

Detailed Factsheet - Coronavirus Act

Impact on Social Care for Disabled People and their Carers

With the situation around COVID-19 constantly evolving, this is a challenging time for us all and our part at Disability Law Service is to ensure that access to justice continues.

Facing an unprecedented crisis, stringent measures and emergency powers were announced under the Coronavirus Bill, which has become law as of 25 March 2020. This Bill, we understand the concern this will cause, therefore set out below is updated information on how this may affect your rights.

During these unprecedented times, we will continue to keep you updated as best as possible as the situation develops.

Local authorities' duties to assess and meet social care needs

For local authority social care teams, the Coronavirus Act has provided for *possible* relaxing of duties to *assess* and *meet* the care needs of adults and carers for adults and children. The Coronavirus Act provides for local authorities *possibly* relaxing the duties to assess and meet needs if the impact of the virus means they become very stretched e.g. if the virus has led to significant loss of staff or to a significant increase in demand for care services. In those circumstances local authorities can begin to alter the services they provide. But, until then, local authorities must use their best endeavours to maintain all care packages (Government guidance says they must do that until it is "*unachievable or untenable*"). If a local authority finds itself unable to maintain care because of the epidemic the Act permits it to suspend or cancel some services (Government guidance says, "*for example, home care or supported living*").¹

If local authorities can no longer cope with maintaining care packages, they can make the decision to prioritise services. If they do, they are required to tell everyone why and what the priorities will be. When they have done that, they can relieve themselves of the lowest priority services, according to local needs. When prioritising, local authorities must act reasonably, ethically and to promote individual wellbeing.² Government guidance says formal assessments and reviews (and application of the eligibility criteria) can be relaxed first. Assessment of needs and care planning must continue, but less formally, with staff time focused on meeting needs (not following procedure) and resources and staff time are used flexibly according to priority.

Only then can a local authority change a person's care package. Local authorities must observe their stated priorities if they do. Where a change would breach a person's human rights, that change cannot happen (and care must be assessed and met). Although it is the local authority's decision on whether a change would breach human rights, this can be challenged. So (for example) if the change to your support meant that you were no longer receiving essential care you had been assessed as needing (for example help with washing, dressing or feeding) then there is a strong argument that it would breach human rights law.

¹ Guidance at: <https://www.gov.uk/government/publications/coronavirus-covid-19-changes-to-the-care-act-2014/care-act-easements-guidance-for-local-authorities#steps-local-authorities-should-take-before-exercising-the-care-act-easements>

² s1 Care Act 2014

Care & Support and Support plans and Reviews

Under the Coronavirus Act 2020, local authorities are no longer under a duty to comply with the care and support planning duties imposed under the Care Act 2014. These include:

s24 & s25 - The duty to prepare a care and support plan. Local authorities will have a *discretion* to continue to prepare care and support plans, but once these powers have been activated by a local authority there will cease to be a duty to do this.

s27 – The duty to review care and support plans regularly or where there is a change in circumstances. Local authorities will have a *discretion* to continue to keep care and support plans under regular review, but once these powers have been activated by a local authority there will cease to be a duty to do this.

Under the new Act if a local authority decides that it is necessary to continue to provide care and support for an adult in need or a carer then (if the authority has activated its powers under the Coronavirus Act) it will no longer be under a duty to prepare a formal care plan that contains the detail required by the Care Act 2014 or to have regular reviews of the plan.

It will, of course, need to have a basic plan of what the person's needs and what care and support he or she requires.

Period within which assessments may be carried out

Under the Care Act 2014 local authorities are required to carry out care needs assessments within a "*reasonable*" timeframe. The Coronavirus Act has temporarily lifted that duty. When the duty is reinstated, if you think your assessment has not taken place with a reasonable timeframe, then the Coronavirus Act says that *generally* the period where the duty was lifted should be discounted when deciding if the time taken was reasonable. If there is fault on the part of a local authority in a particular case, then the general position can be displaced.

Care Charges

Local authorities can charge you for care provision. If you have assets (savings, etc.) with a combined value exceeding £14,250, your local authority is still entitled to charge you for some of your care, or for all your care if your assets exceed £23,250. If your assets are below £14,250 your local authority will work out your potential charge based on your income.

