



What is changing for adult social care under the Coronavirus Act 2020?



On 25 March, the parliament at Westminster passed the **Coronavirus Act 2020** into law. This act is **temporary**, and the government has stated that they will only 'switch on' the new powers in the act when needed. The Coronavirus Act will be in place for **two years** and will be **reviewed every six months**. Not all the measures listed in the act will come into force immediately.

The 'easement' power

One section of the act which **has been 'switched on'**, is the one designed to ease the burden on frontline social care staff. This part of the act is often referred to as the **'easement' power**. The easement power means that local authorities could reduce or even stop providing care to some people if the local situation becomes critical. This part of the act has raised some concerns about the implications for human rights of specific groups, such as people with disabilities.



This guide outlines what the Coronavirus Act 2020 is changing from the existing laws in **England and Wales**. Information regarding **Scotland and Northern Ireland** will be released shortly.



***Disclaimer:** *This is intended as a guide only and has been produced by Shared Lives Plus, a national charity, for our members who are Shared Lives carers and Shared Lives scheme workers, and to aid their partner agencies and commissioners. It is not government guidance. It is accurate to the best of our knowledge at the time of publishing (3 April 2020), but government guidance is changing rapidly, and there is no settled policy position on some issues. If in doubt, seek qualified medical or legal advice. No liability is accepted for any losses or damages arising from following this guidance**

Local authority duties towards social care before coronavirus

Prior to the outbreak of coronavirus and the passing of the Coronavirus Act, local authorities in England were given specific duties and obligations under the **Care Act 2014** (Care Act). In Wales, these duties and obligations were outlined in the **Social Services and Well-being Wales Act 2014** (Wales Act).

Both acts require local authorities to **assess the needs of every person who require care**, to **consider whether they are eligible** for state funding, and to **provide a care plan** where necessary.

Specific duties of local authorities under the Care Act/Wales Act

- The first and general duty of a local authority is to **promote an individual's wellbeing**. This means;
 - respecting a person's dignity,
 - their physical, mental and emotional wellbeing,
 - their social and economic wellbeing,
 - their participation in work, education, training or recreation,
 - their domestic, family and personal domains,
 - and protecting them from abuse and neglect.
- Arguably the most important duty that local authorities have is to **meet a person's needs for care and support**.
 - Under the National framework for NHS Continuing Healthcare and NHS-funded nursing care (October 2018), local authorities are required to comply with their duty to assess **NHS continuing health assessments**.
- The **'transition' duties** of local authorities mean that under the Care Act/Wales Act it isn't possible for children to lose their children's service provision without gaining adult service provisions.
- Furthermore, local authorities are obliged to protect people's rights to **be involved in the decisions which affect them**.
- Both acts also require local authorities to meet a **carer's needs**, as well as the person they support.



Changes to social care under the Coronavirus Act 2020

Many of the **duties and obligations** of local authorities in England and Wales under the Care Act/Wales Act have been **removed or downgraded** under the Coronavirus Act. This part of the act has been 'switched on' **and is now in action in both England and Wales**. The motivation behind this change is to enable local authorities to prioritise their services during the pandemic. In other words, to make sure that the **most urgent and serious care needs** are met first.

Local authorities are **no longer obliged to meet an individual's care needs**. Instead, the duty of the local authority has been downgraded to only providing care and support **if not doing so breaches a person's human rights** according to the European Convention of Human Rights (ECHR). The same also applied to the rights of carers, although in Wales carers still have the right to be protected from abuse and neglect.

In practice the Coronavirus Act 2020 means that;

- Local authorities in England or Wales **no longer have to comply** with the following obligations as outlined in the Care Act/Wales Act;
 - Duty to assess needs
 - Duty to assess the needs of a carer
 - Duty to give written records of an assessment
 - Duty to give effect to a preferred place of accommodation.
 - The local authority does not have to carry out financial assessments. However, it cannot charge for services unless an assessment has been undertaken.
 - In addition, local authorities **no longer have to carry out any transition assessments** for young people in transition to adulthood unless it breaches a person's human rights.
- **What hasn't changed** under the Coronavirus Act 2020;
 - People should **continue to have a choice** regarding what their care looks like.
 - Local authorities are still required to carry out **safeguarding inquiries**.



