local authorities to charge for support for carers, whereas in the past they have provided it for free.

Meeting people's needs

Almost all respondents – including local authorities, voluntary groups, and individuals – welcomed the duties on local authorities to meet an individual's needs for care and support (clauses 17 and 19). It was considered critical that the Bill retain strong individual rights to care and support, which consolidate the various existing provisions. The principle of treating all people equally in establishing those rights – and extending the rights to carers – was widely supported. In particular, respondents welcomed the provision to allow individuals to ask the local authority to meet their eligible needs, regardless of the level of their personal finances.

In relation to carers, the new right to local authority support (clause 19) was almost universally welcomed, as were the statements about the relationship between meeting carers' needs and providing a service to person they care for. However, some suggested that the demarcation between services for carers and those for the person for whom they care could be more clearly defined, as it is in current legislation.

“The draft bill strengthens the rights of carers in several respects concerning assessments which the CSA strongly supports.” - *The Care and Support Alliance*

With regard to the exception for provision of health care services (clause 21), several respondents welcomed the principle of delineating a clear boundary between social care and healthcare, though many respondents expressed the view that there was need for greater clarity still on the demarcation. Several respondents also wanted to see greater clarity around the relationship with NHS Continuing Healthcare, including practical considerations as to assessments and joint working between local authorities and the NHS.

“There is a desperate need for clarity on the boundary between the responsibility of councils to provide care and support, and the NHS in providing healthcare.” – *Parkinsons UK*

Care and support planning, personal budgets and direct payments

Overall, respondents were strongly in favour of clauses 23-30 and the focus on personalised care. There were some cross-cutting issues relevant to many of the “personalisation” clauses, mainly around timescales, accessibility, support and redress for complaints.

With regard to care and support plans (clause 24), an overarching theme was the need to ensure that the balance of decision-making lies with individuals rather than the local authority. Respondents felt that the current drafting places too much emphasis on the local authority, which conflicts with the wider personalisation agenda. For example, many respondents felt the phrase “as far as it is feasible to do so, consult” should be replaced with “consult and involve”. A number of respondents also suggested that local authorities should set out in writing the reasons as to why a person is assessed as not requiring care and support.

Respondents were particularly supportive of the inclusion of personal budgets in law for the first time (clause 25) and the definition used, believing this would promote better understanding. The provisions relating to direct payments which follow were also broadly welcomed. However, there were caveats. First, respondents felt that people should be offered the appropriate support to use direct payments. Second, it is important to recognise that direct payments might not be for everyone, and so we must retain the ability for people to opt out.

“Direct payments can be an effective way to ensure that people have increased flexibility and control over their services. However, some people prefer to receive a direct service rather than a direct payment. This may be because the burden of arranging services is too onerous, or they do not want the responsibility of employing people.” – Sense

Where a person lives

Respondents supported the extension of existing rules about “deeming” of ordinary residence to other types of accommodation (clause 32). The most consistently held view was the need to define further the settings and types of accommodation to which this clause applies in regulations. Some respondents questioned whether the rules about deeming ordinary residence should continue in perpetuity when an adult is placed in accommodation in another area, or whether there should be some kind of cut off related to time spent in another area, so that disputes about local authority responsibility are not merely delayed a further few months, rather than being avoided.

In line with comments in other areas, there was an acknowledgment that while the draft Bill sets out the framework, there is more detail to follow.

“The success or failure of the new Act will rest in the range and quality of statutory guidance which will accompany the Act.” – The Henry Spink Foundation

Almost all people were pleased to see continuity of care addressed in the draft Bill (clause 31). They supported the principles but were keen to see further detail. Some were disappointed that the provisions did not go as far as “full portability” of assessment. A frequent comment was that “continuity of care” as described in these clauses did not equate with “portability” and would still allow the possibility of differences in care packages between areas when a person moves.

Respondents also raised the link between information and portability. They made the point that people need a variety of information in relation to moving, for example information about the new area that they are moving to, or information about who they need to tell about a move. Some people wanted to see timescales associated with the processes around moving from one area to another.

Safeguarding adults at risk of abuse or neglect

We heard considerable support for placing adult safeguarding on a statutory footing. Whilst supportive of including a definition of abuse, the majority of comments about clause 34 expressed called for it to be set out more fully to make explicit that abuse includes more than financial exploitation.

