



Draft Care and Support Bill

Carers UK first analysis of main provisions for carers

July 2012

Headlines

This is a draft Bill published on 11 July 2012 which will become the main plank of social care legislation - effectively replacing many statutes from the last 60 years and the three Private Member's Bills which form the cornerstone of carers' rights and which Carers UK drafted and secured.

Carers UK warmly welcomes the announcement of detailed consultation on the draft Bill and the fact that Parliament has the opportunity for pre-legislative scrutiny to discuss the Bill before it fully goes before Parliament – this is a clear demonstration of the value placed in the views of carers, older and disabled people and organisations representing them. The deadline for responses to a consultation on the Bill is 19 October 2012 and Carers UK will be responding in full. We will be carrying out further analyses of different parts of the Bill and looking at further provisions. Our detailed response will be provided at a later date.

It is anticipated that the legislation will come in the fourth session of parliament i.e. 2013/14, but this will not be confirmed until the Queen's Speech in June 2013. Implementation would then be in 2015.

Carers UK has welcomed the draft Bill and the new rights that it contains for carers. This represents an important step forward in the development of carers' rights, their recognition and the vital support that they need.

There will be costs associated with implementing carers' rights which are provisionally planned for 2015. Carers UK will be publishing an assessment of these costs at a later date.

The Bill will represent a wholesale change in the way that carers, disabled people and older people are supported by communities.

Where the Bill is stronger for carers:

1. **New duty on local authorities to promote an adult's well-being (Clause 1) if this includes carers.**
2. **New duty on local authority to 'establish and maintain a service for providing people with information and advice relating to care and support for adults and carers' (Clause 2).**
3. **New duty to promote diversity and quality in provision of services (Clause 3).**
4. **New rights to services for carers following assessments.**



5. **No need to request an assessment now, but automatic assessment if the local authority considers the carer to have needs.**
6. **No requirement to provide regular and substantial care, so any carer with needs, could be assessed.**
7. **New rights to be consulted on the assessment of the person needing care.**
8. **New rights in primary legislation to receive a copy of the care plan and to be consulted.**
9. **Stronger role for advocates for carers and adults needing care.**

Where the Bill needs amendments, additions and clarifications for carers:

1. **Rights for parents of disabled children are less strong compared with adults caring for adults as they must still request an assessment.**
2. **Rights for young carers are less strong as they must still request an assessment.**
3. **Young carers are required to be a 'child in need' under the Children Act 1989 which is restrictive and not in the spirit of prevention – avoiding a child from becoming 'a child in need'.**
4. **Following assessments of young carers, there is no clear duty to provide additional services to the parent needing care under this Bill.**
5. **There are several different and at times confusing definitions of carers.**
6. **It is not clear whether Clause 1 actually applies to carers – needs to be clarified – although the notes state that they are included – the rest of the legislation separates out carers.**
7. **There are new provisions giving local authorities the power to impose charges, however needs assessments still must occur before financial assessments.**
8. **No duty to provide services if a person is a self-funder and they do not ask the local authority to arrange services.**
9. **Potential increased costs for families as local authorities can charge for arranging services for a person needing care or a carer.**
10. **There is no definition of needs.**

Social Care (Local Sufficiency of Supply) and Identification of Carers Bill

This is a Private Member's Bill (a piece of legislation proposed by a backbench MP) currently being promoted by Barbara Keeley MP and has strong cross party support from Sir Tony Baldry MP, Laura Sandys MP, Sarah Newton MP, Stephen Lloyd MP, Caroline Lucas MP, Annette Brooke MP, Diana Johnson MP, Dr Hywel Francis MP, Alex Cunningham MP, Heidi Alexander MP and Sharon Hodgson MP.

This important Bill makes several key provisions which would help support the draft Care and Support. If successful it would make several key changes, placing duties on:

- a) Local authorities to provide sufficiency of supply of social care services.
- b) Local authorities to ensure sufficiency of supply of social care services for disabled people and carers who wish to work or go into education.
- c) NHS bodies to identify carers.



