

CARE ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Care and Support

Next steps after assessments

Section 24 – The steps for the local authority to take

171. This section sets out the steps local authorities must take after carrying out the needs assessment or carer's assessment (and the financial assessment where relevant).
172. *Subsection (1)* requires a local authority which has a duty under section 18 or section 20 or has exercised its discretion under section 19 or section 20 to meet needs for care and support to do the following:
- Prepare a care and support plan for an adult with needs for care and support, or a support plan for a carer (as specified in section 25).
 - Inform the adult which of their needs it will meet and where direct payments may be used to meet needs.
 - Help the adult in deciding how to have the needs met.
173. *Subsection (2)* requires the local authority to provide those whose needs it is not required to meet, and has decided not to meet, with the following:
- A written explanation of the reasons why it is not going to meet the needs (e.g.; this could be the adult is ordinarily resident elsewhere, or their needs are being met by a carer).
 - Information and advice in writing on how the adult can meet or reduce their needs independently, including information on how the adult can prevent or delay their needs (unless the adult or carer has received such advice already as required by section 13).
174. *Subsection (3)* applies where the adult has eligible needs for care and support, but the local authority does not have a duty to meet these needs (because, for example, the adult does not want to have their needs met by the local authority). It requires the local authority to prepare an independent personal budget (as required by section 28).

Section 25 – Care and support plan, support plan

175. This section sets out the information and details which must be specified in the care and support plan (or in the case of a carer, the support plan) provided under section 24.
176. *Subsection (1)* provides that the needs identified in the needs or carers assessment must be specified in the plan and also whether and if so the extent to which the needs meet the eligibility criteria. It requires the plan to specify the needs the local authority will meet and to state how it will meet them, and to specify to which of the various relevant matters covered in the assessment, including the outcomes which the person wishes to

achieve in day to day life. It must also include the personal budget for the adult and information and advice about how to prevent, delay or reduce the adult's needs for care and support or the carer's need for support.

177. If the individual's needs are met by a direct payment, *subsection (2)* requires that the plan must specify the needs that will be met by the direct payment, and the amount and frequency of the direct payment.
178. The purpose of *subsections (3) and (4)* is to ensure that all relevant people are involved in the preparation of and agreement to the plan. Subsection (3) 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 development of the care and support plan. Where a person lacks capacity the local authority must also involve any person who appears to be interested in the individual's welfare.
179. Subsection (4) requires the local authority to involve the carer, the adult receiving care, and anyone else the adult may ask to be involved in the development of the support plan.
180. *Subsection (5)* requires the local authority to take all reasonable steps to reach agreement with the person for whom the plan is being prepared about how the local authority is going to meet their needs. The local authority may be required to make an advocate available to support the person, see section 67.
181. *Subsection (6)* provides for this by requiring the local authority to have regard to various matters covered by the assessment such as the outcomes of the adult or the carer wishes to achieve.
182. *Subsection (7)* allows the local authority to jointly prepare the plan with another person, including the adult or carer who the plan is being prepared for. *Subsection (8)* requires the local authority to facilitate the development of the plan by providing such a person with information, resources and access to facilities.
183. *Subsection (11)* allows the local authority to combine a care and support plan or a support plan with any other plan, where those to whom the plans relate agree (or where one of the plans relates to a child who lacks capacity or is not competent to agree, the local authority is satisfied that combining the plans is in the child's best interests). This would allow for a combined care and support plan, for instance to reflect the needs of a family more holistically.
184. *Subsections (13) and (14)* allow regulations to specify circumstances where elements of subsections (1) and (2) do not apply.

Section 26 – Personal budget

185. This section defines a personal budget as a statement and set out the financial information which must be included in the statement.
186. *Subsection (1)* makes clear that the total amount which it costs the local authority to meet the needs which it must or has decided to meet must be set out in a statement and broken down so that the adult can see from the statement the amount if any which the adult must pay towards that cost and the amount if any which the local authority must pay. The amount the adult must pay is calculated on the basis of the financial assessment carried out under section 17.
187. *Subsection (2)* requires the total cost to the local authority of meeting eligible needs which it is required to meet under section 18 to be broken down so that the adult can see from the statement how much of that is attributable to daily living costs. This is because daily living costs do not count for the purposes of working out whether costs accrued in meeting adult's eligible needs have exceeded the cap on care costs, and where they have, this will allow the adult and local authority to distinguish what the adult must pay for their daily living costs and what the local authority must pay to meet the care costs.

188. *Subsection (3)* provides that the personal budget may specify other amounts of public money that are available to the person for spending on matters including those relating to housing, healthcare or welfare.
189. *Subsection (4)* allows regulations to specify costs to be excluded from the personal budget in cases where the local authority decides not to charge, or is restricted from making a charge.

