

Carers and the New Law
The Care Act 2014
&
The Children and Families Act 2014

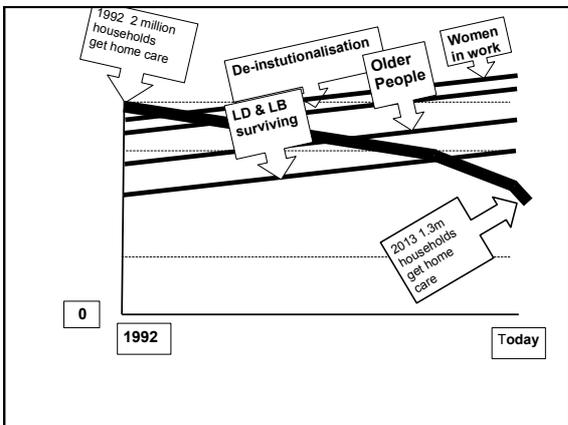
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Care Act 2014



AN
ACT
TO

Make provision to reform the law relating to care and support for adults and the law relating to support for carers



Legislation intended to be repealed

- National Assistance Act 1948
 - Chronically Sick and Disabled Persons Act 1970 (but only for adults)
 - Health & Social Services & Social Security Adjudications Act 1983
 - NHS & CC Act 1990
 - Community Care (Delayed Discharges etc.) Act 2003
 - Carers Acts
 - Health & Social Care Act 2001 (DPs)
- Not
s117 MHA 1983 nor DFGs etc

Statutory Guidance

Original Statutory Guidance (October 2014)

Revised Statutory Guidance (March 2016)

Status of Guidance

- LAs must follow guidance unless they can demonstrate sound legal reasons for not doing so'. (s78 Care 2014)

Annexes

- Annex B, C, D, E Charging
- Annex G: Hospital Discharge

Definitions

Adult

- 'in need'
- has 'a physical or mental impairment or illness'.

Carer

- an adult who provides or intends to provide care for someone but not employed to do this.

Transitional Arrangements

Individuals receiving services / support on 1st April

- Will continue to be entitled (under pre-Care Act law) until reassessed;
- Must be reassessed by 1st April 2016;
- Re-assessments should be done in ordinary cycle and 'not be used as a mechanism to arbitrarily reduce the level of a person's personal budget' (para 13.4)

Principles (section 1)

Well-being

- A general duty
- The making explicit of the duty to promote an individual's well-being
 - applies when exercising 'any function under Bill

Well-being

"Well-being" relates to:

- (a) personal dignity
- (b) physical / mental health / emotional well-being;
- (c) protection from abuse and neglect;
- (d) control over day-to-day life inc nature of care provided;
- (e) participation in work, education, training or recreation;
- (f) social and economic well-being;
- (g) domestic, family and personal relationships;
- (h) suitability of living accommodation;
- (i) the adult's contribution to society.

Well-being

"Well-being"
LA must have regard to—

- (a) assumption that the 'individual' is best placed to judge well-being;
- (b) individual's views, wishes and feelings;
- (c) take into account all the individual's circumstances (and non-discriminatory in terms of stereotyping etc);
- (d) individual participating (with support if needs be) as fully as possible in decisions about them;
- (e) a balance between the individual's well-being and that of any friends or relatives involved in their care;
- (f) the need to protect people from abuse and neglect;
- (g) any restrictions kept to the minimum necessary.

Independent living

- The wellbeing principle is intended to cover the key components of independent living, as expressed in the UN Convention on the Rights of People with Disabilities (in particular, Article 19 of the Convention). Supporting people to live as independently as possible, for as long as possible, is a guiding principle of the Care Act

Guidance (para 1.19)

- *Burnip v. Birmingham City Council* (2012)
- *R (Bracking and others) v. SS DWP* (2013)
- *Mathieson v Sec State Work & Pensions* (2015)
- *Hurley v Sec State Work & Pensions* (2015)

Care Act 2014

General

- Prevention;
- Integration (Better Care Fund);
- Information;
- High quality providers.

