

Coronavirus (COVID 19): Changes to Social Care Assessments

**Statutory guidance for local authorities
on sections 16 and 17 of the Coronavirus
Act 2020**

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Coronavirus (COVID 19): changes to social care assessments - statutory guidance for local authorities on sections 16 and 17 of the Coronavirus Act 2020

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1 INTRODUCTION

1.1 Status of guidance

This statutory guidance is issued by Scottish Ministers under section 17 of the Coronavirus Act 2020 (“the 2020 Act”).

Local authorities must have regard to the guidance and may be directed to comply with it under section 17(2)(b) of the 2020 Act.

1.2 Who this guidance is for

This guidance is primarily intended for local authorities and integration authorities, which have duties under the following legislation:

- Section 12A of the Social Work (Scotland) Act 1968 (“the 1968 Act”);
- Sections 23 and 29 of the Children (Scotland) Act 1995 (“the 1995 Act”);
- Section 1 of the Social Care (Self-directed Support)(Scotland) Act 2013 (“the 2013 Act”); and
- Sections 6 and 12 of the Carers (Scotland) Act 2016 (“the 2016 Act”)

Those authorities must have regard to this guidance in exercising their functions.

Other organisations and individuals, including care providers, carers and users of health and social care services, will have clear interests in the guidance.

It is intended to be read alongside sections 16 and 17 of the 2020 Act, relating to Social Care Assessments in Scotland.

1.3 Relationship with other guidance

Local authorities may disregard pre-existing guidance to the extent that it is inconsistent with this guidance. This applies to pre-existing guidance issued under 5(1) of the Social Work (Scotland) Act 1968 and codes of practice published under section 274(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003.

The existing guidance under section 5 of the 1968 Act which may be affected includes guidance about social care assessments for adults, carers and children.

1.4 Overview of social care assessment provisions

The Coronavirus Act 2020 (“the 2020 Act”) makes provision to respond to an emergency situation and manage the effects of a COVID-19 pandemic. Sections 16 and 17 of the 2020 Act allow for an easing of health and social care assessment

duties in relation to adult social care, carer support and children's services in Scotland.

These sections of the 2020 Act will allow Local Authorities to dispense with particular assessment duties where complying would not be practical or would cause unnecessary delay in providing urgent care and support to people. The aim is to allow Local Authorities to focus their resources on meeting the most urgent needs, thereby protecting the lives of the most vulnerable members of society.

The provisions can be switched on and off as necessary, including in different parts of the country, in order to respond to the COVID-19 outbreak.

When section 16 is in force, authorities are still obligated to do as much as they can to meet people's needs, with appropriate safeguarding measures in place.

1.5 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.

The value and principles enshrined in Getting It Right For Every Child remains central to all decisions which support children, young people and their families. This includes decisions in relation to support for young carers.

1.6 When the assessment duties on Local Authorities will be eased

The powers for Local Authorities to decide whether or not to do full assessments will be available when section 16 is in force. Sections 16 and 17 can be switched on by commencement regulations made by the Scottish Ministers. Section 16 can also be switched off by regulations.

These powers will only be switched on when they are absolutely necessary to allow local authorities to prioritise and provide urgent care without delay. They will also be switched off by regulations when they are no longer needed. They can be switched on and off for different areas at different times – for example to deal with a very

intense localised outbreak. The intention is that the powers would only be brought into operation for the shortest time possible and only when absolutely necessary to protect people.

The 2020 Act will expire after a set period under section 89. This will ensure that the emergency provisions it contains are only available for as long as they are needed to deal with the COVID 19 outbreak.

2 WHAT THE SOCIAL CARE PROVISIONS IN THE 2020 ACT DO

2.1 How sections 16 and 17 of the 2020 act ease assessment duties

Sections 16 and 17 of the 2020 Act allow for an easing of social care assessment duties in relation to adult social care, carer support and children's services. They allow local authorities to dispense with particular assessment duties where complying would not be practical or would cause unnecessary delay in providing support to any person.

Section 16 allows for temporary relaxation of Local Authorities duties in relation to:

- needs assessments for any relevant person under section 12A of the Social Work (Scotland) Act 1968,
- assessments for children under section 23 and 29 of the Children (Scotland) Act 1995,
- section 1 of the Social Care (Self-directed Support)(Scotland) Act 2013; and
- preparation of adult carer support plans/young carer statements under the Carers (Scotland) Act 2016.

