

**EXPLANATORY MEMORANDUM TO
THE YOUNG CARERS (NEEDS ASSESSMENTS) REGULATIONS 2015**

2015 No. 527

1. This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 Local authorities in England have a duty, under section 17ZA of the Children Act 1989, to assess whether young carers in their area have needs for support and, if so, what those needs are. These Regulations prescribe: (i) the manner in which local authorities must carry out young carers' needs assessments; (ii) the training and expertise required from those who carry out the assessments; and (iii) the matters which the local authority must determine or consider when carrying out those assessments.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Section 17ZA of the Children Act 1989 requires local authorities to assess whether young carers in their area have needs for support and, if so, to assess what those needs are. Section 17ZB(8) allows the Secretary of State to make further provision in relation to those assessments. These Regulations, which are the first to be made under the power at section 17ZB(8), set out in further detail how the local authority must carry out a young carer's needs assessments.

4.2 Sections 17ZA and 17ZB were inserted into the Children Act 1989 by section 96(1) of the Children and Families Act 2014. Those amendments were made in order to clarify the duties of local authorities to assess young carers' needs for support.

5. Territorial Extent and Application

5.1 This instrument applies to England only.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Research, such as *Hidden from View* (Children's Society 2013) highlighted the disadvantage and social exclusion faced by young carers relative to other children and young people. Despite the challenges they face young carers may struggle to access appropriate support.

7.2 One of the key outcomes of the National Carers Strategy¹ is that “children and young people will be protected from inappropriate caring and have the support they need to learn, develop and thrive and to enjoy positive childhoods”. Government’s commitment to this vision was reaffirmed in the updated action plan for the carers strategy published in October 2014. This commitment is best realised by ensuring that the person being cared for, whether that is an adult or a child, is assessed in to develop a response to their eligible needs. Effective professional practice in this area requires local services for children and adults to work together to consider the needs of all the members of a young carer’s family.

7.3 The changes we have introduced through the Children and Families Act 2014 and these Regulations simplify the legislation relating to young carers’ assessments. They extend the entitlement to an assessment to all young carers under the age of 18 regardless of who they care for or the type and frequency of this care. This revised legislative framework aims to make rights and duties clearer to both young people and to professionals working to support them and enables appropriate links to be made between legislation about children and legislation concerning support for adults with care needs (i.e. Care Act 2014) so local authorities can align the assessment of a young carer with assessment of the person they care for.

8. Consultation outcome

8.1 Formal consultation took place between 22 December 2014 and 26 January 2015. A total of 57 consultation responses were received from local authority representative organisations, individual local authorities, voluntary sector organisations campaigning on behalf of young carers, from individual young carers and from parents. The consultation process was additionally informed by two online forums held with young carers and with young adult carers respectively.

8.2 The majority of respondents to the consultation welcomed the draft Regulations as a step forward in recognising young carers and their needs. Most responses acknowledged that the Regulations as drafted provided sufficient information to understand the requirements of young carers’ needs assessments without being overly prescriptive.

8.3 The finalised Regulations now have a specific section to cover the matters to which local authorities must have regard. These general principles “set the scene” for the Regulations that follow. The local authority should follow an approach to young carers’ needs assessment that is proportionate and appropriate. Assessments must involve and inform young carers so their participation is at the heart of the assessment process.

8.4 Respondents made some drafting suggestions to emphasise that the focus of a young carer’s needs assessment must always be on children’s needs. These were considered in finalising the Regulations. For example, final Regulations now require a local authority to determine whether a young carer is

¹ See *Carers Strategy Second National Action Plan 2014 – 2016*
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/368478/Carers_Strategy_-_Second_National_Action_Plan_2014_-_2016.pdf

offering “excessive” care, as well as determining whether they are providing “inappropriate” care.

8.5 Respondents too wanted to see greater emphasis on the importance of preventing children from having to take on young carer tasks. In response to this important point, the final Regulations require the local authority’s assessment to determine whether the need to support the child could be prevented by providing support to the person being cared for, or to a member of the young carer’s family.

8.6 Consultation responses also noted the importance of ensuring continuity of support to a young carer into legal adulthood and wanted to see these Regulations more explicitly aligned with requirements in the Care Act 2014 about children’s transitions to adult care and support. We consider, however, that young carer’s transition into adulthood has been appropriately provided for in sections 63 and 64 of the Care Act 2014 and, as such, these Regulations do not need to replicate the provisions made in that Act.

8.7 A full analysis of consultation responses is available on the Department’s website at:

www.gov.uk/government/consultations/young-carers-draft-regulations

9. Guidance

9.1 Revised statutory guidance Working Together to Safeguard Children includes information about the new requirements on local authorities to conduct young carers’ needs assessments. This Guidance will be issued during March 2015.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 These Regulations do not impose any new burdens on public sector organisations and their partners.

11. Regulating small business

11.1 These Regulations have no bearing on the regulation of small businesses.

12. Monitoring & review

12.1 We are committed to continuing work with local authorities, other government departments, voluntary sector bodies representing young carers and with other interested parties to monitor the impact of these reforms intended to offer young carers protection from inappropriate caring to allow them to reach their potential in the same way as other children who do not have caring responsibilities.

13. Contact

Mark Burrows at the DfE, Tel: 020 778 38079

or email: Mark.Burrows@education.gsi.gov.uk can answer any queries regarding the instrument.