Prevention (section 2)

Preventing needs for care and support

Duty to provide a range of preventative services that will:

- (a) contribute towards preventing or delaying the development by adults in its area of needs for care and support;
- (b) contribute towards preventing or delaying the development by carers in its area of needs for support;
- (c) reduce the needs for care and support of adults in its area;
- (d) reduce the needs for support of carers in its area.

eg

carers centres / carers breaks / carer employment support;

Adaptations

Young carers – LAs should consider how supporting the adult can prevent YC from undertaking inappropriate care (para 2.50)

Integration (section 3)

Integration with the NHS

Duty on LA's to promote integration with health provision where it would

- (a) promote the well-being of adults with needs & carers in its area; or
- (b) contribute to the prevention of the development of needs in adults / carers; or
- (c) improve the quality of care for adults / carers, provided

New section (4 Feb 2014 C/ee stage)

- Places **Better Care Fund** on a statutory basis (s223B NHS Act 2006)

Cooperation

section 6 ~ general duty to cooperate

section 7 ~ specific duty to cooperate

Where LA requests co-operation of a 'relevant partner' (or vice versa) in relation to an 'individual with needs' or a carer, a carer of a child or a young carer, then they must comply with the request unless it would:

- (a) be incompatible with its duties, or
- (b) have an adverse effect on the exercise of its functions.

Duty to give reasons if refuses

Mirrors existing s27 Children Act 1989

Non-delegable (section 79(2))

Care & support (section 8)

Range of care & support for carers / adults in need
a) accommodation in a care home or in premises of some other type;
b) care and support at home or in the community;
c) counselling, advocacy and other types of social work;
d) goods and facilities;
e) information and advice.

Delegation

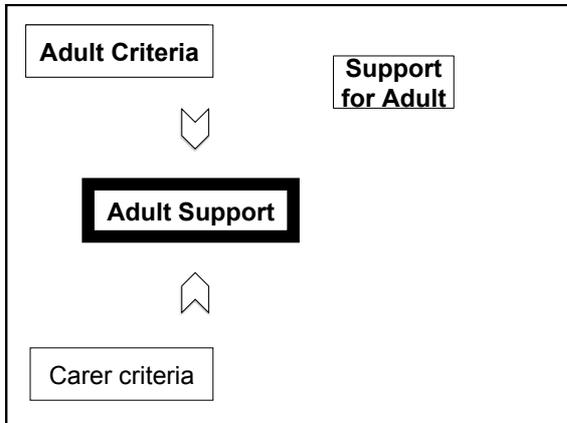
section 79

Enables LAs to delegate all of their functions under the Act – with few exceptions (eg safeguarding);
(6) Act / omissions by delegated body to be treated as done / omitted to be done by the LA.
Many carers support groups already doing what are in effect LA 'assessments'

Assessment of adults in need

section 9

Mirrors existing s47 NHS&CC 1990 duty
Duty 'to involve carer'
Carer blind assessments
• LAs must consider all of the adult's care ... needs, regardless of any support being provided by a carer. ... information on the care that [the carer provides]... can be captured during assessment, but it must not influence the eligibility determination.(para 6.15)



An adult's needs meet the eligibility criteria if—

- (a) the needs are caused by a physical or mental impairment or illness;
- (b) as a result of the adult's needs the adult is unable to achieve two or more outcomes; and
- (c) as a consequence there is, or is likely to be, a **significant** impact on the adult's well-being.

