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## **Adult Social Care Outline of our Proposed Adult Social Care Statute**

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# OUTLINE OF OUR PROPOSED ADULT SOCIAL CARE STATUTE

*This document provides a short outline of how our proposed adult social care statute would operate as a whole. The main consultation paper sets out our detailed proposals and arguments for the reform of adult social care law.*

1. The aim of our proposed new statute is to create a coherent legal framework for the future of adult social care. It is structured to enable it to accommodate different policies and practices, while maintaining the existing core legal entitlements and rights.
2. We emphasise that all of the proposals represent our initial view about how the law should be reformed. We will review the proposals on the basis of the responses to the consultation paper.

## STATEMENT OF PRINCIPLES

3. Our proposed statute would begin with a statement of fundamental principles upon which the legislation is based. Decision-makers, such as courts, social workers and directors of social services departments, will be required to consider these principles when making a decision or taking an action under the statute.
4. We have put forward for discussion a number of general concepts that might form the basis of statutory principles. We welcome views on these principles and on whether there are any other principles that could be included in our statute.

## THE ASSESSMENT DUTY

5. The community care assessment process is the gateway to the provision of community care services by local authorities. Under our proposals there would be a single and explicit duty placed on a local authority to undertake a community care assessment where it appears to the local authority that *any person for whom they may provide or arrange the provision of community care services (or a direct payment) may have social care needs that can be met by the provision of community care services (including a direct payment in lieu of services).*
6. This would establish a low qualifying threshold for an assessment, which is not dependent on a request or on whether the person is likely to qualify for services. However, we welcome views on whether it would be useful to add a right to request an assessment to this duty.
7. As is currently the case, the duty to assess would be supplemented by a power for a local authority to provide temporary services in cases of urgency, without having undertaken an assessment. A full assessment could then be carried out as soon as practicable.

## THE ASSESSMENT PROCESS

8. Once the duty to assess has been triggered, a local authority will be required to carry out an assessment. Under our proposed statute, the focus of that assessment will be the *outcomes* a person wishes to achieve and their social

care *needs*. By *outcomes* we mean the goals identified by the individual and by *needs* we mean the things that an individual can and cannot do. Therefore, an outcome would need to be assessed with reference to a person's needs or risk factors. Our statute will provide clearly that an assessment should not focus on the person's suitability for a particular existing service.

9. Although we do not propose to put self-assessment on a statutory footing, we welcome views on whether our statute should make it clear that a co-produced self-assessment is a lawful form of assessment, and whether the statute should allow for pure self-assessments for certain people.
10. Our proposed statute would ensure that certain aspects of the assessment process should be set out clearly in regulations, issued by the Secretary of State and Welsh Ministers. This might include who should be consulted during the assessment, requirements for recording the results of the assessment and the areas that an assessment must cover.

### **ELIGIBILITY FOR SERVICES**

11. Once a local authority has completed an assessment of a person's needs, our statute will then require the authority to decide whether or not services will be provided to that individual.
12. Our proposed statute would provide that an assessment of social care needs and the application of eligibility criteria are the sole means by which a person's eligibility for community care services is determined. In effect, there would be a single eligibility framework for all community care services. Local authorities would have a duty to use that framework to determine whether a person's social care needs are eligible and a duty to provide or arrange for the provision of community care services (or a direct payment in lieu of services) to meet all eligible needs. The duty to meet eligible needs would be strong and individually enforceable.
13. To emphasise the importance of eligibility criteria in determining eligibility for services, our statute would impose a duty on the Secretary of State and Welsh Ministers to make regulations prescribing the eligibility framework that must be used by local authorities, including:
  - (1) the risks to independence that may call for the provision of services; and
  - (2) the objectives that are to be achieved by the provision of services.
14. Given the Department of Health's commitment to introducing personal budgets, it is important in our view that the law and personal budgets are more closely aligned. Our statute would enable the Secretary of State and Welsh Ministers to make regulations prescribing whether local authorities have a duty to allocate a personal budget, or whether it is optional. If national eligibility criteria and a right to re-ablement services are introduced by the Government, we believe they should be accommodated in our future statute.

## **STATUTORY CARE PLANS**

15. Our proposed statute would introduce a statutory duty on local authorities to produce a care plan for any person (including a carer) who has been assessed as having eligible needs. This will give additional prominence to the legal requirement to produce a care plan, which is currently contained in statutory guidance, and would help to underline the importance of such a plan within the community care process as a whole. The duty to produce a care plan would be reinforced by a duty placed on the Secretary of State and Welsh Ministers to make regulations concerning the form and content that the care plan must take.

