

Draft Care & Support Bill, July 2012

Briefing 1: Short briefing on key clauses affecting carers

The Care and Support Bill simplifies, clarifies and improves on the current legislation. It aims to introduce a more person centred care and support system that can meet and respond to the needs of individuals and promote their wellbeing. This briefing outlines the main parts of the Bill which affect carers. For a more detailed overview of the whole Bill, please refer to Carers Trust Briefing 2: Detailed briefing clause by clause and Carers Trust Briefing 3: What does the Bill mean for young carers?

1. **Clause 1: Duty to promote individual wellbeing**

A new statutory principle to promote individual wellbeing in decisions made with and about individuals. "Wellbeing" relates to: physical and mental and emotional wellbeing; protection from abuse and neglect; control over day-day life (how care is provided); participation in work, education, training and recreation; social and economic wellbeing; domestic, family and personal relationships; the adult's contribution to society. Importantly for carers, clause 1 (3) (e) specifies that local authorities must consider "achieving a balance between the adult's wellbeing and that of any friends or relatives who are involved in caring for the adult".

2. **Clause 2: New duty to provide information and advice**

Local authorities will be required to establish and maintain an information and advice service so that people understand how the local care and support system operates; what choices they have and how to access services.

- **Implications:** Local organisations that already provide information and advice will be critical for meeting this duty and there is potential to build on existing strengths, e.g. face-face and condition specific advice and support

3. **Clause 3: New duty to promote diversity and quality in provision of services**

To promote an efficient care and support market that will ensure people have choice of a range of providers and high quality services, the local authority has to ensure that there is sufficient information so that people can make informed decisions about their care; that the market meets current and future demand and continues to develop and improve in a sustainable way.

- **Implications:** for sustainability of local services. To ensure duty is upheld local organisations will need to inform local authorities about number of carers, the level and nature of demand for services and how local organisations can meet needs.

4. **Clauses 4-6: Duties to promote cooperation between partners**

Local authorities must cooperate with partners e.g. NHS body, police, prison authorities and probation and any other person specified in regulations and make arrangements so that there is cooperation between adult social care, housing and the Director of Children's Services. Local authorities must cooperate with health services and health related services e.g. NHS Commissioning Board, clinical commissioning groups (CCGs) and NHS trusts or foundation trusts to integrate provision, promote wellbeing and prevent the need for care and support.

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- **Implications:** Potential impact on how carers are supported and for services to work collaboratively with a range of partners to meet carers' needs. Clarification needed on how duty will apply to voluntary organisations providing services on behalf of the local authority and those contracted to deliver a statutory service.

5. **Clause 7: New duty to provide services to prevent or delay needs for care and support**

Local authorities will have to provide or arrange for the provision of preventative services, facilities and resources; identify existing services and “involve or make use of them” for carrying out this duty and identify adults whose needs are not being met. Providing or arranging preventative services can be charged for.

- **Implications:** for carers support services that provide a range of universal and preventative services, particularly as supporting carers is in itself preventative. Duty is potentially a key lever for investment and development of carers support services and there. Law could refer specifically to supporting carers. It will be important that local organisations can demonstrate preventative interventions and outcomes in relation to reducing or preventing levels of need; numbers of carers and unmet need.

6. **Clause 9: New rights to be consulted on the assessment of the adult needing care**

A new single right to assessment for disabled people and older people with care and support needs and duty to assess applies regardless of an adult's level of need or financial resources. It must take into account outcomes the adult wishes to achieve in their day-day life and how provision of support can help to achieve those outcomes. Adults, any carer and any person whom the adult asks the authority to consult must be consulted as part of the assessment.

7. **Clause 10: New single duty for carer's assessments based on appearance of need**

A new single duty for local authorities to undertake an assessment based on whether a carer “may have needs for support – whether currently or in the future”. This removes the requirement for carers to request an assessment or to be providing a substantial amount of care on a regular basis.

A “carer” is defined as an adult providing care or who intends to provide care to an “adult needing care” but not by virtue of a contract or as voluntary work (apart from in some circumstances). The assessment will continue to be on whether the carer is willing and able to continue to provide care but carers will now have to be consulted and any person whom the carer asks the authority to consult.

- **Implications:** welcome step to give carers the same rights as the people they care for and consulting carers should ensure they are fully involved in the assessment process. There needs to be clarification of the definition of a “carer” eligible for assessment and whilst the new law appears to equalise rights between carers and the people they care for there are two omissions: The duty to assess carers does:
 - not appear to apply regardless of the level of their financial resources (as with a “needs assessment” clause 9 (3) (b)) or;
 - Consider outcomes the carer wishes to achieve in day-day life and how they can be supported to help achieve these outcomes (clause 9 (4) (a)(b)).

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8. **Clause 12: Needs assessments should include a whole family assessment**

Regulations will prescribe that on carrying out the assessment, local authorities must have regard to the needs of the family of the person to whom the assessment relates. This could include anyone in the family, e.g. children, siblings and carers.

- **Implications:** A whole family approach in assessing needs is welcome and should have particular implications for young carers. However, implementation will depend on how the regulations are drafted and good practice and it is not clear how a whole family needs assessment will relate specifically to the duties to meet needs¹.

