

Coronavirus Act 2020:

Statutory guidance on Care Act 2014 easements – key points and what it means for carers and local organisations.

England only.

Overview

This briefing sets out the main points in the statutory guidance which has been published in relation to the Coronavirus Act 2020. It should be read alongside the guidance that is published alongside the Act: <https://www.gov.uk/government/publications/coronavirus-covid-19-changes-to-the-care-act-2014/care-act-easements-guidance-for-local-authorities>.

The Coronavirus Act 2020 is emergency legislation that went through Parliament very quickly and received Royal Assent on **25 March 2020**. It came into force in England on 31 March 2020. This means that each local authority can decide whether they need to implement these provisions. More is set out below.

We have also produced a detailed briefing on the main health and care provisions of the Coronavirus Act 2020 which can be found here: <https://www.carersuk.org/news-and-campaigns/campaigns/coronavirus-act-emergency-measures>

This means that the Care Act 2014, in England has now been amended in key sections. However, this only applies if local authorities decide the need to use the easements. Information on this is set out below.

Purpose of these provisions as set out in statutory guidance:

Government has recognised that “Local Authorities and care providers are already facing rapidly growing pressures as more people need support because unpaid carers are unwell or unable to reach them, and as care workers are having to self-isolate or unable to work for other reasons. The Government has put in place a range of measures to help the care system manage these pressures. Local Authorities should do everything they can to continue meeting their existing duties prior to the Coronavirus Act provisions coming into force. In the event that they are unable to do so, it is essential that they are able to streamline present assessment arrangements and prioritise care so that the most urgent and acute needs are met. The powers in the Act enable them to prioritise more effectively where necessary than would be possible under the Care Act 2014 prior to its amendment (referred

to in this guidance as the Care Act). **They are time-limited and are there to be used as narrowly as possible.**” (Section 2 of the guidance).

Summary of the provisions: (Section 3) – Extract

1. “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.” Replicated in full from the guidance.
2. “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.” Annex B of the guidance provides more information. There is also a helpful section which reminds authorities that not charging carers for services is preferred.
3. “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”
4. “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”

Protections and Safeguards (Section 4)

“The easements took legal effect on 31 March 2020, but should only be exercised by Local Authorities where this is essential in order to maintain the highest possible level of services. They should comply with the pre-amendment Care Act provisions and related Care and Support Statutory Guidance for as long and as far as possible.” (Section 4, para 2)

“They are temporary. The Secretary of State will keep them under review and terminate them, on expert clinical and social care advice, as soon as possible.”

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

“Local Authorities will 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. 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.”

The CQC will continue to provide oversight of providers under existing legislation but will change inspections during this time.

Principles that govern changes – Section 5

The guidance states the principles of the Care Act around embodying a principled, person-centred and values-based approach to all aspects of social care and expects these to continue to be upheld. The following are extracts from 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.

Alongside the framework Local Authorities should continue to respect the principles of personalization and co-production. TLAP provided a statement, which Carers UK also contributed to.

I am supported to make decisions by people who see things from my point of view, with concern for what matters to me, my wellbeing and health. [\(Making it Real\)](#)

“We find ourselves in unprecedented times with citizens facing significant uncertainty. This is especially true for those of us who receive social care support and who care for people with support needs. However, the fundamental principles of personalisation and co-production underpinning the Care Act should not be removed as a result of emergency guidance and key statements set out in the Making it Real framework ought to be viewed as immovable.

Working together matters now more now than ever. Genuine co-production will ensure the best possible decision making and the best possible outcomes for both citizens and the workforce. This is critical if we are to save time and prevent costly mistakes. This will require the Local Authority to respond flexibly in spite of pressure to respond - at pace and scale - to increasing demand.

We expect and trust that Local Authorities will adhere to the principle of co-production and continue to view those of us in receipt of support or carers providing support, as equal partners. We continue to be experts in our own care and support whatever the circumstances.

Now is the time to reinforce co-production, not dispense with it.”

