



# Care Act 2014

## 2014 CHAPTER 23

### PART 1

#### CARE AND SUPPORT

##### *Independent advocacy support*

#### **67 Involvement in assessments, plans etc.**

- (1) This section applies where a local authority is required by a relevant provision to involve an individual in its exercise of a function.
- (2) The authority must, if the condition in subsection (4) is met, arrange for a person who is independent of the authority (an “independent advocate”) to be available to represent and support the individual for the purpose of facilitating the individual's involvement; but see subsection (5).
- (3) The relevant provisions are—
  - (a) section 9(5)(a) and (b) (carrying out needs assessment);
  - (b) section 10(7)(a) (carrying out carer's assessment);
  - (c) section 25(3)(a) and (b) (preparing care and support plan);
  - (d) section 25(4)(a) and (b) (preparing support plan);
  - (e) section 27(2)(b)(i) and (ii) (revising care and support plan);
  - (f) section 27(3)(b)(i) and (ii) (revising support plan);
  - (g) section 59(2)(a) and (b) (carrying out child's needs assessment);
  - (h) section 61(3)(a) (carrying out child's carer's assessment);
  - (i) section 64(3)(a) and (b) (carrying out young carer's assessment).
- (4) The condition is that the local authority considers that, were an independent advocate not to be available, the individual would experience substantial difficulty in doing one or more of the following—
  - (a) understanding relevant information;
  - (b) retaining that information;

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- (c) using or weighing that information as part of the process of being involved;
  - (d) communicating the individual's views, wishes or feelings (whether by talking, using sign language or any other means).
- (5) The duty under subsection (2) does not apply if the local authority is satisfied that there is a person—
- (a) who would be an appropriate person to represent and support the individual for the purpose of facilitating the individual's involvement, and
  - (b) who is not engaged in providing care or treatment for the individual in a professional capacity or for remuneration.
- (6) For the purposes of subsection (5), a person is not to be regarded as an appropriate person unless—
- (a) where the individual has capacity or is competent to consent to being represented and supported by that person, the individual does so consent, or
  - (b) where the individual lacks capacity or is not competent so to consent, the local authority is satisfied that being represented and supported by that person would be in the individual's best interests.
- (7) Regulations may make provision in connection with the making of arrangements under subsection (2); the regulations may in particular—
- (a) specify requirements that must be met for a person to be independent for the purposes of subsection (2);
  - (b) specify matters to which a local authority must have regard in deciding whether an individual would experience substantial difficulty of the kind mentioned in subsection (4);
  - (c) specify circumstances in which the exception in subsection (5) does not apply;
  - (d) make provision as to the manner in which independent advocates are to perform their functions;
  - (e) specify circumstances in which, if an assessment under this Part is combined with an assessment under this Part that relates to another person, each person may or must be represented and supported by the same independent advocate or by different independent advocates;
  - (f) provide that an independent advocate may, in such circumstances or subject to such conditions as may be specified, examine and take copies of relevant records relating to the individual.
- (8) This section does not restrict the provision that may be made under any other provision of this Act.
- (9) “Relevant record” means—
- [<sup>F1</sup>(a) a health record (within the meaning given in section 205 of the Data Protection Act 2018),]
  - (b) a record of, or held by, a local authority and compiled in connection with a function under this Part or a social services function (within the meaning given in section 1A of the Local Authority Social Services Act 1970),
  - (c) a record held by a person registered under Part 2 of the Care Standards Act 2000 [<sup>F2</sup>, Chapter 2 of Part 1 of the Health and Social Care Act 2008 or Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016], or
  - (d) a record of such other description as may be specified in the regulations.