“We are concerned that the definition of abuse under this section is not wide enough. It should be expanded to reference other types of abuse.” – Staffordshire and Stoke Adult Safeguarding Board

Many comments focussed on language and definitions. Whilst there was some support for the duty to make enquiries, some preferred the term “investigation”.

Respondents welcomed the placing of safeguarding adults boards on a statutory footing but some also indicated that they would like to see more direction – including about the composition of boards, their accountability to other local groups and organisations, and how they should be funded. Similarly, people have been broadly supportive of clause 36 on safeguarding adults reviews but also wanted greater clarity about the definition of circumstances in which a review should take place.

Respondents were almost universal in their support for the abolition of the powers to remove an adult from their property under section 47 of the National Assistance Act 1948 (clause 37). A separate consultation was conducted on whether a new power of entry should be developed in its place – a response to which will be published in due course.

Transition for children to adult care and support

Respondents were generally supportive of the inclusion of provisions about transition, recognising that adult social care law has not attempted to tackle this issue before.

“We strongly support the undertaking at clause 39, which specifies that a young person must continue to receive children’s services until adults services are able to meet their needs.” – Herefordshire Carers

A number of respondents commented on the interaction between these provisions and the provisions in the draft Children and Families Bill, noting the link with its proposals for

education, health and care plans and questioning how the two systems would operate together in practice.⁷

A large number of responses reflected concern about the fact that the draft Bill, although consolidating and updating legislation relating to adult carers (that is, adults caring for other adults), does not (because its scope is limited to provisions relating to adults) make similar provision for young carers. Many also felt that parent carers should be afforded parity with other carers.

Many people questioned whether a young person should have to be defined as a child "in need" in order to be able to get an assessment, and whether they should have to ask for an assessment or whether it should be automatically triggered. Many felt that too narrow a definition had been used, potentially restricting those who may access an assessment from adult care and support in advance of their 18th birthday. There was also concern that use of the phrase "child's carer" (clause 40) is confusing and should be replaced with the more commonly used term "parent carer".

We also received comments about the need for the legislation not to impose fixed age limits, but equally there were those who considered whether fixed limits would be a useful addition to the process. Other people felt that we need to emphasise the importance of prevention and planning for the future at the point of transition.

Other issues

Respondents generally welcomed clauses 45-51, which cover a few other related areas, although there were fewer comments on these provisions.

In relation to the ongoing requirement for local authorities to hold a register of blind and partially sighted people (clause 49), this was supported, although some questioned whether this requirement should extend to cover other groups or disabilities.

All respondents who commented agreed that the provision of new statutory guidance to support the legal framework (clause 50) would be critical to implementation, and most expressed a desire for consultation as guidance is drafted.

Of those who commented on the provisions about delegation of local authority functions, some made the point that this is not a new concept.

"We welcome the flexibility and opportunity for innovation and service development this could potentially bring, however it will be a matter for individual authorities how they wish to pursue any activity in this area." – South East England Councils

⁷ <http://www.education.gov.uk/childrenandyoungpeople/send/sen/b00213564/wms-sen-reform>

The draft Care and Support Bill

Again, respondents suggested there was a need for guidance in respect of such delegations. Whilst some people noted the potential benefits, others highlighted the risks, and many were concerned with the need to be clear about accountability when functions are delegated.

Part 2

Health Education England (HEE)

Establishing HEE as a non-departmental public body (NDPB)

Throughout consultation we have heard widespread support for establishing HEE as an NDPB. People believe this will provide a secure foundation for the education and training system and ensure greater objectivity in decision making. We heard that the creation of HEE provides the opportunity to build a new system that is more closely aligned with the needs of patients and able to be more responsive to changes taking place across the wider NHS and public health system.

