

# COVID-19: Maintaining the Care Act

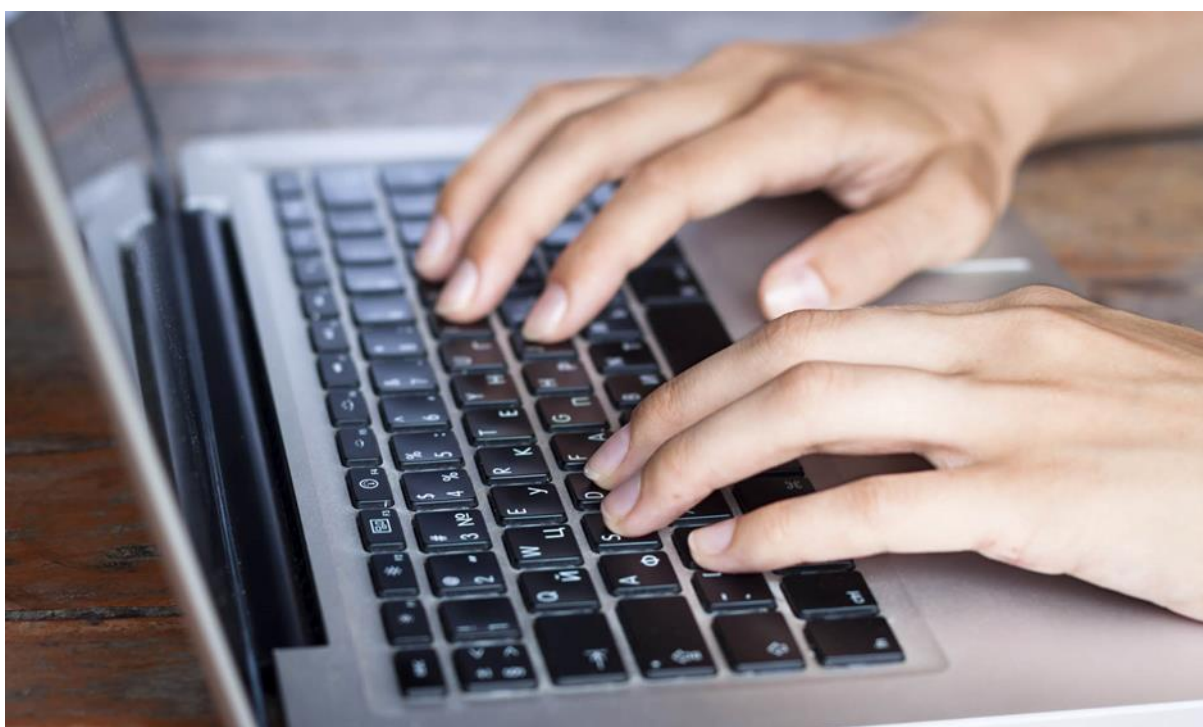
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This resource has been prepared for tri.x customers. Its purpose is to support practitioners and managers on the frontline to maintain some or all of the functions and duties of the Care Act 2014 when the local authority has decided not to implement some/any of the easements set out in section 15 of the [Coronavirus Act 2020](#).

It provides information about the flexibilities that may be required when carrying out functions and duties, and which procedures this is likely to have an impact on.

**Use the Contents list on the following page to find the information you are looking for.**

**Updated 21.01.21**



**NOTE: If your local authority has made the decision to implement all of the easements in section 15 of the Coronavirus Act 2020 this guidance does not apply.**

Key decision makers should see [Care Act easements: guidance for local authorities](#) for guidance on deciding whether/when to apply the easements.

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# 1. Safeguarding and Risk Assessment

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## **Procedures impacted**

Adult Safeguarding Procedures

Risk Assessment

Lone Working

## Safeguarding

The duties and responsibilities of the local authority in regards to safeguarding are maintained regardless of whether or not the easements are being implemented.

There is recognition that safeguarding during the pandemic is more challenging and Covid-19 specific guidance to support practice has become available;

[Safeguarding adults during the COVID-19 crisis](#)

[Guidance for Safeguarding Adults during Covid-19](#)

[Safeguarding adults in placements](#)

[Safeguarding adults with Dementia during the COVID-19 crisis](#)

[Domestic violence and abuse: Safeguarding during the COVID-19 crisis](#)

[Coronavirus \(COVID-19\): support for victims of modern slavery](#)

## Risk Assessment

The BASW ethical guidance for social workers states that any assessment of risk carried out at the current time (including risk to a person/carer or to yourself or a colleague) should include the risk of Covid-19 infection.

