



Duties to parent carers and carer's assessments

The rights of parent carers to assessments and entitlement to support and services arise out of a number of different regulations and statutory guidance, including under Part 3 of the Children Act 1989 and the Care Act 2014.

The key duties are outlined below.

It is important to note that some of these duties are not yet in force and some of the existing duties will be repealed.

Duties to parent carers of children under the age of 18

Under the Children Act 1989, it has always been expected that an assessment of a child 'in need' under section 17, including all disabled children, will be 'holistic' – so that it will take account of the needs of other family members. Indeed 'parenting capacity' is one of three key domains for a child 'in need' assessment.

However parent carers also have rights to stand-alone assessments and new rights to services under the Children and Families Act 2014.

Section 97 of the Children & Families Act 2014 amends the Children Act 1989 (by adding s17ZD to s17ZF) to require local authorities to assess parent carers on the appearance of need or where an assessment is requested by the parent.

This is called a "parent carers needs assessment".

Where requested, then the local authority must assess whether that parent has needs for support and, if so, what those needs are. The assessment must include an assessment of whether it is appropriate for the parent to provide, or continue to provide, care for the disabled child, in the light of the parent's needs for support, other needs and wishes.

The assessment must also have regard to:

- the well-being of the parent carer; and
- the need to safeguard / promote the welfare of the disabled child and any other child for whom the parent carer has parental responsibility.

Following assessment, the local authority must then decide whether the parent has needs for support; whether the disabled child has needs for support; and if so whether those needs could be met (wholly or partly) by services under Children Act 1989, s17.

Services to be provided for parent carers of disabled children, including following an assessment of their needs under sections 17ZD-17ZF of the Children Act 1989 can be included in Section H1 of the EHC plan, if the child has one.

The new rights for parent's carers under the Children and Families Act set out above are not yet in force.

In the meantime, parent carers still have a right to request a separate assessment of their needs under Section 6 of the Carers and Disabled Children Act 2000, where the carer:

- a) provides or intends to provide a substantial amount of care on a regular basis for another individual aged 18 or over; and
- b) asks a local authority to carry out an assessment of his ability to provide and to continue to provide care for the person cared for,

In these circumstances, the local authority must carry out a carer's assessment if it is satisfied that the person cared for is someone for whom it may provide or arrange for the provision of community care services.

Carers assessments during Transition to adult social care

As part of transition planning, the needs of carers should also be assessed or reviewed to explore the impact of changing circumstances on the carer.

Young people with SEN and disabled young people turning 18 or their carers may become eligible for adult care services, regardless of whether they have an EHC plan or whether they have been receiving children's social care services.

Under the Care Act 2014, the local authority must carry out an adult care transition assessment where there is significant benefit to a young person or their carer in doing so and they are likely to have needs for care or support after turning 18.

Carer's assessments for carers of adults over 18

Existing duties

Carers of adults over the age of 18 have rights to assessments and support under the following Acts:

- The Carers (Recognition of Services) Act 1995 – this gives carers a right to a carer's assessment.
- The Carers and Disabled Children Act 2000 – this extends the rights of carers to include rights to support services and to receive support through direct payments and vouchers.
- The Carers (Equal Opportunities) Act 2004 - this Act introduced a legal duty on local authorities to inform carers of their rights and requires carers assessments to consider whether the carer works or wishes to work and / or is undertaking or wishes to undertake, educate, training or any leisure activity.

In order to be eligible for a carer's assessment under existing law, carers must be providing substantial and regular care. This requirement will be removed under the Care Act as explained below.

The Care Act 2014

Section 10 of the Care Act 2014 introduces key changes to the existing rights of carers for young people over 18 to assessments:

- Carers no longer have to request an assessment to obtain one and they must be completed by the local authority on appearance of need.
- The carer no longer has to establish that they are providing substantial care on a regular basis to qualify.

Instead, the only requirement is that the carer 'may have needs for support – whether currently or in the future'.

The assessment must consider:

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

Local authorities must also consider whether the carer would benefit from preventative services, information and advice. There will be a national eligibility threshold to determine following the assessment whether the carer has eligible needs. Where a carer is assessed as having an eligible need, the local authority has a legal duty to meet those needs.

The new duties under the Care Act 2014 will come into force in April 2015.

Additional duties in the Local Offer

The local authority's local offer must include a short breaks duty statement giving details of the local range of services and how they can be accessed, including any eligibility criteria (in accordance with the Breaks for Carers of Disabled Children Regulations 2011). The Local Offer must also set out the support groups and others who can support parent carers of disabled children and how to contact them.

To talk to a specialist advisor today simply call 0800 028 1943

www.irwinmitchell.com

To see a list of our offices please visit our website.

Irwin Mitchell LLP is a limited liability partnership registered in England & Wales, with number OC343897, and is authorised and regulated by the Solicitors Regulation Authority. All Scottish cases will be handled by a separate Scottish legal practice, Irwin Mitchell Scotland LLP, which is regulated by the Law Society of Scotland.

Follow us on Twitter @irwinmitchell

