



## BRIEFING PAPER

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# Carers' rights and benefits (England)

By Alex Bate

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## Summary

This short briefing paper sets out the rights and benefits afforded to carers in law, covering employment rights, protection from discrimination and social security benefits.

It also provides information on carers' rights to an assessment of need from their local authority, and what needs can be covered by a carer's assessment, including respite breaks, work, education, training and leisure activities.

Significant changes to carers' assessments, and to the rights of young carers and parent carers of disabled children, came into force on 1 April 2015. This is as a result of provisions in the *Care Act 2014* and the *Children and Families Act 2014*, details of which are also provided.

As care is a devolved matter, this briefing paper refers to England unless otherwise specified.

An annual Carers' Week is organised jointly by a number of organisations, including Age UK, Carers UK and Carers Trust, to highlight challenges that many carers continue to face. More information is available at [www.carersweek.org](http://www.carersweek.org).

# 1. Carers' legislation

The 2011 census showed that 5.4 million people in England (10.2% of the population) were providing some level of unpaid care, with 1.3 million (2.4%) providing 50 or more hours of unpaid care per week.<sup>1</sup>

Carers' legislation is a relatively recent phenomenon. The needs of carers, independent of the needs of those they are caring for, have been recognised and subsequently strengthened in law by three Private Members' Bills that became Acts of Parliament: The *Carers (Recognition and Services) Act 1995*, the *Carers and Disabled Children Act 2000*, and the *Carers (Equal Opportunities) Act 2004*.

These have recently been further strengthened by the *Care Act 2014*, which introduces a legal duty for local authorities to meet carers' needs, according to nationally set criteria.

Further details on local authority assessments, the rights to services and benefits, and the legal protection at work and from discrimination for carers are set out in the following sections.

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<sup>1</sup> Office for National Statistics, [2011 Census: Provision of unpaid care, local authorities in England and Wales \(Table reference QS301EW\)](#), 30 January 2013

## 2. Local authority assessments

Any carer who may have needs for support, whether currently or in the future, is entitled to a carer's assessment by their local authority. Carers assessments were introduced by the *Carers (Recognition and Services) Act 1995* and have been since been strengthened by subsequent legislation, most recently the *Care Act 2014*.

The assessment must look at any assistance that the carer requires to continue to provide care, and a carer remains entitled to an assessment even if the care recipient refuses an assessment for themselves. It must also look at the carer's needs independent of the needs of the care recipient, including care breaks, and, since 2005, a carer's outside interests.

As the *Carers (Equal Opportunities) Bill's* sponsor, Dr Hywel Francis noted, with regards to outside interests:

The Bill's provisions are relatively modest. They will improve information for carers about their rights and will enhance the choices open to them through work, education and leisure. For individuals, the personal impact of the Bill could be huge. It aims to change the culture to acknowledge that carers have a right to information so that they can make choices about their lives, and a right to "have a life", as one carer put it, beyond their caring responsibilities.<sup>2</sup>

There previously was no duty on local authorities to meet a carer's assessed needs, only for them to be taken into consideration. Since the *Care Act 2014* came into force, however, any carer who meets national eligibility criteria must have services provided to meet their needs (see section 2.1 below). Local authorities will also retain the power to provide support to those who have been assessed, even if they do not have a statutory duty to under the eligibility criteria.

Where a local authority provides services following a carer's assessment, the carer is entitled to request a direct payment to give them control over how these services are provided.

Legislation on carer's assessments states that someone providing care as an employee under any form of contract or as a volunteer for a voluntary organisation is not entitled to an assessment.

### 2.1 Changes in force from 1 April 2015 under the Care Act 2014

Section 10 of the Act gives the right to an assessment to any carer who may have needs for support now or in future. This changes the previous right to assessment, which was limited only to those who provided a "substantial amount of care on a regular basis"<sup>3</sup>

Prior to the Act coming into force, carers also needed to request an assessment from the local authority in order to have their needs

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<sup>2</sup> [HC Deb 14 May 2004 c573](#)

<sup>3</sup> [Carers \(Recognition and Services\) Act 1995](#) as amended

considered. The *Care Act 2014* instead puts the responsibility on the local authority to identify those in need of an assessment and carry this out, although the carer remains able to refuse an assessment.

In a significant change to previous carers' legislation, section 20 of the *Care Act 2014* introduces a legal duty to meet carers' needs should these fall within national eligibility criteria. These are set out in the [Care and Support \(Eligibility Criteria\) Regulations 2015, SI 2015/313](#).

