From:	Graham Gibbens, Cabinet Member for Adult Social Care and Public Health Andrew Ireland, Corporate Director for Social Care, Health & Wellbeing
To:	Adult Social Care & Health Cabinet Committee – 11 July 2014
Subject:	**PREPARATION FOR THE CARE ACT 2014**
Classification:	Unrestricted
Past pathway:	CMT - 3 June 2014 Corporate Board - 23 June 2014 Cabinet – 7 July 2014
Future pathway:	None
Electoral Division:	All

Summary: The Care Act 2014, which received Royal Assent on 14 May 2014, will establish a new legal framework for adult care and support services. It marks the biggest change to care and support law in England since 1948 and will replace over a dozen pieces of legislation with a single consolidated modern law. The new framework will come into effect from April 2015 but some of the key reforms (including the cap on care costs) only take effect from April 2016. This report sets out the work underway to prepare for the implementation of the Act and the current assessment of the main financial and other implications.

Recommendations: Cabinet Committee is asked to:

(a) **DISCUSS** the contents of this report and the extra information provided in the PowerPoint presentation which will be delivered on the day.

(b) **NOTE** that a full implementation plan will be presented to the Adults Transformation Board on 23 July 2014 after the draft regulations and guidance have been analysed. This will be made available to Cabinet Members.

1. Introduction

1.1 The Care Act 2014 received Royal Assent on 14 May 2014. The changes to be implemented will overhaul and modernise the complex system of care and support that has evolved over the last sixty years. The changes will have significant implications for Kent residents and Kent County Council.

1.2 Although commencement dates for the different sections have not yet been confirmed, it is expected that the majority of changes to the legal framework will come into effect from April 2015. The main exceptions are what are referred to as the 'Dilnot' reforms which will come into effect in April 2016. This includes the cap on care costs (£72,000 for people over pension age) and the increase in the capital threshold for people in residential care whose former home is taken into account (from the current £23,250 to £118,000).

1.3 The regulations and guidance which outline the reforms in further detail were only issued on 6 June 2012 (in draft form) and they only cover the changes to be introduced from April 2015. They are subject to a 10 week consultation period (closing date of 15

August 2014) and the final versions are expected to be issued in October 2014. The regulations and guidance covering the ‘Dilnot’ reforms (to be introduced in April 2016) are expected to be released later this year.

2. Key implications and possible decisions required

2.1 **Eligibility criteria:** The Act replaces the current four-level criteria (low, moderate, substantial and critical) with a single national minimum from April 2015. Councils will be able to meet needs at a lower level if they so wish, however it will only be needs assessed as meeting the national minimum that will count towards the cap. Although previous information from Government has suggested the new minimum would be set at a level close to the current ‘substantial’, the draft regulations just released indicate a wider definition. Early indications are that this may mean KCC does not need to tighten its criteria if it wishes to only provide for needs assessed as meeting the national minimum. This would mean that the current 26% of service users currently assessed as having ‘moderate’ needs (approximately 2,600) can be passported to the new national minimum. It would also mean that anyone who would be assessed as eligible under our current system would also meet the criteria under the new system. If however the final regulations do end up equating more to the current ‘substantial’ level, KCC will need to decide if they wish to continue to provide more generous entitlement. In this scenario there would be an impact on the budget. Currently providing services to the 26% of service users assessed as “moderate” equates to 10% of the allocated budget.

Decision may be required on: whether to only meet needs at the national minimum level (by September 2014).

2.2 **Carers:** From April 2015 there is a significant extension of carers’ rights. In addition to the duty to assess, local authorities will have a duty to provide carers’ services to those who are eligible. On top of the carers’ assessments carried out in-house, we currently commission a number of third sector organisations to carry out these assessments. It is believed by Strategic Commissioning that there is sufficient flexibility in the contract to enable them to cope with the expected increase in demand. The costs associated with the extra assessments and services are currently being modelled.

2.3 **Assessments:** There is likely to be a significant increase in the number of people coming forward for care and financial assessments. This is likely to have the most significant impact from October 2015 in anticipation of the ‘Dilnot’ reforms in April 2016. This will require that the necessary capacity (workforce and systems) is in place and that any decisions relating to the delegation powers have been taken. The estimated increase in activity is provided in the PowerPoint presentation on the day.

2.4 **Delegation powers:** The Act gives local authorities the power to delegate nearly all of its social care functions to third parties, although legal responsibility will still rest with Kent County Council. This power can be used from April 2015 but is most likely to be needed for the ‘Dilnot’ changes in 2016. In view of the long lead in time for procurement, decisions will need to be taken at an early stage about the use of this power. Options are currently being considered including working with providers and the Kent voluntary sector. It would be possible to delegate all functions except (1) safeguarding adults at risk of abuse or neglect, (2) promoting integration with health services, (3) decision on which services to charge for and, (4) cooperating with relevant partners. The advantages of delegation may include greater flexibility, cost effectiveness and partnership working. It also fits with the strategic direction towards becoming a commissioning authority. Risks to this approach include the fact that KCC would still be legally responsible for any delegated functions, the need to have in place robust contract management, systems issues concerning transfer of data and concerns about the current capacity of the market to deliver.

