



## **Carers and legislative reform**

### **The Care Bill & The Children and Families Bill**

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### **Recent Bills / Acts**

**Health & Social Care Act 2012**

**Care and Support Bill 2012**

**Care Bill 2013**



# The present context

## Shifting limelight





## The 'politics of dependency'

Just as we have created environments based on the needs of non-disabled people, so too have we created environments based on the mythology of independent people. Caring, like disability, is not in itself a handicap: it is the socio-legal context in which it is practiced that renders it so. The principal politically engineered handicap experienced by carers is that their care is uncompensated and ... it is uncompensated because it is gendered.

## National Assistance Act 1948



### National Assistance Act 1948

#### PART I INTRODUCTORY

- 1 Supersession of existing poor law.  
The existing poor law shall cease to have effect ....



**April 2015**

**Care Bill**



A

**BILL**

TO

Make provision to reform the law relating to care and support for adults and the law relating to support for carers;

## Legislation to be repealed



- National Assistance Act 1948
- Health Services & Public Health Act 1968
- Chronically Sick and Disabled Persons Act 1970 (but only as for 'adults')
- Health & Social Services & Social Security Adjudications Act 1983
- Disabled Persons (Services, Consultation and Representation) Act 1986
- NHS & Community Care Act 1990
- Carers Acts
- Health & Social Care Act 2001 (DPs)

### Not

s117 MHA 1983 nor DFGs etc

## Statutory architecture



### Primary Statute

- Principle rights /duties

### Regulations

- Flesh out eg FACS

### Code of Practice

### Guidance



## Care Bill



- 2011 Law Commission Report
- 2012 **Draft Care & Support Bill** for consultation;
- 2013 Scrutiny Joint Select Committee 2013 (March).
- 2013 Formal **Care Bill** May / June
- 2014 Royal Assent expected – ie **Care Act 2014**
- 2015 Partial implementation
- 2016 Dilnot implemented

## Clause 1



### Well-being

- A general (target) duty
- The making explicit of the duty to promote an **individual's** well-being
  - applies when exercising 'any function under Bill
  - 'individual' includes both **'adults in need and adult carers**

### But

- Not apply to the Government (eg when setting eligibility criteria)

## Clause 1



### “Well-being”

LA must have regard to—

- (a) assumption that the ‘individual’ is best placed to judge well-being;
- (b) individual’s views, wishes and feelings;
- (c) take into account all the individual’s circumstances (and non-discriminatory in terms of stereotyping etc);
- (d) individual participating (with support if needs be) as fully as possible in decisions about them;
- (e) a balance between the individual’s well-being and that of any friends or relatives involved in their care;
- (f) the need to protect people from abuse and neglect;
- (g) any restrictions kept to the minimum necessary.

## Clause 1



### “Well-being”

- (\*) personal dignity
- (a) physical / mental health / emotional well-being;
- (b) protection from abuse and neglect;
- (c) control over day-to-day life inc nature of care provided;
- (d) participation in work, education, training or recreation;
- (e) social and economic well-being;
- (f) domestic, family and personal relationships;
- (\*) suitability of living accommodation;
- (g) the adult’s contribution to society.

## Clause 2



### Preventing needs for care and support

Duty to provide a range of preventative services that will:

- (a) contribute towards preventing or delaying the development by adults in its area of needs for care and support;
- (b) contribute towards preventing or delaying the development by carers in its area of needs for support;
- (c) reduce the needs for care and support of adults in its area;
- (d) reduce the needs for support of carers in its area.

eg

carers centres / carers breaks;

Fire brigade support / convalescent homes / carer friendly employment practices

## Clause 3



### Integration with the NHS

Duty on LA's to promote integration with health provision where it would—

- (a) promote the well-being of adults with needs & carers in its area; or
- (b) contribute to the prevention of the development of needs in adults / carers; or
- (c) improve the quality of care for adults / carers, provided

