



# Social Services and Well-being (Wales) Act 2014

2014 anaw 4

## PART 3

### ASSESSING THE NEEDS OF INDIVIDUALS

#### *Assessing adults*

#### **19 Duty to assess the needs of an adult for care and support**

- (1) Where it appears to a local authority that an adult may have needs for care and support, the authority must assess—
  - (a) whether the adult does have needs for care and support, and
  - (b) if the adult does, what those needs are.
- (2) The duty under subsection (1) applies in relation to—
  - (a) an adult who is ordinarily resident in the authority's area, and
  - (b) any other adult who is within the authority's area.
- (3) The duty under subsection (1) applies regardless of the local authority's view of—
  - (a) the level of the adult's needs for care and support, or
  - (b) the level of the adult's financial resources.
- (4) In carrying out a needs assessment under this section, the local authority must—
  - (a) seek to identify the outcomes that the adult wishes to achieve in day to day life,
  - (b) assess whether, and if so, to what extent, the provision of—
    - (i) care and support,
    - (ii) preventative services, or
    - (iii) information, advice or assistance,could contribute to the achievement of those outcomes or otherwise meet needs identified by the assessment, and

- (c) assess whether, and if so, to what extent, other matters could contribute to the achievement of those outcomes or otherwise meet those needs.
- (5) A local authority, in carrying out a needs assessment under this section, must involve—
  - (a) the adult, and
  - (b) where feasible, any carer that the adult has.
- (6) The nature of the needs assessment required by this section is one that the local authority considers proportionate in the circumstances, subject to any requirement in regulations under section 30.

## **20 Refusal of a needs assessment for an adult**

- (1) If an adult (or, where applicable, an authorised person) refuses a needs assessment under section 19, the duty under that section to assess the adult’s needs does not apply.
- (2) But a refusal under subsection (1) does not discharge a local authority from its duty under section 19 in the following cases—
  - CASE 1 - the local authority is satisfied, in the case of a refusal given by the adult, that—
    - (a) the adult lacks capacity to decide whether to refuse to have the assessment, but
    - (b) there is an authorised person to make the decision on the adult’s behalf;
  - CASE 2 - the local authority is satisfied, in the case of a refusal given by the adult, that—
    - (a) the adult lacks capacity to decide whether to refuse to have the assessment,
    - (b) there is no authorised person to make the decision on the adult’s behalf, and
    - (c) having the assessment would be in the adult’s best interests;
  - CASE 3 - the local authority suspects that the adult is experiencing or at risk of abuse or neglect.
- (3) Where a local authority has been discharged from its duty under section 19 by a refusal under this section, the duty is re-engaged if—
  - (a) the adult (or, where applicable, an authorised person) subsequently asks for an assessment, or
  - (b) the local authority considers that the adult’s needs or circumstances have changed,
 (subject to any further refusal under this section).
- (4) In this section “authorised person” means a person authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to decide whether to refuse, or ask for, a needs assessment on the adult’s behalf.

### *Assessing children*

## **21 Duty to assess the needs of a child for care and support**

- (1) Where it appears to a local authority that a child may need care and support in addition to, or instead of, the care and support provided by the child's family, the authority must assess—
  - (a) whether the child does need care and support of that kind, and
  - (b) if the child does, what those needs are.
- (2) The duty under subsection (1) applies in relation to—
  - (a) a child who is ordinarily resident in the authority's area, and
  - (b) any other child who is within the authority's area.
- (3) The duty under subsection (1) applies regardless of the local authority's view of—
  - (a) the level of the child's needs for care and support, or
  - (b) the level of the financial resources of the child or any person with parental responsibility for the child.
- (4) In carrying out a needs assessment under this section, the local authority must—
  - (a) assess the developmental needs of the child,
  - (b) seek to identify the outcomes that—
    - (i) the child wishes to achieve, to the extent it considers appropriate having regard to the child's age and understanding,
    - (ii) the persons with parental responsibility for the child wish to achieve in relation to the child, to the extent it considers appropriate having regard to the need to promote the child's well-being, and
    - (iii) persons specified in regulations (if any) wish to achieve in relation to the child,
  - (c) assess whether, and if so, to what extent, the provision of—
    - (i) care and support,
    - (ii) preventative services, or
    - (iii) information, advice or assistance,could contribute to the achievement of those outcomes or otherwise meet needs identified by the assessment,
  - (d) assess whether, and if so, to what extent, other matters could contribute to the achievement of those outcomes or otherwise meet those needs, and
  - (e) take account of any other circumstances affecting the child's well-being.
- (5) A local authority, in carrying out a needs assessment under this section, must involve—
  - (a) the child, and
  - (b) any person with parental responsibility for the child.
- (6) The nature of the needs assessment required by this section is one that the local authority considers proportionate in the circumstances, subject to any requirement in regulations under section 30.
- (7) For the purposes of subsection (1) a disabled child is presumed to need care and support in addition to, or instead of, the care and support provided by the child's family.
- (8) This section does not apply to a child looked after by—