[COVID-19: ethical guidance for social workers](#)

[Risk identification and virtual interventions for social workers](#)

## 2. Mental Capacity and Deprivation of Liberty

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The duties and principles of the Mental Capacity Act 2005 are maintained regardless of whether or not the easements are being implemented.

There is recognition that implementing the Mental Capacity Act during the pandemic is more challenging and Covid-19 specific guidance to support practice has become available;

See:

[Coronavirus \(COVID-19\): looking after people who lack mental capacity](#)

[Mental Capacity Act \(MCA\) and the COVID-19 crisis](#)

[Best Interests Decisions: A COVID-19 Quick Guide](#)

[Working with the Mental Capacity Act during the coronavirus pandemic](#)

[Testing for COVID-19 and mental capacity](#)

[Vaccination and mental capacity](#)

## 3. Referrals and Assessment

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### **Procedures impacted**

Deciding the Outcome of a Contact or Referral (all versions)

Preparing to Establish Needs (all versions)

The Skilled Conversation (all versions apart from transitions)

The Skilled Conversation (Adult Carer's Assessments/Carers)

### Information and advice

There is a range of guidance to support effective implementation of the general responsibilities during the current pandemic, particularly around the provision of good information and advice. The following list is an example only:

[Supporting people who are isolated or vulnerable during the COVID-19 crisis](#)

[Being a deputy or attorney during the coronavirus outbreak](#)

[COVID-19 help and advice for informal carers](#)

[Coronavirus \(COVID-19\): guidance for people receiving direct payments](#)

[Personal Assistants returning from shielding-TLAP Factsheet](#)

### Prioritising assessments

When prioritising assessments regard should also be given to whether or not any delays will jeopardise the person's/carer's human rights.

Under the Coronavirus Act it is paramount that human rights are not breached.

When recording decisions around prioritisation where necessary, a record of how human rights have been considered should be made.

**See:** [Human Rights Act 1998](#)

High risk cases where assessment is delayed should be monitored and re-prioritised should human rights become jeopardised.

### Independent Advocacy

Independent advocacy referrals should still be made when any care and support process is being carried out and the person lacks capacity or person/carer has substantial difficulty. Advocates may have to carry out their functions remotely, making effective use of technology.

## The method of assessment

### Supported self-assessment

If the local authority already uses a supported self-assessment process it should be promoted, so long as it is accessible to the person/carer (or they have appropriate support).

### Other methods

Due to the current measures with regards to social distancing, it is important to be as flexible as possible when considering options.

The government guidance suggests the following possibilities:

- Use of third party/allied professionals to carry out the assessment;
- Use of telephone assessments;
- Use of video technology.

When using video or other technology you should refer to available guidance to ensure this is the most appropriate method and is carried out in the most effective way:

[Digital capabilities for social workers: Ethical considerations](#)

[Guidance on working virtually](#)

[Technology checklist for video calling an adult or carer](#)

[Matching interventions with people tool](#)

[Building rapport and establishing meaningful relationships using technology in social work](#)

### Face to face assessment

Face-to-face assessment should still take place when it is necessary, for example to meet communication needs, assess risk or if there are concerns about human rights. During face-to-face visits regard must be given to current guidance on social distancing, shielding and self-isolation.

**See:** [Appendix 1: Government Guidance Links](#)

Depending on your setting, further guidance about face to face visits can be found in the following documents from BASW. This includes guidance about deciding whether or not a face to face visit is necessary, preparing for a face to face visit, multi-agency visits as well as a host of useful links:

[Professional practice guidance for home visits during Covid-19 Pandemic](#)

[Professional practice guidance for hospital social work with adults during Covid-19](#)

[Face to face visit checklist during COVID-19](#)

## Deciding who should carry out the assessment

Managers with responsibility for allocation should exercise pragmatism, flexibility and good health and safety practice.

## Storing and protecting data

The legal obligation to protect data remains throughout the pandemic. There is information on the website of the Information Commissioners Office to support you with this:

[Data protection and coronavirus: what you need to know](#)

[Data protection and working from home](#)

[ICO data protection and coronavirus information hub](#)

## Information and advice about financial assessment

It is important for you to understand whether the local authority has implemented easements of the Coronavirus Act 2020 in regards to financial assessment so that you can provide relevant information.

If easements have been implemented (meaning a financial assessment will not be completed before any service is provided) you will need to let the person/carer know that an assessment may be completed retrospectively and charges backdated.

## 4. Eligibility

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### **Procedures impacted**

Understanding and Applying Eligibility Criteria

Understanding and Applying Eligibility Criteria (Carers)

If a person/carer has a need that is not eligible under the Care Act you should consider whether human rights are likely to be jeopardised if the need is not met.