Unable to achieve 2 or more of:

- (a) managing and maintaining nutrition;
- (b) maintaining personal hygiene;
- (c) managing toilet needs;
- (d) being appropriately clothed;
- (e) being able to make use of the adult's home safely;
- (f) maintaining a habitable home environment;
- (g) developing and maintaining family or other personal relationships;
- (h) accessing and engaging in work, training, education or volunteering;
- (i) making use of necessary facilities or services in the local community including public transport, and recreational facilities or services; and
- (j) carrying out caring responsibilities the adult has for a child.

unable to achieve an outcome if —
(a) is unable to achieve it without assistance;
(b) is able to achieve it without assistance but doing so causes the adult significant pain, distress or anxiety;
(c) is able to achieve it without assistance but doing so endangers or is likely to endanger the health or safety of the adult, or of others; or
(d) is able to achieve it without assistance but takes significantly longer than would normally be expected.

Guidance on meaning of 'outcomes'

Game Over for 'needs v. wants'

Regulations spell out what 'needs' are:

- If unable to 'achieve' two or more 'outcomes' and impact 'significant' then:
- LA must address this need;
- Must it do so in a way that enables the person to 'achieve the outcome' the regulations describe?
- The *McDonald* question?
- Section 1 principles ~ ie the assumption that the 'individual' is best placed to judge well-being;

Guidance para 6.104

managing and maintaining nutrition.

- whether the adult has access to food and drink to maintain nutrition, and that the adult is able to prepare and consume the food and drink.

maintaining personal hygiene

- LAs should, for example, consider the adult's ability to wash themselves and launder their clothes.

managing toilet needs

- LAs should consider the adult's ability to access and use a toilet and manage their toilet needs.

Guidance para 6.104

being appropriately clothed.

- LAs should consider the adult's ability to dress themselves and to be appropriately dressed, for instance in relation to the weather to maintain their health.

being able to make use of the home safely

- the adult's ability to move around the home safely, which could for example include getting up steps, using kitchen facilities or accessing the bathroom. This should also include the immediate environment around the home such as access to the property, for example steps leading up to the home.

Guidance para 6.104

maintaining a habitable home environment.

- whether the condition of the adult's home is sufficiently clean and maintained to be safe. A habitable home is safe and has essential amenities. An adult may require support to sustain their occupancy of the home & to amenities, such as water, electricity, gas.

developing & maintaining family / relationships

- whether the adult is lonely or isolated, either because their needs prevent them from maintaining the personal relationships they have or because their needs prevent them from developing new relationships.

Guidance para 6.104

accessing /engaging in work, training, education or volunteering

- whether the adult has an opportunity to apply themselves and contribute to society through work, training, education or volunteering, subject to their own wishes in this regard. ... includes physical access to any facility & support with participation in the relevant activity.

Guidance para 6.104

making use of necessary facilities or services in the local community including public transport and recreational facilities or services

- the adult's ability to get around in the community safely and consider their ability to use such facilities as public transport, shops or recreational facilities when considering the impact on their wellbeing. LAs do not have responsibility for the provision of NHS services such as patient transport, however they should consider needs for support when the adult is attending healthcare appointments.

Guidance para 6.104

carrying out any caring responsibilities the adult has for a child

- LAs should consider any parenting or other caring responsibilities the person has. The adult may for example be a step-parent with caring responsibilities for their spouse's children.

Bristol CC v. S (2015)

Care proceedings (mother a disabled person)

'There appears to be a profound lack of knowledge of the responsibilities that arise under the Care Act 2014'

HH Judge Wildblood 4 para 10.

Proportionate assessments

C&S (Assessment) Regulations 2014 (reg 3(1))

LA must carry out an assessment in a manner which—

- (a) is appropriate and proportionate to the needs and circumstances of the individual to whom it relates; and
- (b) ensures that the individual is able to participate in the process as effectively as possible.

Proportionality concerns the nature of the assessment – not whether to undertake one.

Appropriately trained assessors

Guidance

- social workers and occupational therapists can provide important support and may be involved in complex assessments which indicate a wide range of needs, risks and strengths ...
- assessors must be 'appropriately trained'.
- if an 'assessor does not have the knowledge of a particular condition or circumstance, they must consult someone who has relevant expertise'

Carers Assessments (s10)

Duty to assess

- Largely codifies the existing Carers Acts – but drops
 - the 'regular & substantial' requirement
 - the 'request'
 - creates 'duty' to meet eligible needs

Carers Assessments (s10)

What is 'care'?