“We very much welcome the establishment of HEE as a non-departmental public body and as part of a strategy to support the development of the health and care workforce. The NHS Confederation continues to hold the view that the ultimate aim should be to become a world leader in delivering a workforce that meets future patient needs.” – NHS Confederation

“We welcome the Government’s proposals to establish HEE and local education and training boards (LETBs) in primary legislation. This is an important step to securing the future of these bodies and of the NHS education and training system.” - Academy of Medical Sciences

A system that is accountable, professionally informed and has a multi-professional approach

Accepting that it is important that HEE builds on the skills and experience available in the current system, a number of respondents felt that this should not get in the way of developing a new approach to education and training, one that brings a renewed focus on the planning and development of the whole healthcare workforce. Some respondents sought assurance that HEE and the LETBs would have the expertise and capability to reflect and represent the needs of their own particular profession, and some argued that there should be a strong professional presence on the HEE Board and LETB governing bodies. Some respondents sought clarification on what membership of a LETB will mean for providers.

“The wording of this section (clause 61) is unclear. What is the justification for every person who provides health services becoming a member of a LETB.” – Royal College of Obstetricians and Gynaecologists

Transparency in local decision making

Overall, stakeholders were supportive of the LETB governing bodies being established as committees of HEE. They felt this will help ensure better co-ordination and strengthen accountability through HEE, which will provide the necessary leadership and oversight. Respondents felt that the appointment of an independent LETB chair is a positive step, although some stakeholders would like to understand in more detail how HEE will ensure conflicts of interest at LETB level will be managed and resolved. Some respondents requested more clarity in respect of accountability between HEE and LETBs and further explanation on the sanctions that HEE would have available.

“As a NDPB, the BMA believes that HEE should continue to delegate authority to LETBs, whilst having national responsibility for education and training, with continued Secretary of State responsibility.” – *British Medical Association*

Partnership and system integration

There was much consensus on the need for HEE and the LETBs to build strong partnerships across health, social care, education and research. Many stakeholders wanted to see some clarity on how such relationships are developing and will work in the future.

“LETBs must have a key role in ensuring there are effective partnerships across health, education and research at a local level.” – *Chartered Society of Physiotherapists*

Strategic workforce planning must underpin decision making

Many respondents stressed the importance of HEE and the LETBs taking a strategic approach to workforce planning. Although commissioning of education and training takes place on annual cycle, they felt that it is crucial that there is a long term workforce strategy which identifies workforce skills needs for at least the next 3-5 years, and longer in the case of some professions such as medicine where there is a lengthy pathway of education and training. To plan effectively and safely for the long term interests of the whole system, we heard that HEE needs to ensure there is co-ordination of planning nationally with joint working across LETBs where appropriate. Several respondents felt there should be more explanation of how HEE will deliver its duty to ensure there are sufficient skilled healthcare workers. A number of respondents sought clarity on the role of the Centre for Workforce Intelligence and its relationship with HEE.

“It is essential that HEE retains oversight to combine a national workforce sufficient to meet current and future projected needs. Strong structural linkage between HEE and LETBs would facilitate the overall planning process.” – *Academy of Medical Royal Colleges*

Quality improvement must underpin all education and training activity

There was support for the approach of the Secretary of State setting HEE's objectives and priorities, including the development of an Education Outcomes Framework (EOF). The majority of responses supported the inclusion of a duty on HEE for quality improvement. This duty should focus on the quality of patient care and service delivery, not simply on the delivery of professional qualifications. Stakeholders were keen to understand how HEE will exercise this duty. Some wish to see strengthened duties placed on LETBs to keep under review the quality of education and training they commission, including measuring and monitoring quality outcomes, and reporting findings.

"We are supportive of the intention in the Draft Care and Support Bill for HEE to exercise its functions with a view to securing continuous improvement in the quality of education and training provided for care workers, as well as in the quality of health services. However, we would welcome further clarity and detail around how HEE plans to exercise this function and how it will be measured." – Royal College of Nursing

"The RCS welcomes the principles of the EOF as this has the potential to set standards and measure the quality of education and training. However, we have expressed concerns that the EOF ignores some existing sources of quality data already in use which risks devaluing the Framework in the eyes of providers and commissioners." – Royal College of Surgeons

Research and links with Academic Health Science Centres and Academic Health Science Networks

Finally, there was a widespread view that the education and training system can play an important role in supporting the development of a research-centred NHS. It was felt that education and training must equip the workforce to utilise the latest knowledge and research. The duty to have regard to the need to support research was welcomed, however, many felt this could be strengthened to a duty to promote research. Clarification was also sought that this would apply equally to LETBs. The relationship between LETBs and Academic Health Science Centres / Academic Health Science Networks was seen as very important, and stakeholders wished to see further information on how this will work in practice.

