



BRIEFING PAPER

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Coronavirus: Local authorities' adult social care duties (the Care Act easements)

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Summary

Under the *Care Act 2014*, local authorities in England have a range of duties relating to assessing and meeting the care and support needs of adults and their carers. This includes, for example, a duty to meet an adult's assessed needs where they meet prescribed national eligibility criteria.

The *Coronavirus Act 2020* provides for a relaxation of local authority duties around the provision of care and support needs. For example, local authorities will only be under a duty to meet a person's eligible needs where not doing so would breach their human rights.

The changes were brought into force on 31 March 2020, meaning that local authorities in England are now able, if they deem it necessary, to adapt their adult social care provision in line with the relaxed duties (referred to as the Care Act easements).

The Government has published guidance for local authorities on when they should use the Care Act easements and how they should prioritise adult social care during the coronavirus outbreak. It has also published an ethical framework intended to "ensure that ample consideration is given to a series of ethical values and principles when organising and delivering social care for adults" during this period.

Concerns have been expressed that the relaxation of local authority duties could result in care standards being lowered to dangerously low levels, putting elderly and disabled people at risk. The Government has, however, stated that the changes are aimed at enabling local authorities to prioritise the social care services they offer in order to ensure that the most urgent and serious care needs are met. It has also emphasised that the easements "should only be used by local authorities where this is essential in order to maintain the highest possible level of services", and authorities will be expected to comply with their pre-amendment duties under the Care Act for as long and as far as possible.

As at 30 April 2020 seven local authorities were operating under the Care Act easements. However, by 3 July no local authorities were currently operating under them and this remains the case at the time of writing (9 October 2020).

If a person disagrees with a local authority's decision regarding their social care they can complain to the authority. If, after completing the local authority complaints process, a person is still not satisfied, they can raise the matter with the Local Government and Social Care Ombudsman. On 26 March 2020 the Ombudsman announced that it had suspended "all casework activity that demands information from, or action by, local authorities and care providers, in light of the current Coronavirus outbreak." However, from 29 June the Ombudsman resumed all existing casework and began taking new complaints through its website.

In a report in September 2020, the Joint Committee on Human Rights cited concerns that, despite limited use of the easements, social care provision had been reduced, including in areas where the easements had not been used.

A Government analysis of the Coronavirus Act published in September 2020 stated that the easements had been used responsibly and the option to use them in the event of a second wave could be "incredibly helpful."

This briefing covers England only. For information on the Coronavirus Act's social care provisions in respect of Scotland and Wales, see Library Briefing 8861, [Coronavirus Bill: health and social care measures](#).

1. The Care Act 2014

Under the [Care Act 2014](#), local authorities in England have a range of duties relating to assessing and meeting the care and support needs of adults and their carers. These include (but are not limited to):

- A duty to undertake an assessment of any adult with an appearance of need for care and support, or any carer with an appearance of need for support, regardless of their financial situation or whether the authority thinks that the individual is eligible for support.¹
- A duty to meet an adult's assessed care and support needs, or the support needs of a carer, where those needs meet prescribed eligibility criteria (see below). Authorities also have the power to meet needs that do not meet the eligibility criteria.²
- If a local authority wishes to charge a person for meeting their needs (whether eligible or not) it must carry out a financial assessment of what the person can afford to pay.³ Further detail is available on Library Briefing 1911, [Social care: paying for care home places and domiciliary care \(England\)](#).
- Where a local authority is required or decides to meet a person's needs, it must prepare a care and support plan setting out how those needs are going to be met.⁴

Local authorities are required to have regard to the [Care and Support Statutory Guidance](#) when carrying out these duties.

National eligibility criteria

Eligibility for adult social care must be determined on the basis of an assessment.⁵

The needs assessment will usually be carried out by a social care professional visiting a person, but telephone and online assessments may also be offered. The assessor may also talk to other professionals, such as the person's GP, if the person is happy for them to do so.

While local authorities have their own assessment procedures, they must meet the minimum threshold for adult care and support needs, and carer support needs, set by national eligibility criteria. As noted above, authorities can also decide to meet needs that are not deemed to be eligible if they chose to do so.⁶

The eligibility threshold for adults with care and support needs is set out in the *Care and Support (Eligibility Criteria) Regulations 2015*. In considering whether an adult has eligible needs, local authorities must consider whether:

¹ *Care Act 2014*, sections 9 and 10.