- both practical and emotional support (para 6.18)
- Section 1 physical /mental health /emotional well-being?

Previous guidance

- may relate to being 'anxious and stressed waiting for, or actively seeking to prevent, the next crisis'.
- encompasses both the notion of 'caring about someone' as well as 'caring for them'

Carers Assessments (s10)

Basic principles

- whether the carer able / willing to provide and continue to provide the care;
- the impact on the carers 'well-being';
- the outcomes the carer wishes in day-to-day life;
- whether the carer works or wishes to (and / or) to participate in education, training or recreation.

Carers Assessments

Private / combined assessments

- 'only if the adult to whom the needs or carer's assessment relates agrees' – s12(5)
- if 'either of the individuals concerned does not agree to a combined assessment, then the assessments must be carried out separately' (para 6.72)

Advocacy / support

- LAs must involve 'any person whom the carer asks the authority to involve'. s10(7)

Eligibility criteria - carers (reg 3)

A carer's needs meet the eligibility criteria if

- The needs arise as a consequence of providing care for an adult
- The effect of the carer's needs is that of the circumstances specified below apply to the carer
- As a consequence there is, or is likely to be, a impact on the carer's well-being.

'Significant' is not defined

Should have its 'everyday meaning' (para 6.130)

1. Needs arise as a consequence of caring for an adult;
 2. One of the circumstances listed below exists;
 3. A significant impact on the carer's well-being occurs

Outcomes
 (a) the carer's physical or mental health is, or is at risk of, deteriorating;
 (b) the carer is unable to achieve any of the following outcomes—
 i. carrying out any caring responsibilities the carer has for a child;
 ii. providing care to other persons for whom the carer provides care;
 iii. maintaining a habitable home environment in the carers home (whether or not this is also the home of the adult needing care);
 iv. managing and maintaining nutrition;
 v. developing and maintaining family or other personal relationships;
 vi. engaging in work, training, education or volunteering;
 vii. making use of necessary facilities or services in the local community, including recreational facilities or services; and
 viii. engaging in recreational activities.

Carers & Eligibility

The carer's physical or mental health is, or is at risk of, deteriorating

- 56% carers have a caring related health condition
- 43% of carers had sought medical treatment for depression, stress or anxiety since becoming a carer;
- 84% of carers reported that caring had had a negative impact on their health
- 23% increased risk of stroke for spousal carers.
- 73% of carers reported increased anxiety;
- 82% increased stress since taking on their caring role; 50% affected by depression after taking on a caring role.

Guidance para 6.121

carrying out any caring responsibilities the carer has for a child

- any parenting or other caring responsibilities the carer has for a child in addition to their caring role for the adult. eg. the carer might be a grandparent with caring responsibilities for their grandchildren while the grandchildren's parents are at work..

- Divya example (p196 guidance)
- Caring for father who has a DP and her 4 children:
- Divya received a carers' direct payment, which she uses for her children to attend summer play schemes so that she get some free time to meet with friends and socialise.

Guidance para 6.121

providing care to other persons for whom the carer provides care

- any additional caring responsibilities the carer may have for other adults. eg, a carer may also have caring responsibilities for a parent in addition to caring for the adult with care and support needs.

Guidance para 6.121

maintaining a habitable home environment

- whether the condition of the carer's home is safe and an appropriate environment to live in and whether it presents a significant risk to the carer's wellbeing. A habitable home should be safe and have essential amenities such as water, electricity and gas.

- 23% of parent carers were going without heating
- 40% of carers in debt because of their caring roles (50% for parent carers)
- 33% unable to afford their utility bills and 75% cut back on holidays, leisure activities, buying clothes and going out with friends and family.