This will give Local Authorities the discretion to dispense with these duties in order to provide services and support for those most in urgent need without delay. It allows Local Authorities to decide not to conduct a full assessment or prepare an adult carer support plan/young carer statement where this would be impractical or cause undesirable delay of the provision of care and support to *any* person.

Section 17 provides for statutory guidance on the provisions. It restricts charging for services provided in the absence of a full needs assessment. It also makes provision for any court proceedings that may arise due to a delay caused by a backlog of assessments.

2.2 How this affects the existing law

2.2.1 Adult Social Care (including AWI and services for people with a mental disorder)

Section 12 of the Social Work (Scotland) Act 1968 ("the 1968 Act") gives local authorities a core duty to provide care and support to people in need of assistance. Sections 25 to 27 of the Mental Health (Care and Treatment) (Scotland) Act 2003 ("the 2003 Act") give local authorities duties to provide services to people with a mental disorder who are not in hospital.

Section 12A of the 1968 Act currently places a duty on all Local Authorities to carry out needs assessments for all relevant persons. When doing this, Authorities must also comply with the principles in section 1 of the Social Care (Self-directed Support) Act 2013 (“the 2013 Act”). These duties apply to people covered by section 12 of the 1968 Act and people covered by sections 25 to 27 of the 2003 Act. This includes adults who lack capacity under the Adults with Incapacity (Scotland) Act 2000.

Section 16 of the 2020 Act amends the assessment duties for adult social care. While it is in force it will give Local Authorities the option to dispense with their assessment duties under section 12A of the 1968 Act, and accordingly the principles under section 1 of the 2013 Act insofar as they relate to their duties under Part 2 of the 1968 Act. Local Authorities will only have this option to disregard duties to the extent that it is not practical to comply with them or would cause unnecessary delay in the provision of support.

The duty to provide support under section 12 of the 1968 Act and the duties under sections 25 to 27 of the 2003 Act will remain in place.

2.2.1.1 Adults with Incapacity

The provisions to ease duties under section 16 and 17 of the 2020 Act also apply to people who may lack capacity but have not previously been assessed as such. The separate duties under the 2003 Act are not affected by the 2020 Act but are amended by the separate Coronavirus (Scotland) Act 2020. The provisions in the Coronavirus (Scotland) Act 2020 relating to section 13ZA of the Social Work (Scotland) Act 1968 will require Ministerial approval to invoke and will only be used in extremis. There is further guidance provided below at 2.3.2.1. on adults who lack capacity.

2.2.1.2 Adult Support and Protection

The Adult Support and Protection (Scotland) Act 2007 (ASPA) places statutory duties on a number of statutory organisations. The 2020 Act does not change or affect the duties under ASPA. Assessments will need to clearly consider how contraction of Covid-19 may create a physical infirmity in terms of Section 3 of ASPA and/or how self-isolation may create new situations of risk for adults, which impact upon their ability to safeguard their wellbeing, property, rights or other interests. The ASPA principles still apply and the Covid 19 Ethical framework for social care should also be considered especially where Section 3 is not satisfied. All those providing support must ensure that staff, including volunteers, are briefed in recognising harm, abuse or neglect in order that they can trigger necessary assessments under ASPA.

2.2.2 Children’s Services

Section 22(1) as read with section 23(1) of the Children (Scotland) Act 1995 (“the 1995 Act”) provides a duty on Local Authorities to safeguard and promote the welfare of children, in particular, by providing services in relation to children and their

families affected by disability. Local Authorities currently have a duty to carry out an assessment for that purpose under section 23(3) of the 1995 Act. When doing this, Authorities must also comply with the principles in section 1 of the Social Care (Self-directed Support) Act 2013 (“the 2013 Act”).

Sections 29(1) and (2) of the 1995 Act provide duties on Local Authorities to provide after-care (in the form of advice, guidance and assistance) to young persons, for example, those who were formerly looked after. Local Authorities currently have a duty to carry out an assessment for that purpose under section 29(5) of the 1995 Act.

