

NORTH LINCOLNSHIRE COUNCIL

**ADULTS AND HEALTH
CABINET MEMBER**

CARE ACT EASEMENTS: CORONAVIRUS ACT 2020

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 To inform the cabinet member of the Care Act easements, which have been created under the Coronavirus Act 2020, which are designed to ensure the best possible care for the residents of North Lincolnshire over this period.
- 1.2 The government has put in place a range of measures to help councils manage pressures on the care system, during this period and this report details those powers.
- 1.3 The report considers the protections and safeguards that will be in place during this period including in what circumstances the powers will be used and the decision making and reporting processes.

2. BACKGROUND INFORMATION

- 2.1 The Coronavirus Act 2020 became law on 26 March 2020, which was designed to provide the legal measures to effectively manage the coronavirus outbreak in the UK. Schedule 12 of the act related specifically to changes to the provisions of the Care Act 2014.
- 2.2 Further guidance for Local Authorities on how the powers under the Coronavirus Act 2020 enable them to prioritise more effectively where necessary than would be possible under the Care Act 2014 prior to its amendment, was issued by the Department for Health and Social Care on 1 April 2020 'Care Act Easements'. The easements came into force on 31 March 2020.
- 2.3 It is expected that Local Authorities do everything they can to continue meeting existing duties and to comply with the pre-amendment Care Act provisions and related Care and Support Statutory Guidance for as long and as far as possible. The new powers are time-limited and are there to be used as narrowly as possible.

- 2.4 Local Authorities 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 reasonably practicable for it to comply with its Care Act duties.
- 2.5 In these circumstances the powers that have changed are:
- Local Authorities will not have to carry out detailed assessments of people's care and support needs in compliance with pre-amendment Care Act requirements.
 - Local Authorities will not have to carry out financial assessments in compliance with pre-amendment Care Act requirements.
 - Local Authorities will not have to prepare or review care and support plans in line with the pre-amendment Care Act provisions.
 - The duties on Local Authorities to meet eligible care and support needs or the support needs of a carer are replaced with a power to meet needs.
- 2.6 There are a number of protections and safeguards that have been put in place if easements are put in place:
- Local Authorities will remain under a duty to meet needs where failure to do so would breach an individual's human rights under the European Convention on Human Rights.
 - All assessments and reviews that are delayed or not completed will be followed up and completed in full once the easements are terminated.
 - CQC will continue to provide oversight of providers under existing legislation.
- 2.7 Other important duties on Local Authorities remain in place:
- Duties in the Care Act to promote wellbeing and duties relating to safeguarding adults at risk remain in place.
 - Duties in the Mental Capacity Act 2005 relating to Deprivation of Liberty Safeguards (DoLS) remain in place. Guidance on the operation of DoLS during this period will be published separately.
 - Local Authorities' duties relating to prevention and providing information and advice also remain in place.
 - Duties imposed under the Equality Act 2010 also remain, including duties to make reasonable adjustments, the Public Sector Equality Duty and duties towards people with protected characteristics.
- 2.8 Any decision to operate an easement will be taken locally with the following:

- It should be agreed by the Director of Adult and Community Wellbeing (DASS) in conjunction with or on the recommendation of the Principal Social Worker.
- The Director of Adult and Community Wellbeing (DASS) and the Principal Social Worker will involve and brief the lead member for Adult and Health as part of this decision-making process.
- The Health and Wellbeing Board will be kept informed.
- The decision will also be fully informed by discussion with the Local NHS CCG leadership.

Local Authorities will be expected to observe the 'Responding to COVID 19: the ethical framework for adult social care' when considering and implementing easements.

2.9 A record of the decision with the evidence taken into account will be kept and:

- Communicated to all providers, service users and carers.
- Reported to the Department of Health and Social Care when Local Authorities decide to start prioritising services under these easements, explaining why the decision has been taken and briefly providing any relevant detail.

2.10 Adult and Community Wellbeing Services have re-modelled services to maximise business continuity and the ability to discharge the current Care Act duties for as long as possible. Performance and quality assurance frameworks will be utilised to monitor this position.

3. OPTIONS FOR CONSIDERATION

3.1 The Cabinet Member notes the temporary changes to the Care Act 2014 arising from the Coronavirus Act 2020 and revised decision making powers afforded to the Director of Adult and Community Wellbeing (DASS) in relation to Care Act easements.

4. ANALYSIS OF OPTIONS

4.1 Enactment of the easements will only be progressed when the workforce is significantly depleted as a result of the coronavirus outbreak or if demand on social care has increased, to an extent that it is no longer reasonably practicable for us to comply with its Care Act duties. This situation will be closely monitored as the current situation progresses.

4.2 Decisions in respect of Care Act easement will be made in accordance with the DHSC Care Act easements guidance and is covered by the Council's Scheme of Officer delegations.

5. FINANCIAL AND OTHER RESOURCE IMPLICATIONS (e.g. LEGAL, HR, PROPERTY, IT, COMMUNICATIONS etc.)

5.1 The Council is likely to face significant costs as a result of the Coronavirus Pandemic including increased demand on services, PPE costs, additional staffing costs and ensuring the care market remains sustainable.

5.2 There should not be additional short term resource implications arising from the Care Act easements. There is the potential, however, for additional staffing resources with associated financial implications to be required to undertake assessments and reviews once the easements have terminated.

5.3 One of the potential easements relates to not having to undertake financial assessments. Although the legislation enables Local Authorities to conduct assessments at a later date and to retrospectively charge for meeting needs subject to those assessments, there is a risk that there will be an impact on client contribution income.

6. OTHER RELEVANT IMPLICATIONS (e.g. CRIME AND DISORDER, EQUALITIES, COUNCIL PLAN, ENVIRONMENTAL, RISK etc.)

6.1 The easements would be exercised, if required to ensure the best possible care for the residents of North Lincolnshire and to keep people safe and well and protect the most vulnerable.

7. OUTCOMES OF INTEGRATED IMPACT ASSESSMENT (IF APPLICABLE)

7.1 An Integrated Impact Assessment is not applicable as this stage and would be considered at the point of exercising any of the Care Act easements.

8. OUTCOMES OF CONSULTATION AND CONFLICTS OF INTERESTS DECLARED

8.1 The Director of Adult and Community Wellbeing and the Principal Social Worker will involve and brief the lead member for Adult and Health as part of this decision-making process.

9. RECOMMENDATIONS

9.1 The Cabinet Member notes the temporary changes to the Care Act 2014 arising from the Coronavirus Act 2020 and the revised decision making powers afforded to the DASS in relation to Care Act easements.

DIRECTOR: ADULTS AND COMMUNITY WELLBEING

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Background Papers used in the preparation of this report –

The Coronavirus Act 2020

Care Act easements: Guidance for Local Authorities – 1 April 2020.

Responding to COVID-19: the ethical framework for adult social care – March 2020.