9. **Clause 13: New eligibility framework and national minimum eligibility threshold**

For the first time local authorities will have to determine eligible needs of an adult who has care and support needs and carers' needs against an eligibility framework which will be set out in regulations. Regulations will provide clarity on what constitutes 'eligible' and set a national minimum eligibility threshold which will mean that local authorities will not be able to tighten the threshold below the national minimum. The White Paper² also sets out that to support a new national minimum eligibility threshold the Government will test options for a new assessment framework.

- **Implications:** welcome development to standardise eligibility and address inequalities in accessing support.

10. **Clause 14: Charging for carer's services is optional but local authorities can impose charges in meeting carer's needs for support**

Applies to the services for meeting the needs of individuals and carers entitled to support (under the duties to meet needs, clause 17 and clause 19). Local authorities "may" impose charges but they are not under a duty to do so. The power to impose charges will now also apply to "putting in place the arrangements" for meeting needs and not just to services. Regulations will also include circumstances where services can be provided free of charge.

11. **Clause 15: Financial assessment and charges will apply to the cared for person if meeting a carer's needs for support is through providing care and support to the adult needing care:** Aims to simplify rules regarding financial assessments to make it clearer to individuals who need to contribute to the cost of their support. It applies to adults who need care (15(1)) and to carers who need support (15(2)).

12. **Clause 19: New duty to meet carer's needs for support**

Having carried out a carer's assessment, local authorities will be subject to a new duty to meet carer's needs when they meet the eligibility criteria and if they are ordinarily resident or present in the area. The duty can be met through:

Provision of support to the carer:

- If there is no charge for the service
- If the carer's financial resources are at or below the financial limit then the local authority must meet their needs (whether or not a charge applies)

¹ For further information about what the draft Bill means for young carers, see Carers Trust Draft Care and Support Bill Briefing 3 <http://www.carers.org/>

² Caring for our future: reforming care and support (July 2012)

<http://www.dh.gov.uk/health/files/2012/07/White-Paper-Caring-for-our-future-reforming-care-and-support-PDF-1580K.pdf>

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- If the carer is above the financial limit then they are still eligible for support if they ask the authority to meet their needs (if there is a charge then the carer will have to pay for the services)

Provision of support through provision of care and support to the adult needing care:

- If there is no charge and the “adult needing care” agrees
- If the adult needing care is at or below the financial limit then the local authority must meet the needs in question (carer’s) by providing care and support to the adult (whether or not a charge applies and as long as the adult agrees)
- If the adult needing care is above the financial limit then they must ask the authority to meet the needs in question (the carer’s) by providing care and support to the adult (if there is a charge then the adult needing care will have to pay for the services)
- Importantly, if it’s not feasible to support the carer through providing care for the cared for then the authority has to find some other way to provide support to them (clause 19(8)).

It is important to note that it is optional for local authorities to impose a charge for meeting needs under this duty (clause 14) as with meeting the needs of an adult with eligible needs (clause 17).

In addition, if after a carers’ assessment (and where applicable a financial assessment) a carers’ needs do not meet the eligibility threshold and the duty to meet their needs does not apply, then the local authority can still meet their needs through the provision of support to the adult needing care as long as the adult agrees (clause 19(6)). Meeting a carers’ needs through provision of support to the adult may also include supporting the adult even if the duty to meet their needs (clause 17) does not apply (clause 19(7)).

- **Implications:** The duty does strengthen carers’ rights to support but if carers or the cared for person is over the financial limit then they will have to request that their needs are met by local authorities and if their authority is charging for carers’ support services then they will have to pay for their own support.
- It is important to consider whether the current drafting of this clause provides for fair and reasonable access to services for carers who have been found to have eligible needs in the context of local authorities’ charging for support.
- Further clarity is needed about how this duty applies in relation to services specifically for the carer and in relation to services for the adult they care and on definition of “adult needing care” and “carer”

13. Clause 24: Carers should be consulted on care and support plans; carers can prepare plans jointly with local authorities (or other organisations); carers can request a copy of the care and support plan

Two definitions are used: “care and support plan” for adults with care needs and “support plan” for carers. Both should specify needs identified by the needs assessment or carer’s assessment; extent to which needs meet eligibility criteria; the needs that will be met by the local authority and how; which outcomes are relevant and whether a carer wishes to work or participate in education, training or recreation. In meeting some needs with direct payments plans must state which needs are to be met; how they will be met with direct

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payments and the amount and frequency of direct payments. Other organisations can also carry out plans. In addition, where an adult has a carer a care and support plan and a support plan can be combined if the adult and the carer agree.

14. Clause 25 and 28: New entitlement to a personal budget and new right to request direct payments which can be paid to the carer or the adult needing care

For the first time the draft Bill sets out a requirement for personal budgets for adults needs care and carers. Where the local authority is contributing towards the adult's personal budget the adult has a right to request direct payments (paid to them or a nominated adult who can be a family member or carer). Regulations will set out conditions that apply to this request, including on capacity to make a request. **Clause 29** clarifies the law in relation to what should happen if the adult is without capacity to request direct payments and a person must be authorised under the Mental Capacity Act 2005 to request direct payments.

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. You can do this by:

- 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 19th 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 and copy in Carers Trust 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: Detailed Briefing 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 and Easy Read version <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
- Department for Health 8 Factsheets <http://www.dh.gov.uk/factsheets>

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