Section 16 of the 2020 Act amends the assessment duties under sections 23(3) and 29(5) of the 1995 Act. While it is in force it will give Local Authorities the option to dispense with their assessment duties under these sections of the 1995 Act, and accordingly the principles under section 1 of the 2013 Act. Local Authorities will only have this option to disregard duties to the extent that it is not practical to comply with them or will cause unnecessary delay in the provision of support.

The 2020 Act does not affect the duties on Local Authorities to safeguard and promote the welfare of children in need under section 22 and to provide aftercare services under section 29 of the 1995 Act. These duties will remain in place while section 16 is in force.

2.2.3 Carer Support (adult carers and young carers)

Section 24 of the Carers (Scotland) Act 2016 (“the 2016 Act”) provides a duty on Local Authorities to provide support to adult carers and young carers. Local authorities currently have a duty to prepare an adult carer support plan under section 6 of the 2016 Act. Similarly, Local Authorities are currently under a duty to prepare a young carer statement under section 12 of the 2016 Act. When doing this, Authorities must also comply with the principles in section 1 of the Social Care (Self-directed Support) Act 2013 (“the 2013 Act”).

Section 16 of the 2020 Act amends both the duties under section 6 and 12. While it is in force it will give Local Authorities the option to dispense with their duties under these sections, and accordingly the principles under section 1 of the 2013 Act as they apply to carers. Local Authorities will only have this option to disregard duties to the extent that it is not practical to comply with them or will cause unnecessary delay in the provision of support.

The duty to provide support to carers under section 24 will remain while section 16 is in force, however rather than refer to “identified needs”, this has been amended to refer to the carers needs for support in order to enable the carer to provide or continue to provide care for a cared-for person.

2.2.4 Charging

Section 87 of the 1968 Act currently allows Local Authorities to charge for certain services to adults and children.

Section 17 of the 2020 Act prevents Local Authorities from charging for services under section 87 if these were provided without complying with the full assessment duties. Local Authorities will be allowed to retrospectively charge for those who become permanent residents in residential care during the emergency period.

2.3 What this means in practice

2.3.1 Impact on Assessments

When section 16 is in force, Local Authorities are not required to carry out full assessments (including adult carer support plans and young carer statements) to the extent that it is deemed impractical or will cause unnecessary delay in the provision of care to do so.

2.3.2 Adult Social Care

When section 16 is “switched on”, this will allow Local Authorities to dispense with the duty to conduct a needs assessment to the extent the authority considers that it would be impractical to comply or that it would cause unnecessary delay to the provision of services to any person.

This allows for a partial assessment, acknowledging that some form of analysis of a person's situation will still need to happen so that the most effective response can be delivered to support the person at their time of need.

The key duties to provide care and support to people in need of assistance remain in place.

2.3.2.1 Adults with Incapacity and provisions in the Coronavirus (Scotland) Act 2020

As highlighted above, the existing assessment duty under section 12A of the 1968 Act covers assessments in relation to adults who may lack capacity. So the provisions to ease those duties under section 16 and 17 of the 2020 Act also apply to people who may lack capacity but have not previously been assessed as such.

It is important to note that these provisions will only affect adults who may lack capacity if the local authority has not already conducted an assessment identifying the adult is incapacitated and their needs.

In most cases local authorities will have already conducted an assessment, identified that the adult lacks capacity and in the absence of an attorney with welfare powers, put in place an application for a court order under the Adults with Incapacity (Scotland) Act 2000, such as a guardianship or intervention order. In these cases adults lacking capacity will be able to be moved using s.13za of the Social Work (Scotland) Act 1968 as amended by the Coronavirus (Scotland) Act 2020. Separate guidance for this will accompany the Coronavirus (Scotland) Act 2020.

2.3.2.2 Adult Support and Protection

The Adult Support and Protection (Scotland) Act 2007 (ASPA) places statutory duties on a number of statutory organisations and in turn, this places expectations and contractual obligations on many service providers.

Adult Support and Protection remains a statutory duty of councils, health boards, police and others to support and protect adults at risk of harm. The Coronavirus Act 2020 does not affect these duties, especially the identification of adults at risk of harm, subsequent inquiries, investigations or protection planning/orders and multi-agency cooperation to support these activities.

It is vital that Councils and those named in ASPA continue to offer the same level of oversight regarding these duties and their application. However, it is also important that staff are proportionate in their responses and mindful of the pressure care providers may be under.