² As above, sections 18-20.

³ As above, section 17.

⁴ As above, sections 24 and 25.

⁵ DHSC, [Care and support statutory guidance](#), updated 2 March 2020, para 6.12.

⁶ As above, para 6.100.

- 1 The adult's needs arise from or are related to a physical or mental impairment or illness.
- 2 As a result of the adult's needs they are unable to achieve two or more of a number of specified outcomes (for example, being appropriately clothed and managing toilet needs).
- 3 As a consequence of being unable to achieve these outcomes there is, or there is likely to be, a significant impact on the adult's wellbeing (including for example, their personal dignity; and participation in work, education, training or recreation).⁷

An adult's needs are only eligible where they meet all three of these conditions.

The national eligibility threshold for carers is also set out in the *Care and Support (Eligibility Criteria) Regulations 2015*. In considering whether a carer has eligible support needs, local authorities must consider whether:

- 1 Their needs arise as a consequence of providing necessary care for an adult.
- 2 The effect of the carer's needs is that any of a number of specified circumstances apply to them (for example, their physical or mental health is deteriorating, or they are unable to carry out caring responsibilities they have for a child).
- 3 As a consequence, there is, or there is likely to be, a significant impact on the carer's wellbeing.⁸

A carer's needs are only eligible where they meet all three of these conditions.

Paragraphs 6.104 to 6.134 of the [care and support statutory guidance](#) provides more information on the eligibility criteria.

⁷ [The Care and Support \(Eligibility Criteria\) Regulations 2015](#), SI 2015/313, paragraph 2.

⁸ As above, paragraph 3.

2. The Coronavirus Act 2020

2.1 Background

The coronavirus outbreak has placed significant pressure on the workforce in the social care sector as staff fall ill, self-isolate, or care for children or other family members. In addition, staff who normally work in multiple care homes are restricted to working in just one. The Government has stated that this workforce pressure could mean that local authorities may not be able to do all the things they are usually required to do.⁹

2.2 Social care provisions

The [Coronavirus Act 2020](#) received Royal Assent on 25 March 2020 after completing all its parliamentary stages over three days. The social care provisions outlined below were not amended during the Bill's passage through Parliament.

Section 15 and Schedule 12 of the Act provide for a relaxation of local authority duties under the Care Act around the provision of care and support.¹⁰ The changes fall into four categories:

- Local authorities do not have to comply with the duties to conduct assessments of an adult's care and support needs, or a carer's support needs.
- Local authorities do not have to carry out financial assessments, but they will not be able to charge a person without carrying one out. Where an authority has not charged a person for their care during the pandemic, the Coronavirus Act provides for the power to apply charges retrospectively, subject to a financial assessment.
- Local authorities will not have to prepare care and support plans.
- The duty to meet care and support needs is replaced with a power to meet needs. A duty to meet needs only applies where not doing so would breach a person's human rights.

The Department of Health and Social Care (DHSC) has the power to issue guidance to local authorities concerning how they exercise their social care functions under the Coronavirus Act.

Guidance on what was then the Coronavirus Bill, published by the DHSC stated that the changes were aimed at enabling local authorities to prioritise the social care services they offer "in order to ensure the most urgent and serious care needs are met, even if this means not meeting everyone's assessed needs in full or delaying some assessments." It added that the measures would "ensure that local authorities will continue to be able to deliver the best possible care

⁹ DHSC, [What the coronavirus bill will do](#), 17 March 2020.

¹⁰ For information on the Act's provisions relating to the social care workforce, see Commons Library Briefing 8861, [Coronavirus Bill: health and social care measures](#), 20 March 2020.

services during the peak and to protect the lives of the most vulnerable members of society.”

Local authorities will, the guidance adds, still be expected to “to do as much as they can to comply with their duties to meet needs during this period.”¹¹

Commencement and duration

The Act provides for the social care provisions outlined above to only come into force through regulations made by a Minister. The provisions may come into force on different days in different areas. A Minister may also, by regulations, suspend or reactivate the provisions.¹²

The measures are also intended to be time-limited to two years, but a Minister may curtail or extend the provisions. The maximum length of any extension is six months at a time. Following an amendment during the Bill’s passage through Parliament, the Act also provides for a debate and vote to be held in the House of Commons on the continued operation of the Act’s temporary provisions every six months.¹³