The then Care and Support Minister, Norman Lamb, described this change as an "historic step":

In an historic step forward we're giving carers new rights to support that put them on the same footing as the people they care for. In the current system, local authorities weren't required to provide support to carers. We are changing that. All carers will be entitled to an assessment. If a carer is eligible for support for particular needs, they will have a legal right to receive support for those needs, just like the people they care for.<sup>4</sup>

In response to a written question from Iain McKenzie, Mr Lamb set out the estimated cost of this change:

We have legislated to give carers new rights, which mean that for the first time, they will have a legal right to receive support of their eligible needs. To meet the cost of these new rights, we are providing over £100 million in 2015-16 to local authorities, with consequent increases rising to around £300 million in 2019-20 and subsequent years.<sup>5</sup>

## 2.2 Respite breaks

The stress and physical demands of care have been argued to have a detrimental effect on carer's health. Iain McKenzie raised this issue in a House of Commons debate on 20 June 2013, and highlighted the importance of respite breaks:

Carers' health can also suffer. People providing high levels of care are twice as likely to fall sick. The fact that 625,000 people suffered mental and physical ill health last year as a direct consequence of the stress and physical demands of caring illustrates the true impact on carers' health. Research by Carers Scotland found that almost half of carers with health problems reported that their conditions began after they started caring. Of those whose condition pre-dated their caring role, a quarter said that their condition had worsened since becoming a carer.

Caring clearly takes a huge toll on carers' physical and mental health, and those not receiving respite are far more likely to suffer from mental health problems. The impact is often exacerbated by carers being unable to find time for medical check-ups or treatment for themselves, with two in five carers saying that they are forced to put off treatment because of their caring responsibilities. Research by Carers UK includes cases of carers discharging themselves from hospital because of an absence of alternative care.<sup>6</sup>

<sup>4</sup> Department of Health press release, [Care Bill becomes Care Act 2014](#), 15 May 2014

<sup>5</sup> [WPO 217261 \[Carers\], 9 December 2014](#)

<sup>6</sup> [HC Deb 20 June 2013 cc1097-8](#)

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Lord Rix, the then chairman of the learning disability charity MENCAP, attempted in 1996 to introduce a legal right to respite care, and highlighted the absence of this provision from the 1995 Act.<sup>7</sup> His *Disabled Persons and Carers (Short-term Breaks) Bill* however did not make it on to the statute book.

The power for local authorities to offer respite breaks through assessments was introduced in the [Carers and Disabled Children Act 2000](#). This allowed the provision of vouchers for temporary care through community care services, so giving the carer a short term break from their caring responsibilities.

The right to care breaks have been strengthened with the introduction of the *Care Act 2014*, as set out above, as the eligibility criteria for carer's support include an inability to achieve the following:

- developing and maintaining family or other personal relationships;
- engaging in work, training, education or volunteering;
- making use of necessary facilities or services in the local community, including recreational facilities or services;
- engaging in recreational activities.<sup>8</sup>

On top of the money made available to local authorities to meet their statutory duties with regards to care, additional funds for carers' breaks are made available through a joint fund between NHS England and local authorities. In its current incarnation, the Better Care Fund, this joint fund has set aside £130m for carers' breaks in 2015-16.<sup>9</sup>

Carers UK has raised concerns that as this allocation in the Better Care Fund is not ring-fenced, the money could end up being used elsewhere in local authority budgets.<sup>10</sup> The Carers Trust has criticised previous joint funds earmarked for carers' breaks where the money was not ring-fenced, as this led to the money allegedly being spent elsewhere in the health service.<sup>11</sup>

### 2.3 Young carers

Under the *Children Act 1989* local authorities have a duty "to safeguard and promote the welfare of children within their area who are in need".<sup>12</sup> Prior to 1 April 2015 however (when the relevant sections of the *Children and Families Act 2014* came into force), there had been no legal provisions in force specifically for young carers. The *Carers and Disabled Children Act 2000* defined a carer as someone over 16.

