

CARERS AND DISABLED CHILDREN ACT 2000

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Carers and Disabled Children Act. They have been prepared by the Department of Health in consultation with the Office of the Secretary of State for Wales in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.
3. This Act extends to England and Wales only.

SUMMARY AND BACKGROUND

4. Carers look after those who are in need of additional care, assistance or support perhaps because of long-term illness or problems associated with disability. Great Britain has an estimated 5.7 million carers and one in six households – 17 per cent – contains a carer. Of the estimated 5.7 million carers, 1.7 million devote at least 20 hours a week to caring. Of those, 855,000 care for 50 hours or more. Most caring is based on close personal relationships.
5. This Act enables local authorities to offer carers support. On 10 June 1998 the Prime Minister announced a review of measures to help carers as part of a National Strategy for Carers. The objective of the Strategy was to bring together a range of initiatives designed to address carers' concerns and give them support.
6. The Carers National Strategy document "Caring about Carers", published on 8 February 1999 highlighted the need for legislation to enable local authorities to provide services direct to carers.
7. Since 1996 when the Carers (Recognition and Services) Act 1995 came into force, carers who provide or intend to provide a substantial amount of care on a regular basis have been entitled on request (at the time the person they care for is assessed for community care services) to an assessment of their ability to care and to continue caring. The results of this assessment are taken into account when decisions are made about the type and level of community care services to be provided to the person cared for. The assessment under the 1995 Act is of the carer's ability to provide care and of his or her ability to sustain the care that he or she has been providing. However, that assessment does not give local authorities the power to offer carers' services to support them in their caring role.
8. The Act makes four principal changes to the law with the objective of enabling local authorities to offer new support to carers to help them to maintain their own health and well being.
9. First, the Act gives local authorities the power to supply certain services - services which help the carer care for the person cared for - direct to carers following assessment. This

change will involve a new right to a carer's assessment which, in particular, will enable a local authority to carry out an assessment in circumstances where the person cared for has refused an assessment for, or the provision of, community care services.

10. Secondly, the Act empowers local authorities to make direct payments to carers (including 16 and 17 year old carers) for the services that meet their own assessed needs, to persons with parental responsibility for disabled children for services for the family and to 16 and 17 year old disabled children for services that meet their own assessed needs.
11. The Carers National Strategy was aimed at empowering carers to make more choices for themselves and to have more control over their lives. To that end, the Act extends the direct payment legislation to carers to meet their own assessed needs. The extension of direct payments to 16 and 17 year old carers is designed to offer them additional flexibility in meeting their developmental needs. The responsibilities of persons with parental responsibility for disabled children are sometimes made more arduous by the difficulty of accessing mainstream services, for example child care, including after school clubs and leisure activities. Where these carers do not think services are sufficiently tailored to the needs of their family direct payments offer more choice in the way services are delivered.
12. The extension of direct payments to 16 and 17 year old disabled children may be particularly helpful where those children are intending to leave home or residential care to go into further or higher education.
13. Thirdly, the Act provides for local authority social services departments to run short term break voucher schemes. Voucher schemes are designed to offer flexibility in the timing of carers' breaks and choice in the way services are delivered to persons cared for while their usual carer is taking a break.
14. The Carers National Strategy report identified voucher schemes as a way of giving persons cared for and carers more flexibility in the timing and nature of short term breaks. The short term break voucher scheme is designed to offer persons cared for and their carers more flexibility and choice than may be achieved by the direct local authority provision of services, and will introduce a simpler way of achieving some level of flexibility and choice in the delivery of respite care than is currently available via direct payments. For example, a person cared for may not wish to enter residential care while their usual carer is taking a break. They may prefer to seek out a provider of support that will enable them to continue living at home.
15. Finally, the Act gives local authorities a power to charge carers for the services they receive.

COMMENTARY ON SECTIONS

Section 1 : Right of carers to assessment

16. This section only applies to individuals who provide care on an informal basis (see subsection (3)).
17. **Section 1(1)** provides that a person who is a carer (aged 16 or over) has the right to an assessment from the local authority of his ability to provide (and to continue to provide) care for another individual ("the person cared for"). That assessment will enable the local authority to decide whether to provide services to the carer under section 2 of the Act.
18. Under section 1(1) of the Carers (Recognition and Services) Act 1995 ("the 1995 Act") a carer has the right to an assessment of his ability to provide care for the person cared for and that assessment must be taken into account by the local authority in any decision they make about community care services for the person cared for. The effect of subsection (2) of this section is that in carrying out a carer's assessment under

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which received Royal Assent on 20th July 2000*

subsection (1) (of this section) the local authority can take into account, so far as it considers it to be material, any assessment the carer may have had under section 1(1) of the 1995 Act.

