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# THE CORONAVIRUS ACT 2020: A QUICK GUIDE TO HOW IT AFFECTS ADULT HEALTH & SOCIAL CARE

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REVISED EDITION 28<sup>th</sup> March 2020

**The following is based on our understanding of relevant legislation and should not be relied upon in respect of any actions subsequently taken as a result of its content**

**The Coronavirus Act has been brought in to ensure that adult social care and other public services can provide an effective response to the coronavirus emergency. Changes are temporary and should only last for the duration of the emergency. This article summarises the major changes to legislation that the act brings into force.**

The Bill was signed into law on 26<sup>th</sup> March 2020, giving ministers powers under the Act that would be unprecedented in normal times. The legislation is time limited for two years, but not all measures come into force immediately and all can be suspended and then later reactivated as circumstances dictate. The Act allows the 4 UK governments to switch on these new powers when they are needed, and, crucially, to switch them off again once they are no longer necessary, based on the advice of Chief Medical Officers of the 4 nations.

For example, in the case of Schedule 12 (Local Authority Care and Support), the provisions of the Act will come into force in England when a Minister of the Crown puts regulation before Parliament, and they are approved.

## Delaying Continuing Health Care assessments

This provision allows NHS providers to delay undertaking the assessment process for NHS continuing health care (NHS CHC) until after the coronavirus outbreak has ended.

This measure is intended to be brought into operation for the shortest possible time at the peak of the coronavirus outbreak. It would support rapid discharges from hospital and the effective prioritisation of NHS staff resources

Pending CHC assessment, individuals would continue to receive NHS funded care.

## Hospital Discharge (NHS England)

If you have a client or relative in hospital there are now emergency discharge procedures in place. What this will mean in practice is:

- They should still receive high quality care from acute and community hospitals, but will not be able to stay in a bed as soon as this is no longer necessary.
- On the day they are due to be discharged, (following discussions with the individual, their family and any other professionals involved in their care, within one hour the ward will arrange to escort the patient to the hospital discharge lounge, so their acute bed can be immediately used by someone being admitted who is acutely unwell. Within two hours of arriving in the discharge lounge, transport home, any volunteer and voluntary sector support and immediate practical measures, such as shopping and the heating turning on, will be organised by the discharge co-ordinators for those who have no one else to do this.
- A lead professional or multidisciplinary team, as is suitable for the level of care needs, will visit the patient at home on the day of discharge or the day after to arrange what support is needed in the home environment and rapidly arrange for that to be put in place. If care support is needed on the day of discharge from hospital, this should have been arranged prior to the patient leaving the hospital site, by their care coordinator.
- If the patient needs are too great to return to their own home (about 5% of patients admitted to hospital) a suitable rehabilitation bed or care home will be arranged. During the COVID-19 pandemic, the patient will not be able to wait in hospital until their first choice of care home has a vacancy. This will mean a short spell in an alternative care home and the care coordinators will follow up to ensure they are able to move as soon as possible to their long- term care home.

That said, we understand that the Government has agreed the NHS will fully fund the cost of new or extended out-of-hospital health and social care support packages referred to in this guidance. This applies to people being discharged from hospital or who would normally be admitted into hospital for a limited time. It is intended to enable quick and safe discharge and more generally reduce pressure on acute services.

Full details can be sourced via revised guidance issued on 19<sup>th</sup> March 2020:

<https://www.england.nhs.uk/coronavirus/publication/covid-19-hospital-discharge-service-requirements/>

## Suspension of the Care Act (England)

Under Schedule 12 of the legislation, ministers can free councils of their duties under the Care Act 2014 - the legislation governing much of the adult care system in England. Councils

will no longer have to assess and meet the care needs of elderly or disabled people unless they are required to by the European Convention on Human Rights (ECHR) and will not have to provide adult care when children receiving social care turn 18. It removes the current requirement to prepare or review care and support plans for adults and carers, and suspends the duty to provide continuity of care when a person moves between local authority areas. So Local Authorities may lawfully determine whether and the extent to which it will carry out assessments of individuals' needs or review care plans, or carry out financial assessments, rather than being required to carry these out in all cases required by the Care Act 2014 as at present.

Currently, Local authorities should continue to assess individual's needs and then assess their financial position in determining whether someone will need to pay for some or all of their care.

The Coronavirus Act 2020 (Section 12) in effect says that during an 'emergency period' someone's local social services are no longer obliged to carry out such assessments.