2.3.3 Carer Support

When section 16 is “switched on”, this will allow Local Authorities to dispense with the duties to prepare adult carer support plans, young carer statements or to have a conversation as the means of identifying needs. It will also allow them to dispense with their duties under section 1 of the 2013 Act.

Authorities can only choose to dispense with their duties to the extent that doing so would be impractical or cause unnecessary delay in the provision of support to any person.

This allows for preparation of a partial adult carer support plan or young carer statement, acknowledging that some form of analysis of a carer’s situation will still need to happen so that the most effective response can be delivered to support the carer at their time of need.

The duty on authorities to provide carer support under section 24 remains in place. This duty and power rely on the authority understanding the carer’s identified needs. Where identified needs meet local eligibility criteria, authorities have a duty to support the carer. Where identified needs do not meet local eligibility criteria, authorities still have a power to support the carer.

Section 16(5) and (6) of the 2020 Act alters the concept of “identified needs” in the 2016 Act to allow for the fact that these needs may not be being identified in conversation with the carer (in line with the flexibilities listed above). This is essentially a technical change to ensure the duty and power to provide support continue to apply. In these cases, a person’s identified needs will be taken to mean: *the carer’s needs for support in order to enable them to provide or continue to provide care for a cared-for person.*

2.3.4 Children’s services

When section 16 is “switched on” this will allow Local Authorities to dispense with the duty to carry out an assessment of needs under section 23(3) of the 1995 Act as a prerequisite to any provision of services to such children and their families to the extent that doing so would be impractical or cause unnecessary delay to the provision of services to any person.

When section 16 is switched on it will also allow Local Authorities to dispense with the duty to carry out an assessment of needs under section 29(5) of the 1995 Act as a prerequisite to any provision of after-care services to such young persons if doing so would be impractical or cause unnecessary delay to the provision of services to any person.

Partial assessments as described under section 3.5.2 below can however be undertaken in relation to providing services to children. These partial assessments should be undertaken following the principles of GIRFEC and referring to the [National Practice Model](#). The overarching priority when undertaking partial assessments is to ensure that protective and/or supportive services are provided to children and families who have the greatest need as quickly as possible.

The key duties to provide services to children under sections 22 and 29 of the Children (Scotland) Act 1995 will not be turned off.

2.3.4.1 Child Protection

Assessments in relation to child protection can also be undertaken using the partial assessment format described in paragraph 3.5.2. These assessments should still follow the principles outlined in the supplementary child protection guidance issued for the duration of the COVID-19 situation. The supplementary child protection guidance can be accessed here <https://www.gov.scot/publications/coronavirus-covid-19-supplementary-national-child-protection-guidance/>

In addition to the supplementary guidance the [2014 National Child Protection Guidance](#) provides the framework for existing local practice and procedures.

2.3.5 Charging

2.3.5.1 Support which cannot be charged for

Section 17(4) and (5) of the 2020 Act means that local authorities may not charge for the following while the assessment duties are relaxed under section 16 unless a full assessment involving the person and their family or carers has been undertaken:

- non-residential care for adults
- temporary residential care for adults
- services provided to a child under section 22 of the 1995 Act
- advice, guidance or assistance provided under section 29 of the 1995 Act

Section 17 does not refer to charging unpaid carers under the 2016 Act because existing legislation already requires authorities to waive all charges for carer support.

2.3.5.2 Support which can be charged for

Section 17(6) makes it clear that local authorities may conduct full assessments after putting care support services in place but may only charge as normal for support provided after a full assessment is done. Any element of personal care must be provided without charge as normal and local processes should be followed.

For charges that are applied following a full assessment, for those receiving social care services at home, local authorities should refer to the [COSLA National Strategy & Guidance, Charges Applying to Non-residential Social Care Services](#).

Charges already in place for people who have previously gone through a full assessment can remain in place.

This ensures that people will only be charged where they have had the benefit of a full assessment which would include a financial income maximisation assessment.

In the event that people with temporary care plans refuse full assessment because it means they will be liable to charges, local authorities are advised to have a clear protocol to ensure a fair and consistent approach.

