

A photograph of two women in professional attire sitting at a table in a room with classical architectural columns. They are looking at a document together. On the table are several white teacups and a teapot. The scene is brightly lit, suggesting a professional office environment.

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The Coronavirus Act 2020: Essential Update for Advocates

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The Coronavirus Act 2020: Overview

Summary:

- Received Royal Assent on 25 March 2020
- Social care provisions came into force on 31 March 2020 (The Coronavirus Act 2020 (Commencement No. 2) Regulations 2020)
- Includes 'extraordinary measures'
- Has 3 primary aims:
 1. To support the slow of spread of the virus;
 2. To reduce the administrative and resourcing pressures on the health and social care sector; and
 3. To increase public sector staffing levels.
- Could be in place for up to 2 years but its necessity will be reviewed every 6 months

The Coronavirus Act 2020: Health & Social Care Implications

Impact on:

- Care Act 2014
- Mental Capacity Act 2005
- Mental Health Act 1983
- Continuing Healthcare
- SEND Provision
- Approach to treatment refusal and DNACPR decisions

The Coronavirus Act 2020: Impact on duties contained in the Care Act 2014

	Care Act 2014	Coronavirus Act 2020
Assessment	<ul style="list-style-type: none"> • Low threshold for assessment • Anyone who 'may' be in need of care and support entitled to be assessed 	<ul style="list-style-type: none"> • Assessment duty suspended
Financial Eligibility	<ul style="list-style-type: none"> • Positive obligation on local authorities to conduct financial assessment to establish whether or not individual eligible for funded care provision 	<ul style="list-style-type: none"> • Assessment duty suspended • BUT local authorities will need to conduct financial assessment if they wish to charge an individual for all or part of their care
Care Planning	<ul style="list-style-type: none"> • Duty to produce care and support plan for individuals with eligible needs • Care and support plans to be reviewed periodically or on reasonable request 	<ul style="list-style-type: none"> • Duty suspended • If care and support plan reviewed/changed there is still a duty to consult the person concerned

The Coronavirus Act 2020: Impact on duties contained in the Care Act 2014

	Care Act 2014	Coronavirus Act 2020
Written Record of Assessment	<ul style="list-style-type: none"> Duty to provide written record of an assessment 	<ul style="list-style-type: none"> Duty suspended
Preferred Place of Accommodation	<ul style="list-style-type: none"> Duty to give effect to preferred place of accommodation 	<ul style="list-style-type: none"> Duty suspended
Carers Assessments	<ul style="list-style-type: none"> Duty to assess the needs of a carer 	<ul style="list-style-type: none"> Duty suspended
Transition from Child to Adult Services	<ul style="list-style-type: none"> Duty to carry out transition assessments for disabled young people 	<ul style="list-style-type: none"> Duty suspended

The Coronavirus Act 2020: What remains of the Care Act 2014?

- Section 1 well-being duty
- Section 5 duty to promote a diverse and high quality market in services for meeting care and support needs
- Duties in relation to advocacy
- Safeguarding responsibilities
- Duties on local authorities to provide information and advice

The Coronavirus Act 2020: Human Rights Exceptions

- Remaining duty to meet assessed need if failure to do so would result in a breach of the human rights of the individual or their carer
- Article 2 – right to life
- Article 8 – right to respect for private and family life
- Article 14 – Prohibition on discrimination
- Duties under the Equality Act 2010 remain including duty to make reasonable adjustments and duties towards people with protected characteristics

The Coronavirus Act 2020: Care Act ‘Easements’

‘Care Act Easements: guidance for local authorities’ – 31 March 2020

- Easements *‘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’*
- *‘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 possible to comply with its Care Act duties ...and where to continue to do so is likely to result in urgent or acute needs not being met, potentially risking life’*
- If particular local authorities wish to apply the easements it must be agreed with the Director of Adult Social Services in conjunction with the Principal Social Worker
- Health and Wellbeing Board to be kept informed

The Coronavirus Act 2020: Care Act ‘Easements’

‘Care Act Easements: guidance for local authorities’ – 31 March 2020

- Local authorities should have a record of their decision to apply the easements.
- *‘Where possible the record should include:*
 - *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’*
- Decision to apply should be communicated to all providers, service users and carers in accessible format
- Decision should also be reported to Department of Health and Social Care
- CQC will continue to *‘provide oversight’* but routine inspections suspended
- All assessments and reviews that are not completed will be followed up and finalised once the easements have been terminated

The Coronavirus Act 2020: Care Act ‘Easements’

‘Care Act Easements: guidance for local authorities’ – 31 March 2020

- *‘Local authorities will be expected to observe the Ethical Framework for Adult and Social Care’*
- Framework includes the following principles:
 - Respect
 - Reasonableness
 - Minimising harm
 - Inclusiveness
 - Accountability
 - Flexibility
 - Proportionality
 - Community

