

COVID-19 POLICY BRIEFING – CARE ACT 2014 EASEMENTS

Summary – The Department for Health and Social Care (DHSC) have published guidance for local authorities to assist them with using Care Act provisions under the Coronavirus Act 2020. They are designed to support councils to prioritise who needs care most.

Context

- These easements are designed to alleviate pressure on the social care system as demands increase because unpaid carers are unwell or unable to reach them and as care workers need to self-isolate or are unavailable for other reasons.
- Local authorities are still expected to do everything they can to meet needs under the duties set by the Care Act 2014 (Care Act). Provisions are temporary and should only be used where authorities are at risk of failing to meet their duties under the Care Act.

Powers

- Changes to powers fall into four categories:
 - Detailed assessments of care and support needs will not need to be carried out. Councils are still expected to respond as soon as possible to requests for care and support, consider needs of the people that need support and their family and carers and assess what care needs to be provided;
 - Financial assessments will not need to be done. Councils still have powers to charge retrospectively for care and support people receive during this period, subject to reasonable information in advance and a financial assessment being produced later;
 - Care and support plans will not need to be prepared or reviewed, however proportionate, person-centred care planning will still need to be implemented so those providing care and support have sufficient information;
 - Duties to meet eligible care and support needs, or needs of a carer, are replaced with a power to meet needs. This means that in the event needs are unable to be met (e.g. overwhelming demand), powers will support prioritising the most pressing needs, such as enhanced support for people who are ill or self-isolating.

Protections and safeguards

- Easements took legal effect on 31 March 2020 and should only be exercised where essential so the highest service standards are maintained. Compliance with pre-amendment Care Act provisions and Care and Statutory Support Guidance should continue for as long as possible.
- Provisions 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.
- Delayed or uncompleted assessments should be followed up and completed in full once easements are terminated.
- Councils are still under an obligation to meet needs. Failure to do so would be in breach of an individual's human rights under the European Convention on Human

Rights.

- The Care Quality Commission (CQC) will continue to have oversight of providers and will take a pragmatic approach to inspection and will take proportionate action where needed.
- Other important duties still in force include:
 - Care Act duties to promote wellbeing and duties for safeguarding adults at risk;
 - Mental Capacity Act 2005 duties on Deprivation of Liberty Safeguards;
 - Duties on prevention and providing information and advice – particularly important for public reassurance in this period;
 - Equality Act 2010 duties including reasonable adjustments, the Public Sector Equality Duty and towards people with protected characteristics.

Principles on use of powers

- Principled, person-centred and values-based approach promoted by the Care Act remain important for all social care activity. Councils are expected to observe the [Ethical Framework for Adult Social Care](#) so the wellbeing and needs of individuals remain central in decision-making. This is particularly important for decisions on prioritising resources.
- Councils should also keep observing personalisation and co-production as central principles. These are particularly important for effective decision-making, securing the best possible outcomes for residents and the workforce and avoiding costly errors.

Steps before exercising Care Act easements

- Decisions to put easements in place should be done locally by the Director for Adult Social Care (ASC) in consultation with the Principal Social Worker. The lead Member should be involved and briefed on the decision-making process. Other stakeholders to engage with are the Health and Wellbeing Board and local NHS CCG leadership.
- A record of the decision should be made along with evidence taken into account including:
 - Nature of changes to demand or the workforce;
 - Steps taken to mitigate the need for it to happen;
 - Expected impact of measures taken;
 - How changes will avoid human rights breaches at population level;
 - Individuals involved in the decision-making process;
 - Points at which this decision will be reviewed again.
- The decision should be communicated to all stakeholders (providers, service users and carers). The DHSC should also be notified explaining why the decision has been taken and relevant detail.

Interaction with other changes

- This should be read in conjunction with COVID-19 Hospital Discharge Requirements. Under these, councils do not have to carry out financial or eligibility assessments for

people being discharged under the enhanced hospital discharge service.

- Government is fully funding new or extended out-of-hospital health and social care support packages for people being discharged from hospital or would otherwise be admitted for a limited time.

Implications for Surrey

- As a result of the pandemic, Surrey is likely to see increased demand on ASC. Easements to the Care Act will support Surrey County Council in circumstances where the council is at risk of failing to meet its duties under the Act.
- Some residents with care and support needs may find it more difficult to access ASC services for a temporary period if easements are introduced. Residents with the greatest care and support needs will be given the highest priority. Communication with service users will be critical for managing expectations of services they may or may not receive.
- Senior officers in ASC should familiarise themselves with this guidance and develop a strategic response should there be a need to activate these easements. These need to take into consideration other guidance, such as the new Hospital Discharge Requirements and Ethical Framework for Adult Social Care.
- Surrey County Council will need to prepare an evidence base should a decision be made to bring Care Act easements into force. This should document the changing nature of demand and the mitigation measures for this. In addition, ASC should work with Legal Services to assess the human rights and equality implications should a decision need to be taken. A full Equality Impact Assessment should also be prepared to inform the final decision.
- A clear process for decision-making should be agreed and understood between the Surrey County Council Cabinet Member for Adults and Public Health, Executive Director for Health, Wellbeing and Adult Social Care and Principal Social Worker. This should be informed by Annex A (see 'Further information' section).
- A communications and engagement strategy should be developed so in the event these easements need to be activated, all relevant stakeholders including service users, partners (Clinical Commissioning Groups in particular), Members and staff understand what these changes will mean for them.

Further information

[Full Care Act Easements guidance](#). This includes:

- Annex A – Recommended governance and decision-making for Directors of Adult Social Services and Principal Social Workers for Care Act easements;
- Annex B – Guidance on streamlining assessments and reviews;
- Annex C – Prioritisation process;
- Annex D – Safeguarding guidance;
- Annex E – Coronavirus Act 2020 Explanatory Notes link