

## Carers Have Rights

The **Care Act 2014** sets out the duty of local authorities to assess people's needs for care and support, and to determine eligibility for public funding to meet those needs. It includes significant legislation to support carers, including the right to an assessment independently of the person they care for.

In March 2020, the government passed the **Coronavirus Act**, which temporarily supersedes some of the provisions in the Care Act. These changes are known as 'easements', and specifically affect the following duties on the local authority:

- The duty to assess for care support
- To complete a financial assessment
- To develop and support care plans
- To provide care and support when a person moves between local authorities
- The duty of local authorities to provide transitional support for young people moving between children's services and those for adults.

Note that this does not *prevent* a local authority from carrying out these duties, and the Care Act Easements Guidance makes it clear that LAs should only deviate from their CA2014 duties if it is no longer practical for them to comply with these duties. Specific information on the easements can be found here:

<https://www.legislation.gov.uk/ukpga/2020/7/schedule/12>

The Coronavirus Act is regularly reviewed and is set to expire by March 2022, but provisions within the act can cause it to end before this time, or can extend it by up to six months.

### The Care Act 2014:

- Brings together into one place most adult social care law, making it simpler and easier to understand..
- Replaces key legislation and guidance, including the three Acts of Parliament which specifically related to carers:
  - Carers (Recognition and Services) Act 1995
  - Carers and Disabled Children Act 2000
  - Carers (Equal Opportunities) Act 2004

### Assessments and eligibility

- Introduces national care and eligibility criteria which all councils must use, ending a 'postcode lottery' on provision for carers and the people they are caring for.



- Gives carers the right to their own assessment, whatever the level of their need for support or their financial resources, or those of the adult that they care for. Previously carers had to provide a 'substantial amount of care on a regular basis' in order to be eligible. If carers have been refused an assessment in the past because they did not meet the eligibility criteria, they are now able to request another assessment.
- Provides a greater clarity about safeguarding responsibilities, and how the local authority and partners work to protect vulnerable people.

### **Information, advice and advocacy**

- Everyone is entitled to advice and information on care and support services, even if they are self-funding or they have not been assessed as needing specific help.

### **Safeguarding**

- Sets out a clear **legal** duty for local authorities to lead on safeguarding issues in their area. Adult safeguarding is the process of protecting adults with care and support needs from abuse or neglect. They must set up a Safeguarding Adults Board (SAB) to work with other agencies such as the NHS and the police to develop a joint safeguarding strategy.

### **Wellbeing**

- Improves and clarifies a local authority's duty to promote all people's wellbeing (both adults and their carers) when providing support.

### **Paying for care**

- Following assessment, the local authority may decide a carer needs support but is not entitled to financial help i.e. they pay for their own services - they are 'self funding'.
- People who are self-funding have a right to ask councils to put services in place for them. These services should be charged at the same rates as the council pays for someone whose care is being funded.
- When someone has been assessed for social care support, they have a right to know the value of their 'personal budget'. This is a summary of the estimated costs of their support services. It is particularly useful when someone is paying for their own care.
- If a person is awarded a personal budget for their care by the council, they can choose to have this money paid to them directly, as cash; this is known as a Direct Payment. If they would rather have someone else, such as a social worker, manage the money and buy services for their care, this is called a Managed



Budget. A person can also choose to have the money paid to a third party provider organisation, who will manage the budget for them, and will source and buy care services with the person's agreement. This arrangement is known as a Individual Service Fund.

- Deferred Payment Agreements (DPAs) are available from all councils across England. This arrangement enables people to use the value of their own home to pay for care home costs. The council will pay bills, recouping the cost when someone decides to sell their home or after their death. This means people will not have to sell their house during their lifetime in order to pay for care.

### **The Children and Families Act 2014**

In September 2014, legislation was introduced which affects children and young people with special educational needs and disabilities (SEND) in England.

Local councils must draw up an education, health and care (EHC) plan instead of a statement of SEN, offering a more comprehensive education, health and care plan from birth to age 25. They must also publish a 'local offer' of the services children, young people and their families can expect. Families will be offered the option of a personal budget to pay for the services they need.

### **Flexible working regulations 2014**

Regulations introduced in June 2014 under the Employment Rights Act 1996 give **all** employees a statutory right to ask their employer for flexible working arrangements, provided they have worked for their employer for 26 weeks continuously at the date the application is made. Employers are required to consider the request seriously.

### **Equality Act 2010**

Combines existing and new legislation relating to equality, including age, disability, gender reassignment, race and religious discrimination, setting out a new legal landscape for employers, services and goods providers. The Act notably, outlaws discrimination against carers. For example, carers should not be treated differently because their employer or prospective employer thinks they may have to take time off to care for someone.

### **Mental Health Act 2007**

Amends the Mental Health Act 1983. Key areas include the definition of mental disorder, criteria for detention, 'nearest relative' rules, supervised community treatment (SCT), electroconvulsive therapy (ECT), Mental Health Tribunals and advocacy.



## **Mental Capacity Act 2005**

Empowers and protects vulnerable people who are not able to make their own decisions. Importantly, carers have a legal right to be consulted regarding decisions for someone who may lack capacity. It also enables people to plan ahead in case they are unable to make important decisions for themselves in the future.

## **Human Rights Act 1998**

Major issues include the right to life and the right to not be subjected to inhuman or degrading treatment, the right to respect for private and family life, and, for example, the right to challenge social services on their provision of care.

If you need further information or would like to discuss any aspect of your caring role, please contact Carers' Resource:

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We can provide this information in another format. Please contact us to discuss your requirements.

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