### **New clause** (4 Feb 2014 C/ee stage)

- Places **Better Care Fund** on a statutory basis (s223B NHS Act 2006)

## Integration



*Ask anyone responsible for the financial health of almost any part of the NHS what worries them most right now, and you will likely get the same answer:*

*planning for the £3.8bn integration transformation fund*

22 November 2013 Health Service Journal

## Better Care Fund

(aka Integration Transformation Fund)



**June 2013 Spending Review: pooled £3.8 billion fund for 2015–16.**

**Existing money (no 'new' money)**

- £130 million Carers' Breaks funding.
- £300 CCG reablement funding
- £350 million capital grant (inc £220m DFG)
- £1.1 billion existing transfer from health to social care.
- Further £1.9 billion from NHS future allocations and some of the costs associated with the Care Bill.

**£1 billion will be performance-related**

**Each locality to produce plan by March 2014**

- Fund will have to cover extra costs of safeguarding, carers assessments, DFGs, admin for Dilnot Taxi meter etc.

## Better Care Fund



### Criteria / Targets.

- plans to be jointly agreed;
- protection for social care services;
- 7-day working in health / social care to support hospital discharges / prevent unnecessary admissions at weekends;
- better data sharing based on the NHS number;
- joint approach to assessments and care planning;
- ensure that, where funding is used for integrated packages of care, there will be an accountable professional;
- agreement on the consequential impact of changes in the acute sector

## Better Care Fund



### Department of Health (2013) Guidance

- Conditions relating to payments between NHS bodies and local authorities – Explanatory note
- **Reminds CCGs / LAs of conditions to joint payments**
- **s76 & 256/257 NHS Act 2006**
- **Directions**
  - NHS (Conditions Relating to Payments by Local Authorities to NHS Bodies) Directions 2013
  - NHS (Conditions Relating to Payments by NHS Bodies to Local Authorities) Directions 2013

## Better Care Fund



### Conditions for NHS ↔ LA payments

Paying body must be satisfied that the payment is:

- likely to secure a more effective use of funds than if an equivalent amount was spent by the paying body
- reduced if the recipient does not provide the agreed level of services
- used in the most efficient and effective way possible
- prepare a memorandum of agreement (precedent in Directions).

For capital costs

- the amount must be determined before the project begins;
- the recipient must agree to meet any costs not covered by the payment and for so long as the project is considered necessary
- Special rules for land purchases (ie repayment on disposal);

Duty to provide 'annual voucher' etc to auditor.

## Clause 4



### Information

The provision of a service to provide adults in need / carers with information about care and support;

Includes:

- how the LA care system operates;
- the choice of types of care and support, and the choice of providers in the local authority's area,
- how to access the care and support that is available;
- how to access independent financial advice;
- how to raise concerns about safety /well-being of an adult who has needs for care and support

## Clause 5



### Duty to promote effective & efficient markets, to ensure a variety of :

- providers;
- variety of services; and
- variety of high quality services.
  - Does this require any public services?
  - Issue of 'actual cost' vs 'usual cost'
  - Need to understand demand / self-funding supply

## Cooperation



### Clause 6 ~ general duty to cooperate

### Clause 7 ~ specific duty to cooperate

Where LA requests co-operation of a 'relevant partner' (or vice versa) in relation to an 'individual with needs' or a carer, a carer of a child or a young carer, then they must comply with the request unless it would:

- (a) be incompatible with its duties, or
- (b) have an adverse effect on the exercise of its functions.

Duty to give reasons if refuses

Mirrors existing s27 Children Act 1989

May help with carers of adults receiving NHS CC funding

## Clause 8



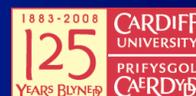
### Range of services for carers / dependent people

- a) accommodation in a care home or in premises of some other type;
- b) care and support at home or in the community;
- c) counselling, advocacy and other types of social work;
- d) goods and facilities;
- e) information and advice.

### Problems;

- Silent on 'adaptations' 'travel'; or 'holidays'?
- Charging for advocacy, social work, information??
- Definition of social work???

