

## HAMPSHIRE COUNTY COUNCIL

### Decision Report

<b>Decision Maker:</b>	Executive Member Adult Social Care
<b>Date:</b>	25 June 2010
<b>Title:</b>	Response to Law Commission Consultation on Adult Social Care
<b>Reference:</b>	1687
<b>Report From:</b>	Director of Adult Services

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### 1. Executive Summary

- 1.1 Earlier this year the Law Commission launched a Consultation paper as a first step towards the introduction of a legislative framework for Adult Social Care that is clear, consistent and modern. The stated aim is to create an effective legal framework that can accommodate current and future policies while also maintaining the core entitlements and obligations that have been established over many years. It is recognised that the existing legislative framework for Adult Social Care is “inadequate, often incomprehensible and outdated”.
- 1.2 The proposals in the Consultation seek to replace the confusing patchwork of conflicting statutes which have been brought in over the past 60 years with a single modern statute to which Local Authorities, service providers and Service Users can look to understand whether services can or should be provided.
- 1.3 The Consultation states that the proposals are broadly resource neutral but that some proposals may have implications in terms of how any given level of resources are deployed within Adult Social Care.
- 1.4 This report summarises the Law Commission proposals, highlights the issues behind particular proposals and provides Hampshire County Council’s response to the Consultation.
- 1.5 This report seeks authority from the Executive Member for Adult Social Care to submit the suggested response.

## **2. Contextual information**

- 2.1 The Consultation by the Law Commission on the legislative framework for Adult Social Care builds on the previously published scoping Report published for information purposes only and meetings with the Department of Health and number of experts in the field. The purpose is to generate responses to provisional proposals and to publish final recommendations for reform in 2011. The Consultation closes on the 1 July 2010.
- 2.2 The Consultation document has been circulated within Adult Services Department and Legal Services Department.
- 2.3 The Consultation differentiates between the Law Commission statutory function to review the law with a view to its systematic development and reform and on the other hand political policy which is a matter for Government. The approach adopted has therefore been that the proposals create as far as possible a neutral legal framework that is not wedded to any particular policy and is capable of accommodating different policies and practices in the future.
- 2.4 It is recognised that in England at least, this includes taking into account personalisation and that adjustments may be required to the legal framework to enable some aspects of policy to develop. It is also recognised as essential that the proposed statute should maintain the existing core entitlements and rights which are a crucial aspect of existing Community Care law. It is an important aspect of the Law Commission review to consider the existing legal framework and how this can be consolidated and reformed into a future statute recognising that some of the existing entitlements may need to be clarified and adjusted to ensure that they can be maintained in the context of a single adult social care statute.
- 2.5 The proposal is that there be a unified Adult Social Care statute covering both England and Wales which would in effect mirror the Children Act in terms of Child Care law. The proposal is that the statute as primary legislation should set out the duties imposed and powers conferred on local authorities which will serve legal clarity and certainty so that the basic responsibilities and entitlements appear on the face of the statute. Where there is a need to expand on detail set out in statute law or prescribe a definition for a term used in the statutes it is proposed that there be regulations as a second level which would carry full force of law and be subject to a degree of parliamentary scrutiny. As a third level the proposal is that statutory guidance continue to be used where the Government wish to guide the exercise of the Social Services functions and discretions by local authorities. Regulations and statutory guidance can be more easily amended than a statute. In addition responses are requested as to whether there should be a code of practice to bring together the statutory guidance.
- 2.6 The Law Commission believes that the most effective way of providing a coherent legal framework for Adult Social Care is to build on the

process-driven elements by establishing tightly defined processes for determining the scope of Adult Social Care. A community care assessment, eligibility decision and formation of a care plan will remain at the centre of the proposed statute. The proposed response from the Council addresses the issues as to whether the scope should be limited by prohibitions, definition of community care services and statutory principles to guide decision making. It is recognised that there are both advantages and disadvantages in having statutory principles within the statute and in particular the Council's response addresses the question as to whether one of those principles should be that decision makers must maximise the choice and control of service users.

