

**Coronavirus (COVID 19):
changes to social care
assessments - statutory
guidance for local authorities
on sections 16 and 17 of the
Coronavirus Act 2020 as
updated on 29 September 2021**

September 2021

Coronavirus (COVID 19): changes to social care assessments - statutory guidance for local authorities on sections 16 and 17 of the Coronavirus Act 2020 as updated on 29 September 2021

Contents

1	Introduction	2
1.1	Status of guidance	2
1.2	Who this guidance is for	2
1.3	Relationship with other guidance	2
1.4	Overview of social care assessment provisions	3
1.5	Values and principles	3
1.6	When the assessment duties on Local Authorities will be eased	4
2	What the Social Care Provisions in the 2020 Act do	5
2.1	How sections 16 and 17 of the 2020 act ease assessment duties	5
2.2	How this affects the existing law	6
2.2.1	Adult Social Care (including AWI and services for people with a mental disorder)	6
2.2.2	Children's Services	7
2.2.3	Carer Support (adult carers and young carers)	7
2.2.4	Charging	8
2.3	What this means in practice	8
2.3.1	Impact on Assessments	8
2.3.2	Adult Social Care	8
2.3.3	Carer Support	9
2.3.4	Children's services	9
2.3.5	Charging	10
2.4	Once the emergency provisions are switched off	12
2.4.1	Recording decisions	12
2.4.2	Reviewing decisions	12
2.4.3	Transitional Arrangements	12
3	Annex: References	15

1 Introduction

1.1 Status of guidance

Please note that this guidance was updated on 6 November 2020 to reflect the changes brought in by the Coronavirus (Suspension: Adult Social Care) (Scotland) Regulations 2020 which came into effect on 30 November. These regulations partially suspended section 16 of the Coronavirus Act 2020 (“the 2020 Act”) insofar it relates to adult social care and adult carers.

It was further amended on 29 September 2021 to reflect the changes brought in by the Coronavirus Act 2020 (Suspension: Children and Young Persons Social Care) (Scotland) Regulations 2021 which come into effect on 29 September 2021. These regulations suspend section 16 insofar as it relates to children services and young carers. Although section 16 has been suspended, section 17 of the 2020 Act remains in force.

This statutory guidance is issued by Scottish Ministers under section 17 of 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

While section 16 of the 2020 Act was in force, this guidance took precedence over older guidance. This applied 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 was affected includes guidance about social care assessments for adults, young carers and children.

Now that section 16 has been suspended for both adults and children, local authorities should revert to pre-existing guidance relating to social care, children's services and carers.

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. Regulations, in force from 30th November 2020, suspended the powers in section 16 as they apply to adult services, including support for adult carers. Regulations, to be in force from 29 September 2021 will suspend the powers in section 16 as they apply to children's services, including support for young carers. Section 17 remains in force

Section 16 of the 2020 Act allowed 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 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. As highlighted above, section 16 was switched off for adults in November 2020 and will be switched off for children in September 2021.

When section 16 was in force, authorities were 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 was made available from 5th April 2020 when commencement regulations brought section 16 into force. Section 16 is being switched off ('suspended') by regulations as highlighted above.

These powers were only to remain switched on when they were absolutely necessary to allow local authorities to prioritise and provide urgent care without delay. They were to 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 was that the powers would only be brought into operation for the shortest time possible and only when absolutely necessary to protect people. **This guidance has been updated to reflect the suspension of the powers in respect of adult social care assessments and adult carers as of 30 November 2020 and now from 30 September to reflect the suspension for children's assessments and young carers.**

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.

While section 16 was switched on it gave 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 allowed 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. This discretion will no longer be available in relation to children, including young carers from 29 September 2021.

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.

Section 16 was suspended from 30 November 2020 insofar as it relates to adult social care and adult carers and from 30 September 2021, insofar as it relates to children and young carers. So the explanation at paragraphs [2.2.1 – to 2.2.3] below will only be relevant if section 16 is revived in the future.

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 was suspended on 30 November 2020 which means that Local Authorities have been required since then to recommence full needs assessment for all relevant persons under Section 12A of the 1968 Act.

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 continue to 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.

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 in force it gave 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 only had this option to disregard duties to the extent that it was not practical to comply with them or would cause unnecessary delay in the provision of support. Section 16 will be suspended in respect of children's services as from 29 September 2021.

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

2.2.3 Carer Support (adult carers and young carers)

Section 16 was suspended from 30 November 2020, insofar as it relates adult carers and as from 29 September 2021 it will also be suspended in relation to 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 gave 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 only had this option to disregard duties to the extent that it was not practical to comply with them or would cause unnecessary delay in the provision of support. From 30 November 2020, Local Authorities have not had the option to dispense with duties in relation to adult carer support plans (section 6). From 30 September 2021 they will not have the option to dispense with duties in relation to young carer statements (section 12).

The duty to provide support to carers under section 24 has remained throughout the period while section 16 is in force. However, while section 16 is in force, rather than refer to “identified needs”, section 24 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

While section 16 is in force, Local Authorities were 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. **From 29 September 2021 this discretion will no longer be available for adults or children’s services or adult and young carers.**

2.3.2 Adult Social Care

When section 16 was suspended in respect of adult services on 30 November 2020 Local Authorities were no longer be able to dispense with the duty to conduct a needs assessment to the extent the authority considered that it would be impractical to comply or that it would cause unnecessary delay to the provision of services to any person. Local authorities are now once again under a duty to conduct a needs assessment as per section 12A of the 1968 Act.

