



# Social Services and Well-being (Wales) Act 2014

2014 anaw 4

## PART 4

### MEETING NEEDS

*Deciding what to do following needs assessment*

#### **32 Determination of eligibility and consideration of what to do to meet needs**

- (1) Where a local authority is satisfied, on the basis of a needs assessment, that a person has needs for care and support or, if the person is a carer, needs for support, the authority must—
  - (a) determine whether any of the needs meet the eligibility criteria;
  - (b) if the needs do not meet the eligibility criteria, determine whether it is nevertheless necessary to meet the needs in order to protect the person from—
    - (i) abuse or neglect or a risk of abuse or neglect (if the person is an adult);
    - (ii) abuse or neglect or a risk of abuse or neglect, or other harm or a risk of such harm (if the person is a child);
  - (c) determine whether the needs call for the exercise of any function it has under this Act or Parts 4 or 5 of the Children Act 1989, in so far as the function is relevant to that person;
  - (d) consider whether the person would benefit from the provision of anything that may be provided by virtue of section 15 (preventative services) or 17 (information, advice and assistance) or anything else that may be available in the community.
- (2) If a local authority determines that any needs must be met, or are to be met, under sections 35 to 45, the authority must—
  - (a) consider what could be done to meet those needs;

- (b) consider whether it would impose a charge for doing those things, and if so, determine the amount of that charge (see Part 5).
- (3) Regulations must make provision about the discharge of the duty under subsection (1)
  - (a).
- (4) Needs meet the eligibility criteria if they—
  - (a) are of a description specified in regulations, or
  - (b) form part of a combination of needs of a description so specified.
- (5) The regulations may, for example, describe needs by reference to—
  - (a) the effect that the needs have on the person concerned;
  - (b) the person's circumstances.

### **33 Procedure for regulations under section 32**

- (1) Before making regulations under section 32(3) or (4), the Welsh Ministers must carry out the following steps.
- (2) The Welsh Ministers must consult—
  - (a) such persons as appear to them likely to be affected by the regulations,
  - (b) such organisations as appear to them to represent the interests of persons likely to be affected by the regulations, and
  - (c) such other persons as they consider appropriate,
 on the proposed draft regulations.
- (3) The Welsh Ministers must—
  - (a) allow those persons a period of at least 12 weeks to submit comments on the proposed draft regulations,
  - (b) consider any comments submitted within that period, and
  - (c) publish a summary of those comments.
- (4) The Welsh Ministers must lay a draft of the regulations before the National Assembly for Wales.
- (5) Draft regulations laid under subsection (4)—
  - (a) must be accompanied by a statement of the Welsh Ministers giving details of any differences between the draft regulations consulted on under subsection (2) and the draft regulations laid under subsection (4), and
  - (b) may not be approved by a resolution of the National Assembly for Wales in accordance with section 196(6) until after the expiry of the period of 60 days beginning with the day on which the draft regulations are laid.

### **34 How to meet needs**

- (1) The following are examples of the ways in which a local authority may meet needs under sections 35 to 45—
  - (a) by arranging for a person other than the authority to provide something;
  - (b) by itself providing something;
  - (c) by providing something, or by arranging for something to be provided, to a person other than the person with needs for care and support (or, in the case of a carer, support).

- (2) The following are examples of what may be provided or arranged to meet needs under sections 35 to 45—
- (a) accommodation in a care home, children’s home or premises of some other type;
  - (b) care and support at home or in the community;
  - (c) services, goods and facilities;
  - (d) information and advice;
  - (e) counselling and advocacy;
  - (f) social work;
  - (g) payments (including direct payments);
  - (h) aids and adaptations;
  - (i) occupational therapy.
- (3) Where a local authority is meeting a person’s needs under sections 35 to 45 by providing or arranging care and support at the person’s home, the local authority must satisfy itself that any visits to the person’s home for that purpose are of sufficient length to provide the person with the care and support required to meet the needs in question.
- (4) A code issued under section 145 must include guidelines as to the length of visits to a person’s home for the purpose of providing care and support.
- (5) See sections 47 (exception for provision of health services), 48 (exception for provision of housing etc) and 49 (restrictions on provision of payments) for limitations on what may be provided or arranged to meet needs for care and support and the way in which it may be provided or arranged.

*Meeting care and support needs of adults*

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

- (1) A local authority must meet an adult’s needs for care and support if it is satisfied that conditions 1, 2 and 3 are met (but see subsection (6)).
- (2) Condition 1 is that the adult is—
- (a) ordinarily resident in the local authority’s area, or
  - (b) of no settled residence and within the authority’s area.
- (3) Condition 2 is that—
- (a) the needs meet the eligibility criteria, or
  - (b) the local authority considers it necessary to meet the needs in order to protect the adult from abuse or neglect or a risk of abuse or neglect.
- (4) Condition 3 is that—
- (a) there is no charge for the care and support needed to meet those needs, or
  - (b) there is a charge for that care and support but—
    - (i) the local authority is satisfied on the basis of a financial assessment that the adult’s financial resources are at or below the financial limit,
    - (ii) the local authority is satisfied on the basis of a financial assessment that the adult’s financial resources are above the financial limit but the adult nonetheless asks the authority to meet his or her needs, or

- (iii) the local authority is satisfied that the adult lacks capacity to arrange for the provision of care and support and there is no person authorised to make such arrangements under the Mental Capacity Act 2005 or otherwise in a position to do so on the adult's behalf.