On 30 September 2020, the House of Commons agreed to the continued operation of the Act’s provisions (see section 4.2 below).¹⁴

2.3 Impact assessment

The UK Government’s Impact Assessment for the Coronavirus Bill stated that without the provisions relating to social care support, local authorities “would be constrained by existing assessments, which could result in them maintaining these at the expense of new, more urgent needs, or prevent them from allocating scarce support purely on the basis of severity of need.” It added that the changes should not in themselves cause local authorities to reduce their adult social care offer because at the point they were triggered this would be a risk regardless. Given this, it stated, the timing of the triggering of the clauses is key.¹⁵

Regarding the impact on individuals, the Impact Assessment for the Bill stated:

If triggered, these clauses could result in individuals not receiving support for some needs where [local authorities] judge that resources need to be focused on meeting the most acute and pressing needs. This could also have secondary impacts on the family members or carers of individuals with needs or the local community, to whom [local authorities] might have to look to provide temporary support. It is worth noting, however, that in these extreme circumstances these impacts would transpire regardless of the introduction of these clauses and that the intent of these clauses is to allow [local authorities] to mitigate the negative impacts of necessary prioritisation as far as possible.¹⁶

¹¹ DHSC, [What the coronavirus bill will do](#), 17 March 2020.

¹² *Coronavirus Act 2020*, section 87 & 88.

¹³ As above, sections 89, 90 & 98.

¹⁴ [HC Deb 30 September 2020, cc388-415](#).

¹⁵ DHSC, [Coronavirus Bill Summary of Impacts](#), 19 March 2020

¹⁶ As above, para 99

2.4 Concerns

Concerns have been raised, both within Parliament and by stakeholders, regarding the potential impact of the Act's social care provisions on elderly and disabled people. For example, [an article in Community Care](#) on 26 March 2020 reported the following comments from the campaign group Disabled People Against Cuts, and Carers UK, about the then Coronavirus Bill [as mentioned, these provisions of the Bill were not amended during its passage through Parliament]:

Campaign group Disabled People Against Cuts (DPAC) said: "As it stands the bill poses a serious risk to the lives of many disabled people, especially those of us who need social care support.

"The bill will effectively free local authorities of their duties to provide social care support under the Care Act 2014 and will only oblige local authorities to provide support in cases where the human rights of Disabled people will be breached.

"We know from experience that in order for human rights to be breached in social care context the situation has to be very critical or severe."

Helen Walker, chief executive of Carers UK, said: "We recognise these are temporary measures which should help local services better deal with coronavirus – but it is essential that councils continue to assess the risks and vulnerabilities affecting carers and the people they support.

"Unpaid carers will be under huge stress currently, taking extra precautions and going above and beyond what they normally do to ensure their loved ones are safe. If they are not clearly recognised and supported during this emergency then more people will become unwell and need support."

The article also highlighted [concerns](#) from the legal advice charity CASCAIDr.¹⁷

Disability Rights UK similarly [stated](#) that it had "serious concerns about the implications of the Coronavirus Bill on human rights, especially the rights of vulnerable groups, including disabled people." The organisation drafted a [template letter](#) for constituents to send to their MP during the Bill's passage through Parliament.¹⁸

In a [blog post](#) published on 20 March 2020, three barristers from 39 Essex Chambers suggested that the legislation was "likely to have a serious negative impact on adults with care and support needs and their carers." With regards to local authorities only having a duty to meet care and support needs if necessary to avoid a breach of a person's human rights, the post stated that:

The caselaw on ECHR [[European Convention on Human Rights](#)] breaches in the realm of social care sets a high threshold in relation to both Article 3 [prohibition of torture] and Article 8 [right to respect for private and family life], so the proposed Bill risks leave [sic] many disabled adults with no entitlement to care (at a time when their need for care may be considerable).

¹⁷ [Coronavirus legislation becomes law, allowing ministers to suspend key Care Act duties](#), Community Care, 22 March 2020.

¹⁸ [Suspension of the Care Act - act immediately](#), Disability Rights UK, 22 March 2020.

