

**URGENT LEADER OF THE COUNCIL
CABINET MEMBER MEETING
22 April 2020**



Report sponsor: Andy Smith, Strategic Director
– People Services

Report authors: Perveez Sadiq, Service
Director, Adult Social Care Services and Alison
Bush, Principal Lawyer

ITEM 6

Implementation of easement of Care Act 2014 duties brought in by the Coronavirus Act 2020

Purpose

- 1.1 On 23rd March 2020, the Prime Minister announced that UK citizens would be restricted from leaving their home except in certain circumstances. It was recognised that these restrictions, together with the effects of the Covid-19 pandemic on the UK workforce would place pressure on the delivery of care and support. On 25th March 2020, the Coronavirus Act received Royal Assent and on 31st March 2020, Commencement Order No 2 was introduced bringing into force those parts that disapply several duties under the Care Act 2014 (“the easements”).
- 1.2 The decision whether to introduce the easements is to be taken by the Director of Adult Social Services (DASS) in each local authority, following a decision-making process set out in Government guidance entitled Care Act easements: guidance for local authorities published on 1st April 2020. This report provides details about the decision to be made and in what circumstances and seeks approval for the Strategic Director for People Services to take that decision.

Recommendation

- 2.1 To agree to implement the easements as set out in this report and subject to recommendation 2.2
- 2.2 To delegate authority to the Strategic Director for Peoples Service, to make decisions when appropriate to implement the easements set out in the Coronavirus Act 2020.

Reason(s)

- 3.1 It is essential that critical levels of care and support are maintained to the most vulnerable people during a time when staffing and care market capacity are severely challenged.
- 3.2 It is essential that patient flow out of the acute hospital is maintained.

Supporting information

- 4.1 The Guidance states that Local Authorities should only take a decision to begin exercising the 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 (as they stand prior to amendment by the Coronavirus Act) and where to continue to try to do so is likely to result in urgent or acute needs not being met, potentially risking life. There are four stages of decision-making which are set out in detail in Annex A of the Guidance but are described as:

Operating under Care Act duties:

- Stage 1: Operating under the pre-amendment Care Act - business as usual.
- Stage 2: Applying flexibilities under the pre-amendment Care Act - decision for individual service type to prioritise short term allocation of care and support using current flexibilities within the Care Act.

Operating under easements:

- Stage 3: Streamlining services under Care Act easements - decision to operate under Care Act easements as laid out by the Coronavirus Act.
- Stage 4: Prioritisation under Care Act easements - whole system prioritising care and support

Only those decisions at stages 3 and 4 are impacted by this report. Those decisions at stages 1 and 2 are within the existing delegated authority of the Strategic Director – People Services to implement.

The following is a link to the Guidance on the gov.uk website;

<https://www.gov.uk/government/publications/coronavirus-covid-19-changes-to-the-care-act-2014/care-act-easements-guidance-for-local-authorities>

4.2 The duties under the Care Act 2014 that are eased by the Coronavirus Act 2020 are:

- Not having to carry out detailed assessments of people's care and support needs in compliance with pre-amendment Care Act requirements. However, they will still be expected to respond as soon as possible (within a timeframe that would not jeopardise an individual's human rights) to requests for care and support, consider the needs and wishes of people needing care and their family and carers, and make an assessment of what care needs to be provided.
- Not having to carry out financial assessments in compliance with pre-amendment Care Act requirements. They will, however, have powers to charge people retrospectively for the care and support they receive during this period, subject to giving reasonable information in advance about this, and a later financial assessment.
- Not having to prepare or review care and support plans in line with the pre-amendment Care Act provisions. They will however still be expected to carry out proportionate, person-centred care planning which provides sufficient information to all concerned, particularly those providing care and support, often at short notice. Where they choose to revise plans, they must also continue to involve users and carers in any such revision.
- Replacing the Council's duty to meet eligible care and support needs, or the support needs of a carer, with a power to meet needs. Local Authorities will still be expected to take all reasonable steps to continue to meet needs as now. In the event that they are unable to do so, the powers will enable them to prioritise the most pressing needs, for example enhanced support for people who are ill or self-isolating, and to temporarily delay or reduce other care provision.