Steps a local authority must take in exercising the functions (Section 6)

Extract as follows:

“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.

Social care varies greatly across Local Authorities and the decision to operate the easements should be taken locally. It should be agreed by the Director of Adult Social Services in conjunction with or on the recommendation of the Principal Social Worker. 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 CCG leadership.

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 (the Department) when Local Authorities decide to start prioritising services under these easements, explaining why the decision has been taken and briefly providing any relevant detail.”

Carers UK’s view: It is vital that there is real transparency around decision-making and we welcome the requirement to ensure that this is communicated clearly to all providers, but must also include local carers organisations and other key voluntary sector partners who provide information advice and support to carers. Carers UK will be measuring the impact of the easements on carers.

Interaction with other changes: Section 7

“This guidance is to be read alongside the [COVID-19 Hospital Discharge Service Requirements](#). This makes clear that Local Authorities do not have to undertake financial and eligibility assessments for people who are being discharged as part of the enhanced hospital discharge service.

The Government is fully funding the cost of new or extended out-of-hospital health and social care support packages for people being discharged from hospital or who would otherwise be admitted into it for a limited time, to enable quick and safe discharge and more generally reduce pressure on acute services. In addition, funding of £1.6bn for local government to meet additional costs arising from Covid-19 has been announced.

Provisions in the Coronavirus Act 2020 allow NHS bodies to postpone NHS Continuing Healthcare (CHC) assessments until the end of the emergency period. Therefore, NHS CHC assessments for individuals on the acute hospital discharge pathway and in community settings will not be required until the end of the COVID-19 emergency period.”

Carers UK’s view and impact on assessments: Carers UK has welcomed the fact that these services from hospital will be made free at the point of delivery. We need clarity about whether those in the community who would have had free NHS CHC would get that now.

Carers UK will be providing an additional briefing on the new hospital discharge arrangements and what this means for carers, assessments, their needs, etc. Normally a carer’s assessment would be done at the point of hospital discharge. If the easements are applied, then this will not be a requirement, but a “power” to do so. However, the sections on “what legal provisions remain” are set out below.

Oversight: Section 8

Extract: “The Department will keep the content of this guidance and adherence to it under regular review, in discussion with Local Authorities, care providers, user and carer representative bodies, and the Care Quality Commission.

This guidance and the [Ethical Framework for Adult Social Care](#) fall under schedule 12 of the Coronavirus Act 2020. Schedule 12 to that Act gives the Secretary of State a power to direct Local Authorities to comply with this guidance and the Ethical Framework, and the Department will keep this under review.”

Carers UK has welcomed the fact that we will be involved in the oversight of this work and it is something that we have asked for. We will be feeding through carers’ experiences and those coming through from our Affiliate network. We hope that Government will consider our input and review the implementation appropriately.

Carers UK is working on guidance around the Ethical Framework for Adult Social Care and how it would apply to carers.

Annex: A – Local decision-making

Assessments, Reviews and Changes to Care Packages:

Extract: “The Care Act pre-amendment currently allows Local Authorities to prioritise and review in differing ways. Local Authorities should continue to be as flexible as possible, and ensure they stay within Government guidelines around [social distancing](#), [shielding](#) and [self-isolating](#).”

Decisions about assessments or reviews, and decisions to either reduce or alter care packages will have an impact on the people being supported as well as their carers. Such decisions must also take account of risks both current and potential should the situation change for the person and/or their carers.

Where people decide to cancel or suspend their own care and support and manage alone or with support of their own family and community networks, this will mostly be for the person to decide themselves. However, where there are concerns that this may lead to unmanageable risk or safeguarding issues, practice oversight should be applied. This is not to undermine the views of the individual making the decisions about their care, but to ensure that where necessary, the Local Authority in conjunction with the individual and their family have considered the possible consequences and the principles of safeguarding have been upheld.”