The barristers suggested possible amendments to the Bill to “protect the interests of disabled adults in England and Wales.”¹⁹

During the Bill’s passage through Parliament concerns were similarly raised that the legislation could result in care standards being lowered to dangerously low levels, putting elderly and disabled people at risk.²⁰ In response to such comments during the Bill’s Second Reading debate in the Commons, the Health Secretary, Matt Hancock, stated that, while he understood the concerns:

in fact the purpose of these measures is precisely the opposite: it is to make sure that when there is a shortage of social care workers, those who need social care to live their everyday life get it and can be prioritised ahead of those who have a current legal right to social care under the Care Act 2014 but for whom it is not a matter of life and death. This is absolutely about prioritising the vulnerable. That is the purpose of the legislation, but I understand her concern, and that is why we put the safeguards in place to ensure that the prioritisation works as intended.²¹

¹⁹ [The Coronavirus Bill – Schedule 11](#), 39 Essex Chambers, 20 March 2020.

²⁰ For example, see HC Deb 23 March 2020, [cc96-7](#) & [c45](#) and [HL Deb 24 March 2020, cc1659-62](#).

²¹ HC Deb 23 March 2020, [c45](#).

3. Use of the Care Act easements

Section 15 and Part 1 of Schedule 12 of the *Coronavirus Act 2020*, which provide for the changes outlined in the previous section in relation to England, were brought into force on 31 March 2020.²²

As a result, local authorities in England are now able, if they deem it necessary, to adapt their adult social care provision in line with the relaxed duties (referred to as the Care Act easements).

The Government has published guidance for local authorities on when they should decide to use the Care Act easements and how they should prioritise adult social care during the coronavirus outbreak.

3.1 Ethical framework for adult social care

On 19 March 2020, the Government published [Responding to COVID-19: the ethical framework for adult social care](#). The introduction to the framework explains that, while local authorities and the health and care workforce are faced with difficult decisions every day, “planning for and responding to COVID-19 as it develops will undoubtedly require making difficult decisions under new and exceptional pressures with limited time, resources or information.” The framework, it explains, is intended to “serve as a guide for these types of decisions” and “ensure that ample consideration is given to a series of ethical values and principles when organising and delivering social care for adults.”

The section sets out the following values and principles, along with best practice when applying and considering them:

- Respect
- Reasonableness
- Minimising harm
- Inclusiveness
- Accountability
- Flexibility
- Proportionality
- Community

The framework explains that these values and principles should be considered alongside professional codes of conduct and the most recent guidance and legislation. The principles are not ranked in order of significance and, the framework notes, it may not be feasible to consider them all where resources are constrained or there are surges in demand.²³

²² [The Coronavirus Act 2020 \(Commencement No. 2\) Regulations 2020](#), SI 2020/388.

²³ DHSC, [Responding to COVID-19: the ethical framework for adult social care](#), 19 March 2020.

3.2 Guidance for local authorities

On 1 April 2020, the Department of Health and Social Care published [guidance](#) for local authorities on how they can use the Care Act easements. The guidance was updated on 20 May 2020.

Under Schedule 12 of the Coronavirus Act the Secretary of State has the power to direct local authorities to comply with the guidance and with the ethical framework. The Department will, the guidance states, keep this “under review.”

Deciding to use the easements

While noting that the Care Act easements took legal effect from 31 March 2020, the guidance states that they “should only be exercised by local authorities where this is essential in order to maintain the highest possible level of services.” Authorities should, it adds, comply with the pre-amendment Care Act provisions and related statutory guidance “for as long and as far as possible.”

Regarding the circumstances when a local authority may decide to start using the easements, the guidance states:

A Local Authority 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 (as they stand prior to amendment by the Coronavirus Act) and where to continue to try to do so is likely to result in urgent or acute needs not being met, potentially risking life. Any change resulting from such a decision should be proportionate to the circumstances in a particular Local Authority.

The decision to operate the easements should, the guidance states, be taken locally and should be “agreed by the Director of Adult Social Services in conjunction with or on the recommendation of the Principal Social Worker.”

Principles governing use of the easements

The Care Act, the guidance states, “embodies a principled, person-centred and values-based approach to all aspects of the provision of social care”, and it is “essential that these principles and values are maintained during this period”.

The guidance also sets out an expectation that local authorities will observe the Ethical Framework for Adult Social Care (see above), and that in particular the Framework should be used “to underpin challenging decisions about the prioritisation of resources where they are most needed.” Alongside the Framework, local authorities should also, the guidance adds, “continue to respect the principles of personalization and co-production.” Annex C of the guidance provides more information on the prioritisation of adult social care services.

