

## Draft Care & Support Bill, July 2012

### Briefing 3: What does the Bill mean for young carers?

The draft Care and Support Bill makes provision in respect of adults caring for adults and it will repeal the current carer provisions that relate to adults caring for adults. It significantly develops adult carers' rights, their recognition and need for support, but it does not develop the law in the same way for young carers. **It provides for transition from children's services to adults services but aims to separate out the adult's statute with the legal framework for children** (see Appendix A for more details). This has the following implications:

- 1. Unequal rights and age discrimination:** Young carers and parent carers do not have the same rights as adult carers because:
  - The Bill introduces a single duty to assess adult carers when they appear they 'may' have need for support (clause 10), but this is not the case for young carers who are still required to request an assessment or their parent has to and;
  - Removes the requirement for adult carers to be providing a substantial amount of care on a regular basis, but young carers will still have to undertake this
- 2. Lack of emphasis on prevention:** young carers at transition will need to be "children in need" in order to be eligible for assessment. Although section 17 of the Children Act 1989 should result in preventative services for children and the whole family to safeguard and promote the welfare of children, in practice this may mean:
  - Identification of inappropriate caring will only happen when a child or family has already been assessed as "in need" and young carers (or a parent) will still have to request an assessment
  - Young carers may not meet "children in need" thresholds and there needs to be provision for early intervention and prevention of inappropriate caring
- 3. Unhelpful approach to preventing inappropriate caring through meeting needs of the whole family:**
  - Whilst prevention and early identification may be set out in Practice Guidance the draft Bill does not make it clear how whole families should be supported to prevent or reduce inappropriate or harmful levels of caring; this appears to **contradict stated Government policy that care should be delivered in ways which sustain families**<sup>1</sup>. The central issue is whether a child's welfare or development might suffer if support is not provided to the child or family. Services should work closely with family and children's services to identify children with additional family burdens and any safeguarding concerns
  - The draft Bill only provides for local authorities to have regard to the needs of the whole family (of the person to whom the assessment relates) in regulations

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<sup>1</sup> *Recognised, valued and supported: next steps for the Carers Strategy* (2010) and *Carers at the heart of 21<sup>st</sup> century families and communities* (2008). See also *Working Together to Support Young Carers – A Model Local Memorandum of Understanding between Statutory Directors for Children's Services and Adult Social Services*, ADASS and ADCS (2009).

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(clause 12) and it is not clear how a whole family needs assessment will relate specifically to the duties to meet needs for care and support or meeting a young carer's needs for support (including through meeting the needs of the adult with care needs)

- The draft Bill does not require local authorities to identify whether there are children or young people in the household or if they have a caring role; what support they may need or whether there are safeguarding concerns arising from the caring role (or otherwise)
  - There needs to be a stronger framework for a whole family approach so that in meeting adults' needs, adult social services identify and properly support young carers without relying on children to provide part of the care package
4. **Inconsistency between different pieces of legislation:** Through setting eligibility for assessment for young carers on becoming 18 years old under section 17 of the Children Act 1989, the draft Bill is inconsistent with practice guidance of existing legislation that applies to young carers.
5. **Confusing and piecemeal legal framework for young carers:** The Government has said that provisions for young carers will be retained (as provided for under The Children Act 1989, The Carers (Recognition and Services) Act 1995, Carers & Disabled Children Act 2000 and the Carers (Equal Opportunities) Act 2004) but with the law related to adults taken out. This will be confusing and it will not be clear how the law for young carers relates to either the adult's statute for meeting the needs of vulnerable adults or how young carers' rights can be strengthened under the Children Act 1989 on supporting vulnerable children and families. In particular, the three Acts (1995 Act, 2000 Act, 2004 Act) require assessment of a young carer's needs to be taken into account in deciding what community care services to provide to the parent. It is unclear how this interfaces with the draft Bill and proposed national eligibility criteria.

### Options for reform

- It is necessary to consider amending the draft Care and Support Bill so that:
  - There are clear provisions for meeting the needs of the whole family so that young carers are identified and inappropriate caring is prevented
  - Adequate provisions for carers of any age caring for adults
- In addition, Carers Trust will work with Government to:
  - Look at consolidating the law as it relates to young carers so that there is a single young carer's statute or repeal the existing legislation and incorporate provisions into the Children Act 1989 as well as consider the interface between the adult's statute and children's legislation (e.g. Children Act 1989) and amending the draft Bill accordingly

### What next? Responding to the consultation

Carers Trust strongly encourages carers and Network Partners to respond to the consultation and to feed into the Carers Trust response. **It needs to be made clear that young carers issues have not been adequately addressed in the draft Care and Support Bill.**

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You can contribute your views in the following ways:

- Organise your own consultation event or contribute to a local consultation response with carers and local partners
- Use Carers Trust Consultation Toolkit to help you put together a response – includes more information on the consultation process and top tips
- Respond online by answering the consultation [questions by topic](#) or [comment-by-clause](#);

