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THE DISABILITY
REPRESENTATION UNIT

COVID-19 & the law on SEN and Social Care Provision

Hosted by The Disability
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Key legislation / guidance

- Coronavirus Act 2020
- Care Act 2014
- Care Act easements: guidance for local authorities
- Responding to Covid-19: the ethical framework for adult social care



What is the Coronavirus Act 2020?

New law in the UK - approved on 25 March 2020 (via Royal Assent).

Purpose of this new law?

Intended to give the Govt powers to enable public bodies (for example Local Authorities) to respond to the **Covid-19 pandemic.**



What is the Coronavirus Act 2020?

What do these powers look like?

1. The power to slow the spread of the virus

E.g. Powers regarding public gatherings and premises/school closures.

2. The power to reduce the resourcing and administrative burden on public

E.g. Easing pressure on NHS and local authority resources by downgrading legal duties.

3. The power to limit the impact of potential staffing shortages on the delivery of public services

E.g. Allowing the registration of retired health and social care professionals to join front line services.



Implications for special education for children and young people

Key sections under the Coronavirus Act 2020:

- Schedule 17, para 5 (6): 'Any duty imposed on a person by section 42 [Children and Families Act 2014 (CFA)] is to be treated as discharged if the person has used reasonable endeavours to discharge the duty'.
- Schedule 17, para 5 (5) (g) permits the Secretary of State the power to disapply s43 CFA which is the duty for a school/college named on the EHCP to admit.
- Schedule 17, para 5 (5) (h) permits the Secretary of State the power to disapply s44 (1) CFA (reviews and reassessments).



Implications for special education for children and young people

What does this mean?

The LA STILL have a legal duty to make provision within section F of EHCP - for now, until the Secretary of State issues a notice before applying any of the changes

How does that work in practice with schools closed?

Some schools are open to provide education for the children of key workers and vulnerable children. But Potentially problematic with staff shortages etc

How does the Coronavirus Act 2020 deal with this?

Schedule 17, para 5 sets out the possibilities. This could include amending the legal duty to provide provision to a 'reasonable endeavours' duty

What does reasonable endeavours mean?

The LA needs to do whatever it reasonably can to put provision in place, but if they cannot do so they would not necessarily be breaching the law



Implications for special education for children and young people

What about parents and young people in the process of obtaining an EHC Plan?

Currently, those processes will continue. Usual deadlines still apply and if the LA miss those deadlines, they can still be challenged by way of judicial review and through other routes of redress.



Implications for The Special Educational Needs and Disability Tribunal

- Business as usual.
- The judiciary have quickly adapted their ways of working to deliver justice during the coronavirus pandemic.
- SEND Tribunal are holding hearings on paper or by telephone and by video.
- No indication that the Right of Appeal to the SEND Tribunal has changed (at the time of writing).
- This means that parents must continue to monitor the Right of Appeal (which will be 2 months from the date of the decision letter/letter enclosing the EHC Plan) and obtain a mediation certificate as and when appropriate.



The new (temporary) changes to the Care Act 2014 as a result of the Coronavirus Act 2020

What is the Care Act 2014?

The Care Act 2014 is the law that sets out the states duties in relation to assessing people's needs (of adult age) and their eligibility for publicly funded care and support. ('A "need" might be related to a disability, mental health, or old age).

How has the Coronavirus Act 2020 impacted the Care Act 2014?

The Govt says the aim of the changes (introduced by the Coronavirus Act 2020) is to reduce the operational burden on Local Authorities and enable them to prioritise the service they offer in order to ensure only the most urgent and serious care needs are met.



What does the new (temporary) changes to the Care Act 2014 look like and the dangers?

The Coronavirus Act 2020 has basically removed the following legal duty:

- Paragraph 2(1) of Schedule 12 Coronavirus Act 2020 removes the duty to assess needs.
- Paragraph 4 of Schedule 12 Coronavirus Act 2020 removes the duty to meet needs UNLESS the authority considers that it is necessary to meet those needs for the purpose of avoiding a breach of the adult's convention rights under the European Convention on Human Rights.
- Paragraph 11 of Schedule 12 of the Coronavirus Act 2020 suspends duties to prepare a care and support plan setting out the details of how the person's needs will be met AND suspends duties to keep these plans under review by local authorities, and to amend if the person's care and support needs have changed.



Implications for young people transitioning to adulthood

- Coronavirus Act 2020 suspends the legal duty to carry out transition assessments for disabled young people, adult carers or young carers.
- No longer a duty to continue to provide children's services during the transition.
- This basically means there is no legal duty to continue to provide children's services to a young person with needs for care and support after they have turned 18 if their adult care package isn't ready.



Any changes to children social services?

Barely. But the Department for Education has issued guidance in relation to children social care:

'Coronavirus (COVID-19) guidance for local authorities on children social care'



Care Act 2014 Duties and responsibilities that remain in force despite the Coronavirus Act 2020

- For a lot of these changes, the LA still retain the **power** to make changes.
- The duty to involve the adult to whom the care and support plan relates, their carer or advocate when making any changes to their care and support plan remains in force.
- Other Provisions not modified include:
 - Well-being duty (s 1)
 - Market shaping duty (s 5)
 - Duties in relation to advocacy – Safeguarding duties



What you should pay close attention to when dealing with the LA

The Care Act easements: guidance for local authorities. **Read this document in full.**

This guidance sets out what the Local Authority is still expected to do.

The Guidance says in chapter 8:

This guidance and the Ethical Framework for Adult Social Care fall under schedule 12 of the Coronavirus Act 2020. Schedule 12 to that Act gives the Secretary of State a power to direct Local Authorities to comply with this guidance and the Ethical Framework, and the Department will keep this under review.



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What you should pay close attention to when dealing with the LA

Legal status of the guidance?

Paragraph 18, Schedule 12 Coronavirus Act 2020 says:

18(1)The Secretary of State may issue guidance about how local authorities are to exercise functions under any of the following enactments in consequence of the provision made by this Part of this Schedule—

(a)Part 1 of CA 2014;

(b)section 2 of the Chronically Sick and Disabled Persons Act 1970;

(c)section 17 of the Children Act 1989.

*(2)A local authority **must have regard** to any guidance issued under this paragraph.*

(3)A local authority must comply with such guidance issued under this paragraph as the Secretary of State directs.

- Any reasons for departure from the guidance by local authorities should be justified and clearly recorded.
- Decision to trigger 'easements' in particular should be recorded and backed up by evidence of need to trigger.



What is the 'The ethical framework for adult social care'?

This document was published on 19 March 2020 and is a framework intended to provide support to ongoing response planning and decision-making to ensure that ample consideration is given to a series of ethical values and principles when organising and delivering social care for adults. **Read this document in full.**

Who must have regard to this?

Planners and policy makers at local, regional and national level; local authorities, health and social care professionals.



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Where to find further information

GOV.UK is the official site for the latest information on the COVID-19 outbreak. The advice is updated regularly by the UK Government.

Opt in to The Disability Representation Units FREE text alert alert service
Text **COVID to 88802**

Visit **thedru.co.uk** and **[book a consultation](#)**



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