Annex A of the guidance provides more information on decision-making relating to the easements, including a four-stage decision making process for local authorities under the following headings:

- Stage 1: Operating under the pre-amendment Care Act

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- Stage 2: Applying flexibilities under the pre-amendment Care Act
- Stage 3: Streamlining services under Care Act easements
- Stage 4: Prioritisation under Care Act easements.

The Annex notes that these decisions are not necessarily sequential and that key stages can be enacted together.

Among other things, the Annex also emphasises that the easements do not give local authorities the power to withdraw whole services:

The Coronavirus Act does not give authority to block, restrict or withdraw whole services. It enables Local Authorities to make and apply person-centred decisions about who is most in need of care, and who might need to have care and support temporarily reduced or withdrawn in order to make sure those with highest need are prioritised.²⁴

3.3 Social care action plan

On 15 April 2020, the Government published an action plan for adult social care during the coronavirus outbreak.

The action plan reiterated that local authorities should only begin using the easements when “absolutely necessary and by always following the Care Act easements guidance.” The plan further stated that any decisions to use the easements should be “fully communicated to care recipients and providers, and reported to the department.”

The plan stated that the DHSC will “work in partnership with user and carer groups to understand the impact of COVID-19 and interventions such as Care Act easements to ensure they are not disproportionately disadvantaging those who are least able to advocate for themselves, and will closely monitor mortality and morbidity in vulnerable groups and the impact on carers.”²⁵

3.4 Use of the easements by local authorities

Although it is not responsible for monitoring local authorities, the Care Quality Commission (CQC) has published information about the easements “to help people understand how and why they’re being used.” This includes which local authorities are using the easements.

Position on 30 April 2020

As at 30 April 2020, there were seven local authorities in England using the Care Act easements:

- Sunderland City Council
- Warwickshire County Council
- Staffordshire County Council
- Birmingham City Council

²⁴ DHSC, [Care Act easements: guidance for local authorities](#), last updated 1 April 2020.

²⁵ DHSC, [COVID-19: our action plan for adult social care](#), last updated 16 April 2020.

- Solihull Council
- Derbyshire County Council
- Coventry City Council.²⁶

Middlesbrough also operated under the easements for a week, but then resumed duties under the pre-amended Care Act.²⁷

An [article](#) on the Community Care website reported that most of the authorities that used the easements were operating at “stage 3” of the easements (see section 3.2 above) “by reducing care and support processes, taking advantage of the provisions relieving councils of duties to carry out needs assessments, financial assessments, care planning and reviews.” However, the article stated, “Solihull has said it is looking to prioritise the needs of service users at higher risk by making use of the easement removing authorities’ duties to meet unmet eligible needs unless necessary to avoid a breach of human rights. Derbyshire has also indicated it may do this.” The article provided more detailed information on how each authority was using the easements.

The article also reported concerns from sector leaders “about the impact of reductions in people’s care and support and a perceived lack of transparency in the way authorities had communicated their decisions to undertake the easements to citizens.”²⁸

Position by 3 July 2020

On 3 July 2020, updated information on the CQC’s website stated that no local authorities in England were currently operating under the easements.²⁹ This remains the case at the time of writing (9 October).

3.5 Oversight and complaints

Care Quality Commission

The Care Quality Commission (CQC) regulates health and social care services in England. All providers of health and adult social care who carry out “regulated activities” are required to register with the CQC and demonstrate they meet fundamental standards. The scope of regulated activities includes, among other things, personal care and nursing care. Further information on the role of the CQC is available in Commons Library Briefing 8754, [The Care Quality Commission](#).

The Government’s guidance on the Care Act easements states that during the coronavirus outbreak “the CQC will continue to provide oversight of providers under existing legislation.” It adds that, “throughout this period the CQC will take a pragmatic approach to

²⁶ CQC, [The Care Act and the ‘easements’ to it](#), last updated 3 July 2020.

²⁷ [PQ39524](#), 1 May 2020; Community Care, [Eight councils have triggered Care Act duty moratorium in month since emergency law came into force](#), 30 April 2020.

²⁸ [Eight councils have triggered Care Act duty moratorium in month since emergency law came into force](#), 30 April 2020.