2.7 The questions within the consultation document are divided under the following thirteen headings:-

- Introduction
- Our Approach to Law Reform
- Statutory Principles
- Community Care Assessments
- Carers' Assessments
- Eligibility for Services
- Section 21 of the National Assistance Act 1948 and Section 2(1) of the Chronically Sick and Disabled Persons Act 1970
- Ordinary Residence and Portability
- Scope of Adult Social Care Services
- Delivery of Services
- Joint Working
- Safeguarding Adults at Risk
- Strategic Planning

2.8 The current position in relation to eligibility criteria is that the national framework of eligibility criteria is divided into four categories of critical, substantial, moderate and low level of need based on risk to independence. Each local social services authority determines its local eligibility criteria for services by reference to the four national categories. Hampshire County Council's eligibility criteria is currently set at critical and substantial.

2.9 The summary of consultation proposals and questions as set out under the above headings in the Consultation document is attached as Appendix 1. The Council's response to the Consultation is set out in Appendix 2.

### **3. Finance**

- 3.1. The proposals are intended to be cost neutral but it is recognised that there may be costs in implementing revised legislation. Some of the proposals could have far reaching financial implications for example in relation to carers' services and a national eligibility criteria. At this point, however, the Council is simply responding to Consultation document and there are therefore no immediate financial implications. The financial implications will be clearer once a draft statute and draft regulations are published.

### **4. Recommendation**

- 4.1. It is recommended that the Executive Member for Adult Social Care gives approval to responding to the Consultation as set out in the document at Appendix 2.

**CORPORATE OR LEGAL INFORMATION:****Links to the Corporate Strategy**

<b>Hampshire safer and more secure for all:</b>	yes
Corporate Improvement plan link number (if appropriate):	
<b>Maximising well-being:</b>	yes
Corporate Improvement plan link number (if appropriate):	
<b>Enhancing our quality of place:</b>	yes
Corporate Improvement plan link number (if appropriate):	

**Other Significant Links**

<b>Links to previous Member decisions:</b>		
<u>Title</u> Report on Commission of Inquiry into Personalisation and the model for adult social care in Hampshire	<u>Reference</u> 458	<u>Date</u> 22 <sup>nd</sup> December 2008
<b>Direct links to specific legislation or Government Directives</b>		
<u>Title</u> Putting People First		<u>Date</u> 10 <sup>th</sup> December 2007

**Section 100 D - Local Government Act 1972 - background documents**

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

DocumentLocation

None

## **IMPACT ASSESSMENTS:**

### **1. Equalities Impact Assessment**

The Consultation concerns proposals to update community care legislation. As such the revised legislation will seek to protect the most vulnerable people in society.

### **2. Impact on Crime and Disorder:**

The County Council has a legal obligation under the Crime and Disorder Act 1998 to consider the impact of all decisions it makes on the prevention of crime. The proposals in this report have no impact on the prevention of crime.

### **3. Climate Change:**

- a) How does what is being proposed impact on our carbon footprint / energy consumption?

No impact has been identified since this report is a response to a Law Commission consultation on community care law.

- b) How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

The consultation document does not cover these issues.

## Summary of Consultation proposals and questions

This Part brings together all of the provisional proposals made and questions asked in this consultation paper. We note that the provisional proposals and questions have their own numbering system, consisting of two numbers separated by a dash. The first number indicates the Part number and the second number represents the number of the proposal or question as made in that Part.

### **PART 1: INTRODUCTION**

There are no provisional proposals made in this Part.

### **PART 2: OUR APPROACH TO LAW REFORM**

**Provisional Proposal 2-1:** We provisionally propose that there should be a single adult social care statute for England and Wales, unless policy in Wales diverges enough to require separate statutes for England and Wales.

**Question 2-1:** Is our proposed three-level structure for the regulation of adult social care law (consisting of primary legislation, statutory instruments and guidance) appropriate?

**Question 2-2:** Should there be a duty on the Secretary of State and Welsh Ministers to prepare a code of practice to bring together statutory guidance?

**Question 2-3:** Is our process-driven approach to adult social care (a prescribed assessment and eligibility process, with support from prohibitions, a broad list of services, care plans and statutory principles) sufficient to determine the scope of adult social care, or is further definition required?

