

CARE ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Care and Support

Transition for children to adult care and support, etc.

Section 58 – Assessment of a child’s needs for care and support

358. This section provides a duty for local authorities to assess a child’s needs for care and support (as provided for by this Part), where it appears to a local authority that the child is likely to have needs for care and support after turning 18 and it considers there is significant benefit to the child in doing so. Children have existing rights to assessment and support under the Children Act 1989, and this provision does not affect those rights.
359. If the child lacks capacity or is not competent to consent to an assessment, the local authority has to be satisfied that carrying it out is in the child’s best interests. In any other case, the local authority may not carry out an assessment where the child does not consent to it, but if a child who refuses an assessment is experiencing (or at risk of) abuse or neglect, the local authority must carry out an assessment.
360. A child does not have to be receiving services under children’s legislation in order to receive or request this assessment. Similarly, there is no restriction on the age of child assessed, or their proximity to their 18th birthday. The local authority must consider, whether the child is likely to have needs for care and support after turning 18 and whether there would be “significant benefit” to the child in undertaking the assessment, so that the authority is able to take all relevant circumstances into account in deciding whether to assess.
361. The purpose of this assessment would be to consider what needs for care and support the child may have after their 18th birthday, to support planning for transition to adult care and support. The local authority will therefore assess the child’s needs by reference to the adult care and support arrangements, and this power is not intended to be used to assess needs for children’s services.
362. Where an assessment is carried out, the information provided to the child or their parent/ carer should include an indication of whether they are likely to have eligible needs for care and support after their 18th birthday, and advice and information about what can be done to meet eligible needs and what can be done to prevent or delay the development of needs.
363. If the local authority does not comply with a request to carry out an assessment it must explain why in writing and provide information and advice about what can be done to prevent or delay the development of needs.

Section 59 – Child’s needs assessment: requirements, etc.

364. This section sets requirements about the assessment of children under section 59 including consideration of the outcomes the child wants to achieve, and whether the

provision of care and support will contribute to meeting these outcomes. The section specifies that the assessment must involve the child, the child's parents and any other person who the child or the child's parent or carer wants to be involved.

365. The assessment must include an indication of whether the needs identified are likely to be eligible, advice and information about what can be done to meet any of the child's needs and what can be done to prevent or delay the development of needs for care and support in the future. This information will normally be given to the child; or to their parents where the child lacks capacity to understand their options or express their wishes.
366. Once the young person becomes 18 the local authority must decide whether to treat this assessment as their needs assessment taking into account when the assessment was carried out and whether the young person's circumstances have changed.
367. As with all assessments, a child's needs assessment will need to consider whether other matters beyond the provision of services might help the child achieve their desired outcomes or prevent needs arising or increasing (similarly to section 9(6) of the Act).
368. The local authority may combine a needs assessment with any other assessment it is carrying out of the child or another person only if the individuals agree or, if a child to whom an assessment relates lacks capacity or is not competent to consent, the local authority is satisfied it is in the child's best interests. If carrying out a needs assessment the local authority can also carry out another agency's assessment of the child or that of another relevant person (provided all parties consent to this) on behalf of the other agency or jointly with the other agency. The provisions relating to this are in section 65.

Section 60 – Assessments of a child's carer's needs for support

369. This section requires a local authority to assess a child's carer's needs for support (as provided for by this Part), when it appears to the local authority that the carer is likely to have needs support after the child turns 18 and it is satisfied that there is significant benefit to the carer in carrying out the assessment.
370. A "child's carer" is any adult providing care to a child, regardless of whether they are the parent of that child.
371. Child's carers also have a right to an assessment under section 6 of the Carers and Disabled Children Act 2000, and support would normally be provided under the Children Act 1989, as part of a whole-family approach. However, there may be certain services available only through adult care and support.
372. If a child's carer refuses an assessment, the local authority is not required to do anything further – although the child's carer has the right to change their mind later.
373. The purpose of the assessment would be to consider what needs for support the child's carer may have at the child's 18th birthday, to support planning for transition to adult care and support. The local authority will therefore assess the child's carer's needs by reference to the adult care and support arrangements, and this power is not intended to be used to assess needs for children's services.

Section 61 – Child's carer's needs assessment; requirements etc.

374. Assessment of a child's carer should include assessment of whether the carer is willing and able to provide care to the child and is likely to continue to be willing and able when the child reaches the age of 18.
375. Assessment must include assessment of the outcomes the carer wants to achieve in day-to-day life, whether and to what extent the provision of support will contribute to meeting these outcomes and consideration of whether there are other matters that could

help the carer achieve the outcomes. The section specifies that the assessment must involve the carer and any other person who the carer wants to be involved.

376. Once an assessment has been done the carer must be provided with an indication of whether they are likely to have eligible needs for support after the child's 18th birthday, advice and information about what can be done to meet any of the carer's needs and what can be done to prevent or delay the development of needs for support in the future.
377. As with all assessments, such an assessment will need to consider whether other matters beyond the provision of services might help the carer achieve their desired outcomes or prevent needs increasing or arising (similarly to section 9(6) of the Act).
378. The local authority may combine a carer's assessment with any other assessment it is carrying out of the carer or another person only if the individuals agree. If carrying out a carer's assessment the local authority can also carry out another agency's assessment of the carer or that of another relevant person (provided all parties consent to this) on behalf of the other agency or jointly with the other agency. The provisions relating to this paragraph are in section 65.

Section 62 - Power to meet a child's carer's needs for support

379. This section provides a power for a local authority to meet a child's carer's needs for support. A child's carer's needs will usually be met under section 17 of the Children Act 1989. However, this section allows for additional support to be provided, where appropriate, for instance, because a certain type of support is only available under adult care and support.
380. The section provides that regulations can be made in relation to the exercise of this power.

