



The Care Act 2014

Introduction

The Care Act received Royal Assent on the 14th of May 2014.

The Act is both a reforming piece of legislation (it changes the law) and a consolidating piece of legislation (it repeals many previous laws relating to care and support and replaces them with this Act). Some of the legislation repealed by the Act – either in whole or in part – includes:

- National Assistance Act 1948, which established the welfare state and abolished the poor laws
- Chronically Sick and Disabled Persons Act 1970 (but only repealed for adults), which introduced major reforms, providing for duty-based entitlement to particular types of community services
- NHS and Community Care Act 1990, a major reform, including an over-arching right to assessments
- Carers (Recognition and Services) Act 1995, the first Act to recognise carers
- Community Care (Direct Payments Act) 1996, which included new powers to make direct payments.

Aims of the Care Act

Put simply the Act aims to make care and support clearer and fairer for people to access.

The Care Act:

- outlines a single national eligibility threshold for care and support
- requires local authorities to provide all local people with information and advice, related to care and support, to help them understand their rights and responsibilities, and plan for their future needs
- includes protections so that people do not go without care if their provider fails, regardless of who pays for their care
- clarifies local responsibilities for people in prison who have needs for care and support so that they can access the care they need.

Aims of the Care Act

The Act also attempts to rebalance the focus of social care on postponing the need for care rather than only intervening at crisis point. The aim is that the care and support system intervenes early to support individuals, helps people retain or regain their skills and confidence, and prevents needs or postpones deterioration wherever possible.

The statutory guidance gives examples of different types of preventative services, including:

- those that promote healthy and active lifestyles (e.g. exercise classes)
- targeted early interventions such as a fall prevention clinic or minor adaptations to housing which improve accessibility
- interventions such as rehabilitation/reablement services.

The Act also recognises carers' vital input and aims to help them maintain their caring role, if they are willing and able to do so, which of course will often help the people they care for to postpone or delay the need for more formal services and preserve choice of setting.

Aims of the Care Act

A key aim of the Act is to embed and extend personalisation in social care.

Personalisation has a wide agenda encompassing universally accessible information and advice, prevention and early intervention, community capacity building, making greater and more creative use of universal services, and tailoring the formal support people need.

People want to be more actively engaged as planning partners but many services frequently underestimate their willingness - the potential impact of harnessing this contribution could have huge economic value and lead to better outcomes.

The Care Act 2014 mandates that all people with an eligible care and support need and carers should have their support planned and managed in this way in future, if they want.

Wellbeing

Local authorities must promote wellbeing when carrying out any of their care and support functions in respect of a person. This may sometimes be referred to as “the wellbeing principle”.

The wellbeing principle applies for all people where a local authority is carrying out a care and support function, or making a decision, in relation to a person. It applies equally to adults with care and support needs and their carers. In some specific circumstances, it also applies to children, their carers and to young carers when they are subject to transition assessments.

Wellbeing

Definition of wellbeing

Wellbeing is a broad concept, and the statutory guidance defines it as relating to the following nine areas in particular

1. personal dignity (including treatment of the individual with respect)
2. physical and mental health and emotional wellbeing
3. protection from abuse and neglect
4. control by the individual over day-to-day life (including over care and support provided and the way it is provided)
5. participation in work, education, training or recreation
6. social and economic wellbeing
7. domestic, family and personal relationships
8. suitability of living accommodation
9. the individual's contribution to society.

Wellbeing

A local authority can promote a person's wellbeing in many ways. How this happens will depend on the circumstances, including the person's needs, goals and wishes, and how these impact on their wellbeing.

There is no set approach – a local authority should consider each case on its own merits, consider what the person wants to achieve, and how the action which the local authority is taking may affect the wellbeing of the individual in relation to the nine areas listed in the definition of wellbeing.

During the assessment process, for instance, the local authority should explicitly consider the most relevant aspects of wellbeing to the individual concerned, and assess how their needs impact on them. Local authorities should adopt a flexible approach that allows for a focus on which aspects of wellbeing matter most to the individual concerned.

Duties introduced by the Care Act

Preventing the need for care and support

A local authority is now under a general duty to prevent, delay or reduce the need for care and support of all local people in its area. Local authorities will need to:

- identify what the particular care and support needs in their area are and facilitate a market that delivers appropriate supply to meet those needs
- identify people who may have care and support needs in their area that are not already being met
- identify carers who may have needs that are not being met.

