

## POTENTIAL CHANGES TO THE CARE ACT 2014

*“Carers already play a vital role in the care and support system and their contribution during this emergency period will be even more critical.”*

[Care Act easements: guidance for local authorities \(DHSC, updated 20 May 2020\)](#)

### Why might there be changes ahead?

Much of the law relating to carers comes from the Care Act 2014. The Coronavirus Act 2020 gives local authorities temporary powers to water down (or ‘ease’) their legal duties where their workforce is so depleted, or the demand for social care is so high, as to pose a risk to life.

### Why is this important for carers?

The so-called ‘easements’ – if activated – enable local authorities to reduce or withdraw care and support from some people to make sure that those most in need are prioritised during the pandemic. It could mean, for example, that it is harder to get a carer’s assessment; or you may not get the same, or any, respite; or the amount of paid carer support might be reduced.

### How long might the easements last for?

It is up to each local authority to decide whether they need to activate the changes. The easements are only available during the pandemic period (up to March 2022) and are to be used as narrowly as possible. Some local authorities activated them temporarily and then returned to normal. As at 1 June 2020, only Solihull Council has activated the easements. For further details, see –

<https://www.cqc.org.uk/guidance-providers/adult-social-care/care-act-easements-it>

### So what are the easements?

The easements are activated when a local authority reaches stages 3 or 4:

<b>STAGE 1:</b>	<u>BUSINESS AS USUAL:</u>  This involves no change.
<b>STAGE 2:</b>	<u>FLEXING THE CARE ACT 2014:</u>  This involves using the existing flexibilities in the law to prioritise short-term allocation of care and support. For example:

	<ol style="list-style-type: none"> <li>1. Conducting carers assessments by phone or video link rather than in person, or asking carers to assess their own needs for support.</li> <li>2. Using different ways of meeting needs – eg if paid carers cannot provide the care, and if an unpaid carer is willing to take over, it may be necessary to use a direct payment to buy that care from the family member.<sup>1</sup></li> <li>3. Providing support to meet urgent needs without having yet carried out a needs assessment or a financial assessment.</li> </ol>
<p><b>TIPPING POINT REACHED - EASEMENTS TRIGGERED</b></p> <p>According to the <a href="#">2020 guidance</a>:</p> <p><i>“A local authority should only take a decision to begin exercising the Care Act easements when the <u>workforce is significantly depleted</u>, 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 <u>urgent or acute needs not being met, potentially risking life</u>. Any change resulting from such a decision should be proportionate to the circumstances in a particular local authority.”</i></p>	
<p><b>STAGE 3:</b></p>	<p><u>STREAMLINING ASSESSMENTS AND REVIEWS:</u></p> <p>At this point, carers might find that the local authority will not carry out a carer’s needs assessment, prepare care and support plans, or carry out reviews. Conversely, it may also mean that carers are temporarily given more support than they would ordinarily be entitled to which may be withdrawn when the easements cease.</p>
<p><b>STAGE 4: (THE MOST SEVERE EASEMENT)</b></p>	<p><u>PRIORITISING NEED:</u></p> <p>The situation for a local authority would have to be severe to reach this crisis point. At stage 4, a local authority does not have to provide any services UNLESS a failure to do so would breach the human rights of the service user or their carer. They can “<i>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</i></p>

<sup>1</sup> Care and Support (DP) Regulations 2014: Reg 3(1) – must not be used to pay family but (2) says may if necessary.

	<p><i>provision.” Put bluntly, it may mean, for example, that personal care is not provided to ‘A’ to ensure that ‘B’ is fed. There is only a duty to meet those needs that are necessary avoid a human rights breach.</i></p>
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*What does this mean for me?*

If your local authority does not activate the easements, you may still experience some changes in terms of how social workers etc make the relevant arrangements. But they cannot at that stage refuse to assess needs and they are still required to meet those assessed needs that are eligible for support.

**FREQUENTLY ASKED QUESTIONS**

*Can an existing care package be stopped or reduced?*

Only if the easements have been triggered and only after consultation with the person and their carers. Care packages without consultation cannot be cut by stealth. If a local authority reaches stage 4, there remains a duty to provide care to avoid human rights breach. That requires some form of assessment of the impact of the changes which should be in writing and shared with the person:

*“Local Authorities should still assess people’s social care and support needs throughout this period and should make a written record of this assessment.”*

*Can family members be paid if they take over from paid carers?*

Ordinarily, local authorities would not directly ‘buy’ care from family members. But because of coronavirus there might be circumstances where they consider this to be necessary. However, this does have implications for the family carer and you may want to get advice before agreeing to it.

*My local authority is not doing carers’ assessments at the moment – is that legal?*

Not unless the local authority has triggered the easements. A local authority can look at different ways of doing a carer’s assessment (eg by phone), but they are still legally required to do it.

*My wife’s needs have changed in the care home; can we apply for NHS continuing healthcare? And will it be backdated?*

At the moment, NHS bodies are not under a legal duty to carry out NHS continuing healthcare (‘CHC’) assessments. You should still request an assessment and the CHC checklist but it may be delayed. If you have done this and your wife later becomes entitled to CHC, it should be backdated to the date of the checklist.

*My father has had a social care assessment but I have not been consulted as his carer. Is this right?*

The legal [guidance](#) states at paragraph 6.9: “An assessment must be person-centred, involving the individual and any carer that the adult has, or any other person they might want involved.”

*Our day centre service and respite facility has been temporarily closed and no alternative has been offered other than potential willing volunteers. But why wife’s needs are so complex and severe that this is not really an option. What can I do?*

If part of the care package is withdrawn (eg because it is unsafe to have people together at a day centre), the local authority remains under a duty to meet those assessed eligible needs (assuming the easements have not been activated). So it must provide an alternative, equivalent level of support and, in the first instance, you can follow the local authority’s complaint procedure.