The Care Act 2014
Implications for Age UK’s
Time Line

• The Care Act was passed in 2014
• The government has just completed a consultation on guidance and regulations
• There will be another consultation, probably in December, on care and support funding
• Most of the Act will be implemented in April 2015
• The new long term funding system will not be implemented until April 2016, but local authorities will start assessing the needs of individuals from April 2015
The Care Act 2014 will affect Age UK’s in several ways

- Even ahead of final regulations and guidance, local authorities are already making plans. This is particularly apparent where Local Authorities have new duties such as managing care markets. Age UK’s may have opportunities to influence this process.

- There are new requirements on local authorities to make information, advice and advocacy available. These and other duties may provide new opportunities for Age UK’s to provide services.

- The ‘user journey’ through the process of assessment, determining eligibility and care planning will be better defined by the act and by regulations so Age UK’s will need to understand how the system will work.

- Implementation of a complex new national system of paying for care will result in more older people wanting advice and information.
Integration

- Local authorities have a general duty to act to promote integration with ‘health related’ services

- ‘Health related services’ for this purpose are defined very broadly and include housing and leisure services

- In contributing to Joint Health and Wellbeing Strategies local authorities must consider greater integration of services, if it would promote wellbeing, prevent or delay needs or improve the quality of care

- The Act attempts to clarify the boundary between care and housing by barring local authorities from providing care to meet needs that the housing department is required to meet.
Age UK’s view

• We welcome the focus of guidance on measures that would not require further structural reforms but would create a ‘seamless service from the point of view of the person’

• Clarity about the boundary between health and social care is vital, but the draft guidance failed to take advantage of the opportunity to clarify entitlements to NHS Continuing Healthcare

• The draft guidance is not very helpful in clarifying when provision of small adaptations and Disabled Facilities Grants are a housing or a social services responsibility
Managing the market

- Local authorities will have a duty to manage local care markets in order to ensure that people who need care and support (including self funders and direct payment users) have a choice of good quality services.

- This duty includes ensuring that sufficient care and support services are available.

- Purchasing decisions made by individuals using personal budgets will help to shape markets, so it is important that users of personal budgets are supported to make choices and control their support arrangements.
Age UK’s view

• Commissioners should take into account the social added value that services can contribute, for example by supporting carers, or by providing a focus for the development of community networks, and should recognise the added value that local or user led organisations can bring to services as a result of strong links to existing community networks.

• Where specialised services are needed that would not be sustainable in one local authority area council’s should co-operate to ensure that the need is met.

• Commissioners should ensure that where services are contracted out to other agencies, contracts require that the agency involves service users. Contracts should ensure that providers respect the rights of service users, including under the Human Rights Act.
Information, advice and advocacy

- The Act includes wider requirements for local authorities to provide information and advice, including to self funders.
- This includes providing financial advice and information to help people to plan to meet care needs.
- People who need support to be able to participate in assessment and care planning, and who do not have a suitable person to assist them will be entitled to advocacy. A person is not suitable if the person who needs care and support does not want them as their representative.
Age UK’s view

• We think advice and information should be free but the Act does not make any reference to this

• People who are thinking about how to pay for care will not initially need a registered financial advisor and indeed are likely to need advice on issues that RFA’s are not necessarily expert on, such as welfare benefits and the care funding system
Assessment

- There will continue to be an entitlement to assessment for people who may have care and support needs
- Assessment will still be free
- Assessors will have to be appropriately trained and skilled
- People will be able to carry out a ‘supported self assessment’, though the local authority will only be required to ‘have regard’ to this so it will not be the final say on what people need
- People will need an assessment to decide how much they can count towards the new lifetime cap on individual spending on care (see below).
Age UK’s view

- Regulations and guidance (including requirements for staff training) should cover the whole process from first contact to the final decision about what help the person gets. This should include any initial screening process or post assessment panel.

- Assessments by telephone must fully involve the individual, and must be capable of identifying whether the person is at risk of abuse and neglect. In practice this will not be achievable for everyone, so we think the role of telephone assessment is limited.

- Guidance on assessment should include reassessment, which should be defined as any review that might lead to changes in the person’s care.
Eligibility criteria

- There will be a single national system of eligibility for care and support.
- Eligibility Criteria determine who is entitled to support, but also important because only spending to meet eligible needs will count towards the lifetime spending cap.
- Under the new system people will be entitled to care if they are unable to carry out ‘some or all’ basic care activities, ‘access necessary facilities’ (which includes shops and recreational facilities, maintain family or other important relationships, or engage in work, training, education or volunteering, to the extent that it has ‘a significant impact’ on their wellbeing.)
Age UK’s view