The Act identifies three main strands of prevention – preventing the need for care and support, delaying needs for care and support, and reducing the needs for care and support. There is clear intent in the Act that the care system should help people maintain their independence and improve their wellbeing.

Duties introduced by the Care Act

Providing information and advice

Under section 4 of the Act local authorities must provide an information and advice service to help all local people understand the care and support system, access services and plan for the future, including enabling people to access independent financial advice to help steer them through the complexities of care funding.

Information and advice on all care and support matters must be accessible to all, so it cannot be simply online, and must be "proportionate" to an individual's needs e.g. a simple, short answer to a simple question or more intensive and more personalised information and advice if a person has more complex issues.

Duties introduced by the Care Act

Integration

The Act includes general duties on local authorities to promote integration and on local authorities and “relevant partners” (including the NHS) to cooperate generally and specifically in relation to individuals.

The general requirement applies to all the local authorities’ care and support functions, including in relation to preventing needs, providing information and advice and shaping the market of care providers.

Duties introduced by the Care Act

Managing provider failure

Sections 48-57 of the Act are about managing provider failure. The aim is to ensure continuity of care, not to prop up failing providers. There is an updated duty for a local authority to temporarily meet needs when a care provider suffers a business failure and the services cease. This duty applies in respect of all people in the area, regardless of their level of need or who was funding the care and support.

The guidance recognises that local authorities manage small scale provider failures effectively, and that most exits from the market are handled responsibly by providers. It clarifies the local authority duty to step in to ensure that no one is left without the care they need.

Duties introduced by the Care Act

Market shaping

Local authorities' new market shaping duties mean they should understand the sustainability and capacity of their whole local market i.e. including those elements that they do not directly procure or commission. This should place them in a strong position for developing contingency plans for provider business failure and ensuring continuity of care in the event that a provider does suffer a business failure and the services cease.

The Act also introduces a new market oversight regime and a role for the Care Quality Commission (CQC) in relation to financial oversight of certain "difficult to replace" care providers (due to size, geographic concentration or specialisation). It aims to give Government as a whole early warning if one of these providers is likely to fail.

Duties introduced by the Care Act

Independent Advocacy

The Act places a duty (section 67) on local authorities to arrange independent advocacy if the authority considers an individual would experience 'substantial difficulty' in participating in (amongst other things) their assessment and / or the preparation of their care and support plan.

The duty does not arise if the local authority is satisfied that there is some other person who is an appropriate representative (provided that person is not engaged in providing care or treatment for the individual in a professional capacity or being paid to do so).

Duties introduced by the Care Act

Safeguarding

The Act places on a statutory footing (sections 42-47) the government's expectations for safeguarding.

This includes the duty for the local authority to carry out enquiries (or cause others to) where it suspects an adult is at risk of abuse or neglect.

There is also a requirement for all areas to establish a Safeguarding Adults Board (SAB) with core partners of the local authority, NHS and police to bring them together with other relevant partners to coordinate activity to protect adults from abuse and neglect.

Duties introduced by the Care Act

Safeguarding

These boards:

- will carry out safeguarding adults reviews into cases where someone who is experiencing abuse or neglect dies and there is concern about how authorities acted. The Boards will investigate the cases with a view to learn from past mistakes
- have the ability to require information sharing from anyone considered to hold relevant information, to support reviews or other functions – this is a new power
- publish a strategic plan for each financial year that sets out how it will meet its main objective and what each member is to do to implement that strategy
- publish an annual report detailing what the SAB has done during the year to achieve its objective and what it and each member has done to implement its strategy as well as reporting the findings of any safeguarding adults reviews.

Duties introduced by the Care Act

Transition assessments

Young people under-18 who have complex health needs caused by physical disabilities, special education needs, or life-limiting or life-threatening conditions will probably need to move from receiving 'children's' services to 'adult's' social care services.

This move, known as transition, can be a vulnerable time for young people and their families. The Act introduces new duties on local authorities to carry out a transition assessment (based on the adult criteria) for young people, young carers and/or the child's carers if they are likely to have needs for care and support, or support, after turning 18, if there is significant benefit to the young person or carer in doing so.

The assessment should be carried out at a time when it is of "significant benefit" to a young person's preparation for adulthood. The purpose is to determine what adult social care a young person might be eligible for so they can make informed choices about their future.

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