

# **SOCIAL SERVICES AND WELL- BEING (WALES) ACT 2014**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### ***Section 20 – Refusal of a needs assessment for an adult***

43. **Section 20** provides that, in general, the local authority’s duty to assess an adult does not apply if the adult refuses the assessment.
44. This provision ensures that adults have control over whether an assessment is carried out. They can decide that they wish to make their own arrangements for meeting their needs for care and support without the involvement of the local authority.
45. Similarly, the duty to assess an adult’s needs does not apply if the adult lacks capacity to decide whether to refuse an assessment and an ‘authorised person’ makes the decision to refuse the assessment on the adult’s behalf. An ‘authorised person’ is defined in subsection (4) as a person authorised under the Mental Capacity Act 2005 (whether in general or specific terms) to decide whether to refuse, or ask for, a needs assessment on the adult’s behalf.
46. However, there are some cases where the local authority will be obliged to carry out an assessment notwithstanding the refusal of the adult concerned or the refusal of an authorised person. Where the local authority suspects that the adult is experiencing or is at risk of abuse or neglect, the authority remains under a duty to assess the adult’s needs. “Abuse” and “neglect” are defined in section 197(1) of the Act.
47. Where the local authority is satisfied that the adult lacks capacity to decide whether to refuse an assessment but there is an authorised person to make the decision on the adult’s behalf, the adult’s refusal of an assessment does not discharge the local authority from its duty to carry out the assessment although the refusal of the authorised person may do so.
48. Where the local authority is satisfied that the adult lacks capacity to decide whether to refuse an assessment and there is no authorised person to make the decision on the adult’s behalf, the local authority must carry out the assessment notwithstanding the adult’s refusal if it considers that this would be in the adult’s best interests.
49. Where the duty to assess an adult’s needs has been discharged by a refusal, the duty is re-engaged if the adult in question (or an authorised person acting on his or her behalf) changes their mind and subsequently asks for an assessment; or if the local authority considers that the adult’s needs or circumstances have changed.