

CARE ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Care and Support

General responsibilities of local authorities

Section 1 – Promoting individual well-being

55. This section provides for a set of legal principles, which govern how local authorities are to carry out their care and support functions for adults under this Act.
56. *Subsection (1)* establishes the overarching principle that local authorities must promote the well-being of the adult when carrying out functions under this Part of the Act in relation to that adult. This duty applies both in relation to adults who use services, and to carers. It also applies to children, in relation to the functions set out in sections 58 to 66.
57. The “well-being principle” applies to local authorities (and their officers) when they exercise a function under this Part in the case of an adult. It is not intended to be directly enforceable as an individual right, but to carry indirect legal weight, where a local authority’s failure to follow the principle may be challenged through judicial review.
58. “Well-being” is not defined precisely. However, *subsection (2)* provides guidance on the interpretation of the general duty in subsection (1). It lists outcomes or areas of activity, which develop the concept of well-being. The outcomes are not a series of requirements, but serve as a description to aid understanding.
59. The final element of the statutory principles is provided in *subsection (3)*. This is a list of factors, which local authorities must consider when exercising any function, such as making a decision, about an adult, under Part 1 of the Act.
60. The factors in subsection (3) direct local authorities on a number of issues that they must consider in complying with the general well-being principle. The list of factors is not in order of importance, and the weight afforded to each will differ according to the circumstances of the individual case. Moreover, it is not exhaustive. There may be other factors not listed which are relevant to the well-being of an individual, and which should be considered by decision-makers.

Section 2 - Preventing needs for care and support

61. This section requires local authorities to take steps, including providing and arranging for services (“arranging for” may include commissioning from others), which are intended to prevent, reduce or delay needs for care and support for all local people including adults and carers.
62. *Subsection (2)* requires local authorities to have regard to how it could make the best use of community facilities to prevent, delay and reduce needs for care and support; and to have regard to identifying adults and carers in their area who have unmet needs for care and support, when providing or arranging for preventative services under this section.

63. This section is intended to require steps that prevent, reduce and delay needs for care and support. This section relates to other local authority functions in Part 1 of the Act, including duties under sections 4 and 5. Local authorities must give information about services that can delay, prevent and reduce needs for care and support in their area under section 4, and must shape the market with regards to such services under section 5.
64. *Subsections (3) and (4)* allow for regulations to specify where a local authority may charge for taking steps to prevent, reduce or delay needs for care and support. Any charge made under these regulations can cover only the cost to the local authority of providing or arranging the service. Subsection (3)(b) allows regulations to prohibit charging where subsection (3)(a) would otherwise allow this. This is to allow for local authorities to continue to charge for some preventative services as they do now (for example subsidised leisure services), and to enable local authorities to broaden access to services that can prevent, delay or reduce needs for care and support, that may fall outside of traditional models of care and support, to a wider range of adults and carers in their area. Regulations under section 14 will be used to continue current entitlements to free intermediate care for a specified period and minor aids and adaptations up to a certain cost.
65. *Subsection (6)* acknowledges that a local authority may take steps to prevent, reduce or delay needs for care and support together with one or more other local authorities.

Section 3 – Promoting integration of care and support within health services etc.

66. This section places a duty on local authorities to carry out their care and support responsibilities (including carer's support and prevention services) with the aim of joining-up services with those provided by the NHS and other health-related services (for example, housing or leisure services). The duty will apply where the local authority considers that integration of services would either promote the wellbeing of adults with care and support needs (including carers), contribute to the prevention or delay of developing care needs, or improve the quality of care in the local authority's area.
67. This section is intended to reflect the similar duties placed on the NHS Commissioning Board (known as NHS England) and clinical commissioning groups by sections 13N and 14Z1 of the National Health Service Act 2006.

Section 4 – Providing information and advice

68. This section replaces and expands duties in section 1 of the Chronically Sick and Disabled Persons Act 1970, by requiring local authorities to provide an information and advice service in relation to care and support for adults, and support for carers.
69. The service will be available to all people in the local authority's area regardless of whether they have needs for care and support, or whether any needs they do have meet the eligibility criteria. The information and advice service should, where it is reasonable, also cover care and support services that, while physically provided outside the authority's area, are usually available to its local population.
70. *Subsection (2)* sets out the high-level requirements for an information and advice service. This includes an explanation of how care and support operates in the authority's area, how to access it, what services and providers are available, how to access independent financial advice and how to raise concerns about the safety or well-being of a person with care needs. Subject to *subsections (3) and (4)* it will be for local authorities to determine the precise scope and manner of the information and advice they will offer.
71. *Subsection (3)* states that local authorities must have regard to the importance of identifying people who would be likely to benefit from financial advice. They must provide sufficient information and advice to enable adults to consider the financial aspects of meeting their care and support needs and to make plans for how they might meet any future needs for care and support. As part of this, the local authority must

seek to ensure that people understand how and where to get financial information and advice on the range of financial options available. For example, the information and advice should cover what people are likely to pay towards their care and support needs, alert them to potential benefits and financial entitlements, other financial options to help them pay or plan for care and support, including deferred payment arrangements, and where they can access appropriate, independent financial advice on these matters. This supports subsection (2) and the need to include information on how to access independent financial advice.