2.3.5.3 Charging for Permanent Residential Care

Section 17(7) to (9) allow retrospective charging for individuals who become permanent care home residents without a full assessment and who later have a full assessment. Charging may be backdated to the date when the person became a permanent resident (ie, where accommodation is expected to last more than 52 weeks). Any element of personal and/or nursing care should be treated in the normal

way with the local authorities paying the service provider directly for that care. Again local processes should be followed.

Where a full assessment takes place and the person is appropriately involved, the local authority may charge in accordance with the Charging for Residential Accommodation Guidance.

2.4 Once the emergency provisions are switched off

Once section 16 is switched off, the usual duties to carry out assessments will switch back on again.

For adult social care, that means the duties to assess under section 12A of the 1968 Act and section 1 of the SDS Act will switch back on.

For carer support, that means the duties to offer and prepare adult carer support plans and young carer statements under the 2016 Act will switch back on and will apply to people who did not receive a full plan or statement during the emergency period.

For children's services, that means the duties to assess under sections 23 and 29 of the 1995 Act will switch back on.

3 WORKING WITH THE AMENDED DUTIES: SOCIAL CARE DECISION MAKING AND DELIVERY UNDER THE 2020 ACT

3.1 Overarching duties

Local authorities should remain committed to delivering quality assessment, choice in how services and support are delivered, and control to people who use them. There will be significant additional pressure within the entire social care system across children, families, adults and older people.

Decisions should be made upholding the principle that every person and their human rights, personal choices, safety and dignity matters.

The vital role that unpaid carers play in supporting friends and relatives will become even more important over the coming months. Recognising and supporting them in their caring roles will play an indispensable role in supporting the social care system as a whole.

3.2 Leadership

Leadership at all levels will be critical in working with the social care assessment provisions in the 2020 Act.

Chief Officers should evidence collective leadership, making collaborative decisions when there may be an impact on partner services, and operating to agreed processes, thresholds and assessments of risk.

Leaders should be visible and accessible to the frontline workforce. They should support their workforce to focus on what matters to people and what delivers the best outcomes in the circumstances.

Leaders should encourage their frontline workers to take steps to reduce unnecessary bureaucracy.

3.3 Prioritising risk to people

There will be extra support needs at this time. The Scottish Government has committed to meeting the additional costs of this. However, there will still be significant system pressures brought about by carer and care staff sickness and self-isolation.

Areas of key priority for either a full or a partial assessment during the crisis are:

- Risk to life
- Risk to a person's immediate health through not being able to wash, eat and look after themselves independently
- Child and adult protection
- Ability of carers to continue to provide care

- Existing complex care arrangements, including where a person lacks capacity

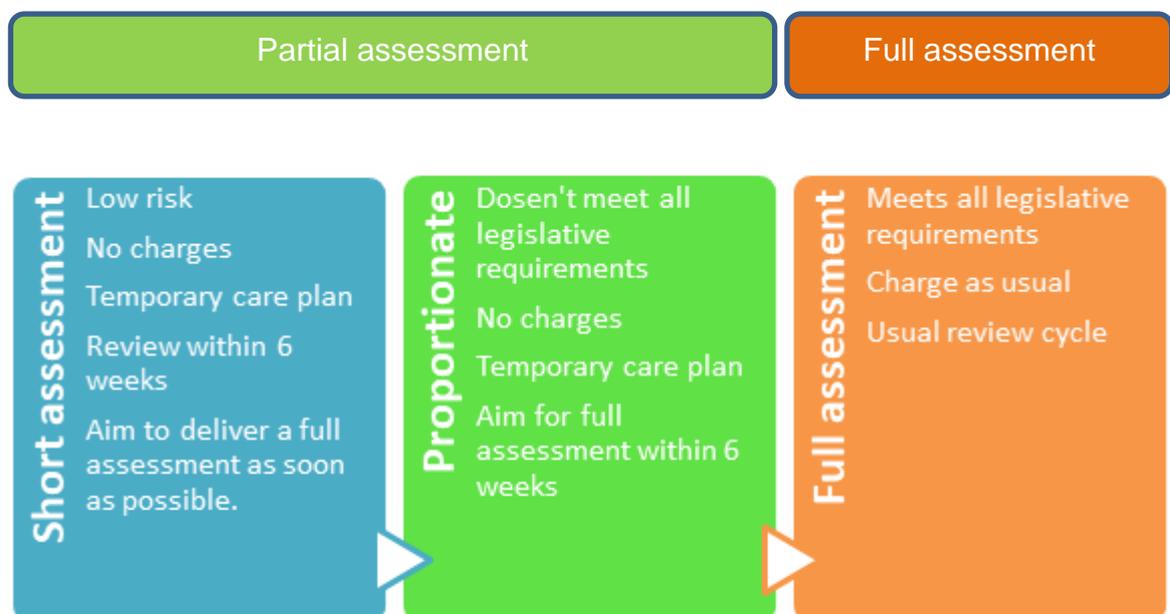
3.4 Support which may be available without formal assessment