- (5) For the meaning of “financial assessment” and “financial limit” see Part 5.
- (6) The duty under subsection (1) does not apply to an adult's needs to the extent that the local authority is satisfied that those needs are being met by a carer.

### **36 Power to meet care and support needs of adult**

- (1) A local authority may meet an adult's needs for care and support if the adult is—
  - (a) within the local authority's area, or
  - (b) ordinarily resident in the authority's area, but outside its area.
- (2) If a local authority meets the needs of an adult who is ordinarily resident in the area of another local authority under subsection (1), it must notify the local authority in whose area the adult is ordinarily resident that it is doing so.
- (3) A local authority has the power to meet needs under this section whether or not it has completed a needs assessment in accordance with Part 3 or a financial assessment in accordance with Part 5.

#### *Meeting care and support needs of children*

### **37 Duty to meet care and support needs of a child**

- (1) A local authority must meet a child's needs for care and support if it is satisfied that conditions 1 and 2, and any conditions specified in regulations, are met (but see subsections (5) and (6)).
- (2) Condition 1 is that the child is within the local authority's area.
- (3) Condition 2 is that—
  - (a) the needs meet the eligibility criteria, or
  - (b) the local authority considers it necessary to meet the needs in order to protect the child from—
    - (i) abuse or neglect or a risk of abuse or neglect, or
    - (ii) other harm or a risk of such harm.
- (4) If the local authority has been notified about a child under section 120(2)(a), it must treat the child as being within its area for the purposes of this section.
- (5) The duty under subsection (1) does not apply to a child's needs to the extent that the local authority is satisfied that those needs are being met by the child's family or a carer.
- (6) This section does not apply to a child who is looked after by—
  - (a) a local authority,
  - (b) a local authority in England,
  - (c) a local authority in Scotland, or
  - (d) a Health and Social Care trust.

**38 Power to meet care and support needs of a child**

- (1) A local authority may meet a child's needs for care and support if the child is—
  - (a) within the local authority's area, or
  - (b) ordinarily resident in the authority's area, but outside its area,  
(but see subsection (4)).
- (2) If a local authority meets the needs of a child who is ordinarily resident in the area of another local authority under subsection (1), it must notify the local authority in whose area the child is ordinarily resident that it is doing so.
- (3) A local authority has the power to meet needs under this section whether or not it has completed a needs assessment in accordance with Part 3 or a financial assessment in accordance with Part 5.
- (4) This section does not apply to a child who is looked after by—
  - (a) a local authority,
  - (b) a local authority in England,
  - (c) a local authority in Scotland, or
  - (d) a Health and Social Care trust.

**39 Duty to maintain family contact**

- (1) This section applies to a child—
  - (a) who is within the area of a local authority,
  - (b) whom the local authority considers has needs for care and support in addition to the care and support provided by the child's family,
  - (c) who is living apart from the child's family, and
  - (d) who is not looked after by the local authority.
- (2) If the local authority considers it necessary in order to promote the well-being of the child, it must take such steps as are reasonably practicable to—
  - (a) enable the child to live with the child's family, or
  - (b) promote contact between the child and the child's family.

*Meeting support needs of a carer***40 Duty to meet support needs of an adult carer**

- (1) A local authority must meet the needs for support of a carer who is an adult if it is satisfied that conditions 1, 2 and 3, and any conditions specified in regulations, are met.
- (2) Condition 1 is that the person cared for by the carer is—
  - (a) an adult who is—
    - (i) ordinarily resident in the local authority's area, or
    - (ii) of no settled residence and within the authority's area, or
  - (b) a disabled child who is within the authority's area.
- (3) Condition 2 is that the carer's needs meet the eligibility criteria.
- (4) Condition 3 is that—

- (a) in so far as meeting the carer's needs involves the provision of support to the carer—
  - (i) there is not a charge under section 59 for meeting those needs, or
  - (ii) in so far as there is a charge, section 41(1) or (2) applies;
- (b) in so far as meeting the carer's needs involves the provision of care and support to an adult cared for by the carer—
  - (i) there is not a charge under section 59 for meeting those needs and section 41(7), (8) or (9) applies, or
  - (ii) in so far as there is a charge, section 41(3) or (4) applies;
- (c) in so far as meeting the carer's needs involves the provision of care and support to a disabled child aged 16 or 17 who is cared for by the carer—
  - (i) there is not a charge under section 59 for meeting those needs and section 41(7), (8) or (10) applies, or
  - (ii) in so far as there is a charge, section 41(5) or (6) applies;
- (d) in so far as meeting the carer's needs involves the provision of care and support to a disabled child aged under 16 who is cared for by the carer—
  - (i) there is not a charge under section 59 for meeting those needs and section 41(12) or (13) applies, or
  - (ii) in so far as there is a charge, section 41(5) or (6) applies.

