

# New Rights for Young Carers

## Changes to the Care Act and Children Act Explained

### Introduction

'Young carer' was not a term that had previously appeared in any English legislation. For a local authority to have an obligation to a young carer (ie someone aged under 18 who provides care on an unpaid basis for another person), she or he had to be labelled a 'child in need'. There were also broader existing obligations to consider the needs of carers with no lower age limit (and so apply to carers under 18). However, although there were several references to young carers in previous guidance, the overall effect was convoluted and difficult to understand.

This has now changed, as both the Care Act 2014 and the Children and Families Act 2014 address the needs of young carers clearly and directly. This short paper aims to explain the background to this and how it should work in the future.

### Policy Background

In the **National Carers Strategy** ['Recognised, valued and supported: next steps for the carers strategy'](#) the Government emphasize that effective whole family approaches to assessment are essential to improving support for adults and young carers alike.

**Every Child Matters** is a Government initiative for England and Wales first launched in 2003. It covers children and young adults up to the age of 19, or 24 for those with disabilities. Its main aims are for every child, whatever their background or circumstances, to have the support they need to:

- stay safe
- be healthy
- enjoy and achieve
- make a positive contribution
- achieve economic well-being

The law concerning young carers has now been strengthened to support delivery of these principles for young carers and their families.

This means that when a child is identified as a young carer, the needs of everyone in the family are to be considered. This should trigger action from both children's and adults services – assessing why a child is caring, what needs to change and

what would help the family to prevent children from taking on this responsibility in the first place”.

## Government joint statement of principles

A joint statement agreed between the Department for Education and Department of Health identified key principles to underpin implementation (including the Regulations and guidance on both Acts).

These provide a high level summary of what is intended:

- 1. “The starting point should be to assess the needs of the adult or child who needs care and support and then see what remaining needs for support a young carer in the family has.*
- 2. The presence of a young carer in the family should always constitute an appearance of need and should trigger either an assessment or the offer of an assessment to the person needing care.*
- 3. A whole family approach is key when assessing an adult needing care where there are children in the family providing care to the adult or undertaking wider caring responsibilities. The adult’s assessment and eligibility for support should take into account their parenting responsibilities and the functioning of the family.*
- 4. Assessments should ascertain why a child is caring and what needs to change in order to prevent them from undertaking excessive or inappropriate caring responsibilities which could impact adversely on their welfare, education, or social development. The views of both adults and children within the family should be sought separately where appropriate.*
- 5. Consideration must be given to whether a young carer is a ‘child in need’ under the Children Act 1989, and whether their welfare or development may suffer if support is not provided to them and/or their family.”*

## Amendments to Section 17 of the Children Act

The Children and Families Act 2014 has amended the Children Act 1989. This has been done by inserting a new Sections 17 ZA to 17 ZC to deliver this change. The new clauses come into force from 1 April 2015 to coincide with the implementation of the Care Act.

This amendment to the Children Act has clarified the law relating to young carers' and addresses the council as a whole (applying to both adult and children's services). The new provisions include;

- Ensuring the right to an assessment of needs for support will be extended to all young carers under the age of 18 regardless of who they care for, what type of care they provide or how often they provide it;
- Placing a clearer duty on local authorities to undertake an assessment of a young carer's needs for support on request or on the appearance of need,
- Requiring councils to ensure that young carers are identified and that consideration is also given as to whether they are a 'child in need' \* see note
- Making links between children's and adults' legislation to enable local authorities to align the assessment of a young carer with an assessment of an adult they care for (preventing inappropriate care).
- Requiring Councils to be proactive about identifying young carers in their area and acting to help reduce their need for support through the provision of information and preventative measures (for example in schools).

These rights are to be underscored by Young Carers Assessment Regulations and these will require councils to take a whole family approach to assessments. Again these will apply to both adult and children's social care.

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\* Note: Definition of "Child in Need"

Section 17 of the Children Act 1989 defines a child as being in need in law if:

- He or she is unlikely to achieve or maintain or to have the opportunity to achieve or maintain a reasonable standard of health or development without provision of services from the LA;
- His or her health or development is likely to be significantly impaired, or further impaired, without the provision of services from the LA;
- He or she has a disability.

Development can mean physical, intellectual, emotional, social or behavioral development. Health can be physical or mental health.

## The Care Act and Young Carers

As described above, the amendment to the Section 17 of the Children Act will work with provisions in the Care Act 2014 as well as for Children Act Assessments. It therefore applies equally to both children's and adult services. The Care Act Regulations and Guidance reinforce this in a number of ways. For example Eligibility Regulations for the Care Act require councils to consider the support disabled parents and carers may need in carrying out their responsibilities to care for a child (who may potentially be a young carer).

