

# **CARERS (EQUAL OPPORTUNITIES) ACT 2004**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These explanatory notes relate to the Carers (Equal Opportunities) Act 2004 which was introduced as a Private Member's Bill by Dr. Hywel Francis and sponsored in the House of Lords by Lord Ashley of Stoke, and which received Royal Assent on 22<sup>nd</sup> July 2004. They have been prepared by the Department of Health in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.
3. This Act extends only to England and Wales.

### **SUMMARY AND BACKGROUND**

4. 5.2 million people in England and Wales identified themselves in the 2001 Census as providing unpaid care to support family members, friends, neighbours or others because of long-term physical or mental ill-health, disability or old age. That represented nearly 10 per cent of the population and of those, 21 per cent (1.09 million) provided care for 50 or more hours per week. The population of carers is not static but changes as people move in and out of caring with the majority of people providing care at some point in their lives.
5. Section 1 of the Carers (Recognition and Services) Act 1995 (c. 12) ("the 1995 Act") provides that at the time a local authority assess a person's needs for community care services or assess the needs of a disabled child, an individual who provides or intends to provide a substantial amount of care on a regular basis for that person has the right to request an assessment of his ability to provide and continue to provide care. The authority must take that assessment into account when making any decision about services for the cared for person or to meet the needs of the child, as the case may be.
6. In 1999 the Government published the National Carers' Strategy which was developed in association with carers and the organisations that represent them. The Strategy identified key factors in supporting sustainable caring, one of which was the need for legislation to enable local authorities to provide services to carers.
7. Section 1 of the Carers and Disabled Children Act 2000 (c. 16) ("the 2000 Act") built on the 1995 Act by giving carers the right to request an assessment that was not dependent on the local authority carrying out an assessment of the needs of the cared for person. It also gave local authorities power to provide certain services to meet the carer's needs and help the carer to care.
8. Section 6 of the 2000 Act made provision for carers with parental responsibility for a disabled child to request an assessment of their ability to provide and to continue to provide care for the child. The local authority must take the assessment into account

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when deciding what services, if any, to provide to the child or the child's family under section 17 of the Children Act 1989 (c. 41) ("the 1989 Act").

9. The legislation referred to above and this Act are concerned with the many people who provide care, for example, to support a member of their family, a neighbour or friend. This excludes people who provide care through a contract or as a volunteer for a voluntary organisation.
10. This Act makes three main changes to the law with the objective of providing further support for carers and helping to ensure that they are not placed at a disadvantage because of the care they provide. First, the Act requires local authorities to inform carers, in certain circumstances, that they may be entitled to an assessment under the 1995 and 2000 Acts. Second, when undertaking a carer's assessment, the local authority must consider whether the carer works, undertakes any form of education, training or leisure activity, or wishes to do any of those things. Third, the Act provides for co-operation between local authorities and other bodies in relation to the planning and provision of services that are relevant to carers.

### **TERRITORIAL APPLICATION: WALES**

11. The Act provides for the amendment of the 1995 Act, the 2000 Act and the Local Authority Social Services Act 1970 (c. 42) ("the 1970 Act"). These changes will apply equally to England and Wales, and the authorities to which the co-operation provisions of section 3 will apply include those which cover Wales. The National Assembly for Wales is responsible for commencing the provisions of the Act as regards Wales, and for issuing guidance or directions for the purpose of the 1970 Act to local authorities in Wales.

### **COMMENTARY ON SECTIONS**

#### ***Section 1: Duty to inform carers of right to assessment***

12. This section introduces new provisions into the 1995 and 2000 Acts which require a local authority, in certain circumstances, to inform carers that they may be entitled to an assessment under those Acts. This will ensure that carers get information about their rights at the appropriate time.
13. **Section 1(1)** inserts a new subsection (2B) into section 1 of the 1995 Act. This means that when a local authority are carrying out an assessment of a person's community care needs or the needs of a disabled child, and it appears to the authority that an individual may be entitled to ask for (but has not requested) an assessment of his ability to care, the local authority must inform the carer of this right before they go on to make any decision about services.
14. **Section 1(2)** amends the 2000 Act by inserting a new section 6A. The effect of this amendment is that where it appears to a local authority that it would be required to carry out a carer's assessment if asked to do so by the carer or a person with parental responsibility for a disabled child, then the authority must inform that person that he may be entitled to an assessment.
15. Subsection **(6A)(3)** and **(4)** sets out the circumstances where the local authority does not need to provide this information. This is where, in relation to the cared for person or the disabled child (as the case may be), the local authority has already carried out a carer's assessment on that person's behalf or has informed him that he may be entitled to such an assessment. A carer does not need to be given this information where the local authority has, in relation to the person cared for, previously carried out an assessment of him under section 4(3) of the Community Care (Delayed Discharges etc.) Act 2003 (c. 5).