## Clause 78



### Delegation

Local authorities will be able to delegate all of their functions under the Act – with few exceptions (including safeguarding s42 – s47);

- (6) Act / omissions by delegated body to be treated as done / omitted to be done by the local authority.

## Delegation



Adult social work practice pilots (SCIE 2011 – 14)

- **Birmingham** (Activ8/Cre8) People with physical disabilities (abandoned Sept 2013)
- **Lambeth** (TOPAZ) Early intervention people with lower level need.
- **North East Lincolnshire** (NEL) All adults (except mental health).
- **Shropshire** (People2People) Assessing all adults (except MH).
- **Stoke-on-Trent** (JMS Homecare) People with long-term neurological conditions
- **Surrey** (FirstPoint) adults with sensory impairments
- **Suffolk** (Sensing Change) adults with sensory impairments

[www.scie.org.uk/workforce/socialworkpractice/pilots.asp](http://www.scie.org.uk/workforce/socialworkpractice/pilots.asp)

## Clause 14



### Charging

No longer the requirement that it be 'reasonably practicable';  
Details to be in regulations

- includes charging 'self-funders' 'for putting in place the arrangements for meeting those needs'.
- Carers can be charged for 'carers services' (under clause 20);
- Carers cannot be charged for services provided to an adult needing care – even if these are provided to give the carer a break

## Clause 9



### Assessment of adult in need of care

#### Specific duty

- Mirrors existing s47 NHS&CC 1990 duty
- Duty to consult carer 'so far as is feasible'
- draft Care & Support (Eligibility Criteria) Regulations
  - Clarify that the decision about whether a person has eligible needs is made on the basis that it does not take into account any support that is being provided by a carer. Instead, where a person receives support from a carer, this will be taken into account during the development of the care and support plan.

## Clauses 12 & 13



### Fleshing out the detail

#### Clause 12

- Assessments / care & support plans in regulations
- Subject to statutory and practice guidance etc.
- Select C'ee recommend Code of Practice (clause 50)

#### Clause 13

- Eligibility criteria (FACS) to be put in regulations;

### Draft eligibility criteria

1. An adult's needs meet the eligibility criteria if those needs are due to a physical or mental impairment or illness and the effect of such needs is that the adult —

- is unable to carry out one or more basic personal care activities and as a consequence there is a significant risk to any aspect of the adult's well-being;
- is unable to carry out one or more basic household activities and as a consequence there is a significant risk to any aspect of the adult's well-being;
- is unable to fully carry out any caring responsibilities the adult has for a child
- needs support to maintain family or other personal relationships, and a failure to sustain such relationships has or is likely to have a significant impact on the adult's well-being;
- is unable to access and engage in work, training, education or volunteering and as a consequence there is a significant risk to any aspect of the adult's well-being;
- is unable to access necessary facilities or services in the local community and as a consequence there is a significant risk to any aspect of the adult's well-being.

### Draft eligibility criteria

2. ... an adult is to be regarded as being unable to carry out a task if the adult —

- is unable to complete the task without assistance;
- is able to complete the task without assistance but doing so causes the adult significant pain, distress or anxiety;
- is able to complete the task without assistance but doing so endangers or is likely to endanger the health or safety of the adult, or of others; or
- is able to complete the task without assistance but takes significantly longer than would normally be expected.

## Clause 10



### Carers' assessments

- Specific duty
- Largely codifies the existing three Carers Acts – but:
- Drops:
  - the 'regular & substantial' requirement
  - the 'request'
- Only applies to adult carers

## Clause 10



### Carers' assessments must include:

- whether the carer able / willing
- the impact on the carers 'well-being'
- the outcomes the carer wishes in day-to-day life,
- the carer's own capabilities and any support available from friends, family or others
- whether the carer works or wishes to (and / or) to participate in education, training or recreation

### NB

- DH (2013) Supporting working carers: the benefits to families, business and the economy
- Carer & Working Time Directive: Complaint no 12 007 311 [Shropshire CC 11 April 2013 ].

