

Bath & North East Somerset Council		
MEETING/ DECISION MAKER:	Children & Young People Policy Development & Scrutiny Panel	
MEETING/ DECISION DATE:	12 <sup>th</sup> July 2016	EXECUTIVE FORWARD PLAN REFERENCE: N/A
TITLE:	Care Act - Implications for Children and Carer's	
WARD:	All	
AN OPEN PUBLIC ITEM		
<b>List of attachments to this report:</b> Appendix 1 included at the end of the report Appendix 2 attached – Lifetime Healthcare Pathway Appendix 3 attached - Social Care Pathway Appendix 4 attached - Young Carers Pathway		

## **THE ISSUE**

This report sets out to inform the Panel about the Care Act 2014 and the interface and implications for children and young people.

## **RECOMMENDATION**

The Panel are asked to note to content of the report.

## **RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)**

None identified.

## **STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL**

The Care Act 2014 has placed new duties on Local Authorities – this report sets out the duties that relate to children and young people.

## **THE REPORT**

### **1. Background**

The Care Act 2014 (the Act) received Royal Assent on 14<sup>th</sup> May 2014. It came into force in April 2015 and abolishes most adult community care statutes (38 in total) including the National Assistance Act 1948, the NHS and Community Care Act 1990, the Carers (Recognition and Services) Act 1995 and the Community Care (Direct

Payments) Act 1996. It does not replace the Mental Health Act 1983 (amended in 2007 and 2009) or the Mental Capacity Act 2005. The Act deals with adult social care for anyone over the age of 18 years and puts a duty on Adult Care Services to ensure that services are available at 18 years. It therefore requires clear planning between Adults and Children Services prior to that age.

The Act is in three parts:

1. Care and Support
2. Care Standards
3. Health

Part 1 of the Act consolidates and modernises the framework of care and support law, including making the provision for new duties for Local Authorities and new rights for service users and carers.

The Act sets out to:

- Promote people's wellbeing
- Enable people to prevent and delay the need for care and support, and for carers to maintain their caring role
- Give people more choice and control of their lives

It embeds the interface with children and families legislation, particularly in relation to transitions and caring roles and special educational needs and disability (SEND) reform.

New entitlements have been established by way of the duty to undertake a transition assessment for young people and their carers in advance of transition from Children to Adult Services and changes introduced by the Children and Families Act 2014 with regard to SEN, which introduced the system of support extending from birth to 25 years of age – thereby meaning that there will be a group of young people aged between 18 and 25 years who will be entitled to support through both the Children and Families Act 2014 and the Act.

The Act also replaces the Chronically Sick and Disabled Persons Act 1970 with the exception of Section 2 (Appendix 1) which remains in force for children (up to 18 years).

## **2. Interface and New Requirements**

### **2.1 Preparing Children for Adulthood – new duties around transition**

Sections 58-66 of the Act relates to the new duties around **transition**:

- Section 58-59 relates specifically to the **assessment of a child's need for care and support**. Where a child is likely to have need for care and support after the age of 18 the Local Authority **MUST**, if it believes there would be of 'significant benefit' to the child, assess their needs and consider what they are likely to be when 18. This is known as a 'child's needs assessment' (Sec 58 (2)). Gaining consent (the consent condition) is a significant issue here as is the determination of capacity in accordance with the Mental Capacity Act 2005. If the child does not consent the Local Authority **MUST** carry out the assessment if the child is 'experiencing, or is at risk of, abuse or neglect'

(Sec 58 (4)). If consent is not received and the child has capacity this must be respected and information and advice provided.

However...*'For young people below the age of 16, local authorities will need to establish a young person's competence using the test of 'Gillick competence' (whether they are able to understand a proposed treatment or procedure). Where the young person is not competent, a person with parental responsibility will need to be involved in their transition assessment, – or an independent advocate provided if there is no one appropriate to act on their behalf (either with or without parental responsibility).* ' Care and Support Statutory Guidance for the Care Act 2014, DH, 16.38.

The assessment itself must include: details of the care and support needs likely after the child becomes 18, details of the outcomes they wish to achieve for day-to-day life and how the provision of care and support could help achieve these outcomes (Sec 59 (1) (a) (b) (c). It must involve the child, parents and carers and any person the child or parents and carers request. The assessment should consider whether any other mechanism can be used to achieve the outcomes other than 'provisions'. The assessment must indicate whether the care and support needs are likely to meet the 'eligibility criteria' (Sec 59 (4) (a) set out in the National Eligibility Framework.

The Act does not set out what age the child's needs assessment needs to be undertaken.

The Act makes the provision for independent advocacy for children being assessed for support from Adult Services as is the case for all people supported through the Act. (Care and Support Statutory Guidance issued under the Care Act 2014, DH, 7.2).

A care and support plan must be developed.

