

# CARE ACT 2014

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 1 – Care and Support

##### Assessing needs

##### *Section 9 – Assessment of an adult’s needs for care and support*

90. This section requires a local authority to carry out an assessment, which is referred to as a “needs assessment”, where it appears that an adult may have needs for care and support. The objective of the needs assessment is to determine whether the adult has care and support needs and what those needs may be. It is the mechanism by which local authorities assess whether a person requires some form of care and support, and whether the nature of their needs is such that the local authority will be under a duty to meet them (in other words, whether the person has “eligible” needs). Whether or not a person has eligible needs, they will receive tailored information on the services available in their local community to help meet the needs they do have.
91. *Subsection (3)* makes it clear that the local authority must carry out the assessment wherever it appears that an adult may have needs for care and support, whether or not it thinks the adult has eligible needs, and regardless of the adult’s financial resources.
92. *Subsection (4)* stipulates that the assessment must consider how the person’s needs impact on their well-being and the outcomes that an individual wishes to achieve in day-to-day life: for example, being able to live at home and feed themselves, and whether care and support can help them to meet those outcomes.
93. *Subsection (5)* requires the local authority to involve the adult, any carer they may have, and anyone else the adult may ask to be involved in the needs assessment. Where a person lacks capacity the local authority must also involve any person who appears to be interested in the individual’s welfare. The intention is to allow the adult to set the outcomes they wish to achieve and to be fully involved throughout the assessment process. Where the adult would otherwise face difficulty in being involved in the process, for example due to communication problems, and they do not have anyone to support them, the adult will be entitled to the support of an advocate to assist them (as provided for in section 67).
94. *Subsection (6)* requires the local authority to consider whether and to what extent matters other than the provision of care and support could help them reach the outcomes they want to achieve. This might include the adult’s own capabilities and what they may be able to do themselves to achieve those outcomes.
95. It also requires local authorities to consider whether the adult would benefit from its prevention or information and advice services (provided under sections 2 or 4) or any other services that might be available in the community. For example the local authority may consider it would benefit the adult to undergo a reablement programme, and this could take place in parallel with the assessment process.

96. The section brings together a number of existing powers and duties to create a single legal basis for assessment, including section 2 of the Chronically Sick and Disabled Persons Act 1970; section 4 of the Disabled Persons (Services, Consultation and Representation) Act 1986 and section 47(1) of the National Health Service and Community Care Act 1990.

### ***Section 10 – Assessment of a carer’s needs for support***

97. This section creates a single duty to assess carers. It requires a local authority to carry out an assessment, known as a “carer’s assessment”, where it appears that a carer may have needs for support at that time, or in the future. The aim of the assessment is to determine whether a carer has support needs either currently or, possibly, in the future and what those needs may be.
98. The duty to assess a carer replaces existing duties in relation to the assessment of adult carers in section 1(1) of the Carers (Recognition and Services) Act 1995 and section 1 of the Carers and Disabled Children Act 2000.
99. A carer is defined as an adult who provides or intends to provide care for another adult. The section makes clear care includes the provision of practical or emotional support. This definition is subject to the proviso that those who care on a contractual or volunteering basis are not considered to be carers for the purposes of this Part. However, if the local authority thinks it is appropriate for such an individual (even if there is a contractual or volunteering element to the relationship) to be treated as a carer, then it may do so.
100. The duty to assess applies regardless of any views the local authority may have about the level of a carer’s needs for support or the financial resources of either the person needing care or the carer. The local authority must involve the carer and any other person nominated by the carer, when carrying out a carer’s assessment.
101. A carer’s assessment must consider certain important factors. These include the carer’s ability and willingness to provide care and support, both now and in the future; the impact of caring on the carer’s wellbeing; and the outcomes that the carer wishes to achieve in day to day life. In carrying out the assessment the local authority must also have regard to whether a carer works or wishes to work, or participates in, or would like to participate in, education, training or recreation.
102. *Subsection (8)* requires the local authority to consider whether and to what extent matters other than the provision of care and support could help the carer reach the outcomes they want to achieve. It also requires local authorities to consider whether the carer would benefit from its prevention or information and advice services or any other services that might be available in the community.