There will be many requests for support that will be best directed straight to community groups and third sector organisations. Enhancing the capacity of these partners and ensuring good communication to the public about what is available and who to contact will help to reduce referrals for formal assessment

3.5 Full and partial assessments

The 2020 Act allows assessment activity to be prioritised. Assessment can be viewed as a process across a continuum of levels and domains carried out through short assessment to full standard assessment.

All assessments other than full should be regarded as temporary. No life changing decisions such as moving permanently into a care home should be taken without a full and complete assessment. This is consistent with section 17(7) to (9) of the 2020 Act, which allows for circumstances where a person is expected to become a permanent resident but a full assessment has not yet been carried out. In those cases the final decision will still be made following a full assessment but the 2020 Act allows retrospective charging for the earlier period.



3.5.1 Full assessments

Unless a full assessment has been undertaken any resulting care plan will be considered temporary. There is an expectation that temporary care plans will be reviewed regularly. Local authorities will have to prioritise the full assessment as soon as possible, based on risk. To qualify as a full assessment, the assessment must meet all the requirements of the relevant legislation (either section 12A of the 1968 Act, sections 23 or 29 of the 1995 Act or sections 6 or 12 of the 2016 Act). They must also comply with the general principles in section 1 of the 2013 Act to fully involve the supported person in decision making about their social care support.

3.5.2 Partial assessments

The 2020 Act relaxes duties to assess in order to speed up the time taken to put care and supports in place for people. Although a full assessment may not be required, a partial assessment should still be undertaken so that the worker can understand the person's level of need and what the most appropriate response to that would be.

Assessment is usually an ongoing process over time based on relationships between workers and people who may need care and support. A pared down approach can be used focusing on key areas – see bullets below. The level to which the assessment is reduced will depend on the circumstances. It must be proportionate to the complexity of the situation.

Workers should ensure first and foremost that the person is not at risk of harm to themselves or others. To meet urgent needs, workers will need to be creative, know their community assets and use their skills to respond to people's needs. They must work with the person's identified strengths, with their family and available community assets, acknowledging that and seek to make the right connections with communities and care and support organisations.

The workers should focus on having conversations with the person on the key areas which include being safe and healthy, active; maintaining positive relationships and living independently, as follows:

- Are they **Safe** (In their own home) and/or at their any Child or Adult Protection Concerns or issues around their cognitive capacity?
- Are there any issues with their physical or mental **Health**?

- Are they able to stay **Active**? Daily physical activity such as seated exercise, walking indoors or outdoors, exercise videos, and purposeful activities and hobbies.
- Are they able to maintain positive **Relationships** at this time? And do they have family supports or carers?
- Able to live **Independently** (food, comfort, financial maximisation)
- Are they a **Carer** who needs access to care and supports to undertake their caring role?
- Can the person identify their own **Contingencies** when supports not able to deliver?
- What else is important to the person?

Communication with family and friends, particularly anyone likely to take on a caring role, will continue to be important. Wherever someone is likely to be providing support as an unpaid carer, authorities should find out about the carer's ability and willingness to care, find out about any needs for support to continue caring and encourage them to look after their own health and wellbeing.

The assessment process should also consider people's own use of technologies including telecare and how they wish to communicate with the worker/team. The use of familiar platforms like Messenger, WhatsApp, Snapchat, etc. should be considered.

Where there are capacity issues, liaising with a Guardian or person with power of attorney (POA) may be necessary and or the use of communication aids to be able to have a 'good conversation' with the person around their needs and the care and supports that can be delivered.

3.6 Partial adult carer support plans and young carer statements

As well as being the mechanism to identify carers' needs for support, adult carer support plans and young carer statements also provide carers with important information to enable them to manage their caring role. Therefore in addition to the considerations outlined in the preceding section, authorities should cover the following in communicating with carers who have not had a full adult carer support plan or young carer statement.