- d) Schools to identify young carers.
- e) Further and higher education establishments to identify young carers.

These important provisions would help support main provisions sought in current government policy and would help to underpin the current legislation.

The Second Reading of the Bill is on 7 September 2012 and we urgently need organisations and carers and disabled people to sign up to support the Bill.

Visit www.carersuk.org/newsroom/item/2644-mp-proposes-landmark-new-social-care-law to sign up your support.

Detailed Clauses in the Bill

Clause 1: Duty on local authorities to promote an adult's well-being.

This covers a range of areas that are listed such as physical and mental and emotional well-being. It also covers participation in work, education and training, social and economic well-being. **Carers UK welcomes this additional focus on work and economic well-being which was not in the Law Commission's proposals. This is a very positive addition.**

Clause 2: Duty on local authority to establish information and advice service.

This is intended to ensure that local information services are provided locally and is also intended to cover advocacy although not specifically mentioned. There will be specific areas that the local authority has to cover including the choices and types of care and support, the choice of providers, how to access care and support and how to raise concerns about safeguarding. This provision is intended to cover self-funders as well as those who might be entitled to either assessment or support. Equally, the intention is not for local authorities to provide this themselves necessarily, but ensure the systems are in place i.e. by contracting with external organisations.

Clause 3: Duty to promote diversity and quality in provision of services

This is a new duty which places new duties on the local authority to promote the efficient and effective operation of a market in services for meeting care and support needs, ensuring that people have a variety of providers, high quality services to choose from, sufficient information to make a decision. It also places a duty on the local authority to look at future demand for services and how providers might meet that demand as well as sustainability of the market. Carers UK believes that whilst this Clause goes some of the way to meeting the provisions set out in the Social Care (Local Sufficiency of Supply) and Identification of Carers Bill, there is still a need to ensure sufficiency of supply, not just a market.

Clause 7: Preventing needs for care and support

A new duty on local authority to provide or arrange for services, facilities or resources which will prevent or delay the development of or reduce the needs of care and support of adults. Carers UK would prefer a reference to carers in this particular clause. However, we would argue that in order to prevent further need for care, then investment in carers is critical.



Clause 9: Assessment of needs for care and support

This is the new main provision for assessing a disabled person's need for care and support. The important sub-section (3) states that this must be regardless of the authority's views of the level of the adults needs for care and support or the level of the adult's financial resources. The needs assessment must focus on outcomes for the disabled person and they must also consult the carer, in so far as it is feasible and any person whom the adult asks the authority to consult.

Clause 10: Assessment of carer's need for support

This new drafting places a duty on the local authority to assess a carer. It does several things that are different to the current legislation. It removes the requirement to ask for an assessment. And it removes the requirement for the carer to be providing regular and substantial care. Instead, the only requirement is that the carer 'may have needs for support – whether currently or in the future'. The requirement is to assess whether they have needs and if they do what they are (or will be in the future).

There is no change to the assessment in the fact that the carer has to be able and continue to be able to provide care, and be willing and continue to be willing to provide care. The Bill also keeps the provisions from the Carers (Equal Opportunities) Act 2004 about consideration of whether the carer wishes to work, or participate in education, training or recreation.

Additionally, the local authority has to consult – in so far as it is feasible – the carer and any person whom the carer asks the local authority to consult – which could be an advocate. This is a new and welcome provision.

Although the normal exclusions to this right apply where the person is employed as part of a contract or is a volunteer, there is a new additional sub-section (8) which confuses the definition and Carers UK will be submitting new drafting to clarify this.

What is missing in this section is any mention that the assessment is carried out regardless of the authority's view of the level of the carer's resources (Cl. 9(3)(b) and the fact that the assessment should be looking at outcomes (Cl. 9(4)(b)). Without similar and parallel rights to disabled people, there will not be a level playing field of rights and **Carers UK recommends that assessment processes, including financial assessment are aligned.**

Clause 11: Refusal of assessments

Adults needing care can refuse assessments and the local authority is under no obligation to assess them unless the adult lacks capacity and cannot refuse the assessment in the first place, or is at risk of abuse, neglect or harm.