72. *Subsection (4)* states that information and advice should be accessible to all and provided in a proportionate manner to meet individual circumstances and needs. For example, an information leaflet may be sufficient for some people, for others it may be face-to-face discussion and advice, while some may require more concentrated access to advocacy services.

Section 5 – Promoting diversity and quality in provision of services

73. This section places a duty on local authorities to facilitate and promote a diverse and high quality market of care and support services (including prevention services) for all people in their local area regardless of who arranges and pays for those services. In particular, local authorities must act with a view to ensuring that there is a range of different services and providers to choose from.
74. *Subsection (2)* lists certain factors a local authority must consider when exercising this duty. These include the importance of ensuring the sustainability of the market and supporting continuous improvement in the quality of services; making available information about the services available to people in its area; facilitating the local market by maintaining awareness of the current and future demand for services in its area, and how this demand can be met by providers; the importance of carers and service users being able to undertake work, education and training; and the importance of fostering an effective workforce capable of delivering high quality services.
75. *Subsection (3)* requires local authorities, when considering current and future local demand and how this might be met by providers, to consider the need for there to be sufficient services to meet the needs of people in their area.
76. *Subsection (4)* requires local authorities to consider, when making decisions about commissioning services, the importance of promoting the well-being of people with care and support needs and carers.
77. *Subsection (5)* requires that the local authority must have regard to the duty when either providing or arranging services to meet the care and support needs of adults with care needs and carers. This is because local authorities' commissioning practices affect the local market of providers.
78. *Subsection (6)* acknowledges that local authorities might work together to exercise this duty. Local authorities might want, for example, to consider the sustainability and diversity of provision across their borders, in order to promote a flexible and responsive market for their local communities.

Section 6 – Co-operating generally

79. This section requires local authorities and their "relevant partners" (listed in *subsection (7)*) to cooperate with each other in the exercise of their respective care and support functions, including those relating to carers and transition for children with needs to adult care and support. This duty does not confer any new functions but relates to co-operation in the exercise of the respective partners' pre-existing functions relevant to adults with care and support needs and support for carers and children in transition.
80. *Subsection (2)* extends the duty of the local authority to cooperate with its partners to any other person or body who the authority considers appropriate. However

subsection (2) does not require this person or body to cooperate in return. *Subsection (3)* sets out examples of the types of other persons with whom it may be appropriate for a local authority to cooperate with under subsection (2). This includes but is not limited to providers of care and support and carer's support services, NHS primary health providers, independent hospitals and private registered providers of social housing.

81. *Subsection (4)* requires the local authority to ensure internal cooperation between its officers: those responsible for adult care and support, housing, public health, and children's services. These officers are employees of the local authority, and are not therefore included in the list of external partners in *subsection (7)*.
82. *Subsection (6)* sets out five aims of cooperation between partners. These are promoting the well-being of adults needing care and support and their carers, improving the quality of care and support for adults and support for carers provided, smoothing the transition from children's to adult services, and protecting adults with safeguarding concerns, whether they are currently experiencing or at risk of abuse or neglect or to investigate past cases of serious abuse or neglect for the purposes of identifying and applying lessons to be learnt. However, the purposes of co-operation are not limited to these matters alone.
83. This section does not require the local authority to take any specific steps to cooperate with relevant external partners, but there are a number of other powers which local authorities may use to promote joint working. For example, local authorities may share information with other partners, or provide staff, services or other resources to partners to improve cooperation. Under section 75 of the NHS Act 2006, a local authority may also contribute to a "pooled budget" with an NHS body – a shared fund out of which payments can be made to meet agreed priorities.

Section 7 – Co-operating in specific cases

84. This section supplements the general duty to cooperate in section 6 with a specific duty. This duty is intended to be used by local authorities or partners where cooperation is needed in the case of an individual who has needs for care and support. The duty is not limited to specific circumstances, but could be used, for example, when a child is preparing to move from children's to adult services; in adult safeguarding enquiries; when an adult requires an assessment for NHS continuing healthcare; or, when an adult is moving between areas and requires a new needs assessment.
85. *Subsection (1)* states that a local authority may request cooperation from a relevant partner in relation to the case of an individual adult or carer, and the relevant partner must cooperate as requested, unless doing so would be incompatible with the relevant partner's own functions or duties. *Subsection (2)* creates the same duty but in reverse, with the request made by the relevant partner to the local authority.
86. If either the local authority, or the relevant partner, decide not to cooperate after receiving a request, then *subsection (3)* requires them to write to the other person setting out their reasons for not doing so. Local authorities and their relevant partners must respond to requests to cooperate under their general public law duties to act reasonably, and failure to respond within a reasonable time frame could be subject to judicial review.