- (a) a local authority,
- (b) a local authority in England,
- (c) a local authority in Scotland, or
- (d) a Health and Social Care trust.

## **22 Refusal of a needs assessment for a child aged 16 or 17**

- (1) If a child aged 16 or 17 (or, where applicable, an authorised person) refuses a needs assessment under section 21, the duty under that section to assess the child's needs does not apply.
- (2) If a person with parental responsibility for a child aged 16 or 17 refuses a needs assessment for that child under section 21 in circumstances in which the local authority is satisfied that—
  - (a) the child lacks capacity to decide whether to refuse to have the assessment, and
  - (b) there is no authorised person to make the decision on the child's behalf,
 the duty under that section to assess the child's needs does not apply.
- (3) But a refusal under subsection (1) or (2) does not discharge a local authority from its duty under section 21 in the following cases—
  - CASE 1 - the local authority is satisfied, in the case of a refusal given by a child, that the child lacks capacity to decide whether to refuse to have the assessment;
  - CASE 2 - the local authority is satisfied, in the case of a refusal given by a person with parental responsibility for the child, that the person lacks capacity to decide whether to refuse the assessment;
  - CASE 3 - the local authority is satisfied, in the case of a refusal given by a person with parental responsibility for the child, that not having the assessment would not be in the child's best interests;
  - CASE 4 – the local authority suspects that the child is experiencing or at risk of abuse, neglect or other kinds of harm.
- (4) Where a local authority has been discharged from its duty under section 21 by a refusal under this section, the duty is re-engaged if—
  - (a) the child (or, where applicable, an authorised person) subsequently asks for an assessment,
  - (b) a person with parental responsibility for the child subsequently asks for an assessment in the circumstances described in subsection (2), or
  - (c) the local authority considers that the child's needs or circumstances, or the needs or circumstances of a person with parental responsibility for the child, have changed,
 (subject to any further refusal under this section).
- (5) In this section “authorised person” means a person authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to decide whether to refuse, or ask for, a needs assessment on the child's behalf.

## **23 Refusal of a needs assessment for a child aged under 16**

- (1) If—
  - (a) a child aged under 16 refuses a needs assessment under section 21, and

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*Status: This is the original version (as it was originally enacted).*

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- (b) the local authority is satisfied that the child has sufficient understanding to make an informed decision about the refusal of the assessment, the duty under that section to assess the child's needs does not apply.
- (2) If a person with parental responsibility for a child aged under 16 refuses a needs assessment for that child under section 21, the duty under that section to assess the child's needs does not apply.
- (3) But a refusal under subsection (1) or (2) does not discharge a local authority from its duty under section 21 in the following cases—
- CASE 1 - the local authority is satisfied, in the case of a refusal given by a person with parental responsibility for the child, that the person lacks capacity to decide whether to refuse the assessment;
- CASE 2 - the local authority is satisfied, in the case of a refusal given by a person with parental responsibility for the child, that the child—
- (a) has sufficient understanding to make an informed decision about the refusal of the assessment, and
- (b) does not agree with the refusal given by the person with parental responsibility for the child;
- CASE 3 - the local authority is satisfied, in the case of a refusal given by a person with parental responsibility for the child, that not having the assessment would be inconsistent with the child's well-being;
- CASE 4 – the local authority suspects that the child is experiencing or at risk of abuse, neglect or other kinds of harm.
- (4) Where a local authority has been discharged from its duty under section 21 by a refusal under this section, the duty is re-engaged if—
- (a) the child subsequently asks for an assessment and the local authority is satisfied that the child has sufficient understanding to make an informed decision about having an assessment,
- (b) a person with parental responsibility for the child subsequently asks for an assessment, or
- (c) the local authority considers that the child's needs or circumstances, or the needs or circumstances of a person with parental responsibility for the child, have changed,
- (subject to any further refusal under this section).