Decision may be required on: the extent to which these powers should be exercised (by December 2014 in time for the 2016 changes).

2.5 **Market price for care:** There is the potential for an impact on the market price for care as many more self-funders and former self-funders may have their care arranged by the local authority. This will be due to the increase in the capital threshold (from April 2016) and also because of the right for self-funders to ask the local authority to make the arrangements for their care (expected to be introduced from April 2015). This is most likely to affect the residential care market and has the potential to put significant pressure on the price KCC has to pay for care. The Department of Health has stated that this will lead to greater transparency in the prices paid by local authorities and "will change the care and support market, although it is not clear whether pressure may fall on commissioners, care and support providers or both".[1] Of relevance in this context is the fact that the current residential care contract work makes it clear that the new rates of care will only apply until April 2016. This is so that any changes necessitated by the Care Act can be taken into account."

2.6 **Cap on care costs and change in capital threshold:** For people over pension age the cap will be set at £72,000 from April 2016, after which the local authority must pick up the care costs (but not daily living/hotel costs in residential care). It is expected that the cap for people between 18 and 64 will be lower but this has not yet been confirmed. At the same time, local authority care will become available to people with capital below a limit of £118,000 (as compared with £23,250 now). It has been estimated that the combined effect of these measures for people 65 and over will cost KCC £11.9 million in 2016/17, rising to £13.4 million by 2020/21. The effect for people aged 18-64 is thought likely to cost £4-5 million per annum. People who develop their care needs before the age of 18 will receive free lifetime care for these needs and this is expected to cost about £280,000 per annum.

2.7 **Ordinary Residence:** Currently, when a local authority places an individual in a care home in another area, that individual retains Ordinary Residence in the area of the placing authority. If that individual later begins living in the community (either because they leave their care home or via deregistration) their Ordinary Residence passes to the authority in which they live. This poses particular problems for Kent's Learning Disability service as we are a "net importer" of such placements (one national provider with 182 residents in Kent has 101 of these placed by other local authorities). Under the Care Act the current rules applying to residential care are due to be extended to Shared Lives and Supported Living settings. This will benefit KCC to some extent but will not solve the underlying problem as individuals moving into other non-residential settings will still become the responsibility of Kent.

2.8 **Charging policy:** From April 2015 the existing legislation underpinning charging will be replaced by a power to charge under section 14 of the Act. It is probable that in order simply to maintain the status quo (for example that we charge for residential and domiciliary care) fresh key decisions will be needed. Legal advice is being obtained on this point.

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[1] DH 'Caring for our future: Consultation on reforming what and how people pay for their care and support', July 2013

Decisions may be required on: the extent to which the power to charge should be exercised (by January 2015).

2.9 **Opportunities for more prevention and early intervention work:** In addition to there being clear duties in this regard in the Act, the Care Costs Cap will mean that many more people are likely to come forward for an assessment at an earlier stage in order to take advantage of the new system. Whilst this will help to support the drive to keep people independent for longer (as early advice and support can be provided), it clearly has the potential to increase the number of people coming into the formal care system.

2.10 **ICT systems:** In order for the reforms to operate effectively changes will be required to the ICT client database systems (Swift, AIS, Oracle). This is required particularly for the 2016 changes when the ability to create a Care Account for all individuals (including self-funders) will be needed. In addition, it is believed that optimal use should be made of supported self-assessment options (as part of a triage system) and e-market solutions to enable people to manage their own care and support needs. Discussions are currently underway with Northgate to determine if their proposals for the changes are sufficient and will be delivered in time. This issue is currently considered a major risk to the implementation of the programme.

Decisions required: Although procuring a whole new system before 2016 (when Northgate's current contract runs out) is not thought to be feasible, certain additional functionality will be required. Decisions will be needed on whether Northgate's proposals are considered adequate or whether we will need to procure these "add-ons" (e.g. for the Care Account, Supported Self-Assessment) from elsewhere in order to be ready for the 2016 changes (by August 2014).

2.11 **Public understanding:** There are significant challenges in ensuring that the public understand the reforms. It is considered that the communication from Central Government has so far not sufficiently explained how the new system will work and more importantly how individuals will be affected. However, a draft local communication strategy and plan has been developed in response to the changes.

2.12 **Debt recovery:** The Act removes the current power under section 22 of the Health and Social Services and Social Security Adjudication Act 1983 to place a charge on a person's property who is in residential care and has outstanding debts to the council (this did not need the client's permission providing a debt existed). Under the Care Act, escalated debt procedures appear to be being limited to action through the County Court. There is concern that this will increase the amount of debt that is not able to be secured. As at the end of March this year KCC had 56 section 22 charges in places securing debt amounting to £887,770. The Deferred Payments duties and powers are being widened but, crucially, any charge placed on a property under this section of the Care Act requires the client to consent.