Authorities should ensure family and anyone likely to take on a caring role know about:

- any funded social care support for the person with care needs – including any potential changes to that support during the outbreak period;
- what support the person might need from family and friends, including information on how to provide that support safely to prevent infection;

- how to access any supplies needed for their caring role, including personal protective equipment where this is needed to minimise risk of infection;
- who to contact if the caring situation is not working, or if the unpaid carer is unable to continue for a period, if they become unwell or need to self-isolate.

For individuals at higher risk of infection, subject to shielding, authorities should also ensure families and unpaid carers are aware of:

- any additional support for this group;
- any additional measures they should be taking to avoid risk of infection.

Unpaid carers should be encouraged to look after their own health and wellbeing:

- encouraging them to share their responsibilities with others;
- encouraging them to work out a plan with others for what happens if they are unable to continue caring if they become ill or need to self-isolate;
- making sure they are aware of local sources of emotional and other support for unpaid carers, such as local carer centre support, and how it can be accessed during the outbreak period.

3.7 Delegating assessments and budget decision making

3.7.1 Delegating assessments

Social workers remain the responsible professionals for assessments. Social care assessments can be delegated (as they often already are to social work assistants and/or other professionals). During the pandemic, it may sometimes be necessary to delegate more complex assessment tasks to others where this can be done safely. Where people have complex protection or capacity needs, where risk to the person or others is high or where life-changing and potentially permanent decisions need to be made, these will be priorities for registered social workers.

Other registered professionals including occupational therapists, physiotherapists, and nurses should feel confident to undertake a partial assessment. Where assessments need to be undertaken quickly by someone who might not ordinarily undertake that type of assessment or where the assessment has been partial, the resulting care plan will be temporary and subject to regular review and a full assessment as soon as is practical.

3.7.2 Delegating budget decision making

During this crisis, there will be increased pressure on services with fewer staff including budget holders and decision makers. To function quickly and effectively, local authorities should consider temporary adjustments to their schemes of delegation to ensure workers are able to put care and support in place without delay.

Where safe to do so, workers will require increased delegated responsibility to undertake their roles to get services to people quickly and to access budgets to pay for care and support. Local partnerships should determine what purchasing decisions can be delegated to whom and to what level.

3.7.3 Supporting staff

Workers who are being asked to take on more autonomous decision making should be fully supported to do so. What workers can and cannot make decisions about should be made clear by leaders and line managers. Workers should expect support from their managers and leaders to take professional decisions to a level proportionate to the worker's experience and competence.

Where workers need support to make decisions, they should have easy access to support. This may take the form of a mentor, a line manager, or a team manager. Support arrangements should be clearly stated to the worker.

Safe and effective practice change cannot happen without effective communication to all levels of staff across the organisation. Workers should be informed clearly about any changes to practice. All accessible technologies should be considered to disseminate information.

3.8 Considering how and when to assess

3.8.1 In person or remote assessment

The decision whether an assessment can be done in person or remotely will need to be individually risk assessed taking into account:

- The quality of information held on current systems which is available to help make temporary care decisions
- Information from family members, friends, unpaid carers and current care workers
- The urgency of the need for support
- The vulnerability of the person
- The risk of transmission of the virus to the person and to workers.

3.8.2 Using telecare

Many vulnerable people will already be connected to telecare (community alarm). Early thought should be given about using the capacity of such systems to check that people are coping as well as to do rapid reviews of temporary care plans. The next of kin of people receiving telecare services will be on file so can be contacted when there are concerns about the level of vulnerability.

3.8.3 Children's services

In children's services, key point of contact will have information about children who may be on the cusp of needing a higher level of intervention. For areas that have not already done so, contact and contingency arrangements should be considered for those at risk of harm or neglect

3.8.4 Self-assessment

A short self-assessment tool that can be completed by the referrer might enable the initial triage in coming to better decisions more quickly about where priorities lie. This might also reduce the volume of calls and lengths of time spent on initial discussions at points of first contact and can provide a starting point for further discussion. This approach is in line with the principles and spirit of the 2013 Act and supports people to begin to think about their own strengths and the capacity of their families and communities.