The government (or technically 'Minister of the Crown') will decide when an emergency period will happen. They will take the following things into account when deciding:

- the level of how much the virus is spreading, and
- whether this is affecting social services ability to carry out their duties.

This will enable social services to prioritise care to protect life and make rapid decisions. However, social services must meet an individual's needs, if failure to do so means that they would be breaching someone's human rights. So, whilst the emergency measures are intended to be used where a local authority is at imminent risk of failure, the duty of care towards an individual's risk of serious neglect or harm remains

***So what does this mean in practice if an emergency period applies?***

Local authorities will still be expected to do as much as they can to comply with their duties to meet needs during this period. However,

- **Assessment of needs** - The Care Act 2014 places a duty on local authorities to assess the needs of adults, adult and young carers, and disabled children in transition to adult services, for care and support should it appear that they may be in need –a low threshold to trigger this duty. The Coronavirus Act 2020 allows for suspension of this duty to assess, with the local authority having discretion as to whether to conduct an assessment.
- **Financial assessment** – where a person is deemed eligible for care and support provision, the Care Act 2014 places a positive obligation on local authorities to conduct an assessment of a person's finances i.e. financial assessment. The Coronavirus Act 2020

allows for suspension of this duty to undertake a financial assessment, but would not be able to charge for care and support without having done an assessment.

- Duty to provide support to meet eligible needs – the Care Act 2014 places a duty on local authorities to meet an adult’s unmet needs for care and support if found to be eligible following an assessment of the person’s needs. The Coronavirus 2020 has weakened this duty significantly, with local authorities only having to provide care and support should this be necessary to prevent a breach of the person’s human rights (under the European Convention on Human Rights).
- Duty to produce a care and support plan – the Care Act 2014 places a duty on local authorities to produce a care and support plan setting out any eligible needs requiring care and support provision, and detailing the support that is going to be provided by the local authority. The Coronavirus Act 2020 allows for suspension of the duty to do this.
- Duty to review care and support plans already in place - the Care Act 2014 places a duty on local authorities to keep care and support plans under review (including to conduct a review following a reasonable request by or on behalf of the vulnerable adult to who it relates). The Coronavirus Act 2020 allows for suspension of this duty to review existing support plans.

Don’t forget - no one should be charged for social care if they can’t afford it. If someone needs legal advice about social care they can contact the following organisation:

Disability Law Service  
Telephone: 0207 791 9800  
Email: [advice@dls.org.uk](mailto:advice@dls.org.uk)  
Website: [www.dls.org.uk/contact-us](http://www.dls.org.uk/contact-us)

In the event of an ‘emergency period’, the practical difficulty for local authorities is likely to be whether and how, in the absence of an assessment, it is possible to be satisfied as to whether lack of support would result in an ECHR breach: it is implicit that there must be some form of assessment to address whether an ECHR breach would result from lack of care and support. This is likely to be a different form of assessment to the care and support needs assessment, and requires particular focus on article 3, 8 and 5 ECHR and associated case-law.

***How is this being positioned by the government?***

The social care clauses are aimed at allowing local authorities to prioritise the care of those that are considered to be most at risk if the impact of coronavirus was to leave staff shortages in the sector. The Act does contain provision for the Secretary of State for Health and Social Care to direct Local Authorities in relation to the prioritisation of services to meet care and support needs in accordance with guidance issued by the Department of Health and Social Care.

According to the government, the changes to the Care Act 2014 would only be triggered if the spread of coronavirus was such that the Secretary of State considered local authorities to be at imminent risk of failing to fulfil their duties under the Care Act 2014 (the 'emergency period').

*"We expect LAs, working with providers, to do everything possible to maintain services over the coming period," the Act states. "However, during the peak, adult social care services will face surging demand and reduced capacity arising from higher rates of staff absence"... "This may make it impossible for LAs to continue to deliver at current service levels, or undertake the detailed assessments they would usually provide" .... "In such circumstances it is crucial that Local Authorities should be able to prioritise care in order to protect life and reach rapid decisions over the provision of care without undertaking full Care Act compliant assessments."*

At My Care Consultant we understand the necessity to introduce emergency powers in the face of the Coronavirus pandemic, but the Act is a recipe for turning social care into a dogfight for resources. Let's hope that is not what transpires.

Full details of the Coronavirus Act 2020 can be sourced via the following link:

<http://www.legislation.gov.uk/ukpga/2020/7/contents/enacted/data.htm>