

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

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### ***Section 23 – Refusal of a needs assessment for a child aged under 16***

65. In the case of children under 16, there is no presumption in law that they have capacity to make decisions. In order for a refusal by a child under 16 to discharge the local authority's duty to carry out an assessment, the local authority must be satisfied that the child is able to make an informed decision about the refusal of an assessment.
66. As a general rule, there is no duty on a local authority to assess the needs of a child aged under 16 if a person with parental responsibility for the child refuses such an assessment. However, the duty to undertake an assessment continues to apply if the child has sufficient understanding to make an informed decision about the refusal of the assessment and does not agree with the refusal given by the person with parental responsibility.
67. There are also other safeguards in place to allow a refusal of a needs assessment for a child under 16 to be overridden in certain circumstances so that the duty to assess continues to apply.
68. Where the local authority suspects that the child is experiencing or is at risk of abuse, neglect or other kinds of harm, the local authority remains under a duty to assess the child's needs. "Abuse", "neglect" and "harm" are defined in section 197(1).
69. Where the local authority is satisfied that not having an assessment would be inconsistent with the child's well-being, the local authority must disregard any refusal given by a person with parental responsibility for the child and must undertake an assessment of the child's needs. Where the duty to assess a child's needs has been discharged by a refusal, the duty is re-engaged if the child subsequently asks for an assessment and has sufficient understanding to make an informed decision about having an assessment. The duty to assess is also re-engaged if a person with parental responsibility for the child subsequently asks for an assessment.
70. A change in the needs or circumstances of the child, or a change in the needs or circumstances of a person with parental responsibility for the child, may also lead to the duty to assess being re-engaged.