Under the Coronavirus Act it is paramount that human rights are not breached.

These include:

Article 2: Right to life

Article 3: Prohibition of torture

Article 4: Prohibition of slavery and forced labour

Article 5: Right to liberty and security

Article 8: Right to respect for private and family life

Article 10: Freedom of expression

**See:** [Human Rights Act 1998](#)

A proportionate record of this consideration should be made alongside the eligibility determination.



## 5. Meeting Needs

### Procedures impacted

Care and Support Planning/Support Planning

### The power to meet needs and Human Rights

Should the situation arise whereby the person/carer has a need that is not eligible under the Care Act, but human rights are likely to be jeopardised if the need is not met the local authority should exercise its powers to meet the ineligible needs to avoid the breach.

Under the Coronavirus Act it is paramount that human rights are not breached.

### Independent Advocacy

Independent advocacy referrals should still be made when any care and support process is being carried out and the person lacks capacity or person/carer has substantial difficulty. Advocates may have to carry out their functions remotely, making effective use of technology.

### Care and Support/Support Planning

The same considerations should be given to the method of Care and Support/Support Planning as are given to the method of assessment.

See: [Method of assessment](#)

### Information and advice about financial assessment

It is important for you to understand whether the local authority has implemented easements of the Coronavirus Act 2020 in regards to financial assessment so that you can provide relevant information.

If easements have been implemented (meaning a financial assessment will not be completed before any service is provided) you will need to let the person/carer know that an assessment may be completed retrospectively and charges backdated.

### Self-Funders experiencing difficulties accessing services

The government's [Action Plan for Social Care](#) is clear that the local authority should offer support to any self-funding individual or their provider if services cannot be maintained due to Covid-19, even if the provider is not one that the local authority already has a contract with. In the case of residential care this includes supporting people to move into alternative provision when the risk cannot be managed in the place they normally reside.

## 6. Review/Revision of Plans

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### **Procedures impacted**

Legal Requirements of a Care and Support Plan Review and Tools

Legal Requirements of a Support Plan Review and Tools

Preparing to Carry out a Care and Support Plan Review

Preparing to Carry out a Support Plan Review

### Monitoring plans

High risk cases where should be monitored and action taken to revise the plan should human rights became jeopardised.

### Review

Light touch reviews should always be considered.

As well as the purpose set out in the Care Act, reviews should also consider whether human rights are in jeopardy and whether it is necessary to revise the Care and Support/Support Plan to avoid a breach.

Under the Coronavirus Act it is paramount that human rights are not breached.

### Method of review/reassessment

Due to the current measures with regards to social distancing, it is important to be as flexible as possible when considering method of review/reassessment.

### **Supported self-review/reassessment**

If the local authority already uses a supported self-review/assessment process it should be promoted, so long as it is accessible to the person/carer (or they have appropriate support).

### **Other methods**

The government guidance suggests the following possibilities:

- Use of third party/allied professionals to carry out the assessment;
- Use of telephone assessments;
- Use of video technology.

When using video or other technology you should refer to available guidance to ensure this is the most appropriate method and is carried out in the most effective way:

[Digital capabilities for social workers: Ethical considerations](#)

[Guidance on working virtually](#)

[Technology checklist for video calling an adult or carer](#)

[Matching interventions with people tool](#)

[Building rapport and establishing meaningful relationships using technology in social work](#)

### **Face to face review**

Face-to-face review should still take place when it is necessary, for example to meet communication needs, assess risk or if there are concerns about human rights. During face-to-face visits regard must be given to current guidance on social distancing, shielding and self-isolation.

**See:** [Appendix 1: Government Guidance Links](#)

Depending on your setting, further guidance about face to face visits can be found in the following documents from BASW. This includes guidance about deciding whether or not a face to face visit is necessary, preparing for a face to face visit, multi-agency visits as well as a host of useful links:

[Professional practice guidance for home visits during Covid-19 Pandemic](#)

[Professional practice guidance for hospital social work with adults during Covid-19](#)

[Face to face visit checklist during COVID-19](#)

### Direct Payments

Anyone receiving a direct payment should be monitored to make sure they are not experiencing any difficulty accessing the support in their Care and Support Plan. Anyone that is experiencing difficulty should be supported by the local authority.

Anyone employing a personal assistant where personal protective equipment (PPE) is not part of their Care and Support Plan can approach the local authority for support in accessing the PPE required.

