

CARE ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Care and Support

Independent advocacy support

Section 67 – Involvement in assessments, plans etc.

402. This section places a duty on local authorities to arrange an independent advocate to be available to facilitate the involvement of an adult or carer who is the subject of an assessment, care or support planning or review process, if that local authority considers that the adult would experience substantial difficulty in understanding the processes or information relevant to those processes or communicating their views, wishes, or feelings.
403. *Subsections (5) and (6)* set out that the duty does not apply if the local authority is satisfied there is an appropriate person to represent the adult, who is not engaged in providing care or treatment to the adult in a professional or paid capacity, and the adult consents to being so represented by that person, or where the adult lacks capacity to consent, the local authority is satisfied that it would be in the adult's best interests to be represented by that person.
404. *Subsection (7)* allows for regulations to specify the arrangements on the provision of independent advocacy including to set out the requirements for an independent advocate, to specify what a local authority has regard to in determining whether an individual would experience substantial difficulties in their involvement in the assessment, specifying any circumstance in which the exception in subsection (5) does not apply, and making provision as to the manner in which independent advocates are to perform their duties.

Section 68 – Safeguarding enquiries and reviews

405. *Section 68* places a duty on local authorities to arrange an independent advocate to be available to represent and support an adult who is the subject of an adult safeguarding enquiry or a safeguarding adults review where appropriate, if that local authority considers that the adult would experience substantial difficulty in understanding the processes or information relevant to those processes or communicating their views, wishes, or feelings. The duty does not apply if the local authority is satisfied there is an appropriate person to represent the adult, who is not engaged as that adult's professional or paid care and by who the adult consents to being so represented, or where the adult lacks capacity to consent, the local authority is satisfied that it would be in the adult's best interests to be represented by that person.
406. The purpose of this section is to ensure that individuals who are the subject of a local authority's safeguarding enquiry or a Safeguarding Adults Review will, where appropriate, have an independent advocate made available to represent and support them so as to enable them to participate meaningfully in those processes.