### **PART 3: STATUTORY PRINCIPLES**

**Provisional Proposal 3-1:** We provisionally propose that our future adult social care statute should include a statement of principles.

**Question 3-1:** Should there be a principle in our proposed adult social care statute which provides that decision-makers must maximise the choice and control of service users?

**Question 3-2:** Should there be a principle in our proposed adult social care statute based on person-centred planning – or should this be incorporated into other provisions of the legislation?

**Question 3-3:** Should there be a principle in our future adult social care statute which provides that a person's needs should be viewed broadly?

**Question 3-4:** Should there be a principle in our proposed adult social care statute based on the need to remove or reduce future need?

**Question 3-5:** Should there be a principle in our proposed adult social care statute based on the concept of independent living?

**Question 3-6:** Should there be a principle in our proposed adult social care statute based on an assumption of home-based living?

**Question 3-7:** Should there be a principle in our proposed adult social care statute based on dignity in care?

**Question 3-8:** Should there be a principle in our proposed adult social care statute based on the need to safeguard adults at risk from abuse and neglect?

**Question 3-9:** Should any one principle in adult social care be given primacy over all other principles?

#### **PART 4: COMMUNITY CARE ASSESSMENTS**

**Provisional Proposal 4-1:** We provisionally propose that there should be a duty to undertake a community care assessment in our future adult social care statute, triggered where a person appears to the local authority to have social care needs that can be met by the provision of community care services (including a direct payment in lieu of services) and where a local authority has a legal power to provide or arrange for the provision of community care services (or a direct payment) to the person.

**Question 4-1:** Should our proposed adult social care statute include a right to have an assessment on request?

**Provisional Proposal 4-2:** We provisionally propose that the focus of the community care assessment duty should be an assessment of a person's social care needs and the outcomes they wish to achieve, and should not focus on the person's suitability for a particular service.

**Question 4-2:** Should our proposed adult social care statute recognise coproduced self-assessments as a lawful form of assessment?

**Question 4-3:** Should our proposed adult social care statute allow for a pure self assessment for certain people or groups of people?

**Provisional Proposal 4-3:** We provisionally propose that our future adult social care statute should place a duty on the Secretary of State and Welsh Ministers to make regulations which prescribe details of the assessment process. The statute should specify the areas which these regulations must cover.

**Provisional Proposal 4-4:** We provisionally propose that local authorities should retain the ability to provide temporary services in urgent cases.

#### **PART 5: CARERS' ASSESSMENTS**

**Provisional Proposal 5-1:** We provisionally propose that there should be a duty to undertake a carer's assessment in our future adult social care statute.

**Provisional Proposal 5-2:** We provisionally propose that the duty to assess a carer should apply to all carers who are providing or intend to provide care to another person, not just those providing a substantial amount of care on a regular basis.

**Provisional Proposal 5-3:** We provisionally propose that the duty to assess a carer should not be triggered by the carer making a request, but should be triggered where a carer appears to have, or will have upon commencing the caring role, needs that could be met either by the provision of carers' services or by the provision of services to the cared-for person.

**Provisional Proposal 5-4:** We provisionally propose that our future adult social care statute provides that the following carers are not excluded from the definition of a carer for the purposes of a carer's assessment: (1) a previously unpaid carer who now receives payment for their services through direct payments received by the cared-for person; (2) a carer who is paid for some but not all of the care they provide; and (3) a carer where the local authority believes the caring relationship is not principally a commercial one.

**Question 5-1:** Should our proposed adult social care statute encourage a more unified assessment process for carers and cared-for people?

**Question 5-2:** Do you think the carers' assessment duty should be merged with the community care assessment duty in our proposed adult social care statute?

## **PART 6: ELIGIBILITY FOR SERVICES**

**Provisional Proposal 6-1:** We provisionally propose that our future adult social care statute should place a duty on local authorities to: (1) determine whether a person's social care needs are eligible needs, using eligibility criteria; and (2) provide or arrange community care services (including a direct payment in lieu of services) to meet all eligible needs.

