

Coronavirus Act 2020

Care Act easements

Provisions in the Act

Schedule 12 of the Coronavirus Act 2020 detailed the powers and duties concerned.

The changes fall into four key categories, each applicable for the period the powers are in force:

- Local Authorities will not have to carry out detailed assessments of people's care and support needs in compliance with pre-amendment Care Act requirements. However, they will still be expected to respond as soon as possible (within a timeframe that would not jeopardise an individual's human rights) to requests for care and support, consider the needs and wishes of people needing care and their family and carers, and make an assessment of what care needs to be provided. Annex B of the guidance provides more information;
- Local Authorities will not have to carry out financial assessments in compliance with pre-amendment Care Act requirements. They will, however, have powers to charge people retrospectively for the care and support they receive during this period, subject to giving reasonable information in advance about this, and a later financial assessment. This will ensure fairness between people already receiving care and support before this period, and people entering the care and support system during this period. Annex B of the guidance provides more information;
- Local Authorities will not have to prepare or review care and support plans in line with the pre-amendment Care Act provisions. They will however still be expected to carry out proportionate, person-centred care planning which provides sufficient information to all concerned, particularly those providing care and support, often at short notice. Where they choose to revise plans, they must also continue to involve users and carers in any such revision. Annex B of the guidance provides more information;
- The duties on Local Authorities to meet eligible care and support needs, or the support needs of a carer, are replaced with a power to meet needs. Local Authorities will still be expected to take all reasonable steps to continue to meet needs as now. In the event that they are unable to do so, the powers will enable them to prioritise the most pressing needs, for example enhanced support for people who are ill or self-isolating, and to temporarily delay or reduce other care provision. Annex C provides further guidance about the principles and approaches which should underpin this.

Limitations

These powers are there only to be used if absolutely essential. Local Authorities should do everything possible to continue meeting their existing duties, for as long as possible. Any use of the powers should be as narrow as possible and should be reported to DHSC.

All assessments and reviews that are delayed or not completed need to be followed up and completed in full once the easements are terminated.

HRA Implications

The council remain under a duty to meet needs where failure to do so would breach an individual's human rights under the European Convention on Human Rights (ECHR). These include, for example, the right to life under Article 2 of the ECHR, the right to freedom from inhuman and degrading treatment under Article 3 and the right to private and family life under Article 8. [see Part 4 of the Guidance]

Local Authorities will be expected to observe the Ethical Framework for Adult Social Care. This provides a structure for Local Authorities to measure their decisions against and reinforces that the needs and wellbeing of individuals should be central to decision-making.

In particular it should underpin challenging decisions about the prioritisation of resources where they are most needed.

Decision-making

Local Authority should only take a decision to begin exercising the Care Act easements when the workforce is significantly depleted, or demand on social care increased, to an extent that it is no longer **reasonably practicable for it to comply with its Care Act duties (as they stand prior to amendment by the Coronavirus Act) and where to continue to try to do so is likely to result in urgent or acute needs not being met, potentially risking life**. Any change resulting from such a decision should be proportionate to the circumstances in a particular Local Authority.

The guidance states it should be agreed by the Director of Adult Social Services in conjunction with or on the recommendation of the Principal Social Worker. This is in accordance with Part 30 of the constitution. This decision would be a key decision if taken as a chief officer's decision or in the current situation via gold/silver arrangements.

Lead Member Briefing and Health and Wellbeing Board/CCG

The Director of Adult Social Services and the Principal Social Worker must ensure that their lead member has been involved and briefed as part of this decision-making process. The Health and Wellbeing Board should be kept informed. The decision should also be fully informed by discussion with the Local NHS and CCG leadership. These should all be recorded [see below]

Transparency and Auditing

Local Authorities should have a record of the decision with evidence that was taken into account. Where possible the record should include the following:

- The nature of the changes to demand or the workforce;
- The steps that have been taken to mitigate against the need for this to happen;
- The expected impact of the measures taken;
- How the changes will help to avoid breaches of people's human rights at a population level;
- The individuals involved in the decision-making process;
- The points at which this decision will be reviewed again.

This decision should be communicated to all providers, service users and carers. The accessibility of communication to service users and carers should be considered.

The decision should also be reported to the Department of Health and Social Care when the council decide to start prioritising services under these easements, explaining why the decision has been taken and briefly providing any relevant detail. An email address for this communication will follow

The CQC will continue to provide oversight of providers under existing legislation. Throughout this period the CQC will take a pragmatic approach to inspection and proportionate action as necessary while maintaining its overriding purpose of keeping people safe.

USEFUL LINKS

Guidance <https://www.gov.uk/government/publications/coronavirus-covid-19-changes-to-the-care-act-2014/care-act-easements-guidance-for-local-authorities#what-the-powers-actually-change>

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