- Section 60 – 61 relates to the **assessment of a child's carer's needs for support**. The Local Authority **MUST** assess the carer of a child (who is likely to have care and support needs when they become 18) if it believes that it would be of 'significant benefit' to the carer. This is known as the 'child's carer's assessment' (Sec 60 (2)). If the carer refuses the assessment the Local Authority is not required to carry one out, however it must provide information and advice in writing about how to prevent the carer's need for support developing in the future.

Similar to the child's needs assessment, the child's carer's assessment must consider: whether the carer is able to continue to support the child upon becoming 18, whether they are willing to continue to do so, the impact it will have on them and what their care and support needs might be when the child is 18, the outcomes they want to achieve in their day-to-day life and whether provision of support can help this. The assessment must consider if the carer works or wishes to do so or whether they wish to undertake education, training or recreation. The carer and any person the carer would like to involve should be involved in the assessment. Like the child's needs assessment the child's carer's assessment must indicate whether the carer's care and support needs are likely to meet the 'eligibility criteria' set out in the National Eligibility Framework.

- Section 62 sets out the **Power to meet child's carer's needs for support**. The Local Authority can meet the identified carer's care and support needs as it 'considers appropriate.'

Regard must be given to the Care and Support (Children's Carers) Regulations 2014 and Section 17 of the Children Act 1989 when deciding the provision for carers.

- Section 63-64 relates to **assessments of young carer's care and support needs**. Again for this to take place the 'consent condition' must be met and the Local Authority must be satisfied that support (after becoming 18) would be of 'significant benefit.' Where this is the case the young carer's care and support will be assessed as a 'young carer's assessment (Sec 63 (2)). If the young carer can't consent but the Local Authority is satisfied this assessment would be of benefit, it will be undertaken in their 'best interests'. Again where the young carer refuses consent and has capacity to do so, the Local Authority **MUST** only carry out the 'young carer's assessment' if the young carer 'is experiencing, or is at risk of, abuse and neglect.' (Sec 63 (4)), otherwise the Local Authority **MUST** provide in writing information and advice about how to prevent the care and support needs building. Section 64 details what the assessment requirements are and these are the same as for the child's carer as set out above.

The Care and Support Statutory Guidance issued under the Care Act 2014, DH, (2.49) states that *'the Local Authority must undertake a young carer's assessment under part 3 of the Children Act 1989.'* The guidance makes it clear that young carer's **MUST** be identified and makes reference to a 'whole family approach' (6.68). It also makes reference to 'unsuitable' tasks that need consideration *'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. (6.72)*

- Section 65 sets out how the assessments above (Section 58 – 64) can be carried out and makes reference to the potential for combination assessments, however again regard must be given to the 'consent condition'. The Care and Support Statutory Guidance issued under the Care Act 2014, DH, (6.3) states *'A combined assessment, where an adult's assessment is combined with a carer's assessment and / or an assessment relating to a child so that interrelated needs are properly captured...'*
- Section 66 refers to **continuity of services under other legislation** and sets out the interface with Section 17 of the Children Act 1989 (Section 17 relates to a child in need). The Local Authority must *'continue to comply with Section 17 after the child reaches the age of 18 until they reach a conclusion in his case.'* (Sec 66 (2)).

A new clause has been inserted into the Children Act 1989 to ensure that Children Services continue to provide services post 18 until Care Act

assessment(s) are completed. The Act does not state when the assessments need to be completed by but refer to them being negotiated with Children Services.

In relation to Education, Health and Care (EHC) plans – where this plan is no longer maintained and the Local Authority hasn't reached its conclusion for Section 17 as set out above it must continue to comply with the Children Act 1989 until this conclusion is reached. The Act sets out to put in place mechanisms to prepare children and carers appropriately and in a timely way without there being a gap in assessment or provision – described in the Government Fact Sheet 11 as 'no "cliff-edge" '.

In relation to the Chronically Sick and Disabled Persons Act 1970 a new section the same as above has also been inserted in 2A.

- 2.2. The aim of the Act is to promote independence and reduce long term needs for care and support.

The Care and Support Statutory Guidance issued under the Care Act 2014, DH, also recommends one 'designated' person coordinates the transition and this person is referred to in the guidance as a Personal Advisor (16.49).

The Act does not set a blanket rule of what age everyone has to be assessed it is flexible in recognition that the best time to plan the move to Adult Services will be different for each person. (Government Care Act Fact Sheet). However regard must be given to start the preparation in year 9 if there is a EHC plan in place (see 2.3 below).

The Act also makes it explicit that Local Authorities have a legal responsibility to cooperate and consider other assessments being carried out – provided all parties agree. The Local Authority can carry out joint assessments with other organisations or on behalf of other organisations. The Care and Support Statutory Guidance issued under the Care Act 2014 states that:

*'...a holistic approach to assessment which aims to bring together all of the person's needs may need the input of different professionals, such as adult care and support, children's services housing, experts in the voluntary sector, relevant professionals in the criminal justice system, health or mental health professionals.'* (6.75).