In the carer's case, refusal of assessment under 11(5) means local authorities do not have to carry out an assessment. However, if the local authority thinks that the carer's situation has changed, or that the person receiving care, then they must assess the carer. If the carer does not want this to happen under 11(7), they have to refuse the assessment again. The area missing for this provision is the fact that if the carers refuses an assessment and the person needing care is at risk, then action needs to be taken. Carers UK will be making this point in our submission.



Clause 12: Assessments under sections 9 and 10 further provision:

This looks at assessments where the local authority must look at the situation of the family – whether this is an adult with care needs’ assessment or a carer’s assessment. This means that this could incorporate the needs of children, siblings, carers, or the disabled person and constitutes a whole family approach.

It also suggests that someone other than a local authority employee could carry out the assessment. Carers UK has had some concerns about the delegation of assessments. Although some may find that the process can be better, there can be a lack of clarity over decision-making, a lack of joined up decision-making and a lack of clarity over the power of the external person to influence the final services decision.

This section allows information to flow to external people. We would have concerns again, about the legal routes by which individuals would be able to challenge processes and decision-making. It is vital that local authorities do not delegate decision-making and that there is a clear open and transparent process.

Clause 13: Eligibility criteria

The legislation provides for the first time that there are set eligibility criteria. Until now, these have been set out in Section 7 guidance which has the force of law. For the first time, the law sets out that the assessment must determine whether the adult or carer has needs and whether they meet the eligibility criteria. There will be a set of regulations to determine levels of need. The White Paper suggests that the threshold will be set at substantial and this Bill sets up the legal framework to do that. An ‘eligible’ need is a need which is defined as one which a local authority has as duty to meet. There will be a number of needs which are not deemed ‘eligible’ which the local authority will not be under a duty to meet.

Clause 14: Power of local authority to impose charges

This unfortunately worded section discusses imposing charges for services and covers all those services that are designed to meet needs that a local authority are under a duty to meet for either the adult needing care for their own services or the carer for their own services.

The local authority can also charge for services that they are not under a duty to provide under these proposals for example, non-eligible needs or for people who are above the financial limit for local authority help. For these services, local authorities may also charge for putting in place the arrangements for meeting needs. Up until now, it has only been the services that have been charged for not the ‘management’ or ‘arrangement’ charge.

There is also an important Clause which protects the carer from being charged for services which essentially should be the adult needing care. Under 14(3) if the local authority thinks that the carer’s needs are best served by providing more services to the adult needing care, then it is the adult which is charged.

However, it is not clear where a carer’s need for services starts and where this might be provided to the disabled person, unlike the clarity in existing legislation. **Carers UK is concerned about the use of the words ‘impose’ charging and feel that this is unnecessarily strong particularly when it is a ‘power’ i.e. they can but don’t have to.** Regulations will be introduced which will



look at calculating income and calculating capital and, at present, does not specify which services these cover. The regulations will state that where a person's financial resources exceed a certain level, the local authority will not pay towards the cost of the provision of services. The section doesn't state whether this applies to residential or non-residential care. Currently different rules apply to residential and non-residential care. **This urgently needs clarifying since the Government objective is to 'simplify rules regarding charging and financial assessment, so people understand any contributions they have to make to the cost of their support.'**

Clause 16: Deferred payments

Local authorities can currently defer a charge on a property if a person enters residential care and the value of their home is taken into account. Some local authorities do not actively pursue this policy. The Bill places a duty and a power on local authority, by regulation, to operate a system of deferred payments on a person's home. The key difference in the legislation is that the local authority may now charge interest on those deferred payments, charge for the administration costs, and charge interest on those administration costs. Although some people may prefer to have a deferred payment on a property rather than having to sell it straight away, they will also end up paying more for care than they would do currently.

