

CARE ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Care and Support

Imposing charges and assessing financial resources

Section 18 – Duty to meet needs for care and support

137. This section sets out the circumstances when a local authority is obliged to meet an adult’s eligible needs for care and support and is the principal individual entitlement to care and support for adults with needs for care and support (the equivalent for carers is provided for in section 20). This replaces a number of duties to provide particular care and support services to adults: sections 21(1), 21(2) and 29(1) of the National Assistance Act 1948, section 2(1) of the Chronically Sick and Disabled Persons Act 1970, and section 45(1) of the Health Services and Public Health Act 1968.
138. *Subsections (1) and (2)* set out the circumstances in which an adult is entitled to care and support to meet their needs where the adult has been assessed by the local authority and has been determined to have “eligible” needs for care and support (this would be decided using the eligibility framework set out in regulations made under section 13).
139. Subsection (1) sets out the preconditions that trigger the local authority’s duty to meet an adult’s eligible needs for care and support in a case where the adult’s accrued costs do not exceed the cap on care costs (see section 15). These are:
- that the adult is ordinarily resident in the local authority area (or has no settled residence in any area, but is living in the local authority area at that time), (provision about ordinary residence is made in section 39); and either:
 - a) that the local authority has either decided not to charge for a particular type of care and support, or is not able to charge. The circumstances in which the local authority does not or may not charge are set out in subsection (6); or
 - b) if it is not such a case, one of the following three conditions is met.
140. *Subsections (2) to (4)* set out the three conditions that trigger the duty to meet eligible needs:
- The first condition is that the adult’s financial resources are assessed as being at or below the financial limit set in regulations under section 17. In other words, the adult does not have sufficient financial resources to be able to pay the charge which is assessed as due, although they may be required to make a contribution. The amount of resources required will depend on the type of care and support, and will be calculated following a financial assessment carried out by the local authority (under section 17).
 - However, the second condition provides that the adult may request that the local authority meet their needs, even if their resources are assessed as above the financial limit, so that they have to pay for their care in full. That request would trigger the

duty on the local authority to meet their needs. Where the adult lacks capacity to make the request, it may be made by someone else acting on their behalf.

- The third condition is that the adult lacks the mental capacity to arrange care and support, and there is no other person willing or able to arrange that care and support on their behalf. In these circumstances, the duty applies, regardless of other factors such as finances.
141. *Subsection (5)* provides that the local authority is under a duty to meet an adult's needs for care and support which meet the eligibility criteria where the adult's accrued costs exceed the cap on care costs (see section 15) if the adult is ordinarily resident in the local authority area (or has no settled residence in any area, but is living in the local authority area at that time).
142. *Subsection (6)* sets out the circumstances in which there may be no charge for particular types of care and support, for the purposes of subsection (1)(c). These are that:
- regulations prohibit the local authority from charging for the type of care and support being provided by the local authority; or
 - the local authority decides not to charge for the care and support being provided.
143. *Subsection (7)* provides that the local authority is not under a duty to meet any of the adult's eligible needs which are being met at that time by a carer. When conducting the needs assessment and the eligibility determination, the local authority will assess the totality of the adult's needs, regardless of whether a carer is currently meeting any of them. This is sometimes referred to as the assessment being "carer-sighted".
144. However, the local authority is not under a duty to meet any eligible needs which are being met by a carer, because the carer is already doing so. If a carer were to cease providing care and to stop meeting any eligible needs, this would trigger a review of the adult's care and support plan, and may mean that the local authority is required to meet the needs. If the carer has needs for support, they should be entitled to an assessment in their own right, under section 10, and may receive support to meet their eligible needs.