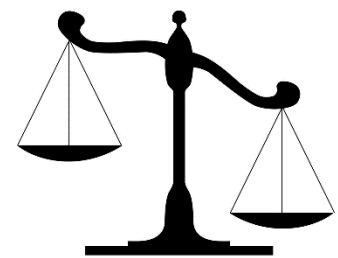
- There has been **no modification to section 1** of the Care Act/Wales Act which state that local authorities are **required to promote individual's wellbeing**. Therefore, even without the obligation to assess an individual's needs, eligibility and requirement of financial support, the local authority can still do all of these things if they consider it important to promote a person's wellbeing.

In other words, **local authorities still have the power, but not the duty, to meet people's care needs.**

Please also note that there should be no changes to assessment and eligibility for social care until the Director of Adult Social Care within a local authority decides that the **social care workforce** has been '**significantly depleted**', and that the **demand for social care has increased** 'to the extent that it is no longer reasonably practicable for it to comply with its Care Act duties.' In theory, local authorities **should continue their obligations until it is no longer possible to do so**, although this may not be the case in practice.

Other laws and guidance that also matter

Even though local authorities in England and Wales are no longer obliged to carry out many of their duties as defined by the Care Act/Wales Act, there are other sources of law which may compel them to do so. These include **common law**, which is based on the decisions of earlier courts, and **human rights law**.



Assessment of needs

- Under the Coronavirus Act, local authorities do not have to perform an assessment of needs. However, this could be unlawful under common law, which holds that local authorities **must act rationally and fairly**.
- In addition, in order for a local authority to determine whether a 'failure to assess a person's needs or to provide care to them might breach their human rights, it will be necessary to carry out an assessment of **what they need to keep them safe and well**, and to evaluate the reasonably foreseeable consequences, in particular on their

physical health and psychological well-being, of not providing or withdrawing support,' according to 39 Essex Chambers.

- The **guidance issued by the government** on how local authorities should interpret the act advises that such an assessment (of how this will impact a person's human rights) is required even if the more detailed form of assessment normally required under the Care Act/Welsh Act is not.
- The guidance also advises that local authorities should act in a **proportionate** and **people-centred way**.

Human rights

The most **important human rights** in relation to the changes the Coronavirus Act has on adult social care are;

- The right to life
- The right to freedom from inhuman or degrading treatment
- The right to respect for a person's individual autonomy (including their physical and psychological integrity) and their private and family life
- The right to no arbitrary deprivation of liberty



Some of these **rights could be breached** if the local authority fails to provide basic services, such as;

- Adequate toileting facilities
- Access to life-saving medication
- Access to fresh food, water and heating
- Access to assistance with personal care
- Support for communication with friends and family

According to barristers from 39 Essex Chambers, human rights could 'also be breached by failing to have in place services that monitor the mental health of a person at risk of suicide or self-harm, or by locking a person in a confined space rather than providing care services to them to keep them safe, or by failing to take any steps to protect a vulnerable adult from abuse'.

In England, local authorities do not have an obligation to provide services to meet assessed needs **unless a failure to do so would result in a breach of the human rights** of the

service user or their carer. Effectively, local authority actions in England must still be driven by compliance with the [European Convention on Human Rights](#) (ECHR). In **Wales, there is no express requirement** for local authorities to avoid breaches of the ECHR.

Behaving ethically

Whilst local authorities in England and Wales are no longer legally obliged to perform the duties that they previously had under the Care Act/Wales Act they are **morally obliged** to do so. In order to help local authorities make the most ethical decisions about adult social care that are possible during the coronavirus crisis, the government has published **an ethical framework**. This framework identifies the following values which should underpin local authority decisions;

- Respect
- Reasonableness
- Minimising harm
- Inclusiveness
- Accountability
- Flexibility
- Proportionality
- Community



Local authorities **will be held accountable** on the ethical framework by a number of other bodies, including the Department of Health and Social Care (DHSC) in England and the Department of Health and Social Services (DHSS) in Wales, as well as the local NHS Trust.

Local authorities who take a 'blank cheque' approach to putting the needs of the community over the needs of the individual may experience push back from these bodies on ethical grounds, given that they will **still be expected to do as much as they can to comply with their duties to meet needs during this period**.

Consulting people over changes to their care packages

Under the Coronavirus Act, in theory **local authorities have the power to revise a current share and support plan**. As the local authorities are no longer responsible for meeting

everyone's assessed needs in full, it is possible that local authorities may withdraw current care packages from people being supported by Shared Lives amongst others.