#### *Assessing carers*

### **24 Duty to assess the needs of a carer for support**

- (1) Where it appears to a local authority that a carer may have needs for support, the authority must assess—
- (a) whether the carer does have needs for support (or is likely to do so in the future), and
- (b) if the carer does, what those needs are (or are likely to be in the future).
- (2) The duty under subsection (1) applies in relation to a carer who is providing or intends to provide care for—
- (a) an adult or disabled child who is ordinarily resident in the authority's area, or
- (b) any other adult or disabled child who is within the authority's area.

- (3) The duty under subsection (1) applies regardless of the authority's view of—
- (a) the level of the carer's needs for support, or
  - (b) the level of the financial resources of the carer or the person for whom the carer provides or intends to provide care.
- (4) In carrying out a needs assessment under this section, the local authority must—
- (a) assess the extent to which the carer is able, and will continue to be able, to provide care for the person for whom the carer provides or intends to provide care,
  - (b) assess the extent to which the carer is willing, and will continue to be willing, to do so,
  - (c) in the case of a carer who is an adult, seek to identify the outcomes that the carer wishes to achieve,
  - (d) in the case of a carer who is a child, seek to identify the outcomes that—
    - (i) the carer wishes to achieve, to the extent it considers appropriate having regard to the carer's age and understanding,
    - (ii) the persons with parental responsibility for the carer wish to achieve in relation to the carer, to the extent it considers appropriate having regard to the need to promote the carer's well-being, and
    - (iii) persons specified in regulations (if any) wish to achieve in relation to the carer,
  - (e) assess whether, and if so, to what extent, the provision of—
    - (i) support,
    - (ii) preventative services, or
    - (iii) information, advice or assistance,
 could contribute to the achievement of those outcomes or otherwise meet needs identified by the assessment, and
  - (f) assess whether, and if so, to what extent, other matters could contribute to the achievement of those outcomes or otherwise meet those needs.
- (5) A local authority, in carrying out a needs assessment under this section, must have regard to—
- (a) whether the carer works or wishes to do so,
  - (b) whether the carer is participating in or wishes to participate in education, training or any leisure activity, and
  - (c) in the case of a carer who is a child—
    - (i) the developmental needs of the child, and
    - (ii) whether it is appropriate for the child to provide the care (or any care) in light of those needs.
- (6) A local authority, in carrying out a needs assessment under this section, must involve—
- (a) the carer, and
  - (b) where feasible, the person for whom the carer provides or intends to provide care.
- (7) The nature of the needs assessment required by this section is one that the local authority considers proportionate in the circumstances, subject to any requirement in regulations under section 30.

## **25 Refusal of a needs assessment for an adult carer**

- (1) If a carer who is an adult (or, where applicable, an authorised person) refuses a needs assessment under section 24, the duty under that section to assess the carer's needs does not apply.
- (2) But a refusal under subsection (1) does not discharge a local authority from its duty under section 24 in the following cases—
  - CASE 1 - the local authority is satisfied, in the case of a refusal given by the carer, that—
    - (a) the carer lacks capacity to decide whether to refuse to have the assessment, but
    - (b) there is an authorised person to make the decision on the carer's behalf;
  - CASE 2 - the local authority is satisfied, in the case of a refusal given by the carer, that—
    - (a) the carer lacks capacity to decide whether to refuse to have the assessment,
    - (b) there is no authorised person to make the decision on the carer's behalf, and
    - (c) having the assessment would be in the carer's best interests.
- (3) Where a local authority has been discharged from its duty under section 24 by a refusal under this section, the duty is re-engaged if—
  - (a) the carer (or, where applicable, an authorised person) subsequently asks for an assessment, or
  - (b) the local authority considers that the carer's needs or circumstances have changed,(subject to any further refusal under this section).
- (4) In this section “authorised person” means a person authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to decide whether to refuse, or ask for, a needs assessment on the carer's behalf.

