

SOCIAL SERVICES AND WELL- BEING (WALES) ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 22 – Refusal of a needs assessment for a child aged 16 or 17

58. **Section 22** makes similar provision in relation to children aged 16 or 17 to that which is made by section 20 in relation to adults.
59. In general, the local authority is not obliged to assess the needs of a child aged 16 or 17 if the child refuses the assessment. This recognises the importance of ensuring that older children have the same control as adults over whether the local authority is to be involved in providing or arranging services to meet their care and support needs.
60. There is also no obligation on a local authority to carry out an assessment if a child aged 16 or 17 lacks capacity to decide whether to refuse an assessment and an authorised person makes the decision to refuse the assessment on the child’s behalf. An ‘authorised person’ is defined in subsection (5) as 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. Where there is no authorised person to make the decision on behalf of such a child, the local authority is not normally obliged to carry out an assessment if a person with parental responsibility for the child refuses the assessment for the child.
61. However, there are some cases where the local authority will be obliged to carry out an assessment notwithstanding the refusal of the child concerned and notwithstanding the refusal of an authorised person or a person with parental responsibility for the child.
62. Where the local authority suspects that the child is experiencing or is at risk of abuse, neglect or other kinds of harm, the authority remains under a duty to assess the child’s needs. “Abuse”, “neglect” and “harm” are defined in section 197(1). Where the local authority is satisfied that a child aged 16 or 17 lacks capacity to refuse an assessment the child’s refusal will not discharge the local authority from its duty to carry out the assessment. However, a refusal given by a person with parental responsibility for the child may discharge that duty, unless the local authority believes that not having the assessment would not be in the child’s best interests.
63. Where the duty to assess a child’s needs has been discharged by a refusal, the duty is re-engaged if the child subsequently asks for an assessment. If the child lacks capacity, the duty is re-engaged if an authorised person (or, if there is no authorised person, a person with parental responsibility for the child) subsequently asks for an assessment.
64. A change in the needs or circumstances of the child, or a change in the needs or circumstances of a person with parental responsibility for the child, may also lead to the duty to assess being re-engaged.