Guidance para 6.121

managing and maintaining nutrition

- whether the carer has the time to do essential shopping and to prepare meals for themselves and their family.

- 14% carers do without food.
- 45% find it hard to maintain a balanced diet.

Guidance para 6.121

developing and maintaining family or other significant personal relationships

- whether the carer is in a position where their caring role prevents them from maintaining key relationships with family and friends or from developing new relationships where the carer does not already have other personal relationships.

- 39% carers find it hard to maintain social networks & have no-one to talk to about caring because 'people do not understand the impact that caring has on their lives'. 57% lost touch with friends or family.
- Loneliness and social isolation increases the risk of premature death by 26% and 29% respectively.

Guidance para 6.121

engaging in work, training, education or volunteering

- whether the carer can continue in their job, and contribute to society, apply themselves in education, volunteer to support civil society or have the opportunity to get a job, if they are not in employment.

- 54% carers have had to give up work to care,
- Half of carers reduced their hours; 32% had refused a promotion/ taken a less qualified job due to caring responsibilities;
- 2.3 million people had quit work to care;
- 3 million have reduced their working hours;
- 62% ~ the stress of juggling everything that meant they gave up work;
- 35% gave expensive or lack of suitable care services as reasons they gave up work or retired early to care

Guidance para 6.121

making use of necessary facilities or services in the local community

- whether the carer has an opportunity to make use of the local community's services and facilities and for example consider whether the carer has time to use recreational facilities such as gyms or swimming pools.

- 58% of carers reduced the amount of exercise they do since they started caring

Guidance para 6.121

engaging in recreational activities

- whether the carer has leisure time, which might for example be some free time to read or engage in a hobby.

• 73% of carers go without leisure and days out.

Carer eligible vs adult non-eligible

section 20

(7) A LA may meet ... a carer's needs for support in a way which involves the provision of care and support to the adult needing care, even if the LA would not be required to meet the adult's needs ...

(8) Where a LA is required by this section to meet some or all of a carer's needs for support but it does not prove feasible for it to do so by providing care and support to the adult needing care, it must, so far as it is feasible to do so, identify some other way in which to do so.

Carer eligible vs adult non-eligible

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Care & support plans

Respite and replacement care

- Where the carer is eligible for support but the adult being cared is not – and accordingly 'does not have their own personal budget or care plan' (para 11.42) – the carer could (eg) request a direct payment, and use that to commission their own replacement care from an agency (para 11.44).
- If such a type of replacement care is charged for... then it would be the adult needing care that would pay, not the carer, because they are the direct recipient of the service (para 11.45)

Respite & replacement care

Respite and replacement care

- For the purposes of charging, the PB which the carer receives must specify the costs to the LA and the costs to the adult, based on the charging guidance
- In this case, "the adult" refers to the carer, because they are the adult whose needs are being met. However, in instances where replacement care is being provided, the carer should not be charged;
- if charges are due to be paid then these have to be met by the adult needing care. Any such charges would not be recorded in the personal budget, but should be set out clearly and agreed by those concerned.

Respite & replacement care

Replacement care & NHS continuing healthcare?

What if the replacement care (identified in carer's assessment) is for an adult in receipt of NHS CC funding?

- NHS would be responsible for this.
- What if it failed / refused to provide this?

Social services could make a section 7 request

Where LA requests co-operation of a 'relevant partner' in relation to an 'individual with needs' or a carer, a carer of a child or a young carer, then it must comply with the request unless it would:

- (a) be incompatible with its duties, or
- (b) have an adverse effect on the exercise of its functions

Carers services

- relaxation classes, training on stress management, gym or leisure centre membership, adult learning, development of new work skills or refreshing existing skills (so they might be able to stay in paid employment alongside caring or take up return to paid work), pursuit of hobbies such as the purchase of a garden shed, or purchase of laptop so they can stay in touch with family and friends.