#### **41 Duty to meet support needs of an adult carer: supplementary**

- (1) This subsection applies if the local authority is satisfied on the basis of a financial assessment that the carer's financial resources are at or below the financial limit.
- (2) This subsection applies if—
  - (a) the local authority is satisfied on the basis of a financial assessment that the carer's financial resources are above the financial limit, and
  - (b) the carer nonetheless asks the authority to meet the needs in question.
- (3) This subsection applies if—
  - (a) the local authority is satisfied on the basis of a financial assessment that the financial resources of the adult cared for by the carer are at or below the financial limit, and
  - (b) subsection (7), (8) or (9) applies.
- (4) This subsection applies if—
  - (a) the local authority is satisfied on the basis of a financial assessment that the financial resources of the adult cared for by the carer are above the financial limit, and
  - (b) subsection (7), (8) or (9) applies.
- (5) This subsection applies if—
  - (a) in respect of an adult upon whom the local authority thinks it would impose a charge for the provision of care and support to the disabled child cared for by the carer, the local authority is satisfied on the basis of a financial assessment that it would not be reasonably practicable for the adult to pay any amount for the care and support, and
  - (b) either—

- (i) subsection (7), (8) or (10) applies, in the case of a disabled child aged 16 or 17, or
  - (ii) subsection (12) or (13) applies, in the case of a disabled child aged under 16.
- (6) This subsection applies if—
  - (a) in respect of an adult upon whom the local authority thinks it would impose a charge for the provision of care and support to the disabled child cared for by the carer, the local authority is satisfied on the basis of a financial assessment that it would be reasonably practicable for the adult—
    - (i) to pay the standard charge for the care and support, or
    - (ii) to pay any other amount for the care and support,
  - (b) the adult does not object to the provision of the care and support, and
  - (c) either—
    - (i) subsection (7), (8) or (10) applies, in the case of a disabled child aged 16 or 17, or
    - (ii) subsection (12) or (13) applies, in the case of a disabled child aged under 16.
- (7) This subsection applies if—
  - (a) the local authority is satisfied that the person cared for by the carer has capacity to decide whether to have the needs in question met by the provision of care and support to that person, and
  - (b) the person agrees to have those needs met in that way.
- (8) This subsection applies if an authorised person agrees, on behalf of the person cared for by the carer, to have the needs in question met by the provision of care and support to that person.
- (9) This subsection applies if—
  - (a) the local authority is satisfied that the adult cared for by the carer lacks capacity to decide whether to have the needs in question met by the provision of care and support to that adult,
  - (b) there is no authorised person to make the decision on the adult’s behalf, and
  - (c) the local authority is satisfied that it is in the adult’s best interests to have those needs met in that way.
- (10) This subsection applies if—
  - (a) the local authority is satisfied that the disabled child cared for by the carer lacks capacity to decide whether to have the needs in question met by the provision of care and support to that child,
  - (b) there is no authorised person to make the decision on the child’s behalf, and
  - (c) no objection has been made by a person with parental responsibility for the child to having those needs met in that way.
- (11) The local authority may disregard an objection for the purposes of subsection (10)(c) if it is satisfied that it would not be in the disabled child’s best interests.
- (12) This subsection applies if—
  - (a) the local authority is satisfied that the disabled child cared for by the carer has sufficient understanding to make an informed decision about having the needs in question met by the provision of care and support to that child, and

- (b) the child agrees to have those needs met in that way.
- (13) This subsection applies if—
  - (a) the local authority is satisfied that the disabled child cared for by the carer does not have sufficient understanding to make an informed decision about having the needs in question met by the provision of care and support to that child, and
  - (b) no objection has been made by a person with parental responsibility for the child to having those needs met in that way.
- (14) The local authority may disregard an objection for the purposes of subsection (13)(b) if it is satisfied that it would not be consistent with the disabled child’s well-being.
- (15) In this section—
  - “authorised person” (“*person awdurdodedig*”) means 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;
  - “standard charge” (“*ffi safonol*”) has the meaning given by section 63(3).
- (16) For the meaning of “financial assessment” and “financial limit” see Part 5.

## **42 Duty to meet support needs of a child carer**

- (1) A local authority must meet the needs for support of a carer who is a child if it is satisfied that conditions 1, 2 and (where applicable) 3, and any conditions specified in regulations, are met.
- (2) Condition 1 is that the person cared for by the carer is—
  - (a) an adult who is—
    - (i) ordinarily resident in the local authority’s area, or
    - (ii) of no settled residence and within the authority’s area, or
  - (b) a disabled child who is within the authority’s area.
- (3) Condition 2 is that the carer’s needs meet the eligibility criteria.
- (4) Condition 3 is that—
  - (a) in so far as meeting the carer’s needs involves the provision of care and support to an adult cared for by the carer—
    - (i) there is not a charge under section 59 for meeting those needs and section 41(5), (6) or (7) applies, or
    - (ii) in so far as there is a charge, section 41(1) or (2) applies;
  - (b) in so far as meeting the carer’s needs involves the provision of care and support to a disabled child aged 16 or 17 who is cared for by the carer—
    - (i) there is not a charge under section 59 for meeting those needs and section 41(5), (6) or (8) applies, or
    - (ii) in so far as there is a charge, section 41(3) or (4) applies;
  - (c) in so far as meeting the carer’s needs involves the provision of care and support to a disabled child aged under 16 who is cared for by the carer—
    - (i) there is not a charge under section 59 for meeting those needs and section 41(10) or (11) applies, or
    - (ii) in so far as there is a charge, section 41(3) or (4) applies.