Carers UK is providing a reminder that Section 27(2) and 27(3) of the Care Act 2014 are not changed. This means that if a care package is going to be reviewed, then the carer and the person being cared for must be involved. In reviewing or changing a care package a local authority must have regard to this statutory guidance as well in terms of risk, prioritisation, Ethical Framework.

This section is critically important and it is vital that it remains transparent. It contains the very important references (extract):

“[The Coronavirus Act](#) does not give authority to block, restrict or withdraw whole services. It enables Local Authorities to make and apply person-centred decisions about who is most in need of care, and who might need to have care and support temporarily reduced or withdrawn in order to make sure those with highest need are prioritised.

Such decisions will in some cases be challenging, and therefore should always be made within the remit of the [DHSC Ethical Framework](#).”

Carers UK’s view: A power to do something does not mean that a local authority doesn’t have to do something unilaterally. This is what this section refers to.

It also helpfully points out that there is a difference to services ceasing because of social distancing measures. Carers UK example: if a day service is closed but provides critical care and support, including to the carer who would not be able to manage without it, the local authority must consider an alternative that meets needs and outcomes of both the person needing care and the carer.

Stages of operation:

The guidance expects key partners to be involved and to make decisions going forward. This is set out in this Annex. It also includes a table with 4 stages:

- Stage 1: Pre-amendment Care Act (i.e. full Care Act provisions before it as amended by the Coronavirus Act) – business as usual.
- Stage 2: Pre-amendment Care Act – flexibilities under the Act to change and prioritise some services.
- Stage 3: Coronavirus Act – streamlining processes and services.
- Stage 4: Coronavirus Act prioritisation – whole system streamlining. This is where really difficult decisions may need to be made.

Stages 2, 3 and 4, the guidance directs councils to consider the impact on carers and those needing care.

Carers UK would expect councils to be very clear at which stage they are operating at so that carers and local carers' organisations are also clear. Both carers and local carers organisations will have valuable insight and input on the likely impact on carers and the people needing care. It is also critical for those services operating as "trusted assessors" and carrying out carers' assessments, as well as the range and type of support that local organisations can provide to carers.

Local carers organisations could be playing an even more crucial role if there are situations where the carer would have received services, but for the fact that local authority is operating under stages 2, 3 or 4.

Finally, we would expect local authorities in mitigation of the impact on carers to ensure that support and advice is provided as much as possible through digital means. We would also consider this to be important for their own staff who are juggling work and caring for relatives who are disabled or ill.

Annex B: Needs and Carer's Assessments

This section will be of great importance to local carers' organisations and carers. This sets out important provisions regarding this.

- There is still a requirement to assess and consider needs.
- Clear written records and decision making must be maintained.
- Evidence of consideration of the Ethical Framework and a check against the Convention (Human Right Act 1998) where necessary.
- Expectation elsewhere in guidance that carers should be involved.
- As above, consideration of the impact on the carer must be considered.
- Services cannot be withdrawn without the person needing care and the carer being involved (existing Care Act 2014 provisions on this remain), despite the duty to carry out reviews being relaxed, if authorities adopt the easements measures.

- If the person would have had a full assessment, then clear records must be kept so that this can be returned to by the local authority when full Care Act 2014 provisions are returned to.
- The person must have it explained to them that this is unusual, temporary and they they may be assessed at a future date and their care package potentially changed.

The guidance encourages more flexibility around carrying out assessments (the method), which the Care Act 2014 allows e.g. online assessments, trusted assessors, supported self-assessment. Carers UK has encouraged online assessments, and this is when they become very useful.

Many local carers organisations carry out carer's assessments and pre-assessments and this will affect them.

The guidance is also very clear that there must be a very clear audit trail of decisions made and local authorities are responsible for this. This responsibility is not delegated, but the process of collecting these data for the authority, would be for any externally contracted organisation to do so.

For local carers' organisations – if you provide carer's assessments, then you may be asked to change your procedures, data collection, etc. by the local authority in relation to this Act. Carers UK would urge all local carers' organisations to maintain a full assessment for as long as possible for carers, recognising that prevention is also a key issue for carers.

