

SOCIAL SERVICES AND WELL- BEING (WALES) ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Sections 40 and 41 – Duty to meet support needs of an adult carer

140. **Section 40** sets out the conditions that must be met for a local authority to be under a duty to meet the support needs of an adult carer who cares for another adult or for a disabled child.
141. The question of which local authority is responsible for meeting the support needs of a carer depends on the residence of the person cared for. This will be the local authority which would be responsible for meeting the cared for person's needs if they were eligible in their own right, either as an adult (see section 35) or a child (see section 37).
142. The adult carer's needs must meet the eligibility criteria which are to be set in regulations under section 32.
143. There is a link between the duty to meet the adult carer's needs for support and the financial resources of the adult carer. In so far as meeting the support needs of the carer involves the provision of support to the carer, section 40(4)(a) provides the local authority must meet the needs of a carer who is entitled to receive services without charge or whose means are such that they do not have to pay the full charge. The local authority does not have to provide support to an adult carer whose means are assessed as being above the financial limit such that they are liable to pay the full charge (often referred to as "self funders") unless the adult asks the authority to meet his or her needs.
144. **Section 44(2)** permits a local authority to meet some or all of a carer's needs for support by providing care and support to the person cared for (even if the authority would not otherwise be under a duty to provide that care and support). But if the local authority wishes to meet the carer's needs in this way, it can only do so if the relevant condition in section 40(4)(c) or (d) is met. Section 40(4)(b),(c) and (d) sets out different conditions depending on whether the person cared for is an adult, a disabled child aged 16 or 17 or a disabled child under the age of 16. In each case, there are different considerations depending on whether there is a financial charge for meeting the cared for person's needs.
145. The conditions in section 40(4)(b),(c) and (d) need to be considered in conjunction with the contents of section 41, which is supplementary to section 40. The key principle is that the cared for person must agree to the carer's needs being met by the provision of care and support to the cared for person. The local authority must be satisfied that an adult or a disabled child aged 16 or 17 has capacity to make their own decision, and in the case of a child under 16, the local authority must be satisfied that the child is able to make an informed decision about the carer's needs being met in this way.

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

146. Provision is made for what is to happen where the adult or disabled child aged 16 or 17 lacks capacity or where a child under the age of 16 does not have sufficient understanding to make their own decision.
147. Where an adult or a child aged 16 or 17 lacks capacity, consent can be given by an authorised person. Authorised person is defined in section 41(15) as a person authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to decide on behalf of the person cared for by the carer whether to have the needs in question met by the provision of care and support to that person.
148. Where an adult lacks capacity and there is no authorised person, the local authority can meet the carer's needs by providing care and support to the adult if this would be in the adult's best interests.
149. Where a disabled child aged 16 or 17 lacks capacity and there is no 'authorised person', the local authority is able to meet the carer's needs by providing care and support to the disabled child provided that no objection has been made by a person with parental responsibility for the child. The local authority is able to disregard any such objection if it thinks this would not be in the child's best interests.
150. In the case of a disabled child under the age of 16 who does not have sufficient understanding to make an informed decision about having the carer's needs met by the provision of care and support to them, the local authority is able to meet the carer's needs by providing care and support to the disabled child provided that no objection has been made by a person with parental responsibility for the child. The local authority is able to disregard any such objection if it thinks this would not be consistent with the child's well-being.
151. Where the cared for person is a disabled child and a charge would be imposed on an adult for meeting that child's needs for care and support, there is a further condition which requires the adult does not object to the provision of care and support.
152. In any case where it is not feasible for the local authority to meet some or all of the carer's needs by providing care and support to the person cared for, the local authority is under a duty to find some other way of meeting the carer's needs for support (see section 44).
153. Where the cared for adult's financial resources are above the financial limit or where an adult would be liable to pay the standard charge for the provision of care and support to a disabled child cared for by a carer, the local authority will be able to charge the adult a brokerage fee for putting in place the arrangements, in accordance with the provisions in section 59(3) (powers to impose charges).