[Coronavirus \(COVID-19\): guidance for people receiving direct payments](#)

### Storing and protecting data

The legal obligation to protect data remains throughout the pandemic. There is information on the website of the Information Commissioners Office to support you with this:

[Data protection and coronavirus: what you need to know](#)

[Data protection and working from home](#)

## 7. Transition

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### **Procedures impacted**

Deciding Whether to Start Transition

Preparing to Establish Needs (Child's Needs Assessment)

Preparing to Establish Needs of Adult Carers

Preparing to Establish Needs of Young Carers

The Skilled Conversation (Child's Needs Assessment)

The Skilled Conversation (Adult Carer's Assessment/Carers)

The Skilled Conversation (Young Carer's Assessment)

### Significant benefit

The impact of the current pandemic and social distancing measures on the young person's/young carer's/parent carer's wellbeing and ability to engage in any transition assessment should be considered when determining whether or not it will be of 'significant benefit' at the present time.

### Independent Advocacy

Independent advocacy referrals should still be made when any care and support process is being carried out and the young person lacks capacity or young person/young carer/parent carer has substantial difficulty. Advocates may have to carry out their functions remotely, making effective use of technology.

### The method of assessment

#### **Supported self-assessment**

If the local authority already uses a supported self-assessment process it should be promoted, so long as it is accessible to the young person/young carer/parent carer (or they have appropriate support).

#### **Other methods**

Due to the current measures with regards to social distancing, it is important to be as flexible as possible when considering options.

The government guidance suggests the following possibilities:

- Use of third party/allied professionals to carry out the assessment;
- Use of telephone assessments;
- Use of video technology.

When using video or other technology you should refer to available guidance to ensure this is the most appropriate method and is carried out in the most effective way:

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### **Face to face assessment**

Face-to-face assessment should still take place when it is necessary, for example to meet communication needs, assess risk or if there are concerns about human rights. During face-to-face visits regard must be given to current guidance on social distancing, shielding and self-isolation.

**See:** [Appendix 1: Government Guidance Links](#)

Depending on your setting, further guidance about face to face visits can be found in the following documents from BASW. This includes guidance about deciding whether or not a face to face visit is necessary, preparing for a face to face visit, multi-agency visits as well as a host of useful links:

[Professional practice guidance for home visits during Covid-19 Pandemic](#)

[Professional practice guidance for hospital social work with adults during Covid-19](#)

[Face to face visit checklist during COVID-19](#)

### Information and advice about financial assessment

It is important for you to understand whether the local authority has implemented easements of the Coronavirus Act 2020 in regards to financial assessment so that you can provide relevant information.

If easements have been implemented (meaning a financial assessment will not be completed before any service is provided) you will need to let the young person/young carer/parent carer know that an assessment may be completed retrospectively and charges backdated.

### Storing and protecting data

The legal obligation to protect data remains throughout the pandemic. There is information on the website of the Information Commissioners Office to support you with this:

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[Data protection and working from home](#)

[ICO data protection and coronavirus information hub](#)

## 8. NHS Continuing Healthcare

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### **Procedures impacted**

NHS Continuing Healthcare Procedure

NHS-funded Nursing Care Procedure

Under section 14 of the Coronavirus Act 2020, NHS bodies (CCG's and NHS Trusts) were relieved of their duty to carry out NHS Continuing Healthcare assessments until the end of the emergency period.

However, from 1<sup>st</sup> September 2020 all assessments, reviews and eligibility decision reviews **in the community** have recommenced.

### [The NHS Continuing Healthcare checklist and referral for assessment](#)

#### **In the community**

Social care practitioners should complete NHS Continuing Healthcare Checklists and make referrals to the CCG as normal for people living in the community.

#### **In hospital**

The NHS Trust remains responsible for the completion of any checklists for people in hospital prior to discharge. However, the duty to do so remains suspended.

### [NHS-funded Nursing Care](#)

#### **In the community**

Following a determination of eligibility for NHS Continuing Healthcare, the CCG should consider NHS-funded Nursing Care eligibility as normal for people living in the community.

#### **In hospital**

NHS Trusts only need to consider NHS-funded Nursing Care prior to hospital discharge if it carries out an assessment of eligibility for NHS Continuing Healthcare. However, the duty to do so remains suspended.

## 9. Hospital Discharge

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### Changes to D2A

To facilitate swift hospital discharges and reduce the risk of DTOC's the government has provided additional funding to the NHS to meet the cost of any out of hospital interim care needed whilst longer term needs are established.

This includes care in the community but also in a care home.

The local authority is expected to support the NHS in identifying and making suitable discharge arrangements for people, and subsequently in reviewing interim measures and assessing for long term needs.