2.3.3 Carer Support

From 29 September 2021, section 16 will be switched off in relation to young carers (having already been switched off for adults from November 2020). This will mean that Local Authorities can no longer choose to dispense with duties in relation to adult carer support plans and young carer statements. The following paragraphs should be read with this in mind.

Section 16 allowed 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 also allowed them to dispense with their duties under section 1 of the 2013 Act. It allowed for preparation of a partial adult carer support plan or young carer statement, acknowledging that some form of analysis of a carer's situation would still need to happen so that the most effective response could be delivered to support the carer at their time of need.

Authorities could 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. The duty on authorities to provide carer support under section 24 remained in place throughout the period when section 16 was in force. 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 altered 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 was essentially a technical change to ensure the duty and power to provide support continued to apply. In these cases, a person's identified needs 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

Section 16 allowed 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.

Section 16 also allowed 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.

As from 29 September the discretion to allow partial assessments for children's services will no longer apply.

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, however, be suspended and must continue to be complied with.

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 were 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.

Section 16 has been switched off but section 17 remains in force and the charging provisions remain relevant for care or support packages put in place without a full assessment during the period when section 16 was in force.

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.

The scope of section 17 will be limited by the suspension of section 16 in respect of adult services and adult carers on 30 November 2020.

Full needs assessments have been required and charging has returned to the previous arrangements as set out either in the Charging for Residential Accommodation Guidance or COSLA guidance for non-residential care services as outlined above.

The charging provisions in section 17 remain relevant for people who became permanent care home residents without a full assessment during the earlier period when section 16 was in force.

2.4 Once the emergency provisions are switched off

Once section 16 has been suspended, the usual duties to carry out assessments will switch back on again.

For adult social care, section 16 was suspended from 30 November 2020. After that date the duties to assess under section 12A of the 1968 Act and section 1 of the SDS Act were switched back on.

For children's services, section 16 will be suspended from 30 September 2021. After that date the duties to assess under sections 23 and 29 of the 1995 Act will be switched back on.

For carer support, that means the duties to offer and prepare adult carer support plans under the 2016 Act were switched back on 30 November 2020 and the duty to prepare young carer statements under the 2016 Act will be switched back on 29 September 2021. These duties also apply to people who did not receive a full plan or statement during the period when section 16 was in force.

2.4.1 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.

2.4.2 Reviewing decisions

Once the emergency provisions are switched off, as will be the case for adult services from 30th November 2020 and children's services from 29 September 2021, all the affected assessment duties will switch back on. A review of the decisions taken under the emergency legislation should take place.

2.4.3 Transitional Arrangements

Transitional arrangements are in place to ensure continuity of support for people who did not have a full assessment while section 16 was in force. The provisions are in the Coronavirus (Suspension: Adult Social Care) (Scotland) Regulations 2020 (the 2020 Regulations) and the Coronavirus (Suspension : Children and Young Persons Social Care) (Scotland) Regulations 2021 (the 2021 Regulations).

2.4.3.1 Adult social care

The 2020 Regulations provide that where the local authority has not conducted a needs assessment services should continue to be provided to any person in receipt of community care services, until the local authority assesses a person's needs or the person no longer requires the services which are being provided. 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.

2.4.3.2 Adult carer support

The 2020 Regulations provide that where the local authority has not prepared an adult carer support plan, an adult carer in receipt of support should continue to receive that support until:

- The offer an adult carer support plan is rejected; or
- There is no longer a requirement for support; or
- The local authority has prepared an ACSP under section 6 of the 2016 Act (duty to prepare adult carer support plan) and has identified the adult's outcomes and needs; or
- In the case of existing ACSP's that have been adjusted during the time which section 16 was in force, the provision of services should continue until the ACSP has been reviewed in accordance with the Carers (Scotland) Act 2016 (Review of Adult Carer Support Plan and Young Carer Statement) Regulations 2018.

2.4.3.3 Young carer support

The 2021 Regulations provide that where the local authority has not prepared a young carer statement, a young carer in receipt of support should continue to receive that support until:

- The offer of a young carer statement is rejected; or
- There is no longer a requirement for support; or
- The local authority has prepared a YCS under section 12 of the 2016 Act (duty to prepare YCS) and has identified the young carer's outcomes and needs; or
- In the case of existing YCS's that have been adjusted during the time which section 16 was in force, the provision of services should continue until the YCS has been reviewed in accordance with the Carers (Scotland) Act 2016 (Review of Adult Carer Support Plan and Young Carer Statement) Regulations 2018.

2.4.3.4 Children's services

The 2021 Regulations provide that where a local authority has not carried out full assessment for a child affected by disability (their own, or a member of their family, under section 23 of the 1995 Act), it must continue to provide services to the child until it has fulfilled its duty to assess the child's needs or the child no longer needs

the services. Likewise, where a local authority has not carried out an assessment of a person's needs for after-care (under section 29 of the 1995 Act), it must continue to advise, guide and assist the person until the assessment has been carried out or person no longer requires the advice, guidance and assistance.

3 Annex: References

[Health and Social Care Standards](#)

[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](#)



Scottish Government
Riaghaltas na h-Alba
gov.scot

© Crown copyright 2021

OGL

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-80201-381-8 (web only)

Published by The Scottish Government, September 2021

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS942006 (09/21)

W W W . g o v . s c o t