The Act (as for all people over the age of 18) introduces means-testing and charging for services which the child and carers will need to be aware of. (Care and Support Statutory Guidance issued under the Care Act 2014, DH, 16.51).

## 2.3 The interface with the Children and Families Act 2014.

The Care and Support Statutory Guidance issued under the Care Act 2014, DH, (1.23) makes specific reference to the fact that the Act is designed to work in

partnership with the Children and Families Act 2014. The Children and Families Act 2014 created the new birth- to-25 EHC plans for children and young people with special educational needs and disabilities (SEND) and offers families personal budgets so they can have choice and control over the type of support they get – in some cases the ‘care’ part of the EHC plan will be provided for by the Act.

The EHC plan must set out the care and support which is reasonably required by the young person’s SEND. For people over 18 with a care and support plan this needs to be incorporated into the EHC plan rather than be developed separately. Whilst the Act itself does not set a specific age for which planning transitions should start both the Care and Support Statutory Guidance issued under the Care Act 2014, DH (16.34) and the Children and Families Act 2014 says preparation for adulthood must start no later than from school year 9 (approximately 14 years of age). However the Guidance also states:

*‘For some people with complex SEN and care needs, local authorities and their partners may decide that children’s services are the best way to meet a person’s needs – even after they have turned 18. Both the Care Act 2014 and the Children and Families Act 2014 allow for this.’ (16.70)*

Both Acts place an emphasis on outcomes focused, person-centred practice when considering assessments, planning and support as well as co-production.

Regard must be given in both Acts to the wellbeing duty rather than waiting for crisis. *‘Children should not undertake inappropriate or excessive caring roles that may impact on their development. A young carer becomes vulnerable when their caring role risks impacting upon their emotional or physical wellbeing and their prospects in education and life.’* (Care and Support Statutory Guidance issued under the Care Act 2014, DH, 2.49). In order for planning to be effective with the interface joint commissioning arrangements across children and adult services are required. Significant focus has been given to this in B&NES.

Both Acts set out the duty to assess a parent carer or young carer.

Both Acts place a duty of the provision of accessible, good quality information, advice and support.

- 2.4 A multi-agency Transitions Planning Group is in place which meets bi monthly. The main objective of the group is to ensure that all the key partners involved in supporting young people and young carers in transition are working together effectively. The groups aim is to facilitate the seamless transition from children services to adult services.
- 2.5 There is also a Transitions Operational Panel which meets three times a year and receives referrals / identifies young people who are likely to be in need of care and support into adulthood. The Operational Panel ensure the pathways are followed once the young person is identified. Examples of the pathways are included as Appendix 2 Lifetime Healthcare Pathway, Appendix 3 Social Care Pathway and Appendix 4 Young Carers Pathway. These pathways ensure that the Council meets its statutory duty for young people and young carers in need of transitional care and support as set out in the Act and in accordance with the Children and Families Act 2014.

## RATIONALE

N/A

## CONSULTATION

N/A

## RISK MANAGEMENT

A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.

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<b>Background papers</b>	<i>None</i>
<b>Please contact the report author if you need to access this report in an alternative format</b>	

## Appendix 1

### Chronically Sick and Disabled Persons Act 1970 Section 2

#### *2. Provision of welfare services.*

*(1)Where a local authority having functions under section 29 of the National Assistance Act 1948 are satisfied in the case of any person to whom that section applies who is ordinarily resident in their area that it is necessary in order to meet the needs of that person for that authority to make arrangements for all or any of the following matters, namely—*

*(a)the provision of practical assistance for that person in his home;*

*(b)the provision for that person of, or assistance to that person in obtaining, wireless, television, library or similar recreational facilities;*

*(c)the provision for that person of lectures, games, outings or other recreational facilities outside his home or assistance to that person in taking advantage of educational facilities available to him;*

*(d)the provision for that person of facilities for, or assistance in, travelling to and from his home for the purpose of participating in any services provided under arrangements made by the authority under the said section 29 or, with the approval of the authority, in any*

*services provided otherwise than as aforesaid which are similar to services which could be provided under such arrangements;*

*(e)the provision of assistance for that person in arranging for the carrying out of any works of adaptation in his home or the provision of any additional facilities designed to secure his greater safety, comfort or convenience;*

*(f)facilitating the taking of holidays by that person, whether at holiday homes or otherwise and whether provided under arrangements made by the authority or otherwise;*

*(g)the provision of meals for that person whether in his home or elsewhere;*

*(h)the provision for that person of, or assistance to that person in obtaining, a telephone and any special equipment necessary to enable him to use a telephone.*