4.3 The duties that cannot be eased are:

- Duties in the Care Act to promote wellbeing and duties relating to safeguarding adults at risk.
- Duties in the Mental Capacity Act 2005 relating to Deprivation of Liberty Safeguards (DoLS). Guidance on the operation of DoLS during this period will be published separately
- Local Authorities' duties relating to prevention and providing information and advice. The provision of information and advice for public reassurance will be particularly important during this period. To aid good communications, Local Authorities should continue to draw on their helpful relationships with trusted partners in the voluntary sector as well as on a full range of digital and other channels which help reach people with differing needs and in different circumstances during this period (for example to make up for the closure of libraries)
- Duties imposed under the Equality Act 2010, including duties to make reasonable adjustments, the Public Sector Equality Duty and duties towards people with protected characteristics. These should underpin any decisions made with regard to the care and support someone receives during this period.

- 4.4 The matters to be taken into consideration when making the decision to implement the easements are:
- 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; and
 - points at which the decision will be reviewed again.
- These matters must be included in the written record of the decision along with any supporting evidence for the decision being taken.
- 4.5 The powers within the Coronavirus Act 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.
- 4.6 Before taking the decision, the Strategic Director – People Services will need to consult the Principal Social Worker and be clear about the reason the decision needs to be taken; the impact of the decision on the people who ordinarily use the service; and the impact of the decision on families and carers of people who ordinarily use the service. The decision should also consider and be informed by a conversation with the local NHS Leadership. The Strategic Director – People Services and the Principal Social Worker will need to ensure that their lead member has been involved and briefed as part of this decision-making process. Once the decision to implement the easements is taken, it must be kept under review and the decision made to end implementation as soon as it is considered they are no longer required.
- 4.7 The risks associated with making this decision are that people who would ordinarily receive care and support will no longer have some, or any of those needs met. By making the decision we can ensure that urgent and acute needs are met, ensuring, as far as we are able the safety of people with care and support needs.
- 4.8 The risks associated with not making the decision are that the Council will breach its duties under the Care Act on multiple occasions, and urgent or acute needs will not be met, thus risking life.
- 4.9 If the decision is not made and the Council breaches its duties under the Care Act, it may be liable in damages for the impact of the breach(es) on those with care and support needs.
- 4.10 The available level of the workforce and market capacity are being monitored daily through the capacity trackers we have in place. Should these trackers indicate that the expected and regular supply of care and support is exhausted, thereby leaving people with critical needs without care, a decision to invoke the easements shall be taken by the Director of Adult Social Services as per the process outlined at para 4.6 of this report

Public/stakeholder engagement

- 5.1 The DASS shall liaise with the senior leadership team of Derby and Derbyshire Clinical Commissioning Group when exercising the delegated authority to invoke the easements.
- 5.2 The DASS shall use the LRF and NHS structures in place during the Corona Virus outbreak to affect the decision making process.

Other options

- 6.1 Do Nothing – This will lead to risk to life and limb of multiple vulnerable adults. There will be exponentially increasing levels of calls on the service with an increasingly depleted workforce or/and care capacity being unable to meet the demand which would lead to adverse impact on the health and well-being of the population. The duty to ensure market viability remains and doing nothing would also negatively impact on that duty.
- 6.2 Remaining at stage 2 of the easements – will eventually lead to the circumstances described in 6.1 above in any event. In extremis, it would also amount to fettering of decision making powers.

Financial and value for money issues

- 7.1 Whilst limited financial consequences of any decision to invoke the easements would ensue, these would not be material to the overall financial position of the Council, as the easements would be temporary in nature.

Legal implications

- 8.1 The Care Act 2014 imposes upon Local Authorities various duties relating to the assessment and provision of support to persons with care and support needs and their carers. If the Council did not implement the easements at a time 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 it will lead to urgent or acute needs not being met, potentially risking life.

Other significant implications

- 9.1 None

This report has been approved by the following people:

Role	Name	Date of sign-off
Legal	Alison Bush – Principal Lawyer	14/04/20
Finance	Alison Parkin – Head of Finance People Services	15/04/20
Service Director(s)	Pervuez Sadiq – Service Director	14/04/20
Report sponsor	Andy Smith - Strategic Director	15/04/20
Other(s)		

Background papers:
List of appendices: