

The draft Care and Support Bill

– Who is entitled to care and support?

"For far too long people's needs assessments have been driven by the service on offer or that can be provided in a particular area... such an approach fails to recognise the richness and complexity of people's lives and fails to support or promote truly person-centred care"
(Care Quality Commission)

This factsheet describes how the draft Bill provides for adults' core entitlements to care and support.

Why do entitlements matter?

Legal entitlements impose clear obligations that must be followed. Where they are not followed they provide people with the possibility of redress including through the courts if necessary. It is critical to the outcomes and experience of people who need care and support for the law to set out when people will be provided with care and support by the local authority. The law needs to be clear about who should receive care and support, and in what circumstances, to ensure that this happens fairly and consistently.

Why do we need to change the law?

At present, there are several different entitlements for different types of care and support, spread across a number of Acts of Parliament and dating back over 60 years. The law is confusing and complex.

As well as being hard to understand what an adult is entitled to in particular cases, there are many anomalies which make the current entitlements inconsistent. For example, the biggest difference is in the way that residential accommodation is treated, which has a different legal test compared to other types of care and support, and means that the entitlement is not the same.

We want to reform the law to design a more simple, modern legal framework for 21st Century care and support.

- We want to ensure that the law focuses on the needs of people. The existing law creates duties to provide particular services, and that leads to a service-led approach to assessment and support planning. We want to change this, so that the person is at the centre of the process.
- The existing law is multi-layered and very complicated. We want to clarify the position in law, so that people can better understand how the system works, and decisions about them are more transparent.
- To be fairly and consistently applied, we want to remove the many existing anomalies in the law, which deal differently with particular groups of people. We want there to be a single route for determining entitlement, which works for all groups of people in all circumstances, without artificial dividing lines between people on the basis of a particular service or where they receive it.

All of this requires some significant changes to the current legislation.

What does the draft Bill do?

The draft Bill creates a single, consistent route to establishing an entitlement to care and support for all adults. It also creates the first ever entitlement to support for carers, on a similar basis (see also *factsheet 5*).

The draft Bill is also clear about the steps which must be followed which lead to this entitlement, to help people understand the process. It follows the person's journey in the care and support system, through an assessment of their needs and a decision about whether their needs are eligible, and including a financial assessment

where necessary. After this process of assessment is finished, the determination can then be made about whether the adult is entitled to care and support.

The core entitlement in the draft Bill is for an adult's eligible needs to be met by the local authority, subject to their financial circumstances. Their "eligible" needs are those which are determined after an assessment (see *factsheet 1*). Having an entitlement "to meet needs" rather than those in the past to provide a particular service (for example, a care home), means that there is more flexibility to focus on what the person needs and what they want to achieve, and to design a package of care and support that suits them. It means that the person is not judged to need a service too soon, before a proper care and support planning process has taken place (see *factsheet 4*).

An adult will still be able to receive the same types of care and support as now. Where their needs can be best met in a care home, that is what should be arranged.

The draft Bill says clearly when an adult will be entitled to have their needs met:

- The adult must have "eligible" needs;
- The adult must be "ordinarily resident" in the local authority area (which means they are living and settled there as their home).

If the adult is going to receive a type of care and support which is provided free of charge, then there are no more requirements, and the adult is entitled to have their needs met in this way (see *factsheet 2* on charging).

If, however, the adult is going to receive one or more types of care and support for which the local authority does make a charge, then one of three conditions also needs to be satisfied. Either:

- The adult cannot afford to pay any charge for their care and support – the amount involved will be set out in regulations – this ensures people without the means to pay do not go without care; or
- The adult does not have mental capacity and has no one else to help them – this ensures people who can not arrange care themselves do not go without; or
- In any other cases, the adult asks the local authority to meet their eligible needs – this entitles anyone, regardless of their finances, to get the local authority to arrange their care and support for them. It ensures that people who are uncertain about the system or lack confidence to arrange their care do not go without. They will still need to pay for their care and support.

FURTHER INFORMATION

- Statutory guidance on eligibility: *Prioritising Need in the Context of Putting People First* (February 2010)

Some of the key existing entitlements:

- for care homes: *Section 21 NAA 1948*.
- for other types of care and support: *Section 29 NAA 1948, Section 45 HSPHA 1968, Section 2 CSDPA 1970, Schedule 20 to NHSA 2006*.