

Law Commission Consultation

We have prepared this summary to save you having to read the full consultation document. However, if you wish to read the consultation document in greater detail, and to comment on areas that we have not covered in this outline, the full summary may be accessed at: http://www.lawcom.gov.uk/current_consultations.htm

Introduce a coherent, effective and modern legal framework for adult social care (part 2)

Adult social care legislation is currently spread across 38 separate Acts of Parliament starting with the National Assistance Act 1948. Alongside these Acts, local authorities have to take into account detailed regulations and guidance. The Law Commission proposed to introduce a single statute based on the process of assessment, eligibility, care planning and service provision.

- *Do you consider that social care law needs updating and is a single statute the best option for this?*

Include a statement of principles in the statute (part 3)

The Law Commission argues that there is a case for developing statutory principles, to create a more coherent framework for all to work to. It suggests some principles to consider: that people are to have choice and control over their care; solutions should be user-focused and holistic; working towards independent (preferably home-based) living and a reduction of future need; based on dignity of care and the need to safeguard adults at risk.

- *Do you agree with the idea that statutory principles should be included in the legislation and if so what you propose them to be? Should any one principle be paramount?*

A duty to undertake a community care assessment (part 4)

The Law Commission proposes a single duty on local authorities to undertake a community care assessment, with a low threshold for qualification. An assessment would refer to an individual's needs or risk factors and would be outcome-focused. It is proposed that regulations would set out how the assessment is undertaken. Co-produced assessments would be included but there are no proposals to include 'pure' self assessments. Services could be provided without an assessment in an emergency.

- *What sort of assessment should be undertaken by Local Authorities?*

A duty to undertake a carer's assessment (part 5)

A carer's assessment should be available for all carers who provide care, where the caring relationship is not primarily a commercial one.

- *When should there be a duty to assess carers?*

A duty to determine eligible needs and to meet them (parts 6 and 7)

A mandatory national eligibility framework for services is to be introduced, which would also apply to carers. Local authorities would have a duty to provide or arrange services (including individual budgets) to those assessed as having eligible needs. In addition there would be a duty on local authorities to provide services to carers. All previous entitlements under NAA

1948 and CSDPA 1970 would be repealed. If a right to enablement is introduced it is proposed that this will be included in future statute.

→ *Should there be a national eligibility framework and should this apply to carers?*

A duty to meet needs where someone is ordinarily resident (part 8)

Local Authorities would continue to have a duty to meet needs only where the person was ordinarily resident. Carers' needs would be met by the Local Authority where the cared for person lived. There would be an enhanced duty to co-operate if someone moved areas, and a national portable needs assessment and national eligibility criteria.

→ *Should carers' and cared for people's needs be met in the same place and should their assessment and eligibility be portable?*

A short and broad list of adult social care services (part 9)

The scope of adult social care services should be defined. This list could consist of residential accommodation; assistance and facilities in the home; social work service and support and advice; centres of other facilities in the community; and social, leisure, communication, education and training activities. There would not be a definition of service users. Carers services would remain undefined.

→ *What should the scope of adult social care services be?*

A statutory duty to provide a care plan for eligible people (part 10)

Regulations would state what form and content a care plan should take and there would be a duty to provide this, including for carers.

→ *Should there be a duty to provide a care plan?*

A statutory duty on local authorities in adult protection cases (part 12)

The new statute would establish a duty to make enquiries and take appropriate action in adult protection cases. This statute should define both who this duty should be applied to and also to set out what the person is at risk from. The term *vulnerable adults* would be replaced by *adults at risk* and the threshold of *significant harm* would remain.

A further duty would be placed on local authority social service departments to set up adult safeguarding boards with requirements about their function, membership, information sharing and a duty to contribute to serious case reviews. There would also be an enhanced duty for organisations to co-operate in safeguarding adults cases.

→ *What should be the role of Local Authorities in safeguarding adults?*

The following are also proposed:

- Continuing health care, housing and services to destitute asylum seekers to remain out of scope (part 9)
- Direct payments to be extended to cover residential accommodation (part 10)
- Choice of accommodation directions and option to top-up option payment for accommodation to remain (part 10) and be extended to section 117 services (part 11)

- Secretary of State or Welsh Ministers to be able to require or authorise local authorities to charge for residential and non-residential services (part 10)
- Statute to apply to 18 year olds and over; power to assess 16 and 17 year olds (part 11)
- Community care assessment to have regard to any young carer (part 11)
- Parent carers to have right to an assessment (part 11)
- Delayed discharge provisions to remain (part 11)
- Decision to be made on whether prisons come under the statute (part 11)
- Section 117 services to be split so LAs have a duty to provide social care and PCTs have a duty to provide health care (part 11)
- General duty to co-operate with relevant organisations; Local Authorities to be able to request assistance e.g. with an assessment or safeguarding case (part 11)
- Section 47 of the National Assistance Act 1948, which enables a local authority to remove people from their home into a hospital or other place of safety, to be repealed (part 12)
- Local Authority to continue to have a duty to prevent loss or damage to property when someone is admitted to residential care or hospital (part 12)
- Disabled person's register to be abolished (part 13)
- Strategic planning not to be included in the statute (part 13)
- Duty to provide information about services in the area (part 13)

Your response can be as detailed or as brief as you wish. Please submit your thoughts on the consultation paper to Rachel, by email rachel@ripfa.org.uk. Please submit all responses by **5pm on Monday 28 June.**

Thank you for your input.