



# The Coronavirus Act & What It Means for Disabled People

## Factsheet

May 2020

With the situation around COVID-19 constantly evolving, this is a challenging time for us all. At Merton CIL we are working to ensure that rights of Deaf and Disabled people are maintained throughout the current pandemic.

On 31 March 2020, the emergency Coronavirus Act 2020 became law.

Unfortunately, the provisions in the Bill relating to social care, support for Disabled children and detentions and treatment under the Mental Health Act went through without any changes and are now law.

However, in response to Inclusion London's campaign on this issue, the Government gave reassurance that these measures will be implemented only in critical situations as a last resort.

**The London Borough of Merton has currently not enacted easements of The Care Act 2014**

### **What the Coronavirus Act means for Disabled People in Merton – Via Inclusion London**

The Act sets out emergency laws in relation to the coronavirus crisis. Parts of The Coronavirus Act's related to the suspension of the duties in the Care Act 2014 were brought into force from the 31st of March 2020, but the Secretary of State has a power to disapply them.

The Department of Health and Social Care (DHSC) has issued guidance that local authorities have to follow when implementing these provisions. You can read more here - <https://bit.ly/3c5tTbt>

This guidance informs when the relaxation of the Care Act framework should take place and details the steps local authorities need to take when implementing the easements.

These are the main duties that will change under The Coronavirus Act:

- The local authority will not have a legal duty to assess needs in accordance with the Care Act, however it will have to carry out a proportionate assessment and keep a record of person's needs.
- The duty to carry out transitional assessments for young Disabled people who are moving from children to adult social services is suspended. The local authority also no longer has duties to continue support in transition periods, unless it is necessary to prevent the breach of a person's human rights.
- The local authority will not have a duty to determine which needs are eligible in accordance with the Care Act eligibility framework.
- The local authority will not have to develop a Care Act compliant care and support plan, but it still has to develop a support plan and involve individuals concerned.
- Local authorities are no longer required to carry out reviews, but they can still do so and if so, they have to involve individuals in the process.
- Local authorities are no longer required to carry out financial assessments, but they will be able to carry them out and charge retrospectively.
- Most importantly, local authorities will no longer have a duty to meet eligible needs, but they still can choose to do so under the Care Act Easements guidance. This says Local Authorities will still be expected to take all reasonable steps to continue to meet needs.

Local authorities will remain under a duty to meet needs where failure to do so would breach an individual's human rights under the European Convention on Human Rights. These include, for example, the right to life under Article 2 of the ECHR, the right to freedom from inhuman and degrading treatment under Article 3, right to liberty under Article 5 and the right to private and family life under Article 8.

You can find more information about the Human Rights Act and how it protects Disabled people on The Inclusion London website:

<https://www.disabilityjustice.org.uk/take-action/human-rights/>

It is worth remembering that even when the local authority chooses to implement the easements scheme it still needs to decide whether to exercise their powers having regard to a person's wellbeing and having regard to The Ethical Framework for Social Care - <https://bit.ly/39Qdera>

Therefore, although they are not legally obliged, they still have a power to continue complying with the Care Act legal framework and they have to make rational and lawful decisions when exercising this power.

Charging: If the local authority decides to meet a person's needs and they would have been able to charge and did not carry out the assessment of finances, they can do it retrospectively as long as the person received information that stated social care is means tested and a charge may apply.

The duties that remain - Although many duties have been suspended, it is important to remember that many duties still remain. Some of those are:

- The duty to promote wellbeing
- The duty to provide information and advice
- Duties to involve
- Prevention duties
- Safeguarding duties
- Advocacy duties
- Equality Act including public sector equality duty, which applies to policies and decisions in individual cases
- Duties under the Human Rights Act

Personal assistants (PAs): PA's are included in the definition of a Health and Social Care key worker. They are able to move around during the lockdown and go shopping for a Disabled person that they support. If being challenged they might need to carry a copy of their contract of employment, Job description and/or a letter from the employer.

All PA's in Merton should be provided with PPE by The London Borough of Merton. If you are having issues getting PPE please contact Michael ([policy@mertoncil.org.uk](mailto:policy@mertoncil.org.uk))