Clause 17: Duty to meet needs for care and support for adults needing care

There will be a duty to meet needs within eligibility criteria, having carried out a needs assessment and where applicable a financial assessment if the adult is ordinarily resident. However, the clause appears to introduce a new provision that the local authority no longer has a duty to provide services to people whose resources are above the "financial limit". They only have a duty to provide where the person's resources are at or below the financial limit. If they are above the financial limit and they ask the local authority to provide the services, then they have a duty to do so. Currently, the local authority has a duty to provide services that meet need and can charge for services and recover this charge through the courts if it is not paid. What this introduces is a new provision which removes the absolute duty of local authorities to meet all needs regardless of resources.

Clause 19: Duty and power to meet a carer's need for support

This is similarly drafted to the Clause above with the exception that services may be provided to the adult needing care in order to meet the carer's needs. At this point, similar provisions apply that look at that adult's resources. The adult needing care must agree to the services and support being provided to them. Although this can be challenging, it is an important provision.

Subsection (8) is important as it recognised that if a carer's need for support cannot be met for any reason by providing care and support to the adult needing care, then it must identify some other way of doing so.

The only problem is that there is little clarity about where carers' services end and the services of the person needing care start. This is very clear under the Carers and Disabled Children Act 2000 but there are not such clear definitions in this Bill. Carers UK is concerned that carers could end up having more services that should belong to the person needing care and the carer will be charged for that support.



In the case of breaks for example, they are often described as a service for carers. Whilst it is true that a carer needs a break to continue caring and to maintain their health and well-being – in the absence of the carer, it is the disabled person who needs care, not the carer. This current definition from the Carers and Disabled Children Act 2000 works well. A similar clarifying point is needed in this legislation to prevent carers from being charged unnecessarily for services. Carers already feel that they are paying several times – in lost employment, in saving the state billions through their care and support, through sacrificing their own opportunities in life. Few say they have a choice about caring and it is morally wrong to charge them for something like a break.

What happens after assessments?

Clause 23: Steps for the local authority to take

The local authority is required to meet needs, then it has to prepare a care and support plan, or in the case of a carer – a support plan. So we have different terminology for adults needing care and carers. The adult (but this is not clear whether this includes carers) must be told of the needs that it is going to meet and which can be met by direct payments and help the adult with deciding how to have the needs met.

If they are not going to meet needs, then the adult must be given a written record of the needs or carer's assessment, a written record of any financial assessment and advice and information about what can be done to meet the needs or to prevent or delay the development of needs in the future.

Clause 24: Care and support plan, support plan

To be clear, the adult needing care will have a care and support plan. The carer will have a support plan. Both duties to each party are similar i.e. each must:

- specify needs assessed
- extent to which they meet the eligibility criteria
- specifies the needs that the local authority is going to meet and how it is going to meet them
- specifies to which outcomes or carer's wishes to work, etc. are to be secured.
- Includes the personal budget for the adult.

If needs are to be met by a direct payment, then plan must also specify the needs which are to be met, how, and the amount and frequency of direct payments. The local authority must consult the adult, carer and any other the person the adult or the carer (respectively) ask to be consulted.

The local authority will be able to authorise another person to prepare the plan, including the person for whom the plan is being prepared, jointly with the local authority. This means that the carer could determine their own plan (as could the adult needing care) and agree it jointly with the local authority. This gives the person much more choice and control. Equally, it means contracting out care planning and development services to external organisations.

Clause 24 also gives the local authority the power to combine care plans of the adult needing care and the carer needing support.



The duties of direct payments are much stronger than currently and a clear presumption in favour of direct payments.

Clause 26: Review of care and support plan, or of support plan

This places duties on the local authority to keep the plan under review for the adult and the carer and, if they think that something has changed, to reassess either or both the adult and/or the carer.