## **26 Refusal of a needs assessment for a carer aged 16 or 17**

- (1) If a carer aged 16 or 17 (or, where applicable, an authorised person) refuses a needs assessment under section 24, the duty under that section to assess the carer's needs does not apply.
- (2) If a person with parental responsibility for a carer aged 16 or 17 refuses a needs assessment for the carer under section 24 in circumstances in which the local authority is satisfied that—
  - (a) the carer lacks capacity to decide whether to refuse to have the assessment, and
  - (b) there is no authorised person to make the decision on the carer's behalf,the duty under that section to assess the carer's needs does not apply.
- (3) But a refusal under subsection (1) or (2) does not discharge a local authority from its duty under section 24 in the following cases—
  - CASE 1 - the local authority is satisfied, in the case of a refusal given by the carer, that the carer lacks capacity to decide whether to refuse to have the assessment;

CASE 2 - the local authority is satisfied, in the case of a refusal given by a person with parental responsibility for the carer, that the person lacks capacity to decide whether to refuse the assessment;

CASE 3 - the local authority is satisfied, in the case of a refusal given by a person with parental responsibility for the carer, that not having the assessment would not be in the carer's best interests.

- (4) Where a local authority has been discharged from its duty under section 24 by a refusal under this section, the duty is re-engaged if—
- (a) the carer (or, where applicable, an authorised person) subsequently asks for an assessment,
  - (b) a person with parental responsibility for the carer subsequently asks for an assessment in the circumstances described in subsection (2), or
  - (c) the local authority considers that the carer's needs or circumstances, or the needs or circumstances of a person with parental responsibility for the carer, have changed,
- (subject to any further refusal under this section).
- (5) In this section “authorised person” means a person authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to decide whether to refuse, or ask for, a needs assessment on the carer's behalf.

## **27 Refusal of a needs assessment for a carer aged under 16**

- (1) If—
- (a) a carer aged under 16 refuses a needs assessment under section 24, and
  - (b) the local authority is satisfied that the carer has sufficient understanding to make an informed decision about the refusal of the assessment,
- the duty under that section to assess the carer's needs does not apply.
- (2) If a person with parental responsibility for a carer aged under 16 refuses a needs assessment for the carer under section 24, the duty under that section to assess the carer's needs does not apply.
- (3) But a refusal under subsection (1) or (2) does not discharge a local authority from its duty under section 24 in the following cases—
- CASE 1 - the local authority is satisfied, in the case of a refusal given by a person with parental responsibility for the carer, that the person lacks capacity to decide whether to refuse the assessment;
- CASE 2 - the local authority is satisfied, in the case of a refusal given by a person with parental responsibility for the carer, that the carer—
- (a) has sufficient understanding to make an informed decision about the refusal of the assessment, and
  - (b) does not agree with the refusal given by the person with parental responsibility for the carer;
- CASE 3 - the local authority is satisfied, in the case of a refusal given by a person with parental responsibility for the carer, that not having the assessment would be inconsistent with the carer's well-being.
- (4) Where a local authority has been discharged from its duty under section 24 by a refusal under this section, the duty is re-engaged if—



- (a) the carer subsequently asks for an assessment and the local authority is satisfied that the carer has sufficient understanding to make an informed decision about having an assessment,
  - (b) a person with parental responsibility for the carer subsequently asks for an assessment, or
  - (c) the local authority considers that the carer's needs or circumstances, or the needs or circumstances of a person with parental responsibility for the carer, have changed,
- (subject to any further refusal under this section).