**43 Duty to meet support needs of a child carer: supplementary**

- (1) This subsection applies if—
  - (a) the local authority is satisfied on the basis of a financial assessment that the financial resources of the adult cared for by the carer are at or below the financial limit, and
  - (b) subsection (5), (6) or (7) applies.
- (2) This subsection applies if—
  - (a) the local authority is satisfied on the basis of a financial assessment that the financial resources of the adult cared for by the carer are above the financial limit, and
  - (b) subsection (5), (6) or (7) applies.
- (3) This subsection applies if—
  - (a) in respect of an adult upon whom the local authority thinks it would impose a charge for the provision of care and support to the disabled child cared for by the carer, the local authority is satisfied on the basis of a financial assessment that it would not be reasonably practicable for the adult to pay any amount for the care and support, and
  - (b) either—
    - (i) subsection (5), (6) or (8) applies, in the case of a disabled child aged 16 or 17, or
    - (ii) subsection (10) or (11) applies, in the case of a disabled child aged under 16.
- (4) This subsection applies if—
  - (a) in respect of an adult upon whom the local authority thinks it would impose a charge for the provision of care and support to the disabled child cared for by the carer, the local authority is satisfied on the basis of a financial assessment that it would be reasonably practicable for the adult—
    - (i) to pay the standard charge for the care and support, or
    - (ii) to pay any other amount for the care and support,
  - (b) the adult does not object to the provision of the care and support, and
  - (c) either—
    - (i) subsection (5), (6) or (8) applies, in the case of a disabled child aged 16 or 17, or
    - (ii) subsection (10) or (11) applies, in the case of a disabled child aged under 16.
- (5) This subsection applies if—
  - (a) the local authority is satisfied that the person cared for by the carer has capacity to decide whether to have the needs in question met by the provision of care and support to that person, and
  - (b) the person agrees to have those needs met in that way.
- (6) This subsection applies if an authorised person agrees, on behalf of the person cared for by the carer, to have the needs in question met by the provision of care and support to that person.
- (7) This subsection applies if—

- (a) the local authority is satisfied that the adult cared for by the carer lacks capacity to decide whether to have the needs in question met by the provision of care and support to that adult,
  - (b) there is no authorised person to make the decision on the adult’s behalf, and
  - (c) the local authority is satisfied that it is in the adult’s best interest to have those needs met in that way.
- (8) This subsection applies if—
  - (a) the local authority is satisfied that the disabled child cared for by the carer lacks capacity to decide whether to have the needs in question met by the provision of care and support to that child,
  - (b) there is no authorised person to make the decision on the child’s behalf, and
  - (c) no objection has been made by a person with parental responsibility for the child to having those needs met in that way.
- (9) The local authority may disregard an objection for the purposes of subsection (8)(c) if it is satisfied that it would not be in the disabled child’s best interests.
- (10) This subsection applies if—
  - (a) the local authority is satisfied that the disabled child cared for by the carer has sufficient understanding to make an informed decision about having the needs in question met by the provision of care and support to that child, and
  - (b) the child agrees to have those needs met in that way.
- (11) This subsection applies if—
  - (a) the local authority is satisfied that the disabled child cared for by the carer does not have sufficient understanding to make an informed decision about having the needs in question met by the provision of care and support to that child, and
  - (b) no objection has been made by a person with parental responsibility for the child to having those needs met in that way.
- (12) The local authority may disregard an objection for the purposes of subsection (11)(b) if it is satisfied that it would not be consistent with the disabled child’s well-being.
- (13) In this section—
  - “authorised person” (*“person awdurdodedig”*) means 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;
  - “standard charge” (*“ffi safonol”*) has the meaning given by section 63(3).
- (14) For the meaning of “financial assessment” and “financial limit” see Part 5.

#### **44 Supplementary provision about the duties to meet carer’s needs**

- (1) This section applies in relation to the duties under sections 40 and 42.
- (2) Meeting some or all of a carer’s needs for support may involve the provision of care and support to the person cared for by the carer, even where there would be no duty to meet the person’s needs for that care and support under section 35 or 37.
- (3) Where a local authority is required by section 40 or 42 to meet some or all of a carer’s needs for support, but it does not prove feasible for it to do so by providing care and

support to the person cared for by the carer, it must, so far as it is feasible to do so, identify some other way in which to do so.

#### **45 Power to meet support needs of a carer**

- (1) A local authority may meet a carer's needs for support if the person cared for by the carer is—
  - (a) within the local authority's area, or
  - (b) ordinarily resident in the authority's area, but outside its area.
- (2) A local authority has the power to meet needs under this section whether or not it has completed a needs assessment in accordance with Part 3 or a financial assessment in accordance with Part 5.

#### *Meeting needs: exceptions and restrictions*

#### **46 Exception for persons subject to immigration control**

- (1) A local authority may not meet the needs for care and support of an adult to whom section 115 of the Immigration and Asylum Act 1999 ("the 1999 Act") (exclusion from benefits) applies and whose needs for care and support have arisen solely—
  - (a) because the adult is destitute, or
  - (b) because of the physical effects, or anticipated physical effects, of being destitute.
- (2) For the purposes of subsection (1), section 95(2) to (7) of the 1999 Act applies but with the references in section 95(4) and (5) of that Act to the Secretary of State being read as references to the local authority in question.
- (3) But, until the commencement of section 44(6) of the Nationality, Immigration and Asylum Act 2002, subsection (2) is to have effect as if it read as follows—
  - (2) For the purposes of subsection (1), section 95(3) and (5) to (8) of, and paragraph 2 of Schedule 8 to, the 1999 Act apply but with references in section 95(5) and (7) and that paragraph to the Secretary of State being read as references to the local authority in question."
- (4) The reference in subsection (1) to meeting an adult's needs for care and support includes a reference to doing so in order to meet a carer's needs for support.