3.9 Providing support

3.9.1 Eligibility criteria

The 2020 Act only relaxes assessment duties. It does not relax any of the duties to provide services and support. Nor does it alter eligibility criteria in relation to adult social care or carer support.

3.9.2 Self-directed support options

The 2020 relaxes assessment duties and the duty to comply with the self-directed support principles in section 1 of the 2013 Act. It does not relax duties to offer the self-directed support options.

Some support may not be available in the person's preferred SDS option, so flexibility should be used in providing service in order to meet priority needs.

3.10 Review cycle

All assessments other than full should be regarded as temporary. These should be reviewed as well as possible at regular intervals. It is important that care and supports are reviewed to check whether outcomes have been achieved or are on track.

In many instances, reviews may be done by telephone, and, when capacity is severely limited, should ensure that people are managing with their care arrangements.

3.11 Recording decisions

Local authorities should keep a record of decision making during any period when section 16 is switched on. That should include decisions to dispense with the duty to assess, decisions to conduct full or partial assessments and decisions about the provision of support.

For adults with incapacity, this should include the situation of those adults moved or discharged from hospital without a full or any needs assessment under the emergency bill's provisions, including those who are subsequently identified as lacking capacity. The local authority should keep basic data including the name, date of birth, current placement, new location, and the date of move of the adult. Once this data has been collected, the local authority should pass information in respect of people who lack capacity onto the Mental Welfare Commission.

The Mental Welfare Commission will keep a register of adults who lack capacity who have to be discharged from hospital without a full or any needs assessment as a result of Covid-19.

3.12 When section 16 is switched off?

Once the emergency provisions are switched off, all the affected assessment duties will switch back on. A review of the decisions taken under the emergency legislation should take place.

Arrangements should be made to conduct assessments for people who did not receive a full assessment while section 16 was switched on.

For adults with incapacity, a review of those adults subsequently identified as lacking capacity should follow the principles of the AWI Act and the recommendations of the United Nations Convention on the Rights of Persons with Disability.

4 COMMUNICATIONS AND PREPARING THE COMMUNITY

4.1 Public messaging about using the 2020 Act

There are understandable concerns from supported people and carers about how authorities may choose to use their powers to dispense with assessment duties. Clear public messaging at local level will be vital to provide information and reassurance about how those powers will be used.

Public communications should include a clear commitment to strive at all levels to support people to get what they are entitled to, subject to available resources. These communications should

- make it clear that the statutory duties to provide support remain in place
- make it clear that full assessments will be carried out once the emergency period is over
- provide reassurance that there will be fair judgement and clear justification for any decisions made on prioritisation.
- explain the position on charging
- recognise the key role played by unpaid carers and make an ongoing commitment to supporting them to maintain their caring roles.

4.2 Unpaid carers

During the emergency period and while these powers are in force, it will be important for unpaid carers to understand the practicalities of how carer support will be provided and how carers needs for support will be identified. Authorities should therefore include the following in their public messaging during the emergency period:

- who people should contact if they think they might need support with their caring role;
- what to expect when requesting an adult carer support plan or young carer statement;
- how carer services (carer centres and young carer services) are being delivered differently to comply with the social distancing rules.

5 ANNEX: REFERENCES

Health and Social Care Standards

[Coronavirus information for social service workers and employers \(SSSC\)](#)

[British Association of Social Workers \(BASW\): Covid-19 updates](#)

[Charges Applying to Non-residential Social Care Services \(COSLA\)](#)

[Safer Recruitment through Better Recruitment, Care Inspectorate](#)

[Statutory guidance to accompany the Social Care \(Self-directed Support\) \(Scotland\) Act 2013](#)

[Responding to Covid-19: The Ethical Framework for Adult Social Care](#)

[Managing Self-Directed Support for Adults with Incapacity Guidance](#)

[Patient Discharge Leaflet](#)

Clinical Guidance

Updated Health Protection Scotland infection control [guidance](#) for Social or Community Care & Residential Settings - includes updated HPS advice on care home admissions

Updated SG Clinical Nursing Home and Residential Care Residents clinical [guidance](#) – building on HPS advice, this guide provides more detailed clinical advice around the steps to put in place for managing the safety and wellbeing of staff and residents in adult residential care settings

Care at Home, Housing Support and Sheltered Housing clinical [guidance](#).



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