²⁹ CQC, [The Care Act and the ‘easements’ to it](#), last updated 3 July 2020.

inspection and proportionate action as necessary while maintaining its overriding purpose of keeping people safe.”³⁰

On 16 March 2020, the CQC wrote to all registered health and social care providers to inform them that routine inspections would be stopped immediately. There would instead be a shift towards other, remote methods to give assurance of safety and quality and care. Some inspection activity may still be needed, the letter stated, in a small number of cases, such as where there are allegations of abuse.³¹

On 30 April 2020 the CQC’s chief inspectors issued a joint statement setting out in more detail its approach to regulation during the covid-19 pandemic. This stated that the CQC would use its “unique oversight of the care provided for people who use adult social care” to “ensure that people are safe, and their human rights are maintained, while also working to support providers to respond to Care Act easements and emerging issues.”³²

On 1 May 2020, the CQC launched an emergency support framework which, it said, “provides a structured framework for the regular conversations that inspectors are having with providers.” The CQC stated that the information gathered through this route “is a further source of intelligence that we are using to monitor risk, identify where providers may need extra support to respond to emerging issues, and ensure they are delivering safe care which protects people’s human rights.”³³ Further information is available on the CQC’s website at: [Emergency support framework: what to expect](#).³⁴

Local Government and Social Care Ombudsman

If a person disagrees with a local authority’s decision regarding their social care they can complain to the authority.

If, after completing the local authority complaints process, a person is still not satisfied, they can raise the matter with the Local Government and Social Care Ombudsman (LGSCO).

On 26 March 2020 the Ombudsman announced that it had suspended “all casework activity that demands information from, or action by, local authorities and care providers, in light of the current Coronavirus outbreak.” The announcement added that, when normal services do resume, the Ombudsman will “take into account any delays when considering whether or not complaints have been brought to us within the normal 12-month time period.”³⁵

On 4 May 2020, the LGSCO published [guidance](#) for local authorities and care providers about handling complaints during the coronavirus

³⁰ DHSC, [Care Act easements: guidance for local authorities](#), last updated 1 April 2020.

³¹ CQC, [Routine inspections suspended in response to coronavirus outbreak](#), 16 March 2020.

³² CQC, [Joint statement on our regulatory approach during the coronavirus pandemic](#), 30 April 2020.

³³ CQC, [CQC launches emergency support framework](#), 1 May 2020.

³⁴ CQC, [Emergency support framework: what to expect](#), 1 October 2020.

³⁵ [LGSCO suspends complaints enquiries of councils and care providers](#), 26 March 2020.

outbreak. The guidance “sets out the basic principles the Ombudsman expects organisations to use to underpin their work during this crisis” and which “the Ombudsman will use...when it considers complaints about actions during the Covid-19 crisis.”³⁶

On 25 June 2020, the LGSCO announced that it would resume all existing casework and take new complaints through its website from 29 June.³⁷

³⁶ LGSCO, [Ombudsman issues guidance to councils and care providers](#), 4 May 2020; LGSCO, [Good Administrative Practice during the response to Covid 19](#), May 2020.

³⁷ LGSCO, [Ombudsman to resume taking new complaints online](#), 25 June 2020.

4. Reports and debates

4.1 Joint Committee on Human Rights report

On 21 September 2020, the Joint Committee on Human Rights published a [report on the human rights implications of the Government's response to Covid-19](#).

The report noted the requirement on local authorities, even when operating under the easements, to continue to meet the needs of individuals where required to prevent a breach of their human rights. However, it also noted concerns that had been raised regarding “whether frontline local authority staff have the requisite knowledge to assess when this threshold has been crossed.” The report cited a survey of those working in health and care carried out by the British Institute of Human Rights, in which 76% of respondents said they had not been provided with legal training or clear information on upholding human rights law during Covid-19.

While noting that the easements “have not to date been widely triggered by local authorities”, the report cited evidence that social care provision had “significantly reduced, including in areas where the easement provisions had have not been used.” This, the report added:

has implications for human rights including the right to life (Article 2 ECHR), the right to respect for private and family life (Article 8 ECHR) and the right to freedom from inhuman and degrading treatment (Article 3 ECHR).

The report concluded that the decision to reduce care provision was a “very serious matter” and that the Government should issue guidance about meeting human rights standards if the easements are to continue:

The decision to reduce care provision to certain individuals is a very serious matter, particularly in circumstances where care needs may have increased during the pandemic. The Government must justify its reasoning for the continuation of the powers to trigger easements to social care provision, and they must only continue if absolutely necessary and proportionate.