#### **47 Exception for provision of health services**

- (1) A local authority may not meet a person's needs for care and support (including a carer's needs for support) under sections 35 to 45 by providing or arranging for the provision of a service or facility which is required to be provided under a health enactment, unless doing so would be incidental or ancillary to doing something else to meet needs under those sections.
- (2) A local authority may not secure services or facilities for a person under section 15 (preventative services) that are required to be provided under a health enactment, unless doing so would be incidental or ancillary to securing another service or facility for that person under that section.

- (3) Regulations may specify—
- (a) types of services or facilities which may, despite subsections (1) and (2), be provided or arranged by a local authority, or circumstances in which such services or facilities may be so provided or arranged;
  - (b) types of services or facilities which may not be provided or arranged by a local authority, or circumstances in which such services or facilities may not be so provided or arranged;
  - (c) services or facilities, or a method for determining services or facilities, the provision of which is, or is not, to be treated as incidental or ancillary for the purposes of subsection (1) or (2).
- (4) A local authority may not meet a person's needs for care and support (including a carer's needs for support) under sections 35 to 45 by providing or arranging for the provision of nursing care by a registered nurse.
- (5) A local authority may not secure the provision of nursing care by a registered nurse in discharging its duty under section 15.
- (6) But a local authority may, despite subsections (1), (2), (4) and (5), arrange for the provision of accommodation together with nursing care by a registered nurse—
- (a) if the authority has obtained consent for it to arrange for the provision of the nursing care from—
    - (i) whichever Local Health Board regulations require, in the case of accommodation in Wales, Scotland or Northern Ireland, or
    - (ii) whichever English health body regulations require, in the case of accommodation in England, or
  - (b) in an urgent case and where the arrangements are temporary.
- (7) In a case to which subsection (6)(b) applies, the local authority must seek to obtain the consent mentioned in subsection (6)(a) as soon as is feasible after the temporary arrangements are made.
- (8) Regulations may require a local authority—
- (a) to make arrangements in connection with the resolution of disputes between the authority and a health body about whether or not a service or facility is required to be provided under a health enactment;
  - (b) to be involved in the manner specified in processes for assessing a person's needs for health care and deciding how those needs should be met.
- (9) Nothing in this section affects what a local authority may do under the National Health Service (Wales) Act 2006, including entering into arrangements under regulations made under section 33 of that Act (arrangements with NHS bodies).
- (10) In this section—
- an “English health body” (“*corffiechyd Seisnig*”) means—
    - (a) a clinical commissioning group;
    - (b) the National Health Service Commissioning Board;
  - a “health body” (“*corffiechyd*”) means—
    - (a) a Local Health Board;
    - (b) a clinical commissioning group;
    - (c) the National Health Service Commissioning Board;

- (d) a Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978;
- (e) a Special Health Board constituted under that section;
- (f) a Health and Social Care trust;
- a “health enactment” (“*deddfiad iechyd*”) means—
  - (a) the National Health Service (Wales) Act 2006;
  - (b) the National Health Service Act 2006;
  - (c) the National Health Service (Scotland) Act 1978;
  - (d) the [Health and Personal Social Services \(Northern Ireland\) Order 1972 \(S.I. 1972/1265 \(N.I. 14\)\)](#);
  - (e) the Health and Social Care (Reform) Act (Northern Ireland) 2009;
- “nursing care” (“*gofal nyrsio*”) means a service which involves either the provision of care or the planning, supervision or delegation of the provision of care, but does not include a service which, by its nature and in the circumstances in which it is to be provided, does not need to be provided by a registered nurse.

#### **48 Exception for provision of housing etc**

A local authority may not meet an adult’s needs for care and support (including a carer’s needs for support) under sections 35 to 45 or discharge its duty under section 15 by doing anything which that authority or another local authority is required to do under—

- (a) the Housing Act 1996, or
- (b) any other enactment specified in regulations.

#### **49 Restrictions on provision of payments**

- (1) A local authority may not provide payments to meet a person’s needs for care and support or a carer’s needs for support under sections 35 to 45 unless—
  - (a) the payments are direct payments (see sections 50 to 53),
  - (b) the authority considers—
    - (i) that the person’s needs are urgent, and
    - (ii) that it would not be reasonably practicable to meet those needs in any other way,
  - (c) the payments are provided under or by virtue of a contract, or
  - (d) the payments are provided in circumstances specified in regulations.
- (2) A local authority may not provide payments in the discharge of its duty under section 15(1) unless—
  - (a) the authority considers—
    - (i) that the payments would achieve one or more of the purposes mentioned in section 15(2), and
    - (ii) that it would not be reasonably practicable to achieve that purpose or those purposes in any other way,
  - (b) the payments are provided under or by virtue of a contract which relates to the provision of services for the authority’s area, or
  - (c) the payments are provided in circumstances specified in regulations.