### **Draft eligibility criteria ~ carers (draft regs 3 & 4)**

#### **A carer's needs meet the eligibility criteria if ... the carer ...**

- is unable or unwilling to provide some of the necessary care ...;
- **as a consequence of providing care,**
  - is unable to carry out ... basic household activities in [their home];
  - physical or mental health ... at risk of significantly deteriorating;
  - is likely to be unable fully to
    - (i) care for any child for whom the carer is responsible, or
    - (ii) provide care to other persons for whom the carer provides care, or
    - (iii) maintain other family or personal relationships;
  - is likely to be unable to obtain or remain in employment, education or training;
  - is unable to access necessary facilities or services in the local community; or
  - is unable to participate in recreational activities.

## **Clause 18**



### **Duty to provide services for the disabled person**

Includes self funders who request help;

- ADASS believes an extra 180,000 to 230,000 people being assessed and an extra 440,000 to 530,000 reviews in 2016-17
- Likely to distort care market
- May be a charge for this service

## Clause 15-16



### Cap on Care Costs

#### Dilnot (2016)

- In 2012 - 24,500 people sold homes to cover care costs;
- Recommended cap at £35,000 (max £50,000)
- Cap will be £72,000
- Board & accommodation assumed to cost £12,000 pa (2017 prices);
- **'Taxi meter'**

## Cap on Care Costs



#### Dilnot (2016)

Vast bureaucracy /increase in assessments / care plans;  
RAS essential?

#### Capital changes

£118,000 upper limit if a house taken into account;

£27,000 upper limit if no house taken into account;

£17,000 lower limit in residential care;

- Interest £1 per week per £250 above lower limit
  - Thus £117,000 capital deemed to generate £20,000 pa
- Deferred payments (clauses 34-36) £23,250 cap proposed  
Care account to be retained for 99 years (clause 29)

## Clause 20



### Specific duty to provide services for carers

- c20 “provides the equivalent right for carers [to that of disabled people] ... is their first ever legal entitlement to public support, putting them on the same footing as the people for whom they care”.
- Includes self funder carers who request help;
- Duty rests with the LA responsible for disabled person;

## Clause 20



### Specific duty to provide services for carers

- (7) A local authority may meet some or all of a carer’s needs for support in a way which involves the provision of care and support to the adult needing care, even if the authority would not be required to meet the adult’s needs for care and support under section 18.
- (8) Where a local authority is required by this section to meet some or all of a carer’s needs for support but it does not prove feasible for it to do so by providing care and support to the adult needing care, it must, so far as it is feasible to do so, identify some other way in which to do so.

## Clause 22



### NHS Continuing Care

Needs re-wording:

*Couglan* – prohibits LA providing nursing care that the NHS has a ‘power or duty’ to provide;

- Clause 21 – only prohibits LA providing nursing care that the NHS has a ‘duty’ to provide;

## Clause 22



Government opposed an amendment to the Bill to use the same wording as s21(8) NAA 1948.

Minister stated:

- The provisions in clause 22 are not intended to change the current boundary—let me place that clearly on the record—and we do not believe that they will have that result. The limits on the responsibility by reference, as now, to what should be provided by the NHS remain the same’.

Public Bill Committee Report 16 January 2014 (page 205/208)

## Clauses 25 & 26



### Clause 25 ~ Care and support plans

Similar to current – but makes PBs mandatory for adults in need and carers

### Clause 26

Amount of a PB is

- The amount the local authority assesses as the cost of meeting [the adults] needs
- Silent on ‘reasonable’ or ‘sufficient’

## Care and support plan



### Clause 25 .. In preparing a C&S plan the LA must involve:

- (3) the adult for whom it is being prepared,
  - any carer that the adult has, and
  - ....
  - any person who appears to the authority to be interested in the adult’s welfare.
- (4) the carer for whom it is being prepared,
  - the adult needing care, if the carer asks the authority to do so, and
  - any other person whom the carer asks ... .