2.13 **Paying providers Gross or Net:** The current approach to paying providers (i.e. Gross) will need to be reviewed to determine if it remains the most effective mechanism once the Care Account is introduced in April 2016 alongside the likely extension of direct payments in care home settings from April 2016.

Decision may be required on: whether to continue to pay providers Gross once the current residential contract ends in 2016.

2.14 **Funding:** There is concern that Government may not fully fund the cost of the implementation thereby raising the issue of affordability for local authorities. Significant work has already taken place (including through ADASS and the County Council Network) to estimate the costs involved. See section 3 below.

3. Financial Implications

3.1 The Government has to date made the following funding announcements:

- 2014-15: £19 million to help local authorities prepare for the changes. It has been confirmed that Kent will receive about £0.125 million of this. Every local authority has been given the same grant money.

- 2015-16: £335 million from DCLG/DH for new burdens (new entitlement for carers, national minimum eligibility, deferred payments, better information/advice and safeguarding and other measures). It is understood that this is top-sliced from the main Revenue Support Grant settlement rather than being new money. Kent's indicative funding is about £8.6 million of this (using the normal funding formula).

- 2015-16: £135 million identified out of the £3.8 billion Better Care Fund. This is earmarked for new burdens under the Care Act. According to Kent BCF plans, this translates to £3.5 million for Kent.

3.2 Further announcements are expected in the next Spending Review.

3.3 The impact of the Care Act will be wide ranging, many activities will be affected and estimating cost impacts is dependent on the forecasts of changes to activity levels. Activity in the various service areas will be affected partly by the detailed provisions of the Act, partly by the reaction of the public and the market, and decisions to be taken locally in relation to the implementation of the Act.

3.4 Some costs will impact in 2015-16 and some in 2016-17 and the years after. The main impact in 2015-16 is for costs related to the assessment and provision of support to carers and the introduction of the national minimum eligibility criteria. In 2016-17 the main impacts will be on the assessment and review of service users particularly self-funders, associated financial assessments and then the increased provision of services due to the increased capital thresholds. In later years, cost will increase because of the lifetime cap on care costs. The exact details of how the provisions of the Act will be implemented are to be confirmed, costings at this stage can only provide a general idea of the likely costs rather than a detailed forecast.

3.5 Increased capital thresholds and introduction of a cap on lifetime care contributions will have the biggest cost impact in 2016-17 and beyond. A standard model provided via ADASS is being used to estimate the cost of these changes, supplemented by local information. As detailed in 2.6 above, the aggregate costs it predicts in the two years mentioned (2016/17 and 2012/21) are £16.6m and £19.3m respectively.

3.6 The costs outlined in 3.5 above do not include the costs associated with the extra assessments, impact on the care market and other costs, such as IT, Training, information advice and guidance, advocacy, deferred payments scheme, safeguarding, and the introduction of direct payments in care homes. These costs will be included in cost estimates as more information is known and decisions taken. This should be confirmed at the meeting of the Adults Transformation Board on 23 July.

3.7 Data from the DH national impact assessments has been used to identify the likely number of service users that will need to be assessed, under the provision of the Act coming into effect in April 2016. It is expected that this increase in activity will begin in October 2015, so these costs will arise partly in 2015-16. For the cost of carrying out each assessment KCC's own staff costs have been used.

4. Programme management and governance

4.1 The Care Act Preparation Programme is a separate programme within the Adults Transformation Change Portfolio set up under 'Facing the Challenge'. Whilst the preparations for the Care Act do warrant a separate programme, there will be strong links to the other programmes in the portfolio to ensure that they are "Care Act proof".

4.2 The Care Act programme is being overseen by the Adults Transformation Board and on a more day to day basis by the Care Act Programme Board. The latter includes representatives from the operational service, policy, finance, strategic commissioning, HR, ICT, Children's Services and Newton Europe. In addition specific reference groups are being set up including for Mental Health, Learning Disabilities and service users.

4.3 A detailed programme plan is currently being developed with the workstream leads and will be completed once the draft regulations and guidance have been released and analysed. This will then be submitted for approval by the Adults Transformation Board on 23 July 2014.

4.4 It should be noted that the preparation for the Care Act is taking place at the same time as other significant changes, for example the move to Business Service Centres and operational restructuring.

6. Recommendations

6.1 Cabinet Committee is asked to:

(a) **DISCUSS** the contents of this report and the extra information provided in the PowerPoint presentation which will be delivered on the day.

(b) **NOTE** that a full implementation plan will be presented to the Adults Transformation Board on 23 July 2014 after the draft regulations and guidance have been analysed. This will be made available to Cabinet Members.

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