*Direct payments***50 Direct payments to meet an adult's needs**

- (1) Regulations may require or allow a local authority to make payments to a person towards the cost of meeting an adult's needs for care and support under section 35 or 36.
- (2) But regulations under subsection (1) may not require or allow such payments to be made unless condition 1 or 2 is met.
- (3) Condition 1 is that—
  - (a) the payments are to be made to the adult who has needs for care and support ("A"),
  - (b) A has, or the local authority believes that A has, capacity to consent to the making of the payments,
  - (c) the local authority is satisfied that—
    - (i) making the payments is an appropriate way of meeting A's needs, and
    - (ii) A is capable of managing the payments (either by himself or herself or with the support that is available to A), and
  - (d) A has consented to the making of the payments.
- (4) Condition 2 is that—
  - (a) the adult who has needs for care and support ("A") does not have, or the local authority believes that A does not have, capacity to consent to the making of the payments,
  - (b) the payments are to be made to a person ("P") other than A,
  - (c) P is a suitable person,
  - (d) the local authority is satisfied that—
    - (i) making the payments is an appropriate way of meeting A's needs,
    - (ii) P is capable of managing the payments (either by himself or herself or with the support that is available to P), and
    - (iii) P will act in A's best interests in managing the payments, and
  - (e) the necessary consent has been obtained to make the payments to P.
- (5) For the purposes of subsection (4)(c), P is a "suitable person"—
  - (a) if P is authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to make decisions about A's needs for care and support,
  - (b) where P is not authorised as mentioned in paragraph (a), if a person who is so authorised agrees with the local authority that P is suitable to receive payments towards the cost of meeting A's needs for care and support, or
  - (c) where P is not authorised as mentioned in paragraph (a) and there is no person who is so authorised, if the local authority considers that P is suitable to receive payments of that kind.
- (6) For the purposes of subsection (4)(e), the "necessary consent" means—
  - (a) the consent of P, and
  - (b) where P is a suitable person by virtue of subsection (5)(b), the consent of a person authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to make decisions about A's needs for care and support.

(7) A payment under this section is referred to in this Act as a “direct payment”.

## **51 Direct payments to meet a child’s needs**

- (1) Regulations may require or allow a local authority to make payments to a person towards the cost of meeting a child’s needs for care and support under section 37, 38 or 39.
- (2) But regulations under subsection (1) may not require or allow payments to be made unless conditions 1 to 4 are met.
- (3) Condition 1 is that the payments are to be made to a person (“P”) who is—
  - (a) a person with parental responsibility for a child who has needs for care and support, or
  - (b) a child who has needs for care and support.
- (4) Condition 2 is that—
  - (a) where P is an adult or a child aged 16 or 17, P has, or the local authority believes that P has, capacity to consent to the making of the payments;
  - (b) where P is a child aged under 16, the local authority is satisfied that P has sufficient understanding to make an informed decision about receiving direct payments.
- (5) Condition 3 is that the local authority is satisfied that—
  - (a) making the payments is an appropriate way of meeting the child’s needs,
  - (b) the well-being of the child will be safeguarded and promoted by the making of the payments, and
  - (c) P is capable of managing the payments (either by himself or herself or with the support that is available to P).
- (6) Condition 4 is that P has consented to the making of the payments.
- (7) A payment under this section is referred to in this Act as a “direct payment”.

## **52 Direct payments to meet a carer’s needs**

- (1) Regulations may require or allow a local authority to make payments to a person towards the cost of meeting a carer’s needs for support under section 40, 42 or 45.
- (2) But regulations under subsection (1) may not require or allow payments to be made unless conditions 1 to 4 are met.
- (3) Condition 1 is that the payments are to be made to the carer who has needs for support (“C”).
- (4) Condition 2 is that—
  - (a) where C is an adult or a child aged 16 or 17, C has, or the local authority believes that C has, capacity to consent to the making of the payments;
  - (b) where C is a child aged under 16, the local authority is satisfied that C has sufficient understanding to make an informed decision about receiving direct payments.
- (5) Condition 3 is that the local authority is satisfied that—

- (a) making the payments is an appropriate way of meeting C's needs, and
  - (b) C is capable of managing the payments (either by himself or herself or with the support that is available to C).
- (6) Condition 4 is that C has consented to the making of the payments.
- (7) A payment under this section is referred to in this Act as a "direct payment".

### **53 Direct payments: further provision**

- (1) Regulations under section 50, 51 or 52 may also make provision about the following matters (among other matters)—
- (a) the manner in which the amounts of the direct payments are to be determined;
  - (b) the making of direct payments as gross payments or alternatively as net payments;
  - (c) the determination of—
    - (i) the financial resources of specified persons, and
    - (ii) the amount (if any) that it would be reasonably practicable for those persons to pay by way of reimbursement (in the case of gross payments) or contribution (in the case of net payments);
  - (d) matters to which a local authority may or must have regard when making a decision of a specified type about direct payments;
  - (e) conditions which a local authority may or must attach, and conditions which it must not attach, in relation to direct payments;
  - (f) steps which a local authority may or must take before, or after, making a decision of a specified type about direct payments;
  - (g) support which a local authority must provide or arrange for persons to whom it makes direct payments;
  - (h) cases or circumstances in which a local authority may act as an agent on behalf of a person to whom direct payments are made;
  - (i) conditions subject to which, and the extent to which, a local authority's duty or power to meet a person's needs for care and support or a carer's needs for support is displaced by the making of direct payments;
  - (j) cases or circumstances in which a local authority must not, or is allowed not to, make payments to a person or in relation to a person;
  - (k) cases or circumstances in which a person who no longer lacks, or who the local authority believes no longer lacks, capacity to consent to the making of direct payments must or may nonetheless be treated for the purposes of sections 50 to 52 as lacking capacity to do so;
  - (l) cases or circumstances in which a local authority making direct payments may or must review the making of those payments;
  - (m) cases or circumstances in which a local authority making direct payments may or must—
    - (i) terminate the making of those payments;
    - (ii) require the repayment of the whole or part of a direct payment;
  - (n) the recovery of any amount due to a local authority in connection with the making of direct payments.
- (2) In subsection (1)(b) and (c)—
- "gross payments" means direct payments—



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*Status: This is the original version (as it was originally enacted).*