### *Supplementary*

## **28 Combining needs assessments for a carer and a cared for person**

- (1) Where a person who appears to need care and support has a carer, a local authority may combine—
  - (a) the person's needs assessment under section 19 or 21, and
  - (b) the carer's needs assessment under section 24,but this is subject to subsections (2) to (4).
- (2) A local authority may not combine a needs assessment for an adult (whether under section 19 or 24) with a needs assessment for another person unless—
  - (a) the adult (or, where applicable, an authorised person) gives valid consent, or
  - (b) the requirement for valid consent may be dispensed with.
- (3) A local authority may not combine a needs assessment for a child aged 16 or 17 (whether under section 21 or 24) with a needs assessment for another person unless—
  - (a) the child (or, where applicable, an authorised person) gives valid consent,
  - (b) a person with parental responsibility for the child gives valid consent in circumstances in which the local authority is satisfied that—
    - (i) the child lacks capacity to decide whether to consent to the combining of the needs assessments, and
    - (ii) there is no authorised person to make the decision on the child's behalf, or
  - (c) the requirement for valid consent may be dispensed with.
- (4) A local authority may not combine a needs assessment for a child aged under 16 (whether under section 21 or 24) with a needs assessment for another person unless—
  - (a) the child or a person with parental responsibility for the child gives valid consent, or
  - (b) the requirement for valid consent may be dispensed with.
- (5) Consent given under subsection (2), (3) or (4) is valid except in the following cases—

CASE 1 - the local authority is satisfied, in the case of consent given by an adult or a child aged 16 or 17, that the adult or child lacks capacity to consent to the combination of the needs assessments;

CASE 2 - the local authority is satisfied, in the case of consent given by a child aged under 16, that the child does not have sufficient understanding to make an informed decision about the combination of the needs assessments;

CASE 3 - the local authority is satisfied, in the case of consent given by a person with parental responsibility for a child aged under 16 in relation to the child's needs assessment, that the child—

- (a) has sufficient understanding to make an informed decision about the combination of the needs assessments, and
- (b) does not agree with the consent given by the person with parental responsibility.

(6) A local authority may dispense with the requirement for valid consent in the following cases—

CASE 1 - the local authority is satisfied, with regard to the needs assessment of an adult, that—

- (a) there is no person who may give valid consent, and
- (b) combining the needs assessments would be in the adult's best interests;

CASE 2 - the local authority is satisfied, with regard to the needs assessment of a child aged 16 or 17, that—

- (a) the child lacks capacity to give valid consent,
- (b) there is no authorised person who may give valid consent on the child's behalf, and
- (c) combining the needs assessments would be in the child's best interests;

CASE 3 - the local authority is satisfied, with regard to the needs assessment of a child aged under 16, that—

- (a) the child does not have sufficient understanding to make an informed decision about the combination of the needs assessments, and
- (b) combining the needs assessments would be consistent with the child's well-being.

(7) In this section “authorised person” means a person authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to decide whether to consent to the combination of the needs assessments on the adult or child's behalf.

## **29 Combining needs assessments and other assessments**

- (1) Where a person who appears to need support as a carer also appears to have needs for care and support in his or her own right, a local authority may combine a needs assessment for that person under section 24 with a needs assessment for that person under section 19 or 21.
- (2) A local authority may carry out a needs assessment for a person at the same time as it or another body carries out another assessment under any enactment in relation to that person.
- (3) For the purposes of subsection (2)—
  - (a) the local authority may carry out the other assessment on behalf of or jointly with the other body, or
  - (b) if the other body has already arranged for the other assessment to be carried out jointly with another person, the local authority may carry out the other assessment jointly with the other body and that other person.

### **30 Regulations about assessment**

- (1) Regulations must make provision about carrying out needs assessments.
- (2) Regulations under this section must make provision for the review of needs assessments, and may, for example, specify—
  - (a) the persons who may request a review of an assessment (on their own behalf or on behalf of another person);
  - (b) the circumstances in which a local authority—
    - (i) may refuse to comply with a request for a review of an assessment, and
    - (ii) may not refuse to do so.
- (3) Regulations under this section may also, for example, provide for—
  - (a) further persons whom a local authority must involve in carrying out an assessment under section 19, 21 or 24;
  - (b) the way in which an assessment is to be carried out, by whom and when;
  - (c) the recording of the results of an assessment;
  - (d) the considerations to which a local authority is to have regard in carrying out an assessment;
  - (e) powers to provide information for the purposes of assessment.

### **31 Part 3: interpretation**

In this Part—

“information, advice or assistance” (“*gwybodaeth, cyngor neu gynhorthwy*”) means information, advice or assistance that may be provided by virtue of section 17;

“preventative services” (“*gwasanaethau ataliol*”) means services that may be provided by virtue of section 15.