## **CARERS' ASSESSMENTS AND ELIGIBILITY**

16. We propose that there be a single duty to assess a carer, which would apply to all carers who are *providing or intending to provide care to another person*, and not just those *providing a substantial amount of care on a regular basis*. The assessment would be triggered where a carer appears to have, or will have upon commencing the caring role, needs that could be met by the provision of carers' services or by the provision of services to the cared-for person. The duty to assess would continue to be reliant on the cared-for person being someone for whom the local authority may provide or arrange for the provision of community care services.
17. We propose that local authorities should be required to use a mandatory national eligibility framework in exercising their power to provide services to carers. This would remove the current ambiguity about how decisions are made regarding the provision of services to carers, and would mean that a carer's eligibility for support is assessed against the same framework throughout England and throughout Wales. It would also mean that authorities would be required to allocate a carer's needs to the different bands and to specify which bands it will provide services to meet. In effect, this would mean the introduction of a duty to provide carers' services, since authorities would be required to provide services to those who fall within its eligibility criteria.

## **THE SCOPE OF ADULT SOCIAL CARE**

18. We believe that the most effective way of providing a coherent legal framework for adult social care is to build on the process-driven elements by establishing tightly defined processes for determining the scope of adult social care. At the centre of our proposed statute is the community care assessment, the eligibility decision and the formation of a care plan.
19. In addition to these process-driven elements, there are a number of additional aspects that would help to determine, in a more general sense, the scope of adult social care. *First*, the scope of adult social care would be limited by prohibitions on the types of services that can be provided by local social services authorities. These prohibitions would ensure that social services authorities cannot provide, for example, NHS services or housing that can be provided under the Housing Act 1996.
20. *Second*, community care services would be defined broadly by the following list of services, which would appear in the statute itself:

- (1) residential accommodation;

- (2) assistance and facilities in the home;
  - (3) social work service and support and advice;
  - (4) centres or other facilities in the community; and
  - (5) social, leisure, communication, education and training activities.
21. *Third*, statutory principles would be introduced to guide decision-makers acting under our proposed statute.
22. It is important to emphasise that we do not envisage that the prohibitions, list of community care services or the statutory principles would define the scope of adult social care precisely. Instead, they would operate more generally to provide a framework for decision makers acting under the legislation.
23. Finally, our statute will not include a central definition of a *disabled person* or a *service user*. We believe that to provide a further hurdle based on a legal category of *disability*, for example, is unnecessary.
24. In summary, adult social care will be those community care services (broadly described and subject to statutory prohibitions) provided or arranged by social services authorities to those individuals, whose identity is determined through an assessment and eligibility decision (and recognised in a care plan), in a process that is prescribed in legislation and guided by statutory principles.

#### **SECTION 21 OF THE NATIONAL ASSISTANCE ACT 1948**

25. Section 21 of the National Assistance Act 1948 places a strong duty on local authorities to provide residential accommodation to certain people. As noted above, we propose that an assessment of need and the application of eligibility criteria should be the sole means for determining a person's eligibility for services. In effect, almost all of the existing community care statutes would be repealed, including section 21.
26. The aim of our review is not to remove any existing entitlements to services. In relation to section 21 of the 1948 Act, we do not believe that repeal of this duty would weaken the entitlement to residential accommodation. However, if any groups did lose their entitlement to services, we believe that section 21 should be retained for those groups. We welcome further evidence on this point.

#### **A CODE OF PRACTICE**

27. Although we have not made any proposals for reform in relation to the overall amount of guidance in this area of law, we believe that any consolidation of the law provides a valuable opportunity to consolidate and revise the associated guidance. In this regard, we believe there may be merit in placing a duty in the statute for the Secretary of State and Welsh Ministers to prepare a code of practice to accompany the proposed statute. This would bring together all of the current obligations placed on local authorities in statutory guidance into one consolidated code of practice, and would mean that practitioners and individuals would only have to have regard to a single statute and one code of practice to understand the obligations and entitlements in adult social care.