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- (a) which are made at a rate that the local authority estimates to be equivalent to the reasonable cost of securing the provision of the care and support (or, in the case of carers, the support) in respect of which the payments are made, but
  - (b) which may be made subject to the condition that a person specified in regulations pays to the authority, by way of reimbursement, an amount or amounts determined under the regulations;
- “net payments” means direct payments—
  - (a) which are made on the basis that a person specified in regulations will pay an amount or amounts determined under the regulations by way of contribution towards the cost of securing the provision of the care and support (or, in the case of carers, the support) in respect of which the payments are made, and
  - (b) which are accordingly made at a rate below the rate the local authority estimates to be equivalent to the reasonable cost of securing the provision of that care and support (or, in the case of carers, that support) so as to reflect the contribution to be made by that person.
- (3) Regulations under section 50, 51 or 52 may make provision in relation to direct payments which corresponds to the provision which is made by, or may be made under, sections 59 to 67 or section 73.
- (4) For the purposes of subsection (3), provision corresponds to that which is made by or under sections 59 to 67 or section 73 if it makes, in relation to reimbursements or contributions, provision which is in the opinion of the Welsh Ministers equivalent in effect to the provision made by or under those sections in relation to charges for providing or arranging the provision of care and support (or, in the case of carers, support) to meet a person’s needs.
- (5) Regulations under section 50, 51 or 52 must require a local authority to take specified steps to enable relevant persons to make informed choices about the use of direct payments.
- (6) In subsection (5) “relevant persons” means persons whose consent must be obtained to the making of direct payments under regulations made under section 50, 51 or 52.
- (7) Regulations under section 51 must specify that where direct payments are made to a person who receives a benefit falling within a specified category, the payments—
  - (a) must be made at a rate that the local authority estimates to be equivalent to the reasonable cost of securing the provision of the care and support in respect of which the payments are made, and
  - (b) must not be made subject to any condition that requires a person to pay any amount to the authority by way of reimbursement.
- (8) In subsection (7) “benefit” includes any allowance, payment, credit or loan.
- (9) A person to whom a local authority makes a direct payment may, subject to regulations made under section 50, 51 or 52, use the payment to purchase care and support (or, in the case of a carer, support) from any person (including, among others, the authority which made the payment).
- (10) A local authority may impose a reasonable charge for the provision of care and support (or, in the case of a carer, support) to meet needs in respect of which a direct payment has been made.

*Plans***54 Care and support plans and support plans**

- (1) Where a local authority is required to meet the needs of a person under section 35 or 37, it must prepare and maintain a care and support plan in relation to that person.
- (2) Where a local authority is required to meet the needs of a carer under section 40 or 42, it must prepare and maintain a support plan in relation to that carer.
- (3) A local authority must keep under review the plans that it maintains under this section.
- (4) Where a local authority is satisfied that the circumstances of the person to whom a plan relates have changed in a way that affects the plan, the authority must—
  - (a) carry out such assessments as it considers appropriate, and
  - (b) revise the plan.
- (5) Regulations must make provision about—
  - (a) how plans under this section are to be prepared;
  - (b) what a plan is to contain;
  - (c) the review and revision of plans.
- (6) Regulations under subsection (5)(c) must specify, in particular—
  - (a) the persons who may request a review of a plan (on their own behalf or on behalf of another person);
  - (b) the circumstances in which a local authority—
    - (i) may refuse to comply with a request for a review of a plan, and
    - (ii) may not refuse to do so.
- (7) When preparing, reviewing or revising a plan under this section, a local authority must involve—
  - (a) in the case of a care and support plan relating to an adult, the adult and, where feasible, any carer that the adult has;
  - (b) in the case of a care and support plan relating to a child, the child and any person with parental responsibility for the child;
  - (c) in the case of a support plan relating to a carer, the carer and, where feasible, the person for whom the carer provides or intends to provide care.
- (8) The local authority may—
  - (a) prepare, review or revise a plan under this section at the same time as it or another body is preparing, reviewing or revising another document in the case of the person concerned, and
  - (b) include the other document in the plan.

**55 Regulations about care and support plans and support plans**

Regulations under section 54(5) may, for example—

- (a) require plans to be in a specified form;
- (b) require plans to contain specified things;
- (c) make provision about further persons whom a local authority must involve in the preparation, review or revision of plans;
- (d) require plans to be prepared, reviewed or revised by specified persons;

- (e) confer functions on persons specified in the regulations in connection with the preparation, review or revision of plans;
- (f) specify persons to whom written copies of a plan must be provided (including, in specified cases, the provision of copies without the consent of the person to whom the plan relates);
- (g) specify further circumstances in which plans must be reviewed.