19. The Secretary of State, or in relation to Wales, the National Assembly for Wales, may give directions as to how the local authority should carry out an assessment.

Section 2: Services for carers

20. **Section 2** enables the local authority to provide services to carers following a carer's assessment under section 1. The local authority must consider that assessment and then decide whether the carer has any needs in relation to the care which he provides for the person cared for. The authority must then decide whether or not it can provide services to meet those needs and whether or not to provide them.

21. Services to carers are not defined in the Act. The local authority may provide any services which in their view will help the carer care for the person cared for.

Those services may take the form of physical help, for example assistance around the house, or other forms of support such as training or counselling for the carer.

22. Sometimes there will be services which, although they are provided to the carer, could be delivered to the person cared for by way of community care services. (For the definition of community care services, see section 46(3) of the National Health Service and Community Care Act 1990.) Such services may be delivered to the person cared for if both the carer and the person cared for agree but may not, except in prescribed circumstances, include anything of an intimate nature. There is a power to set out in regulations what is, or is not, a service of an intimate nature. Services of an intimate nature might include dressing, feeding, lifting, washing or bathing the person cared for.

Section 3: Vouchers

23. This section enables the Secretary of State or, as the case may be, the National Assembly for Wales, to make provision in regulations for local authorities to issue vouchers for short term breaks. Vouchers are defined in subsection (2) and will enable the person cared for to arrange for someone to provide services for him, in lieu of the care which would otherwise have been provided to him by the carer, either at home or in residential accommodation whilst the carer takes a break from caring. It is intended that the regulations will include provision for vouchers, whether expressed in terms of money or for the delivery of a service for a period of time, to be redeemed in exchange for services delivered by local authority approved providers.

Section 4: Assessments and services for both carer and person cared for

24. Subsection (1) amends section 1 of the 1995 Act and enables the local authority, insofar as it considers it to be material, to take into account for the purposes of an assessment under section 1(1) or (2) of that Act a carer's assessment carried out under section 1(1) of the Carers and Disabled Children Act or an assessment of a person with parental responsibility for a disabled child carried out under section 6(1) of the Carers and Disabled Children Act. This would be helpful where a person cared for changed their mind and agreed to have an assessment of their needs and the carer no longer wished to have services in their own right.

25. Subsections (2) and (3) set out various situations where the local authority has identified a need for services that could either be provided to the carer as carers' services under the Act or to the person cared for as community care services. Subsection (2) covers the situation where the local authority is either providing carers' services to the carer or is providing community care services to the person cared for and proposes to provide another service to the person who is not receiving a service, and the existing or the new

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service are ones which could be provided as carers' services under the Act or by way of community care services.

26. Subsection (3) covers two further situations. In the first of these neither the carer nor the person cared for has previously been receiving services, but the local authority proposes to provide services to each of them, any of which could be provided as carers' services under the Act or as community care services. The other situation arises where the local authority is providing services to the carer and community care services to the person cared for and proposes to provide to either of them a new service, and the new service is one which could be provided under the Act or by way of community care services.
27. In each of these situations the local authority must decide whether the services are to be provided as carers' services under the Act or by way of community care services (subsection (4)). Under subsection (5) the local authority's decision is to be made without regard to the means of the carer or of the person cared for. This will ensure that the decision is based on assessed need. The recipient of the service is the person who will be liable for any charges and who may complain in relation to the service in question.

Section 5: Direct payments

28. This section amends section 1(1) of the Community Care (Direct Payments) Act 1996 ("the 1996 Act"). The amendment enables local authorities to make direct payments to carers in lieu of the services which they have been assessed as needing under section 2(1) of the Act. A carer can then arrange for a provider of their choice to provide those services. All carers whom the local authority have decided to provide with carers' services will be eligible for direct payments unless they are of a description specified in regulations.

Section 6: Assessments: persons with parental responsibility for disabled children

29. Section 6(1) provides that a person with parental responsibility for a disabled child has the right to an assessment from the local authority of his ability to provide (and to continue to provide) care for the child. The local authority must take that assessment into account when deciding what services, if any, to provide under section 17 of the Children Act 1989.
30. The effect of subsection (2) of this section is that in carrying out an assessment under subsection (1) (of this section) the local authority can take into account, so far as it considers it to be material, any assessment the person may have had under section 1(2) of the Carers (Recognition and Services) Act 1995.