16. A carer's assessment is defined in section 6A(5) and means an assessment under section 1 or section 6 of the 2000 Act.

### ***Section 2: Assessment of carers***

17. Subsection (1) amends section 1 of the 1995 Act and provides that an assessment of a person's ability to care must include consideration of whether the carer works or wishes to work, is undertaking or wishes to undertake, any education, training or leisure activity. This ensures that best practice and current Department of Health guidance is enshrined in legislation. The effect of this amendment is that the local authority will have to ask the carer about those activities during the assessment, and then take this into account when making the decision about whether the needs of the cared for person or the disabled child (as the case may be) call for the provision of any services by them.
18. Subsection (2) makes a similar amendment to section 1 of the 2000 Act by adding a new subsection (3A). This will mean that when making any decision about services for the carer under section 2 of that Act, the local authority must consider whether a carer works or wishes to work, is undertaking or wishes to undertake, any education, training or leisure activity.
19. Subsection (3) makes similar changes to section 6 of the 2000 Act (assessment of persons with parental responsibility for disabled children). It does this by inserting a new subsection (2A). This feeds through to the existing duty of the local authority to take that assessment into account in deciding what, if any, services to provide under section 17 of the 1989 Act (provision of services to children and their families). For example, if the child's carer expressed an intention to undertake a college course or to return to employment, then the local authority would need to consider this when making any decision about services in light of the assessment.

### ***Section 3: Co-operation between authorities***

20. **Section 3** facilitates joint working by providing a formal basis for co-operation between local and other authorities in relation to carers and cared for persons. It sets out two situations where an authority must give due consideration to a request by a local authority for assistance in relation to the planning or the provision of services.
21. The authorities that must give due consideration to a request are specified in subsection (5) and are any other local authority, any local education authority, any local housing authority, and certain National Health Service bodies, including any Primary Care Trust, any National Health Service Trust or NHS foundation trust, and any Local Health Board.
22. Firstly, subsection (1) covers a situation where a local authority asks such an authority for assistance in planning the provision of services to persons who are entitled to an assessment under section 1 of the 1995 Act, sections 1 or 6 of the 2000 Act, or for whom those individuals provide, or intend to provide, regular and substantial care.
23. For example, this will ensure that a local authority is better placed to seek information from, or the participation of, the NHS when deciding how to deliver carers' services that are linked local NHS services.
24. Secondly, subsection (3) deals with a situation where a local authority is assessing or has assessed a person's ability to care under the 1995 or 2000 Acts, and considers that his ability to provide and to continue to provide care would be enhanced by the provision of services by another authority. The type of services are not specified in the Act, but can include services for either the carer or the person cared for.
25. So, where a local authority makes a request under subsection (1) or (3), the other authority must make a decision about whether to provide the assistance or the services, as the case may be, that have been requested.

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26. Subsection (6) provides that subsections (1) and (3) do not apply to acts that could be the subject of a request by the local authority under section 27 of the 1989 Act (co-operation between authorities). This is to make it clear that nothing in this Act affects the operation of that legislation.

***Section 4: Minor amendment***

27. This section amends the 1970 Act by providing that local authority functions under section 3 of this Act are social services functions. In particular, this means that for the purpose of the 1970 Act, the Secretary of State, in relation to England, and the National Assembly for Wales, in relation to Wales, can give guidance or directions to local authorities about the carrying out of their functions under section 3 of this Act.

**COMMENCEMENT**

28. Except for section 6 which comes into force on Royal Assent, this Act will be brought into force by orders made in relation to England by the Secretary of State and in relation to Wales by the National Assembly for Wales.

**THE FOLLOWING TABLE SETS OUT THE DATES AND HANSARD REFERENCES FOR EACH STAGE OF THIS ACT'S PASSAGE THROUGH PARLIAMENT:**

<i>STAGE</i>	<i>DATE</i>	<i>HANSARD REFERENCE</i>
<b>HOUSE OF COMMONS</b>		
Introduction	7 January 2004	Vol 416 No. 17 col 259
Second Reading	6 February 2004	Vol 417 No. 36 cols 1015-1076
Committee	10 March 2004	Standing Committee C
Report & Third Reading	14 May 2004	Vol 421 No. 86 cols 572-587
<b>HOUSE OF LORDS</b>		
Introduction	18 May 2004	Vol 661 No. 85 col 650
Second Reading	25 June 2004	Vol 662 No. 105 cols 1471-1494
Order of Commitment discharged	12 July 2004	Vol 663 No. 115 col 1015
Third Reading	19 July 2004	Vol 664 No. 120 col 12
Royal Assent - 22 July 2004		Commons Vol 424 No 125 col 514
		Lords Vol 664 No. 123 col 333