**Provisional Proposal 6-2:** We provisionally propose that our future adult social care statute should place a duty on the Secretary of State and Welsh Ministers to make regulations prescribing the risks to independence that will call for the provision of services and the objectives that are to be achieved by the provision of services.

**Provisional Proposal 6-3:** If a right to re-ablement services is introduced, we provisionally propose this should be accommodated in our future adult social care statute.

**Provisional Proposal 6-4:** If the eligibility criteria are to be set at a national level in England and in Wales, we provisionally propose that the eligibility criteria should be prescribed in regulations issued by the Secretary of State and Welsh Ministers respectively.

**Provisional Proposal 6-5:** We provisionally propose that our future adult social care statute should prescribe that the Secretary of State or Welsh Ministers may by regulations require that a local authority must allocate a personal budget in fulfilling the duty to meet all needs that are eligible.

**Provisional Proposal 6-6:** We provisionally propose that there be a mandatory national eligibility framework which local authorities must use to decide whether or not to provide services to carers, and a duty to meet the eligible needs of carers.

## **PART 7: SECTION 21 OF THE NATIONAL ASSISTANCE ACT 1948 AND SECTION 2(1) OF THE CHRONICALLY SICK AND DISABLED PERSONS ACT 1970**

**Provisional Proposal 7-1:** We provisionally propose that section 21 of the National Assistance Act 1948 should be repealed and that the Government should ensure a proper scheme for the provision of residential accommodation to those people who might lose their entitlement.

**Provisional Proposal 7-2:** If the Government does not introduce a proper scheme for residential accommodation, we propose that section 21 should be retained but *only* in relation to those people who would otherwise lose their entitlement.

**Question 7-1:** If section 21 of the National Assistance Act 1948 were repealed, do you think that any groups would lose their entitlement to accommodation under our proposed structure?

**Provisional Proposal 7-3:** We provisionally propose that section 2(1) of the Chronically Sick and Disabled Persons Act 1970 should be removed from adult social care legislation.

## **PART 8: ORDINARY RESIDENCE AND PORTABILITY**

**Provisional Proposal 8-1:** We provisionally propose that the local authority be placed under a *duty* to provide services for people ordinarily resident in their area and have the *power* to provide services for people who are not ordinarily resident in their area. In cases of urgent need of residential accommodation, there should be a duty to provide accommodation to those people not ordinarily resident in the authority's area. Assessments of need and the provision of temporary urgent services should not be limited by the ordinary residence rules.

**Provisional Proposal 8-2:** We provisionally propose that the local authority in which the cared-for person lives should be given responsibility for providing carers' services.

**Provisional Proposal 8-3:** We provisionally propose that our future adult social care statute should enable the portability of services by the introduction of: (1) an enhanced duty to co-operate when service users move areas; and (2) if these policies are implemented, a national portable needs assessment and national eligibility criteria.

## **PART 9: SCOPE OF ADULT SOCIAL CARE SERVICES**

**Provisional Proposal 9-1:** We provisionally propose that community care services should be defined by a short and broad list of services.

**Provisional Proposal 9-2:** We provisionally propose that the list of community care services should be set out on the face of our future adult social care statute.

**Question 9-1:** Do you think that community care services should be undefined in our future adult social care statute?

**Provisional Proposal 9-3:** Provisionally, we do not propose that our future adult social care statute should include a central definition of a disabled person or service user.

**Provisional Proposal 9-4:** We provisionally propose that carers' services should remain undefined in our future adult social care statute.

**Provisional Proposal 9-5:** We provisionally propose that our future adult social care statute should allow for regulations to be issued that are capable of defining Shared Lives schemes as being non-residential services in all cases.

**Provisional Proposal 9-6:** We provisionally propose that the existing divide between health and social care service provision should be maintained in our future adult social care statute. This would mean that local authorities would be prohibited from providing residential accommodation, if this is authorised or required to be provided under the NHS Acts 2006; any non-residential services that are required to be provided under the NHS Acts 2006; and nursing care which is required to be provided by a registered nurse.