"There are particular issues with academic training that we have highlighted previously, such as the importance of ensuring flexibility and providing long-term career pathways, which we see as fundamental to developing a research culture within the NHS. We believe that HEE can and should play an important role in championing research within the new education and training system. We would therefore suggest that this duty should be strengthened to require HEE to 'promote research.' – Academy of Medical Sciences

“Although the College supports the inclusion of a duty on HEE to have regard to the need to promote research in clause 57, we would like to see this wording strengthened in line with the duties in the Health and Social Care Act 2012 which puts requirements on the Secretary of State, NHS Commissioning Board, and Clinical Commissioning Groups to promote research. LETBs should also be subject to the same duty.” – *Royal College of Surgeons*

Many of the responses were relevant to the development of the HEE Special Health Authority and the process currently underway to establish the governing bodies of the LETBs as committees of HEE. We have shared these messages with the HEE leadership team.

Health Research Authority (HRA)

Establishing HRA as a non-departmental public body (NDPB)

There was strong support for establishing the HRA as an NDPB in both the written responses to the consultation and in our discussions with stakeholder organisations. Respondents to the consultation have raised a small number of issues, suggesting changes or seeking further clarification - as set out below.

The overarching role and objectives of the HRA

Respondents expressed some concern about how the HRA would ensure that it achieves the right balance between its role in protecting patients and about its role in improving the research environment and promoting research. Respondents asked for further clarification of how the Government expects the HRA will achieve this balance.

“There have been concerns expressed that the HRA may have some role in promoting the UK’s research capacity as well as acting as the regulator of medical research. These concerns have been reinforced by the Government’s linking of the establishment of the HRA with the benefits arising from ‘contribution health research makes to the UK economy’. We would welcome further clarity on how the Government sees the role of the HRA in this regard.” - *British Medical Association*

HRA role as part of a national system of research governance

Respondents said that they would like to see further clarification of the relationship between the HRA and those responsible for research governance in the NHS. Respondents asked for the HRA’s role in this to be explicit in the draft clauses in order to ensure that issues of complexity, duplication and delays in research approvals are addressed.

The Academy of Medical Sciences said it would like to see the HRA develop metrics and indicators to monitor performance on the regulation and governance pathway.

“Currently the HRA’s responsibility for NHS research and development is only implicit in the Bill . . . Given the importance of the NHS research governance processes for those in academia, industry and the charity sector who carry out research, we think it would be helpful for this part of the HRA’s role to be formalised by explicit mention in the Bill.” - *Royal College of Physicians*

Duty of co-operation between the HRA and others in the exercise of their functions relating to health or social care research.

Respondents were supportive of the duties of co-operation between the HRA and the bodies listed in the draft Bill, although some suggested that additional bodies should be included. Respondents welcomed the intention to let the HRA exercise functions on behalf of the devolved administrations if asked, in order to promote a harmonised approach to regulation and governance across the UK. Respondents also welcomed the freestanding duty to promote co-ordination and standardisation of health and social care research practice.

Public and patient involvement in the HRA's work

Respondents would like to see the Government set out in detail how engagement between HRA, patients and the public is expected to work. The involvement of people with disabilities and their representatives was specifically mentioned.

The inclusion of a duty to keep matters relating to the ethics of health and social care research under review (referred to by respondents as “horizon scanning”) was seen as particularly important in gaining the confidence of the public and raising the profile of the HRA's work.

The process of public consultation “is valuable to ensure the views of the public are taken into account as policy is developed, providing an overview of public and expert opinion to inform government and parliament in making decisions.”

- Association of Medical Research Charities

Clarification of policy

Respondents said they would welcome further clarification on two of the proposed functions. The duty to publish policy and guidance documents was welcomed by some respondents, saying that this function is consistent with the view that the HRA should be the focal point for research approvals and the provision of advice and guidance on research regulation. Clarification about the bodies with which the HRA should consult when preparing guidance was requested.

Respondents were supportive of giving HRA the function of approving processing of confidential patient information for medical research. This was seen as a good opportunity to improve, and reduce complexity of, regulation in this area through the publication of guidance. However, respondents would like to see more information about how the process will work.