## **CHOICE AND CONTROL**

28. We propose that the choice of accommodation directions would be placed in statute law to require local authorities to accommodate any person assessed as requiring residential accommodation at the place of their choice. The additional payment regulations would remain in secondary legislation.
29. Our proposed statute would also retain the existing direct payments provisions. These place a duty on local authorities in certain circumstances to give direct payments to a person who has assessed eligible needs for services.
30. Provisionally, we consider that the most effective way of securing the policy of choice and control would be to extend direct payments to cover residential accommodation. We welcome views on this issue.

## **CHILDREN AND YOUNG PEOPLE**

31. Our proposed statute would apply to those aged 18 and above. In general terms, this would mean that children's services would be provided primarily under the Children Act 1989, and adults' services under our proposed statute. We also propose amending the Chronically Sick and Disabled Persons Act 1970 and carers' legislation (such as the Carers (Recognition and Services) Act 1995) to provide that it applies to children only. This would ensure that children would not lose their existing entitlements to services or to a carer's assessment as a result of our proposals.
32. Our statute would also include provisions aimed at encouraging *transitional services* between children's and adult services. Local authorities would be given a power to assess and provide services to young people aged 16 and 17. For example, in cases where a young disabled person or young carer aged 16 or 17 is likely to need services beyond the age of 18, the authority could decide that it would be preferable to assess that person under adult social care legislation rather than the Children Act 1989. In addition, young people aged 16 and 17 (and their parents on their behalf) would be given a right to request (or rather make a request that must be responded to) that they be assessed under adult social care legislation rather than the Children Act 1989. The local authority would then be required to give written reasons if it refuses to carry out the assessment.

## **DUTIES TO CO-OPERATE**

33. Under our proposed statute, there would be a general duty on each social services authority to make arrangements to promote co-operation between the authority and other relevant organisations. The legislation would provide a list of "relevant organisations", such as housing, education and health authorities.
34. There will also be a specific duty of co-operation, whereby a local authority can request certain other authorities to assist in a number of circumstances, including when an assessment of a person is taking place and in providing services to the person. The "other authorities" could include other local authorities, and education, housing and health authorities. In such cases, the requested authority would be under a duty to give *due consideration* to the request. We welcome views on whether the duty should apply in other circumstances and to any other bodies.

## **SAFEGUARDING ADULTS FROM ABUSE AND NEGLECT**

35. Our proposed statute would clarify the existing legal position and establish a duty to make enquiries and take appropriate action in adult protection cases. This duty would operate in conjunction with the community care assessment duty by enabling *explicitly* a formal process to be initiated in adult protection cases.
36. The introduction of a duty to investigate would be in the context of the existing powers and duties of local authorities to intervene in cases where adults are at risk of abuse and neglect. The duty would be distinct from any responsibility the police may have to conduct a criminal investigation, though a joint approach may be appropriate in some circumstances.
37. The duty to make enquires would be triggered in cases where there is an “adult at risk”. This would be defined in our statute as any person aged 18 or over who has social care needs and is at risk of *significant harm*, where *harm* could be defined as ill-treatment or the impairment of health or development, or unlawful conduct, including specifically financial abuse.
38. Our statute would also place a duty on local social services authorities to establish an adult safeguarding board. The statute would set out the functions and membership of the board; requirements to share information; and a duty to contribute to serious case reviews. The compulsory power to remove certain people to a place of safety under section 47 of the National Assistance Act 1948 would be repealed by our statute. However, the duty to protect property in section 48 of the National Assistance Act 1948 would be retained in situations where a person is admitted to hospital or provided with residential accommodation.

## **ORDINARY RESIDENCE**

39. In order to maximise consistency and clarity in our proposed statute, the concept of ordinary residence would apply to all community care services. Therefore, local authorities would be under a *duty* to provide services where a person is ordinarily resident in their area (and has assessed eligible needs) and a *power* where a person is not ordinarily resident in their area (in the case of residential accommodation this would be with the permission of the local authority in which the person is resident) or of no settled residence.
40. The ordinary residence rules will not apply to the provision of urgent residential accommodation where the person is ordinarily resident in a different local authority; community care assessments; and temporary provision of urgent community care services.
41. Our statute would also facilitate the portability of services by the introduction of: (1) an enhanced duty to co-operate when service users move areas; and (2) if these policies are implemented by the Government, a national portable needs assessment and national eligibility criteria.

## **STRATEGIC PLANNING**

42. Our proposed statute would place a duty on the local social services authorities to provide information about services available in their local area. The disabled persons register will be abolished.