- In this scenario, the person being supported by Shared Lives **MUST** be consulted by the local authority. Where the person themselves are deemed to lack mental capacity, their care giver, family or other advocate must be consulted on their behalf.
 - **Section 9 of the Care Act** and **10 of the Wales Act** still apply in this instance. In other words, the local authority must involve the person about whom the decision is being made, and this involvement must be **appropriate and meaningful**.
 - These rights are also protected under **article 8 of the Human Rights Act**.

In effect, if there is going to be a removal of someone's care, the local authority is **not legally able to do this** without the knowledge of the person being supported.

What can you do if a person supported by Shared Lives has had their care packaged changed or removed?

- Primarily, you need to make sure that this decision has been **made with the consultation of the person** who is receiving the care package, as outlined above.
- You could also go back to the local authority, **asking for evidence** of how they have carried out 'proportionate, person-centred care planning which provides sufficient information to all concerned', as is stipulated in the Care Act easements: guidance for local authorities published on 31 March.
- You can **contact Shared Lives Plus** who will try to advise you further. Please consider that this is an extraordinary change to the law, and the situation is still unfolding. Shared Lives Plus may not have all the answers at this current time, but we will try our best to assist our members.
 - Phone: 0151 227 3499
 - Email: info@sharedlivesplus.org.uk

Summary

- The Coronavirus Act 2020 removes or downgrades some adult social care duties of local authorities in England and Wales under the Care Act 2014 and the Social Services and Well-being Wales Act 2014 (Wales Act). These powers were 'switched on' on 31 March.
- Neither Scotland nor Northern Ireland have 'switched on' the easements at this time.
- These measures are designed to enable local authorities to prioritise their services during the pandemic.
- Under the Coronavirus Act 2020, local authorities are no longer obliged to meet needs. This means they no longer need to;
 - Assess needs of a person requiring adult social care
 - Assess the needs of the carer
 - give written records of an assessment
 - give effect to a preferred place of accommodation
 - does not have to carry out financial assessments
- Local authorities are only required to provide care and support if not doing so breaches a person's human rights.
- Local authorities are still obliged to;
 - carry out safeguarding inquiries
 - allow people to have a choice regarding what their care looks like
 - promote individual's wellbeing
- Under the Coronavirus Bill 2020, local authorities are required to continue their obligations until it is no longer possible to do so.
- Other sources of law and guidance which may compel local authorities in England and Wales to carry out many of their adult social care duties as previously defined in the Care Act and the Wales Act include;
 - Common law
 - Human rights law
 - The government guidance on the Coronavirus Act 2020 for local authorities
 - The ethical framework for adult social care
- A person being supported by Shared Lives (or their family member/advocate) MUST be consulted regarding any changes to their care package.
- There are a few actions that a Shared Lives carer/schemes can take if a person being supported by Shared Lives has their care package changed or removed, including contacting Shared Lives Plus.

Shared Lives Plus is the UK network for shared living.

We promote supportive shared living through Shared Lives and Homeshare, with local and national governments. We believe everyone should be able to choose who they spend time with - and do what matters to them. We want to reduce loneliness and help make our communities more connected. We offer guidance, best practice, a community of people sharing their lives, legal advice and insurance

Shared Lives Plus is issuing regularly updated guidance to the sector

here: <https://sharedlivesplus.org.uk/infection-control-guidance/>

There is also more detailed guidance for Shared Lives Plus members (Shared Lives scheme workers and Shared Lives carers) in the members' area of www.SharedLivesPlus.org.uk, including FAQs. We are issuing separate guidance for our Homeshare members.

Contact us: info@sharedlivesplus.org.uk, 0151 227 3499

What are Shared Lives schemes?

Shared Lives schemes offer support for adults with learning disabilities, mental health problems or other needs that make living on their own more difficult. Shared Lives schemes carefully match someone who needs support with a Shared Lives carer. The Shared Lives carer gives care to the person who needs support and shares their family and community life. Some people who need support move into the Shared Lives carers home, whilst others visit for daytime visits and respite. Shared Lives offer an alternative to traditional kinds of care, such as care homes, and is available across the country. Shared Lives is also known as adult placements in some parts of Northern Ireland and Scotland.