Section 7: Vouchers and direct payments to disabled children and persons with parental responsibility for disabled children

31. Section 7(1) inserts new sections 17A and 17B into the Children Act 1989. The effect of subsections (2) and (3) is that regulations made under the new sections 17A and 17B will be made in respect of England by the Secretary of State and in respect of Wales by the National Assembly for Wales.

New Section 17A

32. The new section 17A enables a local authority, instead of providing services under the Children Act, to make to the person who has parental responsibility for a disabled child a direct payment in lieu of those services to enable that person to arrange for the provision of those services rather than rely on direct service provision from the local authority. Similar provision is made in relation to a disabled child aged 16 or 17. Subsections (3) and (4) make similar provision to that contained in the 1996 Act. A person with parental responsibility for a disabled child or a disabled child aged 16 or 17 ("the payee") may not use the direct payment to secure services from a person who is of

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a prescribed description (subsection (3)). The limitations here are likely to include the spouse of the payee and anyone who lives with him as his spouse and certain relatives who live in the same household as the payee as well as the spouse of such a person and anyone living with such a person as his spouse.

33. Subsection (4) enables the Secretary of State or, as the case may be, the National Assembly for Wales to limit the period of residential accommodation which may be purchased by means of a direct payment.
34. Subsection (5) provides for the application (except as mentioned in subsection (6)) of section 1(2) and (6) and of section 2(1) and (2) of the Community Care (Direct Payments) Act 1996 in relation to payments under the new section 17A(1). Under section 1(2) of the 1996 Act the local authority may have regard to an individual's financial circumstances when determining the amount of direct payments. It may not require an individual to contribute more than it appears to the authority to be reasonably practicable for him to contribute. The amount of the direct payment will be equal to the local authority's estimate of the reasonable cost of securing the provision of the service (subsection (6)), in the case of -
 - a) a person with parental responsibility for a disabled child, other than a parent of such a child under 16,
 - b) a person who is in receipt of income support, working families' tax credit or disabled person's tax credit under Part VII of the Social Security Contributions and Benefits Act 1992 or of an income-based jobseeker's allowance.
35. Under section 1(6) of the 1996 Act the local authority is empowered to recover all or part of a direct payment where it is not satisfied that it has been used for the purpose for which it was intended or that the conditions imposed on its use have been met.
36. The effect of section 2(1) and (2) of the 1996 Act is to ensure that a local authority which makes direct payments will not also have to arrange the services as long as it is satisfied that the individual's own arrangements are adequate to provide the service. However, the local authority will have a responsibility to arrange the services if it is not satisfied that the individual's needs are being met.

New Section 17B

37. This makes similar provision for vouchers to that contained in section 3 of the Act. It inserts a new section 17B into the Children Act which will enable the Secretary of State or, as the case may be, the National Assembly for Wales, to make provision in regulations for the issue of vouchers by local authorities to persons with parental responsibility for disabled children to enable such persons to arrange for someone to care for their disabled child while they take a short break from their caring responsibilities.

Section 8: Charging

38. **Section 8** enables local authorities to charge carers for the services they receive. This is achieved by means of an amendment to section 17 of the Health and Social Services and Social Security Adjudications Act 1983.

Sections 9 to 12.

39. **Sections 9 to 12** make provision for minor and consequential amendments, financial provision, interpretation and commencement.

COMMENCEMENT

40. This Act will be brought into force by orders made in relation to England by the Secretary of State and in relation to Wales by the National Assembly for Wales.

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DETAILS OF THE BILL'S PASSAGE THROUGH PARLIAMENT WERE AS FOLLOWS:

HOUSE OF COMMONS	DATE	HOUSE OF COMMONS HANSARD
Introduction	15 December 1999	Vol 341 No. 19 col 281
Second Reading	4 February 2000	Vol 343 No. 40 cols 1335-1398
Committee	8 March 2000	Standing Committee C
	15 March 2000	Standing Committee C
Report & Third Reading	5 May 2000	Vol 349 No. 93 cols 397-471
HOUSE OF LORDS	DATE	HOUSE OF LORDS HANSARD
Introduction	9 May 2000	Vol 612 No. 85 col 1372
Second Reading	23 June 2000	Vol 614 No. 110 cols 593-618
Order of Commitment discharged	14 July 2000	Vol 615 No. 125 col 453
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