### ***Section 11 – Refusal of assessment***

103. This section sets out what is to happen where an adult or a carer refuses to have a needs or carer’s assessment.
104. Normally if an adult refuses a needs assessment or a carer’s assessment, the local authority need not carry it out.
105. However, the section specifies that there are two situations in which the local authority must carry out a needs assessment even if the adult refuses an assessment:
- a) if the adult lacks the capacity to agree to an assessment but the local authority is satisfied that an assessment would be in their best interests; and
  - b) if the adult is at risk of harm or financial abuse.

106. Where a person has refused a needs assessment or carer's assessment and the local authority thinks the circumstances have changed, the duty to carry out an assessment applies, unless the person continues to refuse.

### ***Section 12 – Assessments under sections 9 and 10: further provision***

107. This section requires the Secretary of State to make regulations about how a needs assessment or a carer's assessment is carried out, to ensure consistent practice in the key elements of the assessment process.
108. The regulations may in particular make provision about matters that a local authority must consider when carrying out an assessment, and about the assessment process, to ensure that it is carried out in an appropriate and proportionate manner. The local authority may be required to have regard to the family needs of the person being assessed, for instance the need to ensure that a child is not undertaking an inappropriate caring role for the adult concerned. Regulations may specify who may or must carry out an assessment, in particular that an expert must carry out the assessment in cases where the adult or carer has a complex condition, including allowing for self-assessment, joint assessments, and for a third party to carry out the assessment on behalf of the local authority. They may also specify when a local authority should refer a person for assessment by the NHS when they believe that the person has NHS continuing healthcare needs.
109. This section also makes clear that a local authority may combine a needs or carer's assessment with some other assessment it is carrying out of the individual or another person, provided that both individuals agree or in the case of a child who lacks capacity or is not competent to agree, provided it is satisfied that combining the assessments would be in the child's best interests. For example, a local authority may combine an assessment of a young carer with the needs assessment of the adult he or she cares for. This section also ensures that a local authority, when carrying out a needs or carer's assessment, may work jointly with or on behalf of another body which is carrying out another assessment of the person or, for example, someone that person is caring for or who cares for that person. For example, if a local authority is carrying out a carer's assessment, and an NHS body is carrying out a continuing healthcare assessment of the person he or she is caring for, the local authority could jointly carry out the continuing healthcare assessment jointly with the NHS body.

### ***Section 13 – The eligibility criteria***

110. Having carried out a needs assessment or a carer's assessment, this section requires local authorities to determine whether a person's needs are "eligible" needs. In other words, whether they meet the eligibility criteria which are to be set out in regulations. "Eligible" needs are those needs of a level or nature which the local authority may be under a duty to meet. The use of the word "eligible" here refers only to the person's needs, not to their financial resources or other circumstances.
111. As *subsection (1)* sets out, provided that a local authority is satisfied on the basis of an assessment that an individual has any needs, of whatever level, the first requirement following an assessment is for the local authority to establish whether those are needs which the local authority must meet. Everyone will receive a written record of that decision, whether their needs are eligible or not.
112. If the person or carer does have eligible needs, *subsections (3) and (4)* require the local authority to establish the adult's ordinary residence and consider the support (of whatever form) that could be provided to meet those needs.
113. *Subsection (3)(b)* requires the local authority to ascertain whether the adult wants to have their needs met by the local authority. This allows individuals who do not want the local authority to meet their needs to take an independent personal budget (as set

out at section 28) and start their care account. This duty is not replicated for carers in subsection (4), as the cap on costs does not apply to carers.

114. Where the individual or carer's needs do not meet the eligibility criteria, *subsection (5)* requires the local authority to provide them with advice on what services are available in the community to meet the needs they do have and to prevent or delay their need for care and support. This will ensure people are helped to access local services, which may be provided by the local authority or by another organisation.
115. *Subsection (6)* provides for the Secretary of State to set out the eligibility framework in regulations. The regulations will set out how a local authority must go about determining whether an adult's needs meet the eligibility criteria. It provides the power for Secretary of State to set out which needs are "eligible" needs, to enable local authorities to make the determination required in subsection (1).
116. *Subsection (7)* specifies that a person's needs will meet the eligibility criteria if they are of a description specified in the regulations. The regulations will prescribe the minimum level of needs which local authorities must meet, subject to the conditions set out in section 18. Local authorities can decide to arrange services to meet needs at a lower level.