*When providing information to people being discharged it is important to let them know that, following an assessment post-discharge, any long term needs they have may be met by the local authority, and that if so, there may be a charge.*

For full guidance on revised D2A requirements see:

[COVID-19 Hospital Discharge Service Guidance](#)

[Professional practice guidance for hospital social work with adults during COVID-19](#)



# 10. Continuity of Care Arrangements

## Procedures impacted

Continuity of Care Arrangements

Prisons and Approved Premises

Even if the local authority is maintaining all functions and duties of the Care Act it is possible that other local authorities may not be. As such it is important to understand the impact of the easements on Continuity of Care Arrangements.

## Assessment of need by the second authority

Under the easements, the second authority (the local authority where the person is moving to) does not have to carry out an assessment of need until the person has moved into their area. Neither does it have to carry out any other duty under section 37 of the Care Act in regards to the move.

**Note:** In the spirit of co-operation under the Care Act, if the second authority is aware of the intended move date, that the person is likely to have an appearance of need and that meeting that need is likely to be necessary to avoid a breach of human rights they should look to put arrangements in place to prioritise the assessment.

## Interim arrangements

Under the easements, if the second local authority has not carried out an assessment of need and put services in place for the day of the move, the requirement for them to make interim arrangements to provide services in line with the previous Care and Support Plan does not apply (section 38 of the Care Act).

**Note:** This does not mean that a person should be left without services by the first local authority. It is likely that should this situation occur they will have no alternative but to continue provision until the matter is concluded.

# 11. End of Life

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## **Procedures impacted**

End of Life Procedures and Practice Guidance

The government's [Action Plan for Social Care](#) sets out the expectations in terms of end of life practice, to ensure dignity is respected and promoted during Covid-19. This in general reiterates that good end of life practice should continue.

## Visits

“While it has been recommended that care homes limit unnecessary visits, visits at the end of life are important for both the individual and their loved ones and should continue”

For the latest government guidance see: [Visiting arrangements in care homes](#)

## Advance care planning, Power of Attorney etc.

Everyone nearing the end of life should be offered the opportunity and supported, if they wish, to develop advance care plans that make their wishes clear, and to make arrangements to get their affairs in order.

## Palliative and end of life care

End of life care, including palliative care, must continue to be planned in a holistic way involving social care, community nursing, general practice, occupational therapy and others. This includes access in people's homes and care homes to professionals and equipment that support this.

## Further guidance

[BASW End of Life social work during Covid-19](#)

[Social Work in Multi-Disciplinary and Multi-Agency Contexts during Covid-19](#)

[Coronavirus, bereavement and grief resources](#)

## 12. No Recourse to Public Funds

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**Procedures impacted**

No Recourse to Public Funds

There are no changes to the core rights of a person with No Resource to Public Funds.

However, the No Recourse to Public Funds Network has produced a helpful factsheet to support practitioners in understanding and navigating some of the challenges in working with this group of people through the pandemic.

[Supporting people with no recourse to public funds during the coronavirus \(Covid-19\) pandemic](#)

## 13. AHMP

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**Procedures impacted**

AMHP Procedure

A range of guidance has been introduced to support Approved Mental Health Professionals to understand the changes to Mental Health Act legislation, and to carry out their role effectively and safely.

[Information and support for Approved Mental Health Professionals, AHMP Leads and PSW's on the role of the AHMP during the Covid-19 pandemic](#)

[BASW Covid-19 Webinar for AHMP Leads and PSW's](#)

# Appendix 1: Government Guidance Links

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The following are links to a selection of core government guidance.

The full range of COVID-19 government guidance for adult social care can be found at:

<https://www.gov.uk/government/collections/coronavirus-covid-19-social-care-guidance>

[Adult Social Care: our COVID-19 winter plan 2020-2021](#)

[Ethical Framework for Adult Social Care](#)

[Visiting care homes during coronavirus](#)

[Coronavirus \(COVID-19\): looking after people who lack mental capacity](#)

[Guidance on shielding and protecting people who are clinically extremely vulnerable from COVID-19](#)

[Guidance for households with possible coronavirus infection](#)

[Guidance for those who provide unpaid care to friends or family](#)

Visit our Resource Hub, where we have collated a wider range of government guidance for the adult social care sector, as well as bespoke information and resources from a range of sources and for a range of practice areas. These include Court of Protection, informal carers, personal assistants, shared lives, regulated providers, mental health (including AHMP), commissioning, education and more.....

See: <https://www.trixonline.co.uk/resource-hub/>