**Provisional Proposal 9-7:** We provisionally propose that social services authorities should continue to be prohibited from providing ordinary housing and connected services, if these services are authorised or required to be provided by or under other legislation.

**Question 9-2:** If Government policy towards asylum seekers continues, what are the likely consequences of retaining the prohibition on adult social care services to those subject to immigration control solely because they are destitute or because of the physical or anticipated physical effects of being destitute?

## **PART 10: DELIVERY OF SERVICES**

**Provisional Proposal 10-1:** We provisionally propose that our future adult social care statute should place a duty on local authorities to produce a care plan for people who have assessed eligible needs. This would be supported by a duty placed on the Secretary of State and Welsh Ministers to make regulations concerning the form and content that the care plan must take.

**Question 10-1:** Should direct payments be extended to cover residential accommodation?

**Provisional Proposal 10-2:** We provisionally propose that the choice of accommodation directions should be placed in statute law and that the additional payments regulations should be retained in secondary legislation.

**Provisional Proposal 10-3:** We provisionally propose that the direct payment provisions should be retained in their existing form in our future adult social care statute.

**Provisional Proposal 10-4:** We provisionally propose that our future adult social care statute should include a regulation-making power to enable the Secretary of State or

Welsh Ministers to require or authorise local authorities to charge for residential and non-residential services.

**Provisional Proposal 10-5:** We provisionally propose that the existing regulation-making power, which enables certain community care services to be provided free of charge, should be retained. All services that must be provided for free should be listed in the regulations.

## **PART 11: JOINT WORKING**

**Provisional Proposal 11-1:** We provisionally propose that our future adult social care statute should apply to those aged 18 and above, and the Children Act 1989 (and the CSDPA 1970) should apply to those aged 17 and below.

**Provisional Proposal 11-2:** We provisionally propose that local authorities should have a power to assess 16 and 17 year olds under our proposed adult social care statute and young people aged 16 and 17 (and their parents on their behalf) would have a right to request such an assessment.

**Provisional Proposal 11-3:** We provisionally propose that the C(RS)A 1995 and the CDCA 2000 should be retained and amended so that they only apply to young carers.

**Provisional Proposal 11-4:** We provisionally propose that parent carers should continue to be eligible for a carer's assessment under the C(RS)A 1995 and the CDCA 2000. We also propose that where a young person aged 16 and 17 is being assessed under our proposed adult social care statute, parent carers should also be given a carer's assessment under this statute.

**Question 11-1:** We welcome further comments on how the well-being power is being or should be used in practice.

**Provisional Proposal 11-5:** We provisionally propose that the delayed discharge provisions should be retained in their existing form in our proposed adult social care statute.

**Question 11-2:** We welcome comments about whether prisons should be included or excluded from adult social care.

**Provisional Proposal 11-6:** We provisionally propose that the choice of accommodation directions should cover residential accommodation provided under section 117 of the Mental Health Act 1983.

**Provisional Proposal 11-7:** We provisionally propose that the additional payments regulations should cover residential accommodation provided under section 117 of the Mental Health Act 1983.

**Provisional Proposal 11-8:** We provisionally propose that the concept of ordinary residence should be extended to apply to after-care services provided under section 117 of the Mental Health Act 1983.

**Provisional Proposal 11-9:** We provisionally propose that section 117 should be amended to clarify that the duty falls on health authorities to provide *health care after-care*, and on social services authorities to provide *social care after-care*. We

also propose that section 117 should be amended to clarify that health and social services authorities can commission after-care services.

**Question 11-3:** If the section 117 duty should be split between health and social services authorities, should the termination of the duty also be split so that, for example, *social care after-care* ceases when the social services authority is satisfied that the person no longer needs social care after-care; or should both authorities be involved in the decision?

**Question 11-4:** Should section 117 be recast from a free-standing duty to a gateway provision?

**Provisional Proposal 11-10:** We provisionally propose that our future adult social care statute should place a general duty on each social services authority to make arrangements to promote co-operation between the local authority and specified relevant organisations.