The Coronavirus Act 2020 removes the duty on your local authority to carry out a financial assessment of your resources, before they meet your needs (i.e. provide your care). This does not mean your care will be free, as local authorities are entitled to conduct a financial assessment of your financial resources at a later date and then subsequently charge you for the care they have provided you (if of course you are assessed as being eligible to pay).

They will of course have to had to inform you of this possibility at the outset, but there is a danger that disabled people could be levied with huge bills for the care they receive while the Act is in force, which they may not be able to pay.

Transition for children to adult care and support

Where a disabled child with care needs is approaching 18 years old, local authorities are now relieved under the new Coronavirus Act 2020, of the *duty* to assess what their adult needs may be. The transition of a disabled child from being the responsibility of the Children's social services department to the adult social services department is an important process to identify whether the child needs continued support as an adult. An assessment is carried out to determine what needs they may have under the Care Act 2014, and if needs are assessed as being apparent, then the services and support must be provided to the individual.

The Coronavirus Act enables local authorities' to make some changes to this transition process which is set out below (but only if it has decided to formally activate its powers under the Act).

The Coronavirus Act, Schedule 12, Part 1, Section 15 states:

'A local authority does not have to comply with any duties imposed by –

- 1. Section 2A(2) to (4) or (6) of the Chronically Sick and Disabled Persons Act 1970 (welfare services: transition for children to adult care and support), or*
- 2. Section 17ZH(2) to (4) or (6) of the Children Act 1989 (section 17 services: transition for children to adult care and support).*

The duty under these sections is to carry out an adult care and support assessment before the child reaches the age of 18, and to comply with their duties under s17 until the assessment is completed. If activated by the authority the new legislation means that they do not have to respond to requests for assessments, and their duties turn to powers instead. The Care easements (Guidance) took effect on the 31st March 2020, but should only be exercised by local authorities where this is essential.

How can you challenge a decision made by the local authority to not carry out the assessment for the transition to adult care and support?

If the local authority uses its powers to not carry out an assessment for a transition into adult social care, you can ask for reasons as to why they have made this decision. Whilst the Coronavirus Act gives them this power, it only does so where it is absolutely necessary and where they need to prioritise their services. This must be explained to you at the outset when they make their decision.

The Care Act Easements: guidance for local authorities, paragraph 6 states: *'a 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 and where to continue to try to do so is likely to result in urgent or acute needs not being met, potentially risking life'.*

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*

Annex B of the guidance states '*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*'.

It is important to seek legal advice when challenging a decision and using the Human Rights Act 1998 as a defence.

Discharge from Hospital

Where an NHS body considers that it is not safe to discharge a patient from hospital unless arrangements for meeting their care and support needs are in place, local authorities are *now* required to inform the NHS provider whether the patient has care and support needs (or carer has support needs). Which of them it proposes to meet and how they will be met. Under the Care Act 2014, authorities *were* required to carry out a needs assessment and identify eligible needs that it would meet.

Provisions in the Coronavirus Act 2020 also allow NHS bodies to postpone NHS 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.

Continuity of Care and Support when a Person Moves to another authority

The Care Act 2014 contains mechanisms to ensure that people who move from one local authority areas to another continue to receive their eligible care and support needs. Once the powers in the Coronavirus Act have been activated by a local authority it will cease to be a duty to take steps to ensure that there is continuity of care in such situations.

The impact of this change will also apply to the new (second) authority to which the person moves. It will not be under a duty to ensure continuity of care (even if formally notified by the (first) authority the person has moved from) where the second authority has activated its Coronavirus Act powers.

The resulting impact is the same as under the care and support plan. Notably the elderly, vulnerable and disabled users who stood to benefit most of all will no longer be owed such duty (s.37 & 38) under the Care Act. This is particularly important as the care and support plan will include details of the care hours they are entitled to, respite hours and housing needs. This means when they move from one authority to another, the issue which may arise could centre around which local authority should have exercised its discretion whether to carry out the assessment since there is no duty imposed on either authorities. This may arise, for example, where a disabled person leaves a care home to live with their family who reside in another authority.

What does this mean for you?

