

SOCIAL SERVICES AND WELL- BEING (WALES) ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 26 – Refusal of a needs assessment for a carer aged 16 or 17

80. **Section 26** provides that the local authority's duty to assess the needs of a carer aged 16 or 17 does not apply if the carer refuses a needs assessment and has capacity to decide whether to refuse the assessment
81. Similarly, the duty to assess the needs of a carer aged 16 or 17 does not apply if the carer lacks capacity to decide whether to refuse the assessment and an authorised person makes the decision to refuse on their behalf. An 'authorised person' is defined in subsection (5) as a person authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to decide whether to refuse, or ask for, a needs assessment on the carer's behalf.
82. Where the carer lacks capacity to decide whether to have a needs assessment and there is no authorised person to make the decision on the carer's behalf, a person with parental responsibility may refuse the assessment. Such a refusal discharges the local authority's duty to assess the carer's needs unless the local authority is satisfied that not having the assessment would not be in the carer's best interests.
83. Where the duty to discharge a carer's needs has been discharged by a refusal, the duty is re-engaged if the carer asks at a later date for an assessment. Where the carer lacks capacity, the duty to assess is also re-engaged if the authorised person (or person with parental responsibility if there is no authorised person) subsequently asks for an assessment.
84. A change in the needs or circumstances of the carer or a change in the needs or circumstances of a person with parental responsibility for the carer may also lead to the duty to assess being re-engaged.