The Coronavirus Act 2020: Continuing Healthcare

- Act permits NHS bodies to postpone CHC assessments until the end of the emergency period
- NHS CHC assessments for individuals on acute hospital discharge pathway and in community settings not required until end of COVID-19 emergency period

The Coronavirus Act 2020: Mental Capacity Act 2005

- Act makes no changes to MCA 2005
- Deprivation of liberty safeguards remain in force
- Guidance due to be provided shortly
- Lord Bethell during second reading of Coronavirus Bill in the House of Lords:

‘We recognise that we have to strike a careful balance between the need to protect some of the most vulnerable in our society with preventing the spread of the virus. Therefore, we have decided not to alter deprivation of liberty safeguards in primary legislation. However, we think that we can achieve significant improvement to the process through emergency guidance. That will include making clearer when a deprivation of liberty safeguards authorisation is necessary, and the basis on which an assessment can be made, including, for example, phone or video calling for assessment’.

Coronavirus and Care Homes

- Care Home guidance was updated on 19 March 2020, it includes basic guidance about hygiene but also:

‘Care home providers should stop all visits to residents from friends and family. Medical staff and delivery couriers can still visit, but you should leave a hand sanitiser by the entrance and ask them to wash their hands as soon as they enter the building.’

The Coronavirus Act 2020: Impact on Mental Health Act 1983

- Only 1 medical recommendation necessary to authorise detention under sections 2 and 3 MHA 1983
- But only if it is impractical or involves unnecessary delay to seek 2 opinions
- The clinician making the recommendation must have examined the patient but does not need to have had any prior knowledge of them
- Written record needed as to why it was impractical or would have caused unnecessary delay to involve 2 clinicians

The Coronavirus Act 2020: Impact on Mental Health Act 1983

- Section 5(2) power to hold detained patients in hospital for 72 hours for the purposes of reviewing whether detention requires extension – timeframe increased to 120 hours
- Section 5(4) allows nurses to detain someone for up to 6 hours in order for an appropriate assessment to be undertaken – timeframe increased to 12 hours
- Section 136 allows the police to detain a person for 24 hours if they think that person has a mental disorder and is in need of ‘care or control’ – timeframe increased to 36 hours

The Coronavirus Act 2020: Impact on SEND Provision

- This aspect of the Act is not yet in force
- Secretary of State required to give notice
- If introduced, the Children and Families Act 2014 would be varied such that:
 - Duty under section 42 to secure special educational provision and arrange health provision amended such that local authorities would have to use 'reasonable endeavours'
 - Duty to complete annual EHCP reviews in section 44 suspended
 - Duty under section 42 to admit a young person where they are named in section I of an ECHP also suspended
- Changes for up to 1 month but can be renewed by Secretary of State for further month on an ongoing basis

Guidance on Advance Care Planning



Joint statement on advance care planning

The importance of having a personalised care plan in place, especially for older people, people who are frail or have other serious conditions has never been more important than it is now during the Covid 19 Pandemic.

Where a person has capacity, as defined by the Mental Capacity Act, this advance care plan should always be discussed with them directly. Where a person lacks the capacity to engage with this process then it is reasonable to produce such a plan following best interest guidelines with the involvement of family members or other appropriate individuals.

Such advance care plans may result in the consideration and completion of a Do Not Attempt Resuscitation (DNAR) or ReSPECT form. It remains essential that these decisions are made on an individual basis. The General Practitioner continues to have a central role in the consideration, completion and signing of DNAR forms for people in community settings.

It is unacceptable for advance care plans, with or without DNAR form completion to be applied to groups of people of any description. These decisions must continue to be made on an individual basis according to need.

This is a joint statement from the following organisations:

British Medical Association (BMA)
Care Provider Alliance (CPA)
Care Quality Commission (CQC)
Royal College of General Practice (RCGP)

A Reminder of DNAR Basics

- When clinicians are considering making a DNACPR recommendation there is a legal requirement for them to discuss this with the patient (or with those within the meaning of section 4 for a patient who does not have capacity for that decision).
- In some health and care settings, DNACPR recommendations are recorded on a form that is specific only to a decision about CPR, many organisations and communities have moved to the use of broader emergency care plans such as Treatment Escalation Plans (TEPs). The same principles apply to both.

A Final Thought...Video Assessments

- The VP of the CoP has now indicated that video assessments of capacity are permissible (cf para 38 in *BP*).
- This can't be a blanket invitation, it is likely to vary on the circumstances of the case and in every case there has to be a proper consideration of section 1(3).
- If video capacity assessments are permissible, can we build an argument that Advocates *must* be given the capability to speak to their clients via similar technology as a part of the Article 5(4) mechanism?

Questions?

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