para 11.41

Care & support plans

section 25 ~ Care and support plans

Similar to current – but makes PBs mandatory for adults in need and carers

section 26

Amount of a PB is

- The cost to the local authority of meeting the adult's needs

Care & Support Plans

Key components of any care and support plan (para 10.36):

- the needs identified by the assessment;
- the extent to which the needs meet the eligibility criteria;
- how the LA is going to meet the needs;
- the desired outcomes of the adult 'in need';
- the outcomes the carer wishes to achieve (inc work, education and recreation);
- the personal budget ...;
- information / advice on what can be done to reduce the needs / prevent or delay development of needs ;
- where a direct payment ... , the needs to be met via the DP, the amount and frequency of the payments.

Care & support plans

Funding Panels

... . In some cases, panels may be an appropriate governance mechanism to sign-off large or unique personal budget allocations and/or plans. Where used, panels should be appropriately skilled and trained, and local authorities should refrain from creating or using panels that seek to amend planning decisions, micro-manage the planning process or are in place purely for financial reasons. ... (para 10.85)

Care & support plans

Local authority financial difficulties

- A local authority's finances are relevant when it decides *how* to meet the eligible needs of an individual 'but not *whether* those needs are met'. (para 10.27)
- LAs 'should not set arbitrary upper limits on the costs [they are] willing to pay to meet needs through certain routes' (para 10.27)

Charging

section 14

- Power to charge – not a duty
- Annexes to Guidance replicate (largely) CRAG / Fairer Charging Guidance
- Loss of ability to impose charges for unpaid fees – under HASSASSA 1983
- Differences – eg DLA

DLA & provision

DoH guidance" LAC (DH) (2012)03 paras 9-11

Notes that "some local authorities were taking the mobility component into account when considering what social services to be provide "

... councils have a duty to assess the needs of any person ... for whom the authority may provide ... community care services They have a further duty to decide, ... what, if any, services they should provide to meet the individual's needs. This duty does not change because a particular individual is receiving the mobility component of Disability Living Allowance.

Charging

Principles (para 8.2)

- not charged more than reasonably practicable to pay;
- be comprehensive, to reduce variation in the way people are assessed and charged;
- Clear/ transparent, so people know what will be charged;
- promote wellbeing, social inclusion & support the vision of personalisation, independence, choice and control;
- support carers to look after their own health and wellbeing and to care effectively and safely;
- be person-focused ... ;

Copies

Guidance

The assessment

- the individual 'must be given a record of their needs or carer's assessment' (section 12(3) / 12(4) & para 6.98).

Care Plan

- the local authority must give a copy of the final plan in a format that is accessible to the person for whom the plan is intended, any other person they request to receive a copy, and their independent advocate if they have one. (section 25(9) / 25(10 & para 10.87)

Reviews / reassessments

Section 27(1)

- Duty to keep under review care and support plans
- Expectation that plans will reviewed at last every 12 months and light-touch review 6-8 weeks after the plan and personal budget signed off (para 10.42 / 13.32)
- Reviews must person-centred, accessible and proportionate: must involve the 'person needing care and also the carer where feasible' (para 13.2)
- Purpose is identify if the person's needs / circumstances have changed' (para 13.4).
- The 'review must not be used as a mechanism to arbitrarily reduce the level of a person's personal budget' (para 13.4).
- .

Direct Payments (ss 31 - 33)

Little change – but:

1. The regulations 'soften' the presumption against making payments to spouses / partners / relatives living in the same house;
 - payments can be made 'if the LA considers it is necessary to do so'; and
 - payment can include not only the cost of meeting the adult's need – but also for the cost of providing administrative and management support or services
2. Residential care excluded until 2020.

Ordinary residence (ss39 – 41)

Basic principle remains – OR is your 'base'

Two 'deeming rules'

1. If in an NHS facility, OR is where person was based immediately before the NHS accommodation
2. Modification to second 'rule'

If a LA arranges and funds care in a care home then the person is deemed to be OR in the LA's area even if the care home is in another area

This is extended to cover 'shared lives scheme' and supported living accommodation in England.