## Clause 28



### **New statutory appeals process**

Regulations to create a new appeals system

1. Flexible local proportionate system avoiding unnecessary bureaucracy;
2. Include an element of independence from the local authority;
3. Will seek to avoid duplication with exiting arrangements for complaints and redress

Government will consult further and issue regulations and guidance 'later this year' (ie 2014).

Introduced by Government (Norman Lamb) 4 Feb 2014

## Clause 31-33



### **Direct payments**

Little change

Expected to extend to residential care

## Clause 37-38



### Continuity of care (portability)

- If 1<sup>st</sup> authority notifies 2<sup>nd</sup> authority that person is moving;
- When move happens:
- If 2<sup>nd</sup> authority not assessed / or put in place care plan for adult in need and/or carer:
- Then 2<sup>nd</sup> authority must meet the same needs as 1<sup>st</sup> authority
- Until it has assessed / produced care plan

If 2<sup>nd</sup> authority's assessment of adult / carer differs from 1<sup>st</sup> authority's it must provide written explanation

## Clauses 42 - 47



### Safeguarding

- Duty to make enquiries if adult with care & support needs:
- Is experiencing, or is at risk of abuse of neglect; and
- Is unable to protect him/herself against the abuse / neglect

### Duty on every LA to have a Safeguarding Boards

- No power of entry / removal;
- Abolition of s47 NAA 1948 power;
- Retains power to protect property

## Clause 48



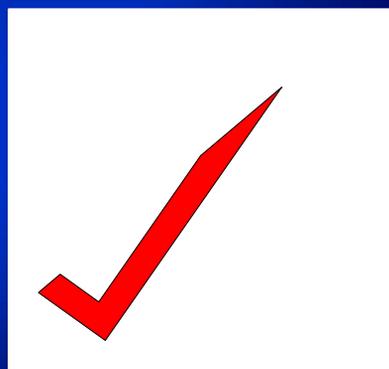
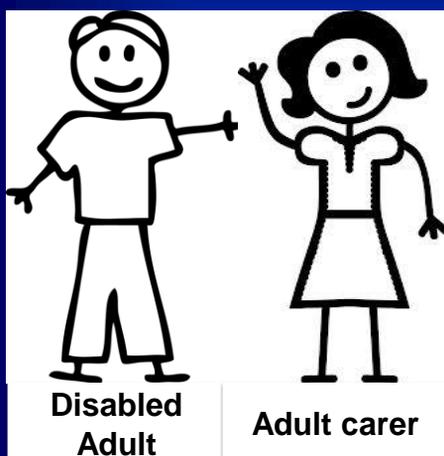
### Human Rights Act provision:

At present s145 Health and Social Care Act 2008 provides that a care home is a public authority if the resident is funded by local authority under s21 NAA 1948;

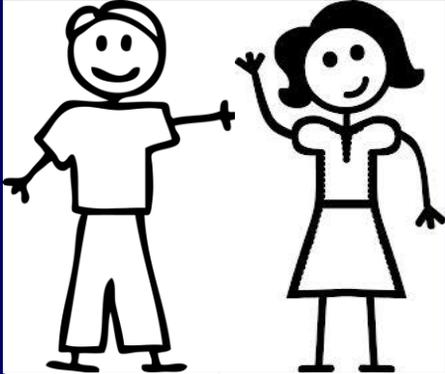
The Care Bill was silent on this;

- On 16<sup>th</sup> October 2013 an amendment to insert an new clause (48) to close this gap so that all regulated providers of social care are subject to the Human Rights Act 1998 was approved by the Lords –  
See Lord Low of Dalston at column 544
- On 21<sup>st</sup> January 2014 the amendment reversed in HC Committee
- On 22<sup>nd</sup> January 2014 Joint Committee on Human Rights proposed a compromise clause