Where this is likely to impact most on carers is the decision about what care to provide to the person with care needs. This is where, in carrying out that assessment, some assessment of the risk and impact on carers needs to be made to ensure that the carers' own rights are not breached. Prevention duties under the Care Act 2014 are not relaxed.

Carers UK's view: local carers organisations are providing a vital support service to ensure that carers are remaining self and well at home, reducing loneliness and isolation, but also acting as a referrer to core services and an early warning system of families that may become vulnerable with a high level need. Equally they are in a position to flag situations at risk.

This section also brings in another element of care providers being able to make assessments and then deliver care. Carers UK expects care providers to consider carer's rights and needs. We would also expect providers to signpost to key sources of information for carers – local carers organisations and Carers UK's information and advice.

Clear pathways for escalation and complaints:

Carers UK welcomes the following two provisions in guidance as something we have raised as vital for the whole system and sector to work effectively and for carers' and people with care and support needs being safeguarded:

“Local Authorities need to ensure that there is a clear and transparent pathway for people with care and support needs, carers and providers to quickly raise concerns should they believe either the decision or the care package is in breach of the European Convention on Human Rights.”

“Complaints and escalation procedures remain the same as under the Care Act. Under the Coronavirus Act, once the emergency period has ended, if Local Authorities do not comply with their duty to carry out a relevant assessment within a reasonable period, action can be taken in court.”

The latter is important as the normal provision that an assessment must take place in a reasonable period of time is also relaxed under Schedule 12.

Direct payments and personal budgets:

There are two main references to direct payments, the provisions of which i.e. guidance around direct payments, are not relaxed during this period. The first suggests that personal budgets and direct payments decisions should continue to be made, and personalised as far as possible. Including providers who may be making these decisions, it also follows guidance that innovation should try to be maintained, least restrictive practices possible. Any reviews of care packages should also avoid any administrative burden.

This means that carers’ personal budgets should continue. As one of the most flexible and innovative practices, this is where local authorities could help deliver innovative support to carers through local carers organisations running grants programmes, etc. in the short term. We would strongly encourage this practice under Section 2 of the Care Act, prevention and to include a second tranche of funding later when any lockdown restrictions are lifted. This might include: white goods, online learning, technology e.g. laptops, etc. training on how to use technology, Alexa’s/Amazon Dot, etc. to help carers deal with the current situation.

Carers UK would also suggest that real caution should be taken around any reviews of a direct payments package where someone directly employs staff. This is critical since a small change in the package could render it unviable in the short term i.e. insufficient hours for a specific Personal Assistant (PA, etc.). Often these relationships have been carefully built up over time, and are responsive and supportive. In this situation, employers may have no option but to make PAs redundant, incurring additional costs for local authorities who ultimately have to cover these as well as additional risk.

Financial assessments:

These can be carried out retrospectively. The guidance includes some important safeguards that must be followed:

- Information must be provided at the time (also under existing Care Act 2014 duties and transparency rules) about potential charges either before, or at the time of giving a service.
- Families should be consulted particularly where a power of attorney exists

- Where a financial assessment is deferred, individuals should be assured that no charges will be made until after a financial assessment has been completed.
- Likely charges must be shown enabling people to make decisions about what to do.
- Applying a financial assessment later must be on the basis of being able to afford the services and should be clear and transparent.
- The local authority has to satisfy itself that the person “can afford and continue to afford” the service.

Rules on top ups, deprivation of assets, and deferred payment agreements still apply. The route for complaints also has not changed.

Carers UK has been concerned at the impact of this and families not understanding large bills that have to be paid retrospectively. Early clarity of information is essential, as is the ability to pay and affordability if a financial assessment is carried out later.