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<sup>7</sup> [HL Deb 17 April 1996 c751-782](#)

<sup>8</sup> [Care and Support \(Eligibility Criteria\) Regulations 2015, SI 313/2015, para 3\(2\)\(b\)\(v-viii\)](#)

<sup>9</sup> [WPO 217261 \[Carers\], 9 December 2014](#)

<sup>10</sup> Carers UK, [Carers UK responds to the publication of Guidance on Care Funding](#), 20 December 2013

<sup>11</sup> Carers Trust press release, [The Princess Royal Trust for Carers' response to the Government announcement of their vision for adult social care, including £400m in new funding for carers breaks](#), 16 November 2010

<sup>12</sup> [Children Act 1989](#) as amended, section 17



Section 96 of the *Children and Families Act 2014* amended the *Children Act 1989* to give young carers the same right to an assessment as adult carers, including the appropriateness of the child providing care in light of their own needs. This was articulated in a written statement on the *Children and Families Bill* by the then Secretary of State for Education, Michael Gove:

It is clear therefore that we need to do more to support young carers. With the Care Bill also under consideration by Parliament, this is an ideal opportunity to ensure that young carers get equal consideration and protection. That is not to say that they should be treated the same as adult carers. We are committed to ensuring that young people are protected from excessive or inappropriate caring responsibilities. The best way to achieve that is to ensure that the person being cared for, whether that is an adult or a child, is assessed and has all their eligible needs met first. To do this effectively requires local services working together across the statutory and voluntary sectors to consider the whole family's needs.<sup>13</sup>

Unlike carers assessments provided for adult carers, there is no national eligibility criteria for provision of services, and local authorities need only to consider the assessment in deciding whether to provide support.

A 2013 Children's Society report, [Hidden from View](#), argued that the Census figures of 166,363 young carers in England was likely too low, and missed many hidden from official figures for various reasons.

To counter what it acknowledges as a lack of reliable information, the Government has commissioned a research project into the lives and numbers of young carers in England, the research for which will be completed by 31 March 2016.<sup>14</sup>

## 2.4 Parent carers

Under section 97 of the *Children and Families Act 2014*, any parent carer of a disabled child who may have needs for support is now entitled to a local authority assessment. As with young carers, the local authority must only consider whether to provide any services the parent carer is assessed to need.

The [Breaks for Carers of Disabled Children Regulations, SI 2011/707](#) state that a local authority must, as far as is reasonably practical, provide a range of services to assist parent carers to provide care.

The local authority must also produce a "short breaks services statement" setting out these services and their eligibility criteria for accessing them. [Government guidance](#) states that services can be provided to families without an assessment, and that, based on legal precedent, eligibility criteria cannot be applied mechanistically without a consideration of a family's needs.

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<sup>13</sup> [HC Deb 8 October 2013 cc11WS-12WS](#)

<sup>14</sup> [WPQ 223375 \[Carers: Young People\], 10 February 2015](#)



### 3. Employment and discrimination

Carers for adults have had the right to request flexible working from their employers since the introduction of the *Work and Families Act 2006*. The 2010 Government extended this right beyond carers to cover all employees as part of the *Children and Families Act 2014*.<sup>15</sup> Employers are only able to refuse a flexible working request on limited grounds identified by statute.<sup>16</sup>

In addition, employees have the right to reasonable time off if a dependant is ill, injured or their care arrangements are disrupted. A dependant, as well as being a spouse, civil partner, parent or child, can also be a person living in the same house as the employee (although not an employee, tenant, lodger or boarder).<sup>17</sup>

As set out in section 2, a local authority's carer's assessment must also consider a carer's desire or intention to work as part of their needs.

Carers of disabled and elderly people are also protected from discrimination at work. The *Equality Act 2010* brought in provisions to prevent "discrimination by association" on the basis of age or disability.

This prevents carers being treated unfavourably at work, or not being offered a job, because of their caring role, as well as protection from harassment. The Act also prevents victimisation of carers, and provides protection when buying goods and using services.<sup>18</sup>

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<sup>15</sup> [Children and Families Act 2014](#), part 9

<sup>16</sup> For more information see House of Commons Library Standard Note SN01086, [Flexible working](#)

<sup>17</sup> [Employment Rights Act 1996](#) as amended, section 57A

<sup>18</sup> Government Equalities Office, [Equality Act 2010: What do I need to know as a carer?](#), 2010

## 4. Carers' benefits

### 4.1 Rates of carers' benefits

Cash benefits for carers consist of:

- **Carer's Allowance** (formerly Invalid Care Allowance), currently worth £62.10 a week. It cannot however be paid in addition to the State Pension.<sup>19</sup>
- The **Carer Premium/Addition** payable with means-tested benefits such as Income Support, Housing Benefit and Council Tax Benefit. It is payable to those who satisfy the conditions for Carer's Allowance, and is currently worth up to £34.60 per week.