Abolition of the Human Fertilisation and Embryology Authority (HFEA) and the Human Tissue Authority (HTA)

A separate consultation about the transfer of functions from the HFEA and HTA to other public bodies ran from 28 June to 28 September. Four organisations responded to the Draft Care and Support Bill with comments about the clause which would amend the Public Bodies Act 2011 to allow for abolition of the HFEA and HTA. They each reflected or made reference to their respective positions as expressed in the separate consultation.

The BMA and Wellcome Trust oppose the transfer of functions to other bodies and correspondingly oppose their abolition. The Royal College of Surgeons opposes the transfer of functions of the HTA only (with no comment on the HFEA) and therefore opposes their abolition. The Care Quality Commission made reference to their separate response but did not expand on their position in response to this consultation.

We are analysing the responses to the consultation about the HFEA/HTA transfer of functions and the Government's response will be published separately.

“We urge the Government not to merge the functions of the Human Tissue Authority into the Care Quality Commission and for the Human Tissue Authority to remain as an independent arms-length body.” - *Royal College of Surgeons*

“We broadly supported Option 3 in which the HFEA and HTA would retain existing functions but deliver further efficiencies. We proposed an enhanced version of this option that seeks to further streamline the regulatory pathway and has the potential for significant cost savings in the future. We therefore consider that the provisions in clause 75 to allow for the abolition of the HFEA and HTA should be deleted.” - *The Wellcome Trust*

Next steps

The Government is grateful to all of those who responded, whether in writing or by participating in an engagement event. We are carefully considering all comments received.

The next stage of the draft Bill is pre-legislative scrutiny by a joint committee (made up of members of the House of Commons and the House of Lords). The joint committee will review the draft Bill and the evidence it receives, and make recommendations in a report.

The Government remains committed to legislating at the earliest opportunity to enshrine these reforms into the law, taking into account the outcome of public consultation and pre-legislative scrutiny.

An EasyRead version of this document will be made available shortly.

Annex A

List of respondents

A total of 433 unique respondents submitted written comments on the draft Care and Support Bill. This included 246 organisations (some of whom submitted joint responses):

- A group of Portsmouth carers
- Action Disability Kensington and Chelsea
- Action for Advocacy
- Action for Carers Surrey
- Action on Hearing Loss
- Adults with Learning Disabilities Forum
- Advice UK
- Advocare
- AKW Medicare Ltd
- Alzheimer's Society
- Ambitious about Autism
- Anthony Collins Solicitors LLP
- Association for Real Change
- Association of British Insurers
- Association of Directors of Adult Social Services
- Association of Directors of Adult Social Services Carers Policy Network
- Barchester Healthcare
- Barnados
- Barnardos North East
- Birmingham City Council
- Birmingham Local Involvement Network
- Borough of Poole
- Bournemouth & Poole Safeguarding Adults Board
- Bracknell Forest Council
- Bradford and Airedale Mental Health Advisory Group
- Bradford and District Disabled Peoples Forum
- Bradford Metropolitan District Council
- Bristol Older People's Partnership Board
- British Association of Social Workers
- British Medical Association
- Browne Jacobsen
- Buckingham County Council
- BUPA
- Bury Metropolitan Borough Council

The draft Care and Support Bill

- Cambridgeshire County Council
- Care and Repair England
- Care and Support Alliance
- Care Quality Commission
- Carers Ambassadors Group - Harrogate/Craven Carers Resource
- Carers in Hertfordshire
- Carers Partnership Group, Croydon
- Carers Trust
- Carers UK
- Carers with Learning Disabilities Support Network
- Carers' Resource
- Carersworld Radio
- Caritas Social Action Network
- Cats Protection
- Centre for Mental Health
- Centre for Public Scrutiny
- Centre for the Advancement of Interprofessional Education
- Chartered Institute for Housing
- Chartered Society of Physiotherapy
- Cheshire Centre for Independent Living
- Christian Science
- College of Occupational Therapists
- Community Catalysts
- Contact a family
- Cornwall County Council
- Cornwall Health and Wellbeing Board
- Coventry City Council
- Darlington Carers' Strategy Steering Group
- Darlington Young Carers and Young Adult Carers
- Darlington Young Carers' Development and Implementation Group
- Deafblind UK
- Dementia Advocacy Network
- Derbyshire County Council
- Devon County Council
- Dimensions
- Disability Law Service
- Disability Rights UK
- Dudley Safeguarding Adults Board
- Durham County Council