The Guidance for the Care Act highlights the importance of whole family approaches and support for young carers (see Statutory Guidance 6.65 to 6.73).

The Statutory Guidance highlights that that when carrying out an adult's or carer's assessment, if it appears that a child is involved in providing care the local authority must consider:

- the impact of the person's needs on the young carer's wellbeing, welfare, education and development;
- whether any of the caring responsibilities the young carer is undertaking are inappropriate.

The Guidance stresses that young carers should not be left with inappropriate levels of caring and describes this as "anything which is likely to have an impact on the child's health, wellbeing or education, or which can be considered unsuitable in light of the child's circumstances and may include:

- personal care such as bathing and toileting;
- carrying out strenuous physical tasks such as lifting;
- administering medication;
- maintaining the family budget;
- emotional support to the adult."

The Guidance also says that: "When a local authority is determining whether the tasks a child carries out are inappropriate, it should also take into account the child's own view wherever appropriate". It should also be borne in mind that young carers may have responsibilities for supporting other non disabled family members such as siblings and this can significantly add to the pressures on them. Any assessment needs to take account of the whole picture and ensure that the overall levels of responsibilities of the young carer are not beyond what is age appropriate.

The Care Act regulations and guidance also specify that Adult Services must identify children in the household, consider whether they are young carers and if so whether they are children in need.

The Guidance says “A young carer becomes vulnerable when their caring role risks impacting upon their emotional or physical wellbeing or their prospects in education and life. This might include:

- preventing the young carer from accessing education, for example because the adult’s needs for care and support result in the young carer’s regular absence from school or impacts upon their learning;
- preventing the young carer from building relationships and friendships;
- impacting upon any other aspect of the young carer’s wellbeing.”

Councils should address the risks of such negative impacts either through support for the adult or through support for the young carer. There will be a need for young carers to either have a carers assessment or for the care assessment of the adult they look after to identify support needed to prevent inappropriate care. These will be adult services responsibilities with referrals made to childrens services largely only where there are safeguarding issues.

## Young Carers in Transition and Young Adult Carers

The Care Act (sections 63 – 64) introduces important new obligations to young carers ‘in transition’ to adulthood. The Act requires councils to undertake an assessment for a young carer if it considers that she/ he is likely to have needs for support after becoming 18 and that the assessment would be of significant benefit to him / her. If a local authority decides not to undertake such an assessment it must give reasons for its refusal.

This change will also provide new opportunities to improve the identification of young adult carers (aged 18 to 24); a group whose needs have often been overlooked. There is a developing awareness across the country about the need to better address the needs of this group and these changes to the law should help this happen. Work in this area is also to be enhanced through the establishment of a national Task and Finish Group to consider what further action can be taken to support young adult carers to fulfil their education and employment potential. This will build on initiatives such as the NIACE Policy briefing paper “**Effective learning opportunities for Young Adult Carers**”.

It is good practice for councils to ensure there is clarity locally about who has responsibility for supporting young adult carers aged 18 to 24. This may be the service responsible for the person they support but in some cases support might be via the Early Help system or other preventative services under the Care Act.

## Whole Council Approaches

The new responsibilities created by the Children and Families Act and the Care Act are placed on a local authority as a whole (not just Adult or Childrens Services).

Together these pieces of legislation are intended to provide a legal framework that will support local authorities to consider the needs of the whole family, deliver coordinated packages of support and protect children and young people from excessive or inappropriate caring roles.

Guidance to the Care Act says councils should ensure that adults' and children's care and support services work together to ensure the assessment is effective – for example by sharing expertise and linking processes. This can be facilitated by joint protocols between adult and children's services to support joint working.

## Children's and Adult Social Care; who does what?

The responsibilities for identifying and supporting young carers are placed on the local authority as a whole. There are potential overlapping responsibilities for Adult and Children's Services. The primary responsibility for responding to the needs of a young carer **rests with the service responsible for assessing the person they support**, rather than the age of the carer. This means that:

- Young carers of disabled children are, therefore, the responsibility of the Children's Service.
- Adult Services have to identify children in the household/ family network and ensure that young carers are not left with unreasonable levels of caring responsibilities.

Where a young carer is thought to be a "Child in Need" adult workers will need to discuss the case with the Children's Services to see if further action is needed. Further action might include:

- A referral to an independent Young Carers service
- Accessing preventative support through the "Early Help Network"
- Further investigation by Children's Services about safeguarding issues
- A jointly undertaken assessment by adult and children's workers (there is provision in the Care Act Guidance and in Section 17 of the Children Act to combine a young carers assessment with that of the adult)

Where disabled young people are in "Transition" this will be an area of joint activity including where any sibling young carers are identified as needing support through transition.