Clause 25: Personal budget

The legislation defines personal budgets for the first time. This is a statement of the amount which the local authority assesses as needing the cost of meeting those of the adult's need which it is required or decides to meet. The amount which on the basis of financial assessment the adult has to pay towards that cost and the basis on which the local authority must itself pay towards that cost, the amount which it must pay.

A personal budget may also specify other amounts of public money that are available in the adult's case for spending on matters relating to housing, health care or welfare.

Clauses 28, 29 and 30: Who can receive direct payments

These sections cover who may receive direct payments and help to clarify the law particularly around people who lack capacity. Carers UK has had many cases from carers refused, particularly in the case of dementia, where someone lacks capacity to consent to a direct payment. This should clarify the situation for them.

What is important is where a direct payment can be used to pay a family member. With most legislation being repealed, it is important that this is clarified in regulations.

Clause 31: Continuity of care when an adult moves

These are the main provisions which have been called "portability of care". The principle is basically that the new local authority has to provide the level of care that the person needing care used to get until they are reassessed. The Clauses stipulate that the receiving authority has to provide information to any carer and has to assess the carer.

Safeguarding adults at risk of abuse or neglect

Clauses 34 to 38: Where a local authority has reasonable cause to suspect that an adult in its area has needs for care and support is experiencing risk, abuse or neglect and as a result is unable to protect themselves, they have to make enquiries to decide what action to take. These sections also establish safeguarding boards and also place a duty on local authorities to protect property of individuals who are being cared for away from home. They can also recover reasonable expenses from the adult for carrying out the latter duty.

Transition for children to adult care and support

Clause 39: Assessment of a child's needs for care and support

A parent (or carer, but with different definition) can request an assessment of the child which is defined as a child in need under S. 17 of the Children Act 1989. This has to look at what the



child's needs are and what they are likely to be when the child turns 18. The problem in this section is another and new definition of carer which is 'in relation to a child in need, means a person, other than a parent, who is providing care for the child whether or not under or by virtue of a contract or as voluntary work'. Carers UK is concerned that there are two conflicting definitions of carers which are contrary to each other. In this section, the 'carers' views take equal weight to a parent's request for an assessment and this needs to be balanced.

Clause 40: Assessment of a child's carer's needs for support

This is where carers, including parents, must request an assessment. This is a higher level bar than will exist for adults caring for adults who do not have to request an assessment, but where it is the duty of local authorities to carry out an assessment if they think the carer may have needs.

If requested, the authority must assess whether the carer has needs for support and if they do, what they are and what they are likely to be when they are 18. The only difference again, is that the authority has to consult the carer and anyone the carer asks them to consult.

This is where the term carer reverts back to the same definition in the Carers (Recognition and Services) Act 1995, i.e. excluding anyone who is caring as a volunteer or whose care covered by a contract or employment. However, this definition is also different to the one set out in Clause 9 earlier. **Carers UK believes it is vital that definitions are consistent throughout the Bill. This is Carers UK's preferred definition under Clause 40.**

Clause 41: Assessment of a young carer's needs for support

In this Clause, the young carer also has to request an assessment or their parent has to. This is a higher test than exists for adults caring for adults in Clause 9 when the local authority has a duty to assess if they think the carer may have needs. There is also a higher test in that the family, or a member of the family, are someone whom services **are** being provided under section 17 of the Children Act 1989. This is a higher test than exists in currently legislation and a higher test than the adults caring for adults provisions. It also excludes young carers who are caring for parents since they may not have services provided under the Children Act 1989 but under relevant adult social care legislation e.g. currently the Chronically Sick and Disabled Person's Act. This section needs to read, **"someone whom services may or are being provided under s. 17 of the Children Act 1989 or a parent who is receiving care and support under this Sections... of this Act."**

What it usefully and newly does is see whether the young carer has needs for support, what those needs are and what they are likely to be on their turning 18. This is useful for transition planning for young carers who become adults.

There are similar provisions compared with adults about the young carer wishing to work, education, training and leisure.