### *Supplementary*

## **56 Portability of care and support**

- (1) Where a local authority (“the sending authority”) is notified by or on behalf of a person in respect of whom it has a duty under section 35 or 37 to meet needs for care and support that the person is going to move to the area of another local authority (“the receiving authority”), and it is satisfied that the move is likely to happen, it must—
  - (a) notify the receiving authority that it is so satisfied, and
  - (b) provide the receiving authority with—
    - (i) a copy of the care and support plan prepared for the person, and
    - (ii) such other information relating to the person and, if the person has a carer, such other information relating to the carer as the receiving authority may request.
- (2) Where the receiving authority is notified by or on behalf of a person in respect of whom the sending authority has a duty under section 35 or 37 to meet needs for care and support that the person is going to move to the receiving authority’s area, and the receiving authority is satisfied that the move is likely to happen, it must—
  - (a) notify the sending authority that it is so satisfied,
  - (b) provide the person and, if the person has a carer, the carer with such information as it considers appropriate,
  - (c) if the person is a child, provide the persons with parental responsibility for the child with such information as it considers appropriate, and
  - (d) assess the person under section 19 (if the person is an adult) or 21 (if the person is a child), having regard in particular to any change in the person’s needs for care and support arising from the move.
- (3) If, on the day the person moves to its area, the receiving authority has yet to carry out the assessment required by subsection (2)(d), or has done so but has yet to carry out the other steps required by this Part or Part 5, it must meet the person’s needs for care and support in accordance with the care and support plan prepared by the sending authority, in so far as that is reasonably practicable.
- (4) In carrying out the assessment required by subsection (2)(d), the receiving authority must have regard to the care and support plan provided under subsection (1)(b).
- (5) The receiving authority is subject to the duty under subsection (3) until it has—
  - (a) carried out the assessment required by subsection (2)(d), and
  - (b) taken the other steps required under this Part or Part 5.
- (6) Regulations may—
  - (a) specify steps which a local authority must take to satisfy itself in respect of the matters mentioned in subsections (1) and (2);

- (b) specify matters to which a receiving authority must have regard in deciding how to comply with the duty under subsection (3);
  - (c) specify cases in which the duties under subsection (1), (2) or (3) do not apply.
- (7) A reference in this section to moving to an area is a reference to moving to that area with a view to becoming ordinarily resident there.

## **57 Cases where a person expresses preference for particular accommodation**

- (1) Regulations may provide that where—
- (a) a local authority is going to meet needs under sections 35 to 38 or sections 40 to 45 by providing or arranging for the provision of accommodation of a specified type for a person,
  - (b) the person concerned, or a person of a specified description, expresses a preference for particular accommodation of that type, and
  - (c) specified conditions are met,
- the local authority must provide or arrange for the provision of the preferred accommodation.
- (2) The regulations may require the person concerned or a person of a specified description to pay some or all of the additional cost (if any) of the preferred accommodation in specified cases or circumstances.
- (3) In subsection (2) “additional cost” means the difference between—
- (a) the cost of providing or arranging the provision of the preferred accommodation, and
  - (b) the cost that the local authority would usually expect to incur in providing or arranging the provision of suitable accommodation of that type to meet the needs of the person concerned.

## **58 Protecting property of persons being cared for away from home**

- (1) This section applies where—
- (a) a person is having needs for care and support met under section 35, 36, 37 or 38 in a way that involves the provision of accommodation or admission to hospital (or both), and
  - (b) it appears to a local authority that there is a danger of loss or damage to movable property of the person’s in the authority’s area because—
    - (i) the person is unable (whether permanently or temporarily) to protect or deal with the property, and
    - (ii) no suitable arrangements have been or are being made.
- (2) The local authority must take reasonable steps to prevent or mitigate the loss or damage.
- (3) For the purpose of discharging that duty, the local authority—
- (a) may at all reasonable times and on reasonable notice enter any premises which the person was living in immediately before being provided with accommodation or admitted to hospital, and
  - (b) may take any other steps which it considers reasonably necessary for preventing or mitigating loss or damage.

- (4) The local authority must ensure that the following requirements are satisfied before taking any steps under subsection (3)(a) or (b)—
- CASE 1 - where the local authority is satisfied that the person is—
- (a) an adult or a child aged 16 or 17 who has capacity to consent to the taking of the steps, or
  - (b) a child aged under 16 who has sufficient understanding to make an informed decision about whether to consent to the taking of the steps,
- the local authority must obtain the person's consent to the taking of the steps;
- CASE 2 - where the local authority is satisfied that the person is an adult who lacks capacity to consent to the taking of the steps—
- (a) the local authority must obtain consent to the taking of the steps from a person authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to give consent on the adult's behalf, if any person is so authorised, or
  - (b) if there is no person so authorised, the local authority must be satisfied that the taking of the steps would be in the adult's best interests;
- CASE 3 - where the local authority is satisfied that the person is a child aged 16 or 17 who lacks capacity to consent to the taking of the steps—
- (a) the local authority must obtain consent to the taking of the steps from a person authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to give consent on the child's behalf, if any person is so authorised, or
  - (b) if there is no person so authorised, the local authority must obtain consent to the taking of the steps from a person with parental responsibility for the child;
- CASE 4 - where the local authority is satisfied that the person is a child aged under 16 who does not have sufficient understanding to make an informed decision about whether to consent to the taking of the steps, the local authority must obtain consent to the taking of the steps from a person with parental responsibility for the child.
- (5) The local authority must take reasonable steps to obtain any consent which may be needed under subsection (4).
- (6) Where the local authority is unable to ensure that the requirements in subsection (4) are satisfied, the local authority's duty under subsection (2) ceases to apply.
- (7) Where a local authority is proposing to exercise the power under subsection (3)(a) or (b), the officer it authorises to do so must, upon request, produce valid documentation setting out the authorisation to do so.
- (8) A person who, without reasonable excuse, obstructs the exercise of the power under subsection (3)(a) or (b)—
- (a) commits an offence, and
  - (b) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (9) A local authority may recover whatever reasonable expenses it incurs under this section in relation to an adult's movable property from that adult.
- (10) An amount recoverable under subsection (9) is recoverable summarily as a civil debt (but this does not affect any other method of recovery).