Carers and charging – false economy to do so:

Extract (Section 7) “The existing statutory guidance (see 8.50 of the Care and Support statutory guidance) makes it clear that Local Authorities are not required to charge carers for support and that, ‘in many cases it would be a false economy to do so’. Carers already play a vital role in the care and support system and their contribution during this emergency period will be even more critical. In line with existing guidance, Local Authorities should therefore ‘ensure that any charges do not negatively impact on a carer’s ability to look after their own health and wellbeing and to care effectively and safely”.

Carers UK has warmly welcomed the inclusion of this paragraph.

Annex C: Prioritisation of services

This is an area of key importance. Government has not provided set criteria and it will be up to each local area to decide how to prioritise care and support. The statutory guidance states that this should be in relation to the Ethical Framework.

This sets out the following expectations:

- That local authorities have mapped high care or high risk care packages.
- That they will have taken on new information about carers involvement
- That a framework will be developed locally

It also contains this paragraph placing an emphasis on individual need and carers:

“Local Authorities should take into account all elements of a person’s life that may impact on their needs and their personal circumstances. These circumstances can include social issues such as domestic abuse, financial issues, and **the vital support of unpaid carers which may not be appropriate or sustainable as a single support in this current climate.**

“Local Authorities should also understand what resources, assets/offers the person has at their disposal – including knowledge of and access to forms of community and neighbourhood support.”

Carers UK view: Whilst we recognise that every area is different, it will result in 152 ways of approaching the Care Act 2014 and application of easements with several possible stages as well. It is vital that this prioritisation work is made clear to carers and to the voluntary sector who often provide advice to carers and many local carers’ organisations provide pre-assessment or assessment support.

What does this mean for local carers’ organisations and commissioners?

- Making sure that councils have good information about cases where carers are providing the bulk of care, but not necessarily have a care package or a low package of care. An important role for local organisations is to flag these cases.
- Blanket assumptions cannot be made that the presence of a carer means that the care situation is not vulnerable. Some appraisal of whether the caring situation is sustainable must be carried out. This is required under existing Care Act 2014 prevention duties, Carers (Recognition and Services) Act 1995 and the statutory guidance, and to ensure compliance with Care Act easements, for both the carer providing care and the person needing care.
- Transparency of this framework between councils and local carers organisations so that advice to carers is clearer and better.
- Strong working relationships and understanding where the logical offer in terms of assets is the local carers’ organisation.
- Contingency planning also needs to be a core part of the prioritisation and assessment framework, should care breakdown, what the response may be. Small breakdowns in care may quickly escalate.
- Young carers also need to be part of this process – see below on key duties that remain.

Annex D – Safeguarding

Safeguarding provisions still apply and, as well as the person needing care, this can also apply to carers, equally.

What legal provisions still exist? Young carers, parent carers, prevention, information and assessments

Several key provisions still exist, which means that they must be considered:

Young carers: Although the duty to consider young carers under the Care Act 2014 may have been changed under the easements, the Children Act 1989 and the Children and Families Act 2014 still apply. This means that the needs of children who may have caring responsibilities still apply.

Parent carers: Although the duty to provide a Care Act assessment if requested at transition has also been changed under the easements if local authorities apply, the provisions under the Children and Families Act 2014 still apply as does Section 1 of the Carers (Recognition and Services) Act 1995 (which applies to any adult who cares, unpaid for a disabled child and there is broader than parents).

Prevention duties under the Care Act 2014: these still exist under Section 2. A local authority has a duty to provide a range of services that prevent, delay and reduce needs of the person needing care and the carer. This means that non-care services are of great importance, carer's personal budgets can play a key role and local carer's organisations.

Duties to provide information and advice under the Care Act 2014: these still exist under Section 4 of the Act, including information and advice to carers.

What next:

Carers UK will be monitoring the implementation of this legislation and the impact on carers. We will be feeding this up to Government. We will also be working closely with others in the sector, including the Care and Support Alliance.

We will be keeping this briefing up to date if new issues around application of practice emerge.

Disclaimer:

While every effort has been made to ensure that this briefing is accurate, it is not an authoritative statement of the law.

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