LA responsibility only attaches if the care and support 'can be met only' in the specified accommodation

NHS interface

section 22 ~ NHS Continuing Care
Retains the current legal position (detailed in the 1999 *Couglan* case)
Minister's statement:

- The provisions in section 22 are not intended to change the current boundary—let me place that clearly on the record—and we do not believe that they will have that result. The limits on the responsibility by reference, as now, to what should be provided by the NHS remain the same'.

Public Bill Committee Report 16 January 2014 (page 205/208)

Safeguarding

sections 42 - 47
Duty to make enquiries if adult

- with care & support needs:
- is experiencing, or is at risk of abuse of neglect; and
- is unable to protect self against the abuse / neglect

Duty to have a Safeguarding Board

- No power of entry / removal;
- Abolition of s47 NAA 1948 power;
- Retains power to protect property (s47)

What is abuse / neglect (para 14.17)

Physical abuse / Sexual abuse / Modern slavery
Domestic violence / Psychological abuse;
Financial abuse (section 42(3));
Discriminatory abuse:

- including 'harassment, slurs etc because of race, gender and gender identity, age, disability, sexual orientation or religion'

What is abuse / neglect (para 14.17)

Organisational abuse:

- eg 'neglect and poor care practice' in a hospital or care home including 'neglect or poor professional practice as a result of the structure, policies, processes and practices within an organisation'

Neglect / Self-neglect:

- a wide range of behaviour neglecting to care for one's personal hygiene, health or surroundings and includes behaviour such as hoarding

Safeguarding

Guidance

- The decision to carry out a safeguarding enquiry does not depend on the person's eligibility, but should be taken wherever there is reasonable cause to think that the person is experiencing, or is at risk of, abuse or neglect (para 6.55)
- LAs must make enquiries, or cause another agency to do so, whenever abuse or neglect are suspected in relation to an adult and the LA thinks it necessary to enable it to decide what (if any) action is needed to help and protect the adult (para 14.93)

Independent advocacy

sections 67 -68

- Duty to arrange independent advocate if LA considers an individual would experience **substantial difficulty** in participating in (amongst others):
 - their assessment/ preparation of care & support plan;
 - a safeguarding enquiry / review
- Not apply if LA satisfied some other person who is an appropriate representative (provided that person is not engaged in providing care for the individual in a professional capacity or for remuneration).

**Transitions into
adulthood**

Care Act 2014

Transitions ~ Care Act 2015

General formula
Where it appears to a LA that:

1. it is 'likely' that [person] will have care & support needs after transition
2. it to be of significant benefit to be assessed;
Must assess (with consent / BI assessment)
LA must give reasons if it refuses to assess

**General
responsibilities**

Children & Families Act 2014

Young carers

Duty to assess YC 'on the appearance of need'

- A YC is "a person under 18 who provides or intends to provide care for another person" (but excluding paid / formal volunteers)
- Detailed assessment regulations
- LAs must identify the extent to which there are YCs within their area who have needs for support

s96 C & F Act 2014 amends Children Act 1989 (s17ZA)

Parent carer

Duty to assess PC 'on the appearance of need'

- A PC is an adult 'who provides or intends to provide care for a disabled child for whom the adult has parental responsibility'
- The PC assessment must have regard to the well-being of the PC;
- "well-being" has same meaning as in Care Act 2014.
- LAs must identify the extent to which there are PCs within their area who have needs for support

s97 C & F Act 2014 amends Children Act 1989 (s17ZD)

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- A PC is an adult 'who provides or intends to provide care for a disabled child for whom the adult has parental responsibility'
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- "well-being" has same meaning as in Care Act 2014.
- LAs must identify the extent to which there are PCs within their area who have needs for support

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