

CARERS (EQUAL OPPORTUNITIES) ACT 2004

EXPLANATORY NOTES

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

*These notes refer to the Carers (Equal Opportunities) Act
2004 (c.15) which received Royal Assent on 22nd July 2004*

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.
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.