Section 63 – Assessment of a young carer's needs for support

381. This section provides a duty for local authorities to assess a young carer's needs for support where it considers the child is likely to have needs for care and support after turning 18 and where there is significant benefit to the young carer in carrying out the assessment. This provision does not affect existing rights to assessment under section 1 of the Carers and Disabled Children Act 2000. A young carer, or a person acting on their behalf, could request an assessment in advance of their 18th birthday, which could indicate to the local authority an appearance of need which would trigger the duty.
382. If a young carer refuses an assessment but is experiencing (or at risk of) abuse or neglect, the local authority must carry out an assessment. It must also carry out an assessment if the young carer does not have capacity or is not competent to consent but it is satisfied that it would be in the young carer's best interests for an assessment to be carried out.
383. There is no prescription about the age at which the local authority must assess. The local authority must consider in all cases whether there would be "significant benefit" to the young carer in undertaking the assessment, so that the authority is able to take all relevant circumstances into account in deciding whether to assess.
384. In judging whether a young carer is likely to have needs for support after they turn 18, this is intended to reflect any need for support, not just those needs that will be eligible after the young carer turns 18. This is similar to the trigger for assessments for carers of adults with care and support needs. When judging whether an assessment would be of 'significant benefit' to the young carer, this is intended to reflect when the assessment should take place.
385. A young carer does not have to be receiving any specific service under children's legislation in order to request this assessment. Similarly, there is no restriction on the age of child for whom the request may be made, or their proximity to their 18th birthday. The local authority must consider in all cases whether there would be "significant

benefit” in undertaking the assessment, so that the authority is able to take all relevant circumstances into account in deciding whether to assess.

386. The purpose of this assessment would be to consider what needs for support the young carer may have after their 18th birthday to support planning for transition to adult care and support. The local authority will therefore assess the child’s needs by reference to the adult care and support arrangements, and this power is not intended to be used to assess needs for children’s services.
387. Where an assessment is carried out the information provided to the carer should include an indication of whether they are likely to have eligible needs for support on their 18th birthday, and advice and information about what can be done to meet eligible needs and what can be done to prevent or delay the development of needs.
388. If the local authority does not comply with a request for an assessment it must explain why in writing and provide information and advice about what can be done to prevent or delay the development of needs.

Section 64 – Young carer’s assessment: requirements etc.

389. This section sets requirements about the assessment of young carers under section 63, including consideration of whether the young carer is willing and able, both at the time and likely to be so when he or she reaches the age of 18, to provide care to the individual in question. It must also include an assessment of the outcomes the child wants to achieve.
390. Results of an assessment will normally be given to the young carer; or to their parents where the young carer lacks capacity to understand their options or express their wishes.
391. The section specifies who the local authority must involve in the assessment, namely the young carer, the young carer’s parents and any other person who the young carer or their parent wants to be involved.
392. When assessing a young carer the local authority must have regard to the extent to which the young person wishes to work or to participate in education, training or recreation.
393. The assessment must include an indication of whether, looking ahead to when the young carer turns 18, the needs identified are likely to be eligible, advice and information about what can be done to meet any of the child’s needs and what can be done to prevent or delay the development of needs for care and support in the future.
394. Once the young carer becomes 18 the local authority must decide whether to treat this assessment as their carer’s assessment taking into account when the assessment was carried out and whether the young person’s circumstances have changed.
395. As with all assessments, a young carer’s assessment will need to consider whether other matters beyond the provision of services might help the young carer achieve their desired outcomes or prevent need (similarly to section 9(6) of the Act).
396. The local authority may combine a carer’s assessment with any other assessment it is carrying out of the young carer or another person only if the individuals agree. If carrying out a carer’s assessment the local authority can also carry out another agency’s assessment of the young carer or that of another relevant person (provided all parties consent to this) on behalf of the other agency or jointly with the other agency. The provisions relating to this are in section 65.

Section 65 – Assessments under sections 58 to 64: further provision

397. The section includes a power to make regulations about carrying out assessments for children and young carers under these provisions. It also includes provision for the local authority to carry out an assessment of a child jointly with another assessment

and specifies that if assessments are to be combined the child must have capacity or be competent to agree to a combined assessment.

398. The local authority may combine a needs assessment with any other assessment it is carrying out of the individual or another person only if the individuals agree or, if a child to whom an assessment relates lacks capacity or is not competent to consent, the local authority is satisfied it is in the child's best interests. So for example an assessment of likely needs after the age of 18 could be included in a young person's education, health and care (EHC) plan, provided for in the Children and Families Act 2014. The EHC offers a joined up assessment for children and young people across education, health and social care. If carrying out a needs assessment the local authority can also carry out another agency's assessment of the child or that of another relevant person (provided all parties consent to this) on behalf of the other agency or jointly with the other agency. For example, if carrying out a child's needs assessment the local authority could carry out a continuing healthcare assessment of his or her carer jointly with the relevant health body.
399. The provisions for assessment in order to plan for transition under sections 58, 59, 60, 61, 63 and 64 apply both to those who are and to those who are not already receiving support.

Section 66 – Continuity of services under other legislation

400. A local authority may not provide any care and support under this Part to meet a child's or young carer's needs in advance of their 18th birthday. However, it is possible that on their 18th birthday, adult care and support may not be in place immediately.
401. Where this happens, and the child or young carer has previously been receiving services under section 17 of the 1989 Act or section 2 of the Chronically Sick and Disabled Persons Act 1970, this section provides that the local authority must continue to provide those services until the relevant steps have been undertaken. This is to ensure no gap in provision during the transition to adult care and support.