## Care Bill



**Care Bill**

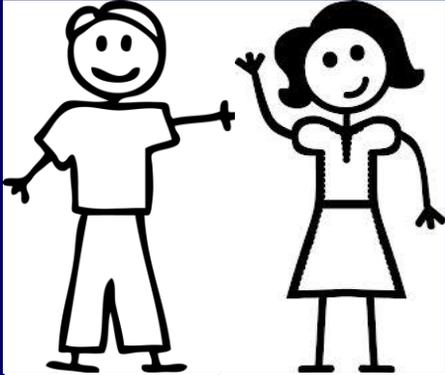


Disabled Child      Adult carer



Except in transition

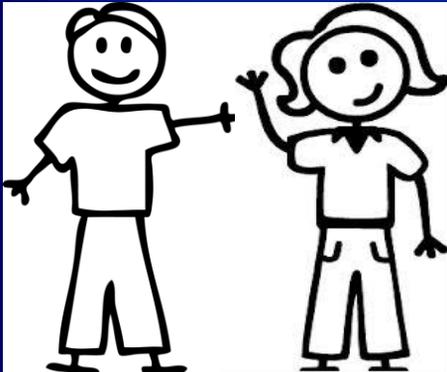
**C & F Bill**



Disabled Child      Adult carer



**Care Bill**

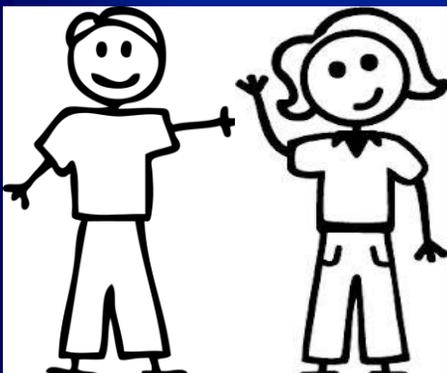


Disabled Adult      Young carer



Except in transition

**C & F Bill**



Disabled Adult      Young carer



**C & F Bill**

1883-2008  
**125**  
YEARS BLYNED

CARDIFF UNIVERSITY  
PRIFYSGOL CAERDYDD

Disabled Child    Adult carer    Young care

**C & F Bill**

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Disabled Child

Adult carer

Young care

## Clauses 59-60



### Disabled children in transition

LA – if:

1. requested
  2. considers it 'likely' that child will have care & support needs on becoming 18
  3. considers it to be of substantial benefit to the child;
- Must assess (subject to consent of child / BI assessment)

LA must give reasons if it refuses to assess

- Treated as a distinct 'adult assessment' – ie a 'needs assessment under s60'

## Clause 64/65



### Young carer in transition

LA – if:

1. requested
  2. considers it 'likely' that YC will have support needs on becoming 18
  3. considers it to be of substantial benefit to the child;
- Must assess (subject to consent of YC or a BI assessment)

## Children & Families Bill



C&F Bill to be amended (new s17ZA CA 1989) to address the needs of Young Carers:

s17ZA (3) A YC is “a person under 18 who provides or intends to provide care for another person” (but excluding paid / formal volunteers)

s17ZA (12) LAs must take reasonable steps to identify the extent to which there are young carers within their area who have needs for support.

## Children & Families Bill



s17ZA (1) Duty to assess YC ‘on the appearance of need’;

Very detailed provisions in s17ZA, s17ZB & s17ZC

Power to issue regulations

Expected that the scheme will be that LAs will have to either:

- provide support under s17 to YC; or
- demonstrate that the ‘cared for person’s’ assessment has provided adequate care and support to prevent inappropriate care being required from the YC.

Provisions to come into force in April 2015 to coincide with Care Bill implementation .