- If people need help with only one basic care activity (rather than ‘some or all’ they should receive it
- ‘significant impact’ is not defined (though ‘wellbeing’ is). How local authorities interpret ‘significant’ will vary according to how tightly local authorities want to restrict eligibility
- Risks should include risk of abuse and neglect. The Department of Health thinks this is unnecessary because there are specific safeguarding duties in the Act, but these are only duties to investigate, not to take action
Entitlement to support

• At present there are different statutory entitlements depending on whether someone lives in their own home or in residential care

• Under the Care Act there will just be one system. This resembles the current system for residential care in that if people can afford to arrange their own care under national rules, the local authority is not automatically responsible for arranging or monitoring care

• However people in this situation will be able to ask the local authority to arrange their care. The local authority would then have to do this but in this case will be able to charge for the cost of arranging and monitoring services, as well as for the service itself. This is the first time that local authorities have had powers to charge to arrange care so we do not know how much they are likely to charge.
Age UK’s view

• Care home residents can be very vulnerable even when they have income and assets, so we are pleased that all residents will have the option of having the local authority arrange their care.

• Since local authorities can usually purchase residential care at lower rates than private funders this option is likely to be popular as people might be able to obtain a care home place at less cost.

• However we are concerned that charges for arranging care will be too expensive and this will deter vulnerable people from taking advantage of the scheme.
The Care Act is the first legislation to require local authorities to take steps to safeguard adults against abuse or neglect.

It requires local authorities to investigate if abuse or neglect is suspected.

However, there is no duty or power to take subsequent action, though local authorities might have duties under the Human Rights Act or common law duty of care, and have powers to seek an injunction to protect the person.

The current framework for considering eligibility for local authority care and support includes risk of abuse or neglect, but this has been removed from proposed new eligibility criteria.
Age UK’s view

- Guidance should make clear what local authorities are expected to do if as a result of an investigation they find that abuse or neglect has taken place or is an immediate risk.
- This should include setting out what statutory powers local authorities have and how the Human Rights Act and common law duties might require them to take action.
- Risk of abuse or neglect should be included in the eligibility criteria.
Delegation of powers

- The Government has already established independent social work pilot sites. In these areas regulations enable the local authority to delegate statutory functions such as assessment, deciding on eligibility for care and support and responsibility for arranging care to an independent agency.
- The Act expands these powers to delegate statutory functions to all local authorities.
- Independent agencies that take on these functions may be able to (or may be expected by the local authority to) charge for advice, information, or arranging care for self funders or others who do not have an automatic right to have care arranged by the local authority.
- However they will not be able to charge for assessment which must be free.
Age UK’s view

- Whilst there is a case for independent agencies being able to carry out an assessment or review on behalf of the local authority, delegation of decisions about whether someone is entitled to care and support will make it more difficult for people to be clear about and to obtain their statutory rights.

- Organisations exercising these delegated powers will not be able to hold themselves out as independent of the local authority for the purposes of advocacy or information provision.

- There would be a reputational risk to voluntary organisations taking on statutory functions as they would be responsible for refusing care and support to people who they thought did not meet eligibility criteria.
The new funding system

• A new system of funding for care and support based on Dilnot Commission proposals

• It includes a ‘lifetime spending cap’, and for people in residential care £100,000 of their assets will be disregarded in calculating the charges they have to pay

• It is expected to result in increased demand for assessment because only after assessment and identification of needs can the ‘meter’ start counting towards the spending cap

• The funding system will be the subject of a further consultation in December, but the current act and regulations ensure that the underpinning framework of entitlement to care and support and to assessment is compatible with the new system
Age UK’s view

- Age UK supported the Dilnot Commission proposals but they have been implemented with a much higher lifetime spending cap than recommended by Dilnot so do less to help the less well off, many of whom will exhaust their means tested assets before they get to the cap

- The cap is undermined by loopholes:
  - Not all spending counts towards the cap
  - Reaching the spending cap will not mean that people do not face further expense. ‘Hotel costs’ for residential care will still have to be paid for, though the maximum amount will be capped
  - Only spending to meet eligible needs will count towards the cap, so if eligibility is tightly restricted not all of the support that people have to pay for will be counted
  - Only the cost that the local authority would have to pay to meet eligible needs is included – but people who purchase their own care often have to pay more than this
Deferred Payments

• The Government has pledged that no one should have to sell their home to meet the costs of care during their lifetime. The national deferred payments scheme (which will replace existing local schemes) is intended to meet this commitment.

• People will be able to defer the costs of residential care and their home will be sold to recover the debt, plus interest, after their death.

• This is in effect a loan to people with the value of the house to be used as security.
Age UK’s view

- The person’s income will be taken into account in deciding how much of their residential care costs they can defer – these seems an unnecessary restriction as the scheme is supposed to be self-financing.

- The regulations should exclude some costs from the income that is taken into account for this purpose – this should include the costs of maintaining the property, which the local authority will expect people to do as the value of the property is their security for the loan.