Clause 42: Further provisions to s. 39 to 41

This section states that a child's assessment can be combined with that of a parent, young carer, etc. but only if the child and the carer agree to have a combined assessment or the local authority believes it in their best interests and the carer agrees to a combined assessment.



This is where the lack of consistency in definitions becomes problematic as the work care is used but it is not clear from the text which definition is being used.

Clause 43: Continuity of services under s. 17 of Children Act 1989

This Clause helpfully establishes if there is any dispute or delay of assessment for a child – whether disabled or a young carer upon reaching age 18, the duty of care and services still lie with the local authority (i.e. children’s services) until an assessment can be undertaken and a decision reached.

Clause 44: Power to meet child’s carer’s needs for support

This effectively reflects of the provisions of the Carers and Disabled Children’s Act 2000 and aspects of the Carers (Equal Opportunities) Act 2004 give the local authority the power to provide services – check against C(R&S) Act and CDC and CEO Action. A local authority must have regard to any services being provided to the carer under s. 17 of the Children Act 1989.

There are several areas missing here:

1. The level of assessment trigger is higher than that of adults caring for adults.
2. Young carers have to be in receipt of 1989 Children Act services rather that ‘may be in need’
3. If, having carried out the assessment of the young carer, and young carer has needs, there also has to be consideration of whether the parent needs additional care under the relevant sections of this Bill. It is not sufficient to rely on the all encompassing services under s. 17 Children Act services. This would firmly place the duty of care and duty to provide services on adult social services where there is a parent who is in need of care services.

Clause 45: Recovery of charges, interest etc.

This section comes under the enforcement of debts which puts regulation and common law into primary legislation to allow local authorities. This also places a duty on the person needing care and the carer to ensure that they fully disclose relevant assets. This doesn’t matter whether failure to disclose was fraudulent or not. Given that financial assessments are so complex and so many people misunderstand them, it is vital that disabled people and carers are given full information about financial assessments.

Clause 46: Transfer of assets to avoid charges

This section puts into primary legislation other legal and common law provisions which look at deprivation of assets. The problematic part of this section suggests that all that needs to happen to invoke this particular clause is the fact that the asset is transferred by either the person needing care or the carer. The way the clause is drafted does not currently require the transfer as being undertaken with the intention of avoiding charges for having the adult’s needs being met. It is vital that this is clarified since there may be a number a reasons why assets may be transferred for many years before a person needs care.

Clause 49: Registers of sight-impaired adult and disabled adults

This section places a duty on local authorities to hold registers of sight impaired adults i.e. these are compulsory. However, in terms of current disability registers, there is no requirement to have these, although this legislation gives local authorities to power to maintain these.



Schedule 1: Safeguarding Adults Boards

This sets out the provisions by which these will operate.

Schedule 2: Discharge of hospital patients with care and support needs

The main provision which currently covers this provision is the Community Care (Delayed Discharges) Act 2003 which is being abolished. The NHS Trust must notify the local authority of care and support needs and before doing so should be consulting the patient and the carer. The consultation with carers is very welcome. Importantly, the Schedule contains the provisions and duties to assess carers that exist in the 2003 Act. Carers UK warmly welcomes these provisions being retained.

Schedule 3: Direct payments for s.117 after-care services under 1983 Mental Health Act

This covers direct payments for after-care services.

Schedule 4, Part 1 – Repeals and revocations

This section deals with repeals and revocations. The three Carers Acts from 1995, 2000 and 2004 are not being repealed, but these rights are expected to replace the rights contained in those Acts in the future.

Community Care (Delayed Discharges) Act is being abolished, so too are clear free services for intermediate care. There are provisions under the charging clauses for the Secretary of State to make regulations to make certain services free of charge. Carers UK will be arguing strongly for the continuation of free 'reablement' or intermediate care services.

What next?

The deadline for responses is 19 October 2012 and Carers UK will be responding in full. These comments should be addressed to: careandsupportbill@dh.gsi.gov.uk

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