## Clause 67 Care Bill



### Continuity of services

- Complex set of amendments that mirror the C&F Bill provision;
- Amend (1) CA 1989 adding a s17ZB and s17ZC and (2) Chronically Sick and Disabled Persons Act 1970, [new s2A].
- Essentially if assessments of disabled children / young carers do take place before 18 then these will either:
  - continue to apply until reviewed [treated as a 'needs assessment under s60 Care Act 2014']; or
  - if the LA do not treat it as a continuing obligation – then they must reassess

## Clause 61



### Parent carer of a disabled child in transition

LA – if:

1. requested
2. child is receiving services
3. considers it 'likely' that carer will have support needs on the child becoming 18
3. considers it to be of substantial benefit to the carer;

Must assess

LA must give reasons if it refuses to assess

## Clause 62



### Parent carer of a disabled child in transition

(5) Having carried out a child's carer's assessment, a local authority must give the carer—

(a) an indication as to whether any of the needs for support which it thinks the carer is likely to have after the child becomes 18 are likely to meet the eligibility criteria ... and

(b) advice and information about—

- (i) what can be done to meet or reduce the needs which it thinks the carer is likely to have after the child becomes 18;
- (ii) what can be done to prevent or delay the development by the carer of needs for support in the future.

## Parent carers



Unlike Young Carers – neither the Care Bill nor the Children and Families Bill properly addressed the needs of Parent Carers

### Under-Secretary of State for Schools (Lord Nash) (Con)

- ... parent carers are in a very different position from adults caring for adults or young carers. We should be wary of simply replicating arrangements that are in place for those other carers without understanding the interrelationship with other legislation and the potential for unintended consequences.

Hansard House of Lords 20 Nov 2013 : Column GC478

## Parent carers C & F Bill



### New clause 90

Amends CA 1989 inserts new section **s17ZD CA 1989**

### Parent carers' needs assessments

- If it appears to a LA that a PC may have needs for support (or is requested by a PC) then it must assess whether that PC has needs for support and, if so, what those needs are.
- A PC assessment must include an assessment of whether it is appropriate for the parent carer to provide, or continue to provide, care for the disabled child, in the light of the PC's needs for support, other needs and wishes.

## Parent carers C & F Bill



### s17ZD Children Act A 1989

The PC assessment must have regard to.

- the well-being of the parent carer, and
- the need to safeguard / promote welfare of DC cared for and any other child for whom the PC has parental responsibility.
- Well-being has the same meaning as s1 Care Act 2014.

The PC assessment, must involve:

- the parent carer,
- any child for whom the parent carer has parental responsibility, and
- any person who the parent carer requests the authority to involve.

## Parent carers C & F Bill



### s17ZD Children Act A 1989

The LA must give a written record of the assessment to.

- the parent carer, and
- any person to whom the parent carer requests the authority to give a copy.

A local authority in England must take reasonable steps to identify the extent to which there are parent carers within their area who have needs for support.

## Parent carers C & F Bill



### s17ZE Parent carers' needs assessments: supplementary

- power to make regulations concerning PC assessments

### 17ZF Consideration of parent carers. needs assessments

Having undertaken a PC assessment the LA must decide.

- whether the PC has needs for support in relation to the care which s/he provides or intends to provide;
- whether the disabled child cared for has needs for support; and if so
- whether those needs could be satisfied (wholly or partly) by services s17 Children Act 1989; and
- and if so, whether to provide such services for the PC or the DC

## Clause 68



### Independent advocacy

- Duty to arrange independent advocate if LA considers an individual would experience 'substantial difficulty' in participating in (amongst other things) their assessment (inc carer assessment) and / or the preparation of their care and support plan.
- Not apply if LA is satisfied that there is some other person who is an appropriate representative (provided that person is not engaged in providing care for the individual in a professional capacity or for remuneration).

Government amendment (Lord Howe 3<sup>rd</sup> October 2013).

## Clause 74



### s117 Mental Health Act 1983

- Currently "after-care services" are not defined
- A new subsection (5) inserted to limit services to those:
  - (a) 'arising from or related to the mental disorder' and
  - (b) reducing the risk of a deterioration of the person's mental condition (ie that may require re-admission)
- Ordinary residence clarified & dispute procedure created