Social distancing and care

We are all under a duty to stay at home as much as possible. The Government has expanded the "*medical need*" exception to include going out to, "*avoid or escape risk of injury or harm, or to provide care or to help a vulnerable person.*" The Government says social care services should be

provided remotely “*whenever possible*” and personal attendance (to care) should take place only when “*absolutely necessary*”.

Apart from the general duty to stay at home, there are additional duties for people with underlying health conditions, their families, friends and carers – shielding duties. Shielding means staying at home at all times and minimising any face to face contact with family, friends and carers for a period of 12 weeks. Families, friends and carers should support the person to maintain shielding. Carers are to visit only to carry out “*essential care*”. The Government says essential care is, “*things like help with washing, dressing or feeding.*” People with underlying health conditions and their carers are to agree a plan to continue that care.

People with coronavirus symptoms (or suspected symptoms) are to stay at home at all times for 7-days (or until symptoms pass, if longer). Family members and other members of the household are to stay at home for 14-days. Contact with each other is to be minimal (particularly for those with underlying health conditions). Carers are still to visit, but wearing personal protective equipment.

What to do

If your local authority has not written to you to say they are prioritising care services under Coronavirus Act, your care should be maintained (so far as is allowed under the social distancing rules). You should speak to your carers and care providers to make sure you have an agreed plan to continue your care. You are entitled to continue to receive care visits and any care that is / can be provided remotely where appropriate.

If your care is maintained in line with the social distancing rules, any complaint is very unlikely to succeed.

If any of your care is not being maintained, think about whether it could be within the social distancing rules, and if it could, contact your carers and care providers to explain. Try to agree a plan.

If any of your care is not being maintained (and it could be) but you are unable to rectify that, speak with your social worker. Your social worker should intervene on your behalf. If your social worker says the Coronavirus Act removed or relaxed care duties, you should take these steps:

1. Ask the social worker if they mean formal relaxation under the Coronavirus Act or general relaxation because of social distancing rules?
2. If the social worker says “*general*” – explain why the care could be maintained within social distancing rules.
3. If the social worker disagrees or says “*formal relaxation*” then ask where the local authority has published its “*formal*” explanation.
4. If the social worker is unsure, take steps yourself to establish if the local authority has taken the necessary steps to formally relax, and change, social care packages.
5. If your local authority has taken the necessary steps – look at the explanation and published priorities to establish if your care is maintained in line with those. If it is, any complaint is very unlikely to succeed.
6. If it is not, or if you think the local authority has not taken the necessary steps – TELEPHONE DISABILITY LAW SERVICE ON 020 7791 9800 AND CHOOSE OPTION 2.

Guidance Links

Please see the links below which are useful guidance sources from the Department of Health and Social Care

1. This guidance is for people who are at very high risk of severe illness from coronavirus because of an underlying health conditions who have received letters from the NHS to shield - <https://www.gov.uk/government/publications/guidance-on-shielding-and-protecting-extremely-vulnerable-persons-from-covid-19/guidance-on-shielding-and-protecting-extremely-vulnerable-persons-from-covid-19>
2. This is guidance for anyone who cares unpaid, for a family member or friend due to a lifelong condition, illness, disability, or who cannot cope without their support - <https://www.gov.uk/government/publications/coronavirus-covid-19-providing-unpaid-care/guidance-for-those-who-provide-unpaid-care-to-friends-or-family>
3. This is guidance on social distancing for everyone in the UK & advises on social distancing measures we should all be taking - <https://www.gov.uk/government/publications/covid-19-guidance-on-social-distancing-and-for-vulnerable-people/guidance-on-social-distancing-for-everyone-in-the-uk-and-protecting-older-people-and-vulnerable-adults>
4. This guidance is aimed at local authorities, clinical commissioning groups and registered providers who support and deliver care to people in their homes - <https://www.gov.uk/government/publications/covid-19-residential-care-supported-living-and-home-care-guidance/covid-19-guidance-on-home-care-provision>
5. This guidance is confirming that if you have autism or a learning difficulty, you can leave your home more than once a day, and travel beyond your local area if this is important to your health - <https://www.gov.uk/government/publications/coronavirus-outbreak-faqs-what-you-can-and-cant-do/coronavirus-outbreak-faqs-what-you-can-and-cant-do>