

Briefing Note for Chief Social Work Officers

Coronavirus Act 2020 - commencement of social care provisions

Introduction

The Coronavirus Act 2020 received Royal Assent on 26th March and regulations commenced sections 16 and 17 of the Act in Scotland on 5th April. These sections allow Local Authorities in Scotland not to comply with particular assessment duties in relation to social care for children, adults and carer support, to the extent that complying would not be practical or would cause unnecessary delay in providing support to people. This includes assessments in relation to child/adult support and protection. The relaxation of these obligations is to allow Local Authorities to prioritise and provide urgent protection and care services without delay.

Relevant Legislation

The particular sections of legislation this applies to are:

- needs assessments under section 12 A of the Social Work (Scotland) Act 1968;
- assessments for children and young persons under sections 22, 23 and 29 of the Children (Scotland) Act 1995;
- general principles applicable to local authority functions, in section 1 of the Social Care (Self-directed Support) (Scotland) Act 2013; and
- adult carer support plans and young carer statements under sections 6 and 12 of the Carers (Scotland) Act 2016.

Potential upcoming provisions under Coronavirus (Scotland) Act 2020

Currently section 13 ZA of the Social Work (Scotland) Act 1968 permits local authorities to provide services to incapable adults. Where it has been decided that an adult's needs call for the provision of a community care service and it appears to the local authority that the adult is incapable in relation to decisions about the service, the local authority may take any steps which they consider would help the adult to benefit from the service including moving the adult to a residential care service. Such action can only occur if there are no objections from the adult or anyone claiming an interest in the adult.

Despite the effects of section 16 and 17, full assessment of adults with incapacity is still required under section 13 ZA.

The separate Coronavirus (Scotland) Act 2020 contains provisions that amend section 13 ZA. **However these provisions will not have effect until Scottish Ministers decide to implement them. This decision will only be taken in extreme circumstances and local authorities will receive notification in advance.**

Charging

Local Authorities will be prevented from charging under section 87 of the 1968 Act for services provided without complying with the full social care and financial assessment duties. Currently, Local Authorities have flexibility and discretion under section 87 of the 1968 Act. The rationale is that charging people for services provided in an emergency situation without engaging them or conducting a full assessment would be unfair and may invite multiple challenges later on.

Local authorities will only be able to retrospectively charge for the duration in which person becomes a permanent resident in accommodation provided by the local authority e.g. a care home.

Assessment formats

It is important to note that whilst the legislation in relation to undertaking full assessments is temporarily not in force the duties under these pieces of legislation remain. There is still a duty to provide services to those children and adults in need of them. The difference is the duty to assess is now a discretionary power.

Partial assessments can and should be undertaken however in relation to deciding which services can be prioritised and provided to a child or adult who requires them.

The statutory guidance in relation to the commencement of the social care provisions explains in more detail the difference between full and partial assessments. (<https://www.gov.scot/publications/coronavirus-covid-19-changes-to-social-care-assessments/>).

Ethics, values and principles

When using these provisions, all decisions made on an individual's social care needs should be considered alongside their individual wellbeing and fundamental human rights.

To support ongoing response planning and decision-making, and to ensure that key ethical values and principles are considered throughout this challenging period, additional considerations are provided in the [Ethical Framework for Adult Social Care](#). This sets out the values which should underpin all our decisions, which include respect, reasonableness, minimising harm, inclusiveness, accountability, flexibility, proportionality and community.

All decisions relating to children's safety or wellbeing needs should be based on children's rights as articulated in the United Nations Convention on the Rights of the Child (UNCRC) and the values and principles of Getting It Right For Every Child (GIRFEC). This includes decisions in relation to support for young carers.

Conclusions

These temporary changes to the legal duties relating to social care assessments are specifically intended to make the process of prioritising and delivering protective and

supportive services to the children and adults who need them the most as straightforward as possible. They are intended to enable Local Authorities to undertake partial assessments without the concern that there will legal action taken against them in the future because a full assessment has not taken place in the current extraordinary circumstances.

It is also expected that where a partial assessment has been undertaken in relation to the provision of any service a full assessment (if required) will subsequently take place when resources allow or when this emergency legislation re social care assessments is no longer in force.

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