Section 27 – Review of care and support plan or of support plan

190. This section requires the local authority to ensure the care and support plan (or support plan) remains an accurate, up-to-date reflection of the person's needs and the outcomes they wish to achieve and the services arranged to meet these needs and outcomes. This section applies to care and support plans for adults needing care and support, and support plans for carers. The local authority must review the plan on a reasonable request by the adult to whom it relates.
191. *Subsection (2)* states that the local authority may revise the care and support plan, and when doing so must have regard to the outcomes the individual identified in the assessment and other relevant matters identified in the assessment and listed in section 9(4). When revising the plan the local authority must involve the adult, any carer they may have, and anyone else the adult may ask to be involved. Where a person lacks capacity the local authority must also involve any person who appears to be interested in the individual's welfare. *Subsection (3)* places similar requirements on the local authority when reviewing a carer's support plan.
192. *Subsection (4)* states that where the local authority is satisfied that the person's circumstances, for example their needs or finances, have changed in a way that affects their care and support plan or support plan, the local authority must, where it thinks appropriate, carry out a new needs or carers assessment, and a new financial assessment (or both) and consider whether the person's needs meet the eligibility criteria. The local authority must then revise the care and support plan or support plan as appropriate. This will ensure that the individual's care and support package, and the level to which the local authority contributes to it are up-to-date and in line with the outcomes of the care and support plan review.
193. *Subsection (5)* states that, as with the care and support plan in section 25, the local authority must involve the user of care services and carer and take all reasonable steps to reach agreement with the person for whom the plan is being prepared if there is to be a change in how the person's needs are met.

Section 28 – Independent personal budget

194. This section establishes the concept of independent personal budgets for adults who have eligible needs, and who choose not to have these needs met by their local authority. Such persons will not have personal budgets under section 26 because the local authority is not under a duty to prepare a care and support plan for them, so a separate mechanism is needed to record their care costs for the purposes of measuring progress towards the costs cap.
195. The independent budget is a statement recording how much of the adult's spending on care will count towards the cap. This amount will be equivalent to what it would cost the local authority to purchase care and support that meets their eligible needs.
196. *Subsection (1)* defines the independent personal budget as a statement that shows the amount that it would cost the local authority to meet the adult's eligible needs. The independent personal budget is equivalent to what it would cost the local authority to purchase the care for the individual, if it were doing so under section 18.
197. *Subsection (2)* requires the independent personal budget to specify how much of the total represents daily living costs (see section 15) and the remaining amount

of the independent personal budget that is for care costs and therefore contributes towards someone's progress towards the cap. Local authorities are required to keep the independent personal budget under review, and if the person asks for it to be reviewed, must do so if the request is reasonable (*subsection (4)*).

198. If the local authority considers the adult's circumstances to have changed in a way that might affect the independent personal budget, then they must, if appropriate, carry out a new needs assessment and revise the independent personal budget (*subsection (6)*).
199. If an adult refuses a reasonable request to be re-assessed, then their independent personal budget will cease counting towards their accrued costs and the local authority will not have to keep their care account up to date (*subsection (7)*).
200. Following a review, the local authority must notify the adult of the outcome and if the independent personal budget has changed, must explain why (*subsection (8)*).

Section 29 – Care account

201. This section requires local authorities to keep a care account for adults whose care costs are counted towards the costs cap. The purpose of the account is to maintain a record of the adult's total accrued care costs, and progress towards the costs cap.
202. *Subsection (1)* requires the local authority to keep a record of the accrued costs of an adult. It also requires the local authority to inform the adult if the level of accrued costs in their care account reaches the cap.
203. If an adult moves to another local authority's area, the local authority from which the adult is moving must retain the record of their care account up to the point they left for either 99 years, or until they are notified that the person has died (*subsection (2)*).
204. Where the care account includes daily living costs, these must be specified separately (*subsection (3)*).
205. *Subsection (4)* provides a regulation making power that will require the local authority to provide adults with a regular statement of their care account. We anticipate that this will be an annual requirement and will show the adult how they are progressing towards the cap.

Section 30 – Cases where adult expresses preference for particular accommodation

206. This section provides powers regarding the choice of accommodation, and other matters. It sets out some further factors to be considered when it has been determined that an individual's needs would be best met through the provision of care and support in a care home or other type of accommodation.
207. As *subsection (1)* sets out, regulations may require a local authority to meet an individual's preference for specific accommodation. For example, an individual may want to be in a care home close to a relative in another local authority area. Conditions may be imposed in the regulations, for example, that the local authority is satisfied that the preferred care home is able to provide appropriate care and support to meet the person's needs.
208. In some instances, the local authority may incur additional costs when making arrangements with the preferred care home or other accommodation. An individual, for example, may wish to be placed in a care home that costs more than the amount specified as the cost of meeting the needs in the personal budget. *Subsection (2)* sets out that the regulations may allow the individual, or someone acting on their behalf, to make an additional payment to the local authority to cover the difference between the cost of their preferred accommodation, and the amount specified in the personal budget.