If this power (which has barely been used thus far) is to continue beyond the six-month review period, the Government should issue specific guidance about meeting human rights standards in the discharge of obligations under the Care Act 2014 and develop guidance as to the content required of human rights assessments.

The Government must ensure that local authorities and care providers are able to meet increased care and support needs during and resulting from the pandemic.³⁸

In [response to a parliamentary question on 7 October 2020](#) asking what steps the Government was taking to provide social care professionals with legal training on Covid-19 emergency measures, Lord Bethell, Parliamentary Under Secretary at the DHSC, stated:

³⁸ Joint Committee on Human Rights, [The Government's response to COVID-19: human rights implications](#), HC265, 21 September 2020, p32-3.

It is the responsibility of local authorities and employers to provide legal training for their staff, if required.

The Department has produced guidance on legal developments resulting from COVID-19 emergency measures, including guidance on the Care Act 2014 easements. This sets out how local authorities can utilise these easements whilst continuing to provide the best possible standards of care, maintaining due regard for the Human Rights Act 1998. The COVID-19 Ethical Framework for Adult Social Care also sets out eight ethical principles that should be considered when local authorities and social care professionals are planning their response to COVID-19.³⁹

4.2 Review of Coronavirus Act's temporary provisions

On 30 September 2020, the House of Commons debated a motion that the temporary provisions of the *Coronavirus Act 2020*, including those providing for the Care Act easements should not yet expire. The House agreed that the provisions should continue.

During the debate, the Leader of the Liberal Democrats, Ed Davey, raised concerns about the impact of the Care Act easements on disabled people:

Has the Secretary of State seen the evidence that many disabled people and people who need care have not received the care that they need? If he listens to the organisations that represent disabled people, he will hear that they are extremely worried about schedule 12 in particular and the easements on the duties of local authorities to assess and meet care needs. Is he telling the House that the Government are not renewing that schedule—yes or no?

In response, the Secretary of State, Matt Hancock, said that he believed the easements had overall improved access to care for people:

Yes, we are renewing that schedule, because it is very important for ensuring that we prioritise care for those who need it most. The concerns that the right hon. Gentleman raises now were raised during the passage of the Act, when we had a good discussion on the subject. I believe that the way the Act has worked has, overall, improved access to care for people both in hospital and in our social care system, which has, of course, been an area of great scrutiny throughout the pandemic.⁴⁰

The Shadow Home Secretary, Nick Thomas-Symonds, also questioned why the easements were still necessary and stated that the Government should regularly report to the House on their impact:

That failure on care homes is particularly relevant as we discuss and debate this legislation and its renewal, because the Act contains provisions that allow for the so-called “easement” of legal safeguards. The Health Secretary said that he thinks those are still necessary, but why are they still necessary? I read carefully the analysis that he published, which did not answer the question. He tried in his speech to make a positive case for it on the basis of

³⁹ [POHL8090](#), 7 October 2020.

⁴⁰ [HC Deb 30 September 2020, c390](#).

prioritisation, but he must realise that that does not deal with the deep concern there is about the situation in our care homes, and he must surely understand that every vulnerable person, throughout this pandemic, must have the standard of care that they need.

[...]

If the Government continue with the easements under the Care Act 2014, as they say they will...they must report regularly to this House about the impact of what they are doing.⁴¹

4.3 Government's analysis of Coronavirus Act

On 23 September 2020, the Government published an analysis of how the provisions of the Coronavirus Act have contributed to the Covid-19 response. Regarding the Care Act easements, the analysis stated that the easements had been used responsibly and that the option to use them in the event of a second wave could be "incredibly helpful":

Currently no local authorities are operating under easements. Work undertaken by our chief social workers (CSWs) shows that LAs used the powers responsibly and complied with guidance, so there is no rush to turn off powers. Sentiments gathered from principal social workers (PSWs) and the Association of Directors of Adult Social Services (ADASS) suggest that the option to use easements in the event of a second wave is incredibly helpful. Suspending the powers would give a powerful signal of government confidence that the adult social care (ASC) sector is returning to a "new normal" and so should form part of a wider government assessment of risk to the sector. We therefore recommend waiting until we are confident of the position before turning them off, rather than turning them off quickly and then turning them back on again in the event of a second wave.⁴²

⁴¹ As above, [c399](#).

⁴² DHSC, [Coronavirus Act analysis](#), 23 September 2020.

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