### The consultation deadline is 19<sup>th</sup> October 2012

- Submit your own written response (using the Consultation Toolkit to help you). Email or send your consultation response to the Department for Health
  - Email: [careandsupportbill@dh.gsi.gov.uk](mailto:careandsupportbill@dh.gsi.gov.uk)
  - And copy in Carers Trust [esmale@carers.org](mailto:esmale@carers.org) OR
  - Write to: Draft Care and Support Bill Team, Department of Health, 6th Floor Richmond House, 79 Whitehall, London, SW1A 2NS

### Useful Resources

- Carers Trust Consultation Toolkit – top tips on responding to the consultation <http://www.carers.org/>
- Carers Trust draft Care and Support Bill Briefing 2: Clause by Clause <http://www.carers.org/> - this briefing includes more detail on the whole Bill
- Carers Trust draft Care and Support Bill Briefing 3: What does the Bill mean for young carers? <http://www.carers.org/>
- The draft Care and Support Bill [http://www.dh.gov.uk/prod\\_consum\\_dh](http://www.dh.gov.uk/prod_consum_dh)
- Easy Read version of the draft Care and Support Bill <http://www.dh.gov.uk/health/files/2012>
- The Law Commission report [http://www.dh.gov.uk/health/files/2012/07/2900021-Reforming-the-Law-for-Adult-Care\\_ACCESSIBLE.pdf](http://www.dh.gov.uk/health/files/2012/07/2900021-Reforming-the-Law-for-Adult-Care_ACCESSIBLE.pdf)
- Department for Health 8 Factsheets <http://www.dh.gov.uk/health/2012/07/cs-bill-factsheets/>

### Contact

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### Appendix A: What does the Bill do for young carers on becoming 18?

#### Clause 39 is for assessment of a child's needs for care and support on transition for children to adult care and support

- This clause applies to any child including young carers who may have care and support needs. This clause specifies that a young person must continue to receive children's services (under the Children's Act 1989) until such a time as adult services have carried out an assessment and are ready to meet needs.

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**Implications:** This should prevent young people from losing support at the critical point of transition. It only refers to services under the Children's Act 1989 and it should include any social care support that a child receives under other legislation.

**Clause 41 aims to ensure better transition between children's and adult support and will enable young carers to undergo an assessment under adult legislation** ahead of their 18th birthday, to determine what needs for support they may have at the age of 18, and support planning for their transition to adulthood.

- Young carers approaching 18 may receive an assessment when they or their parent requests one (rather than a duty to assess needs as with an adult carer)<sup>2</sup>.
- A Young Carer eligible for an assessment is a person under 18 years caring for an adult and a child "in need" or part of a family for whom, or for a member of whose family is in receipt of services under section 17 of the Children Act 1989 (clause 41 (3)).
- A young carers assessment must include whether the young carer is able to care and is willing to do so after the young carer becomes 18 (clause 41 (8)) and when the young carer becomes 18 the local authority must decide whether to treat the assessment as an adult's carers assessment (clause 41 (11)). The assessment should include what the care and support needs are and likely to be when the child becomes 18.

**Implications:** The assessment under the new adult statute would be in addition to any assessment or services received under children's services, but on transition, older young carers will only be able to request an assessment which accounts for their needs beyond 18 if they are a child "in need" under the Children's Act 1989. The draft Bill would replace only the element of this provision which relates to carers over the age of 18. In effect, "carve out" the adult carers' element, since that right to a carer's assessment would be replaced by the provision in clause 10 of the draft Bill. This means that:

- The draft Bill sets a higher threshold for support than currently applies for young carers' assessments and for adult carers' assessments (i.e. on becoming 18 a young carer must be a child in need);
- It would result in inconsistency between eligibility for assessments for young carers under 18 and young carers on becoming 18 and;
- Exclude young carers caring for parents who may receive services under other legislation e.g. currently the Chronically Sick and Disabled Person's Act

However, young carers on becoming 18 will have the right to be assessed as an adult carer providing continuity in assessment; meeting their needs and assessment under section 17 could have advantages for children where there are safeguarding concerns given the scope to support the whole family which is appropriate for reducing harmful or inappropriate caring.

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<sup>2</sup> Under this clause, the Government have clarified that the right to a carer's assessment under section 1 of the Carers and Disabled Children Act 2000, would continue to apply to young carers aged 16-17

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**Clause 42** specifies that a needs assessment under section 17 can take place at the same time as a young carers assessment if the child and parents agrees or the local authority believes it is in their best interests (relevant to assessments at transition, clause 39).

**Clause 43 is around continuity of services** (under section 17 Children's Act 1989) but appears to omit continuity of services provided to young carers under section 1/2 Carers and Disabled Children's Act 2000.

**Implications:** The omission will be amended so that the same transitional protection applies if the services are provided under the 2000 Act to a young carer reaching the age of 18.

**Clause 44 is a power to meet a young carers' needs for support** as in the Carers and Disabled Children's Act 2000 and Carers (Equal Opportunities) Act 2004 and the local authority must have regard to any services provided under section 17 Children Act 1989.