Although Carer's Allowance is to remain outside of Universal Credit, carers of working age who receive means-tested benefits will be affected by its introduction. Universal Credit will however include additions for people with caring responsibilities, which mirrors the current Carer Premium.

People with "regular and substantial caring responsibilities" will not be required to undertake work-related activities to receive Universal Credit.<sup>20</sup>

More information on Carer's Allowance, including eligibility criteria and interaction with other benefits, can be found in the House of Commons Library briefing paper, [Carer's Allowance](#).<sup>21</sup>

### 4.2 Take-up of carers' benefits

Research from Carers UK has calculated that of the estimated 1,045,000 eligible carers in the UK, 366,000 (35%) are not claiming the Carer's Allowance to which they are entitled. The research estimates this is leaving £1.13bn per year unclaimed.<sup>22</sup>

The [Gov.uk website](#) allows carers to apply online for Carer's Allowance.

Carers providing care for at least 20 hours per week may also be eligible for Carer's Credit, which is a National Insurance credit that helps build entitlement to the State Pension. It is not affected by a carer's income, savings or investments.

### 4.3 Changes to carer's benefits eligibility

In order to claim carer's benefits, the recipient must meet certain criteria including caring for somebody in receipt of a disability benefit. This includes certain rates of Disability Living Allowance (DLA), which is being replaced by the Personal Independence Payment (PIP).

The Government estimates 600,000 fewer people will receive PIP than would have got DLA, which may have a knock-on effect for receipt of

<sup>19</sup> For more information see House of Commons Library Standard Note SN06349, [Carer's Allowance and the Retirement Pension](#)

<sup>20</sup> [Welfare Reform Act 2012](#), section 19(2)

<sup>21</sup> House of Commons Library, [Carers Allowance](#), SN00846, last updated 8 May 2015

<sup>22</sup> Carers UK, [Estimates on the number of carers missing out on Carer's Allowance](#), 28 November 2013

carers' benefits. The National Audit Office has criticised delays and backlogs in processing PIP applications, which is also affecting carers dependent on an assessment to determine their eligibility for carers' benefits.<sup>23</sup>

## 4.4 Under-occupation deduction from Housing Benefit

Since 1 April 2013, working-age social tenants in receipt of Housing Benefit have experienced a reduction in their benefit entitlement if they live in housing that is deemed to be too large for their needs.<sup>24</sup>

Non-resident carers however are entitled to a bedroom in social housing without incurring the under-occupation deduction from Housing Benefit (commonly referred to as the "bedroom tax" or the "spare room subsidy"). This entitlement is dependent upon meeting what is known as the "overnight care condition":

A renter satisfies the overnight care condition if—

(a) they are in receipt of—

(i) the care component of disability living allowance at the middle or highest rate;

(ii) attendance allowance; or

(iii) the daily living component of personal independence payment;

(b) one or more persons who do not live in the renter's accommodation are engaged to provide overnight care for the renter and to stay overnight in the accommodation on a regular basis; and

(c) overnight care is provided under arrangements entered into for that purpose.<sup>25</sup>

Should this condition be met, a renter is entitled to one additional bedroom as part of the calculation of their Housing Benefit entitlement. The overnight care condition does not extend to all carers, as highlighted in November 2013 in response to a written parliamentary question by the then Minister for Employment Esther McVey:

**Barbara Keeley:** To ask the Secretary of State for Work and Pensions how many households affected by the under-occupancy penalty include a carer. [176201]

**Esther McVey:** We estimate that around 60,000 households affected by the removal of the spare room subsidy policy are in receipt of carer's allowance or have an underlying entitlement to carer's allowance.<sup>26</sup>

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<sup>23</sup> House of Commons Library, [Introduction of Personal Independence Payment – Commons Library Standard Note](#), 20 November 2014

<sup>24</sup> For more information see House of Commons Library Standard Note SN06272, [Under-occupation of social housing: Housing Benefit entitlement](#)

<sup>25</sup> [The Housing Benefit and Universal Credit \(Size Criteria\) \(Miscellaneous Amendments\) Regulations 2013, SI 2013/2828](#)

<sup>26</sup> [HC Deb 21 November 2013 c1021W](#)

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