

# **SOCIAL SERVICES AND WELL- BEING (WALES) ACT 2014**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### ***Section 35 – Duty to meet care and support needs of an adult***

118. **Section 35** sets out the conditions that must be met for a local authority to be under a duty to meet the care and support needs of an adult in its area. It is a condition that the needs meet the eligibility criteria set under section 32. However, subsection (3)(b) provides safeguards to ensure that local authorities also have a duty to meet an adult's needs for care and support if this is necessary to protect the adult from abuse or neglect, or a risk of abuse or neglect, even if their needs do not meet the eligibility criteria. "Abuse" and "neglect" are defined in section 197(1).
119. The local authority is not under a duty to meet any of the adult's needs which are being met by a carer. If a carer was to cease providing care and to stop meeting any of the adult's needs, this would trigger a review of the adult's care and support plan, and may mean that the local authority would then be required to meet the needs. Similarly, if the person cared for indicates that they do not want some or all of their needs to be met by a carer, or no longer want their needs to be met in this way, this may mean that the local authority would then be under a duty to meet the adult's needs and will need to consider other ways of doing this.
120. Subsection (4) provides that the local authority must meet the needs of adults who are entitled to receive services without charge or whose means are such that they do not have to pay the full charge.
121. The local authority does not have to meet the needs of a "self funder": an adult whose means are assessed as being above the financial limit so that he or she is liable to pay the full charge unless the adult asks the authority to meet his or her needs. In that case, the local authority will be under a duty to meet the adult's needs and will be able to recover the cost of providing or arranging services. The local authority will also be able to impose a "brokerage" charge (see section 59(3) in Part 5).
122. Where there is a charge for care and support, the local authority is also under a duty to meet an adult's needs for care and support if the adult lacks the capacity to arrange the provision of care and support himself or herself, and there is no person authorised under the Mental Capacity Act 2005 or otherwise in a position to do so on the adult's behalf. This duty will apply regardless of the level of the adult's financial resources.
123. Even if these conditions are met, a local authority will only be under a duty to meet a person's needs if the residence condition in subsection (2) is met. Subsection (2) provides that a local authority will be under a duty to meet the needs of an adult if they are "ordinarily resident" in its area.

*These notes refer to the Social Services and Well-being (Wales)  
Act 2014 (c.4) which received Royal Assent on 1 May 2014*

124. A local authority must also meet the needs of adults who are within its area and have no settled residence. The local authority does not have to meet the needs of adults who are temporarily within its area but are ordinarily resident elsewhere.