The draft Care and Support Bill

- East Riding of Yorkshire Council
- East Riding of Yorkshire Safeguarding Adults Board
- East Sussex County Council
- Employers for Carers Leadership Group
- Energy Future Holdings
- Epilepsy Action
- Epilepsy Society
- Equality 2025
- Essex County Council
- Essex Safeguarding Adults Board
- Every Disabled Child Matters
- Federation of Irish Societies
- Friends of Dolphins Practice
- Gateshead Advocacy and Information Network
- Gateshead Carers Association
- Gateshead Local Involvement Network
- Halton Borough Council
- Hammersmith and Fulham Action on Disability
- Hampshire County Council
- Harrow Association of Disabled People
- Healthwatch England
- Help the Hospices
- Henry Spink Foundation
- Herefordshire Carers Support
- Heritage Care
- Hillingdon Local Involvement Network
- HM Land Registry
- Home Farm Trusts
- Ideal Carehomes
- Inclusion London
- In Control
- Inclusion North
- Inclusive Neighbourhoods
- Independent Age
- Independent Chairs of Safeguarding Adults Boards
- Involve Yorkshire & Humber
- Jewish Care
- Joseph Rowntree Foundation
- Kent County Council

The draft Care and Support Bill

- Key Ring
- Lancashire Age UK
- Lancashire County Council
- Law Society
- Leeds Safeguarding Adults Board
- Leicestershire County Council
- Lesbian and Gay Foundation
- Lewisham County Council
- Lincolnshire Carers and Young Carers Partnership
- Lincolnshire County Council Adult Social Care Services
- Lincolnshire Safeguarding Adults Board
- Linkage
- Living Autism
- Local Government Association
- London Borough of Barnet
- London Councils
- London Voluntary Service Council
- Macmillan Cancer Support
- Mencap
- Mental Health Foundation
- Mental Health Independent Support Team
- Middlesbrough Carers Partnership
- Mind
- Monitor
- National AIDS Trust
- National Association for Voluntary and Community Action
- National Association for the Care and Resettlement of Offenders
- National Autistic Society
- National Care Association
- National Federation of Occupational Pensioners
- National Housing Federation
- National Lesbian, Gay, Bisexual and Transsexual Partnership
- National Pensioners Convention
- National Union of Students
- National Voices
- Newcastle City Council
- Newcastle Council for Voluntary Service
- Newcastle Safeguarding Adults Board
- NHS Confederation

The draft Care and Support Bill

- NHS Sheffield
- No Recourse To Public Funds
- North Derbyshire Voluntary Action
- North East Families and Carers Network
- North Staffordshire Pensioners Convention
- North Tyneside Local Involvement Network
- Nottinghamshire County Council
- Parkinsons UK
- Partners for Inclusion (Sheffield)
- Partnership
- Partners in Policymaking
- Portsmouth City Council
- Positive Ageing in London
- Practitioner Alliance for Safeguarding Adults
- Preston Learning Disabilities Forum
- Prison Reform Trust
- Prostrate Cancer UK
- Race Equality Foundation
- Real Life Options
- Red Cross
- Regional Action West Midlands
- Regional Voices
- Rethink Mental Illness
- Richmond Users and Carers Group
- Rotherham Metropolitan Borough Council Health Scrutiny
- Royal Association for Deaf People
- Royal College of Nursing
- Royal College of Obstetricians and Gynaecologists
- Royal College of Physicians
- Royal College of Psychiatrists
- Royal College of Speech and Language Therapists
- Royal National Institute for Blind People
- Salford City Council
- Salford Safeguarding Adults Board
- Scope
- Self Direct
- Sense
- Shared Lives Plus
- Sheffield City Council