**Provisional Proposal 11-11:** We provisionally propose that our future adult social care statute should specify that a local authority can request certain authorities to assist in a number of circumstances, including when an assessment of a service user or carer is taking place and in providing services to a service user or a carer. In such cases, the requested authority would be under a duty to give due consideration to the request.

## **PART 12: SAFEGUARDING ADULTS AT RISK**

**Provisional Proposal 12-1:** We provisionally propose that our future adult social care statute should place a duty on local authorities to make, or cause to be made, such enquiries as it considers necessary where it has reasonable cause to suspect that a person appears to be an *adult at risk* and consider whether there is a need to provide services or take any other action within its powers in order to safeguard that person from harm.

**Provisional Proposal 12-2:** We provisionally propose that the term *vulnerable adult* should be replaced by *adult at risk* for the purposes of the duty to make enquiries.

**Provisional Proposal 12-3:** We provisionally propose that an *adult at risk* should be defined in our statute as anyone with social care needs who is or may be at risk of significant harm.

**Provisional Proposal 12-4:** We provisionally propose that if the Government in England or the Welsh Assembly Government decides to introduce new compulsory or emergency powers to safeguard adults from abuse and neglect then these will be included in our future adult social care statute.

**Provisional Proposal 12-5:** We provisionally propose that section 47 of the National Assistance Act 1948 should be repealed.

**Provisional Proposal 12-6:** We provisionally propose that a local authority should continue to be under a duty to prevent the loss or damage of a person's property when they have been admitted to hospital or provided with residential accommodation.

**Provisional Proposal 12-7:** We provisionally propose that our future statute should place a duty on each social services authority to establish an adult safeguarding board and should specify the functions and membership of the board, the requirement to share information and a duty to contribute to serious case reviews.

**Provisional Proposal 12-8:** We provisionally propose that the enhanced duty to co-operate, as proposed in Part 11 of this consultation paper, should include specific provision to promote co-operation between the organisations in safeguarding adults from abuse and neglect.

**Provisional Proposal 12-9:** We provisionally propose that *No Secrets* and *In Safe Hands*, or their successors, are linked clearly to a local authority's statutory functions to safeguard adults from abuse and neglect, as set out in our future adult social care statute.

### **PART 13: STRATEGIC PLANNING**

**Provisional Proposal 13-1:** We provisionally propose that the disabled persons register should be abolished.

**Provisional Proposal 13-2:** Provisionally, we do not propose to include any strategic planning provisions in our future adult social care statute.

**Provisional Proposal 13-3:** We provisionally propose that our future adult social care statute should place a duty on a local social services authority to provide information about services available in the local area.

## **Hampshire County Council response to the Law Commission Consultation on Adult Social Care**

### **Part 2 Approach to Law Reform**

The Council welcomes the proposals that there be a single Adult Social Care statute with the core duties and powers of local authorities set out on the face of the statute itself and that there be a three level structure for the regulation of Adult Social Care consisting of primary legislation statutory instruments and guidance. The Council believes that a Code of Practice bringing together all the statutory guidance in one place would assist in consolidating and unifying all relevant documentation.

In addition to the process driven approach to Adult Social Care including prescribed assessment and eligibility process, the Council believes that the scope of Adult Social Care would benefit from clearer definition between what is the responsibility of the NHS and what comes within Adult Social Care and that there should be a broad list of fundamental social care outcomes.

### **Part 3 Statutory Principles**

The Council recognises that some principles are so fundamental to the provision of Adult Social Care that they should be stated as an overarching principle within the proposed statute. The Council would see safeguarding and dignity in care and **person** centred planning as being such principles. The Council supports the direction of other suggested principles as playing an important part in every case however placing them as overarching principles on the face of a statute could in particular circumstances lead to unintended outcomes. Maximizing choice and control would be an integral part of person centred planning.

