

The 'grandparent' problem

The Government's 11th hour amendments to the Children and Families Act 2014 appeared to have resolved the problems caused by the failure in the Care Act 2014 to address the needs those caring for disabled children. Unfortunately on analysis this has not been fully effective. The amendments secure the position of parent carers¹ - but adults who care for a disabled child – but who do not have parental responsibility² for that child have no rights to a carer's assessment or support under either of the 2014 Acts. A grandparent providing care for a disabled child would come into this category – but so too would some unmarried father's, some step parents, as well as all adult siblings, relatives, friends providing care.

The problem caused by the definition of a parent carer as one who has parental responsibility' for the child would appear to have been unforeseen, and one that requires urgent attention. No rational argument has been advanced as to why such carers should be treated less favourably than those with parental responsibility. Indeed the Care Act guidance highlights the importance of support for people such as grandparents who are providing care³ - but of course this provision (in the Care Act) is predicated on them also caring for an adult.

The problem is all the more acute given that the legal protection for such carers under the pre-Care Act 2014 legislation⁴ is scheduled to be repealed when the Care Act comes into force.

There are at least two options that can address this problem:

1. A short term option⁵ would be that the Government does not repeal the relevant sections of the Carers (Recognition and Services) Act 1995 that provide for the assessment of (non-parental) carers of disabled children – namely section 1(2) and the consequential provisions to that Act (ie sub sections 1(2A) - 1(7) inclusive and sections 3, 4 and 5). It is still not certain what legislation the government does intend to repeal. It has generally been assumed that the Government intends to repeal all the Carers' Acts, although the Consultation document on this issue referred to an intention to repeal 'in whole or in part'⁶ - which might

¹ Children & Families Act 2014, section 97 which amends the Children Act 1989, inserting section 17ZD – subsection (2) of which defines a parent carer as an 'adult who provides or intends to provide care for a disabled child for whom the person has parental responsibility' Children Act 1989, section 17ZD(2).

² Parental responsibility (PR) is a legal status governed by the Children Act 1989 section 3(1). All mothers and most fathers have legal PR. For an overview of the law concerning PR see Manjit Gheera *Parental responsibility* House of Commons Library Briefing Note 8 September 2014 at www.parliament.uk/briefing-papers/SN02827.pdf. Some unmarried fathers of children lack parental responsibility – in the absence of an agreement or court order and this is also the case for some step parents.

³ See for example, Department of Health *Care and Support Statutory Guidance* para 6.128 (DH 2014)

⁴ Carers (Recognition and Services) Act 1995, section 1(2) – for those carers providing a substantial amount of care on a regular basis.

⁵ If option 2 is not possible in the short term.

⁶ A list of the legislation to be repealed, in whole or in part was provided as Annex E of Department of Health *The Care Act 2014 Consultation on draft regulations and guidance for implementation of Part 1 of the Act in 2015/16* June 2014 at www.gov.uk/government/uploads/system/uploads/attachment_data/file/317820/CareAct_cons_040614.pdf

mean that parts of the 1995 Act are intended to be retained.⁷ It will be necessary – when repealing the Carers (Equal Opportunities) Act 2004 – to have a ‘saving provision’ to ensure the amendments it made to the 1995 are retained.

2. Even if the relevant sections of the 1995 Act are retained – it can only be a short-term patch. The 1995 Act creates a much higher assessment threshold for carers than does the Children & Families Act 2014, section 97 (ie the ‘regular / substantial care’ requirement and the obligation on the carer to request an assessment. In the medium term there appears no option other than that the definition of a ‘parent carer’ be amended, so that it is not an exclusive right of those with parental responsibility.

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⁷ Further (slight) evidence that this might be the case, is that the Children and Families Act 2014, section 97 (which amends the Children Act 1989 inserting (among other sections) section 17ZD(8) which makes reference to a ‘care-related assessment’ as being one undertaken under Carers (Recognition & Services) Act 1995 section 1. This would appear to refer to such an assessment prior to April 2015 but the context is ambiguous.