The draft Care and Support Bill

- Sheffield People's Parliament
- Skills for Care
- Social Care Institute for Excellence
- Society of Local Authority Chief Executives
- Solicitors for the Elderly
- Solihull Safeguarding Adults Board
- South Carers Network
- Southern Derbyshire Voluntary Sector Health & Social Care Forums
- South East England Councils
- South East England Forum on Ageing
- South Essex Partnership University NHS Foundation Trust, Social Care and Partnerships
- South Staffordshire and Stoke on Trent Partnership Trust
- South West Forum
- Southampton City Council Health Overview and Scrutiny Panel
- Staffordshire County Council
- Staffordshire and Stoke Adult Safeguarding Board
- Standing Commission on Carers
- Stockport Carers Partnership Board
- Stonewall
- Sue Ryder Care
- Sunderland Carers Centre
- Support, Empower, Advocate, Promote
- Surrey County Council
- Sutton Carers Centre
- Swan Housing Association
- Swindon Carers Centre
- Tameside Local Involvement Network
- The Childrens Society
- The Stroke Association
- Thurrock Coalition
- Together for Short Lives
- Turning Point
- UK Home Care Association
- UK Vision Strategy
- Unison
- UNITE
- United Response
- Vivo Support Limited
- VoiceAbility

The draft Care and Support Bill

- Voluntary Organisation Disability Group
- Voluntary Organisations' Network North East
- Warrington Borough Council
- Wellcome Trust
- West Anglia Crossroads
- West Berkshire Council
- West Lancashire Peer Support Group
- Which?
- Wiltshire and Swindon Users Network
- Wiltshire Involvement Network
- Winchester Young Carers Project
- Women's Royal Voluntary Service
- Worcestershire Association of Carers
- Worcestershire Safeguarding Adults Board
- Yellow Pebbles
- Yorkshire and Humber Families and Carers Network
- Yorkshire and Humber Safeguarding Adults Partnership

In addition, 187 individuals also submitted comments.

Annex B

List of engagement events and meetings

Part 1 - Care and Support

Event	Date
Action on Elder Abuse	9 August
Action on Elder Abuse conference	10 October
Ambassadors' Forum	11 October
Association of Directors of Adult Social Services (ADASS) and Local Government Association	13 September
ADASS Executive	13 September
Care and Support Alliance	25 July 10 September 18 September 17 October
Care and Support Transformation Group	19 July
Care Quality Commission	17 September
Carers in Hertfordshire	27 September
English Community Care Association	8 August
Health and Social Care Partnership and Carers UK	14 September
Henry Spink Foundation	2 October
Law Commission	1 October
Lincolnshire County Council	5 October
Local Government Association	7 August
London ADASS regional branch meeting	12 October
Luton Older People's Partnership Board	18 October
Mencap	21 September
National Care Forum	8 August
National Conference on Adult Services	22-24 October
National Housing Federation	11 October
No Recourse to Public Funds network	19 October
Regional Action West Midlands/Regional Voices Birmingham	16 October
Regional Safeguarding Adults Leads event (Yorkshire and the Humber)	26 September
Right to Control Advisory Group	14 October
Royal College of Nursing	11 October

The draft Care and Support Bill

Royal National Institute for the Blind	23 October
Safeguarding Advisory Group	25 September
Sense	12 October
Skills for Care Board Meeting	27 September
Skills for Care Employer Forum	4 September
Society of Local Authority Chief Executives	4 October
Standing Commission on Carers	3 October
Standing Commission on Carers Cross-Government Programme Board	16 October
Surrey Care Association annual conference	9 October
Think Local Act Personal	26 September
Think Local Act Personal Co-Production Group	24 September
Voluntary Organisations Disability Group	20 September
Voluntary sector joint learning event (London)	11 September
Voluntary sector joint learning event (Sheffield)	1 October

Part 2 – HEE and HRA

The Department also had discussions with the following stakeholders on the establishment of the HRA and HEE as NDPBs through the draft Care and Support Bill, as part of the engagement process:

Academy of Medical Sciences
Allied Health Professions Professional Advisory Board
Association of British Pharmaceutical Industry
Association of Medical Research Charities
Association of Medical Royal Colleges
British Medical Association
Cancer Research UK
Medical Research Council
NHS Confederation and NHS Employers
Nursing and Midwifery Professional Advisory Board
Royal College of Nursing
Royal College of Physicians
Royal College of Surgeons
The BioIndustry Association
Wellcome Trust