### **Part 4 Community Care Assessments**

The Council agrees that there should be a duty to undertake a community care assessment triggered where a person appears to the local authority to have social care needs and that the focus of the community care assessment duty should be an assessment of person's social care needs and the outcomes they wish to achieve and should not focus on the person's suitability for a particular service. The Council currently carries out supported self assessments but questions whether pure self assessment would in practice be workable however administratively attractive. It would assist if legislation provided definitions of screening and full assessments and clarified that an entitlement to request an assessment related to an initial screening assessment. A proposal that statute include a right to have a full assessment on request could lead to unnecessary additional work in cases where it did not appear to the local authority that there was any need for community care services. The proposal that regulations prescribe details of the assessment process is welcomed for the sake of clarity as is the proposal to retain the ability to provide temporary services in urgent cases

where the person meets eligibility criteria. Clarity in respect of initial screening for a full assessment would also be welcomed.

## **Part 5 Carers Assessments**

Consolidation of the various existing legislation relating to carers into one statute is welcomed. The suggestion that the statute encourage a more unified assessment process for a family and carers is welcomed provided that there is a real choice for a carer to refuse a carers assessment or to have a separate carers assessment where this is more appropriate. In order to properly consider a carer's needs as distinct from those of the cared for person, a separate assessment should be carried out but that the two assessments should inform each other and provide a joined up approach in each matter. The Council agrees that the definition of a carer should not be dependent upon complicated definitions, however, there has to be some eligibility criteria to align with the threshold for provision of services to cared for people. The Council supports local authorities having a duty to offer a carer's assessment and a carer's right to request a carer's assessment.

## **Part 6 Eligibility for Services**

The Council agrees that within a permissive legislative framework local authorities should be required to determine eligible needs using eligibility criteria and then to provide or arrange community care services including a direct payment to meet all eligible needs.

With funding coming from local residents the Council considers it important that eligibility criteria be determined at a local rather than national level to ensure the local voice is heard within the local democratic process. The Council is concerned that if it were centrally determined which categories of the national framework of eligibility criteria would be met by local authorities this would not be matched with the appropriate level of government funding.

The Council would welcome clarification within the statute in relation to a power to provide preventative services to people who did not meet the eligibility criteria. The Hampshire Commission of Inquiry into Personalisation supported replacing the risk to independence with priorities for intervention as being easier to understand.

In relation to personal budgets the Council agrees that this would be better dealt with in regulations than in the statute itself and that there should be clarity as to when and in what circumstances a personal budget must be allocated taking into account potential differences between arrangements for short term and longer term care.

As regards a national eligibility framework for exercising a local authority's power to provide services to carers a mandatory framework would remove current ambiguity however, this is one area where more detailed consideration would be required as there may be significant resource implications for local authorities.

## **Part 7 Section 21 Of The National Assistance Act 1948 And Section 2(1) Of The Chronically Sick And Disabled Persons Act 1970**

In relation to the repeal of Section 21 NAA 1948, the Council supports the repeal of outdated legislation.

## **Part 8 Ordinary Residence**

The revised guidance on Ordinary Residence relies on whether or not the accommodation is provided under Section 21 National Assistance Act 1948. Presumably this guidance would be revised in light of a repeal of Section 21. The Council accepts the proposal that there be a duty to provide services for people ordinarily resident in their area and have the power to provide services for people who are not ordinarily resident in their area together with a duty to provide in cases of urgent need and that as at present the assessment of need and provision of temporary urgent services should not be limited by the ordinary residence rules. In addition the Council supports the reflection of the existing rules around it being the local authority in which the cared for person lives and should have responsibility for providing carers services. While not relevant to the proposed statute funding arrangements related to changes in ordinary residence should be taken into account.

The Council welcomes the portability of assessments but recognises that this in effect could do away with local variations in eligibility criteria and would be dependent on a national eligibility criteria. Portability of assessment should relate to identification of need with the individual local authority having flexibility in how the needs are met.

## **Part 9 Scope of Adult Social Care Services**

The Council agrees that the divide between health and social care be maintained and would welcome any additional clarity that an adult social care statute could provide.

The Council does not consider that community care services or carers services should be defined in order to take into account choice and control and would welcome flexibility in how eligible needs are met while recognising that provision made must be capable of meeting the needs.

In respect of the proposal that Shared Lives be defined as being non-residential in all cases the Council agrees that this should be the case in all permanent Shared Lives arrangements but that further consideration be given as to the definition in the case of short temporary arrangements.