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### Textual Amendments

- F1** S. 67(9)(a) substituted (25.5.2018) by [Data Protection Act 2018 \(c. 12\)](#), s. 212(1), **Sch. 19 para. 187** (with [ss. 117, 209, 210](#)); [S.I. 2018/625](#), reg. 2(1)(g)
- F2** Words in s. 67(9)(c) substituted (2.4.2018) by [The Regulation and Inspection of Social Care \(Wales\) Act 2016 \(Consequential Amendments\) Regulations 2018 \(S.I. 2018/195\)](#), **regs. 2(1), 50**

### Modifications etc. (not altering text)

- C1** Pt. 1 modified (1.4.2015) by [The Care and Support \(Isles of Scilly\) Order 2015 \(S.I. 2015/642\)](#), arts. 1, **2(2)(a)**; [S.I. 2015/993](#), **art. 2(a)**
- C2** Pt. 1 applied in part (with modifications) (1.4.2015 coming into force in accordance with reg. 1(1)) by [The Care and Support \(Children's Carers\) Regulations 2015 \(S.I. 2015/305\)](#), regs. 1(1), **2(1)(a)(2), 4-12**; [S.I. 2015/993](#), **art. 2(q)**
- C3** S. 67(5) excluded (6.10.2014 coming into force in accordance with reg. 1(1)) by [The Care and Support \(Independent Advocacy Support\) Regulations 2014 \(S.I. 2014/2824\)](#), regs. 1(1), **4**
- C4** S. 67(5) restricted (1.4.2015 immediately after s. 67(2) comes into force, see [S.I. 2015/993](#), art. 2(q)) by [The Care and Support \(Independent Advocacy Support\) \(No. 2\) Regulations 2014 \(S.I. 2014/2889\)](#), regs. 1(1), **4**

### Commencement Information

- I1** S. 67(1)-(6) (8) (9) in force at 1.4.2015 by [S.I. 2015/993](#), **art. 2(q)** (with transitional provisions in [S.I. 2015/995](#))
- I2** S. 67(7) in force at 1.10.2014 for specified purposes by [S.I. 2014/2473](#), **art. 2(1)(t)**
- I3** S. 67(7) in force at 1.4.2015 in so far as not already in force by [S.I. 2015/993](#), **art. 2(q)** (with transitional provisions in [S.I. 2015/995](#))

## 68 Safeguarding enquiries and reviews

- (1) This section applies where there is to be—
- an enquiry under section 42(2),
  - a review under section 44(1) of a case in which condition 2 in section 44(3) is met or a review under section 44(4).
- (2) The relevant local authority must, if the condition in subsection (3) is met, arrange for a person who is independent of the authority (an “independent advocate”) to be available to represent and support the adult to whose case the enquiry or review relates for the purpose of facilitating his or her involvement in the enquiry or review; but see subsections (4) and (6).
- (3) The condition is that the local authority considers that, were an independent advocate not to be available, the individual would experience substantial difficulty in doing one or more of the following—
- understanding relevant information;
  - retaining that information;
  - using or weighing that information as part of the process of being involved;
  - communicating the individual's views, wishes or feelings (whether by talking, using sign language or any other means).
- (4) The duty under subsection (2) does not apply if the local authority is satisfied that there is a person—

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- (a) who would be an appropriate person to represent and support the adult for the purpose of facilitating the adult's involvement, and
  - (b) who is not engaged in providing care or treatment for the adult in a professional capacity or for remuneration.
- (5) For the purposes of subsection (4), a person is not to be regarded as an appropriate person unless—
- (a) where the adult has capacity to consent to being represented and supported by that person, the adult does so consent, or
  - (b) where the adult lacks capacity so to consent, the local authority is satisfied that being represented and supported by that person would be in the adult's best interests.
- (6) If the enquiry or review needs to begin as a matter of urgency, it may do so even if the authority has not yet been able to comply with the duty under subsection (2) (and the authority continues to be subject to the duty).
- (7) “Relevant local authority” means—
- (a) in a case within subsection (1)(a), the authority making the enquiry or causing it to be made;
  - (b) in a case within subsection (1)(b), the authority which established the SAB arranging the review.

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**Commencement Information**

**14** S. 68 in force at 1.4.2015 by [S.I. 2015/993](#), [art. 2\(q\)](#) (with transitional provisions in [S.I. 2015/995](#))

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