The Council would welcome greater clarity in respect of the provision of community care services to foreign nationals, including asylum seekers, by the bringing together in one place all relevant provisions relating to provision for foreign nationals whether they be nationals of European Union (EU) countries or from outside the EU.

Provision within the statute would be welcomed on the extent of local authority duty and power to make arrangements for community care outside of England and Wales for people who are ordinarily resident in an English or Welsh authority area for example when requested to make a placement in Jersey.

## **Part 10 Delivery of Services**

The Council recognises the need for a care plan for people with eligible needs including carers.

The Council would be cautious about extending Direct Payments to cover longer periods of residential accommodation and aspects such as the calculations of the amount of the Direct Payment would need to be clear. The Council considers it unlikely that an individual would be in a position to purchase residential care at a rate as advantageous as a local authority.

It would be of benefit for the principles of the choice of accommodation directions to be placed with the statute.

The Council would welcome greater flexibility in making payments into a person's bank account subject to being able to cease the Direct Payments and provide care if the arrangement were found not to be providing the required care. Additional regulations would be required to implement this. Control of transfer payments in bank accounts would be better dealt with through banking regulations than in social care legislation.

Discretion whether or not to charge for non-residential care whether provided directly or through Direct Payments should be retained by local authorities and provided for within the statute.

## **Part 11 Joint Working**

The Council recognises the need to work jointly with health partners. Although the Consultation is in respect of community care legislation the Council considers it is important that the respective legislative frameworks for health and social care dovetail to ensure the most appropriate outcome for service users. The Council considers it important to engage with the voluntary sector as appropriate including through the provision of grants.

The Council would welcome the proposal that adult social care statute include a power to assess 16 and 17 year olds where required and that young carers retain their rights under existing or different legislation.

The Council considers that prisoners with social care needs would benefit from the local authorities having a duty to enter a prison to carry out an assessment on the persons entry to prison at the expense of the prison service. Statutory provisions in respect of safeguarding prisoners who are vulnerable as well as in respect of those who pose a danger to others on release would provide clarity.

In relation to the requirements in the Mental Health Act 1983 Section 117 (Section 117) to provide aftercare services for those no longer detained in hospital the Council welcomes the extension of choice on ordinary residence principles. Consideration should include the inclusion of deeming provisions as currently included in Section 24 National Assistance Act 1948 so that if a local authority makes a placement in a care home in another area, they will remain the responsible authority under Section 117.

Clarification of the split of health and social care provision under Section 117 is welcome. Greater clarity within legislation as to the circumstances in which Section 117 aftercare could be terminated and the need for both Health and Social Care to agree before termination is permitted would also be welcomed .

Consideration of request to assist is welcomed and if refused reasons should be given.

## **Part 12 Safeguarding**

Safeguarding is a key priority for the Adult Services Department and the Council agrees with the majority of the proposals around safeguarding. The Council considers that the term 'adult at risk' best represents the relevant group of people who require assistance and that it is helpful to define an adult at risk by reference to their potentially having social care needs but it is not necessary to define the group in terms of people who may be at risk of significant harm. Such a definition has the potential to exclude some safeguarding situations.

In relation to local authorities continuing to have a duty to prevent loss or damage to a person's property when they have been admitted to hospital or provided with residential accommodation the Council would welcome greater clarity as to the extent of this duty in practice with for example a limit being placed on the time for which the duty lasted.

A duty to share information should be defined and be included in the statute to tie in with the Data Protection Act. This would ease co-operation between local authorities and other organisations including General Practitioner's.

The Council would welcome a statutory duty to have a protection plan similar to the duty to have a care plan.

While the Council supports the proposed repeal of Section 47 National Assistance Act 1948 it is important that the local authorities taking action under public health legislation also have a duty to provide suitable alternative accommodation for person's removed from their homes.

### **Part 13 Strategic Planning**

The Council agrees the disabled person's register should be abolished and that strategic planning should be a matter for local authorities based on the Joint Strategic Needs Assessment rather than further provision being included in the statute.

The proposed duty to provide information requires clarification as to the level of detail requested to be provided.