

CABINET

THE CARE ACT 2014 EASEMENTS

Report of the Director for People

Strategic Aim:	Safeguarding	
Key Decision: Yes	Forward Plan Reference: FP170420	
Cabinet Member(s) Responsible:	Mr A Walters, Portfolio Holder for Safeguarding - Adults, Public Health, Health Commissioning & Community Safety	
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DECISION RECOMMENDATIONS

That Cabinet:

- 1) Note the implications of the Coronavirus Act 2020 and the Care Act Easements.
- 2) Delegate authority to activate the Easements to the Strategic Director for People, in consultation with the Portfolio Holder for Safeguarding Adults, in line with the process proposed in this Report.

1 PURPOSE OF THE REPORT

- 1.1 This report sets out the implications of the Corona Virus Act 2020 for the Care Act 2014 and proposes a process for implementation of the Care Act Easements, under the delegated authority of the Strategic Director for People.

2 BACKGROUND AND MAIN CONSIDERATIONS

- 2.1 Currently Adult Social Care has a duty under the Care Act 2014 to undertake assessments of need for adults and carers, and to consider the eligibility of those adults and carers for the provision of care and support.
- 2.2 The Coronavirus Act 2020 came into force on the 31st of March 2020. These regulations enable the relaxation of the need to comply with certain duties under the Care Act 2014 (See 3:1).
- 2.3 Guidance was introduced on 1 April 2020 which set out how local authorities can use the Easements to ensure the best possible care for people during the coronavirus emergency. This set out clear steps for a local authority to take to 'activate' the Easements under the Coronavirus Act.

3 THE CARE ACT EASEMENTS

- 3.1 The Government recognises the growing pressures on local authorities as more people need support during the coronavirus crisis. The legislative changes under the Coronavirus Act enable local authorities, working with providers, to streamline assessments, reviews and care planning, and to prioritise care and support so that the most urgent and acute needs are met.
- 3.2 It allows the local authority to provide care and support, without needing to comply with any of the following Care Act duties:
- Duty to assess needs
 - Duty to assess the needs of a carer
 - Duty to give written records of an assessment
 - Duty to give effect to a preferred place of accommodation (this relates to residential and supported living placements)
 - The local authority does not have to carry out financial assessments,
 - The local authority does not have to provide services to meet assessed needs unless a failure to do so would result in a breach of the human rights of the service user or their care
- 3.3 At the same time, an ethical framework for Adult Social Care was published making explicit the following important values and principles to which Adult Social Care services are expected to work:
- Respect
 - Reasonableness
 - Minimising harm
 - Inclusiveness
 - Accountability
 - Flexibility

- Proportionality
- Community

- 3.4 Each principle must be considered to the extent possible in the context of everyone's circumstances, with appropriate risk management and considerations of individual wellbeing, overall public good, and available information and resources.
- 3.5 Should capacity in Adult Social Care reach critical levels, implementing the easements would enable services to prioritise need. This might, for example, be reducing a service user's care calls from four a day to two, in order to release sufficient capacity to support another service user to receive a care call; or to prioritise service provision to meet personal care needs over that which enables social inclusion.
- 3.6 Alongside the Care Act Easements, instruction was issued on how Local Authorities would manage hospital discharge within 2 hours of a patient being declared medically fit. This is to maintain hospital capacity for those experiencing life threatening infection. The Care Act Easements will enable facilitation of maintaining this requirement should the system become pressured as described.
- 3.7 Other relevant legislation, including the Mental Capacity Act, Mental Health Act, Deprivation of Liberty Safeguards, and Equalities Act, remain in place and are unchanged from a local authority perspective. It is therefore only Care Act assessments that could potentially be eased, all other key Social Work assessments remain in place.

4 IMPLEMENTING THE EASEMENTS

- 4.1 The Guidance states that Local Authorities should only take a decision to begin exercising the Easements when the workforce is significantly depleted or demand so increased that it is no longer reasonably practicable to comply with the usual Care Act duties and where to continue to try to do so is likely to result in urgent or acute needs not being met, potentially risking life.
- 4.1 Any changes should be agreed by the Director of Adult Social Services (DASS) - for Rutland this is the Strategic Director for People - in conjunction with, or on the recommendation of, the Principal Social Worker (PSW) and should be fully informed by discussion with the local Clinical Commissioning Group (CCG) leadership. This would be as an absolute last resort in Rutland.
- 4.2 RCC Adult Social Care has clear processes in place for managing service risk and escalation: the demand within each area of the service will be reviewed via oversight of the key performance indicators and via Senior Leadership meetings held every two days in which each service area provides an update. This will enable it to be clear when Adult Social Care is approaching high levels of risk in relation to service capacity which cannot otherwise be managed, and therefore when the Care Act Easements are required.
- 4.3 In such circumstances, it is proposed that the process would be as follows:
- 4.4 The Deputy Director for Adults and the PSW will escalate to the DASS with the following information:

- a) The nature of the changes to demand or the workforce.
- b) The steps that have been taken to mitigate against the need for this to happen.
- c) The expected impact of the measures taken.
- d) How the changes will help to avoid breaches of people's human rights at a population level.
- e) The individuals involved in the decision-making process.
- f) The points at which this decision will be reviewed again.

4.5 The DASS will consider all the relevant information, in conjunction with the PSW, and informed by discussion with the CCG.

4.6 The DASS will consult with the Portfolio Holder as to the need to implement the Easements. The Leader of the Council will be informed at the earliest opportunity and Group Leaders will be informed. The Health and Wellbeing Board members will also be informed.

4.7 Every effort will be made to ensure that briefings take place in advance of implementation of the Easements however if implementation is required urgently then these may be implemented before members are informed (with the exception of the consultation with the Portfolio Holder).

4.8 On implementing the Easements, (in line with the guidance) Rutland will:

- a) Maintain a record of decisions made, along with the evidence that was taken into account.
- b) Communicate the decision to providers, service users and carers, considering accessibility issues; and
- c) Report the decision to start prioritising services under the Easements to the Department of Health and Social Care.

4.9 Any decisions taken to prioritise or reduce support will be reviewed every two weeks between the DASS and PSW. The Easements will be deactivated as soon as is reasonably possible; Rutland will follow the same consultation and briefing process as used for implementation (Paras 4.6 and 4.7).

5 CONSULTATION

5.1 Cabinet and Group Leaders have been briefed on the implications of Care Act Easements.

6 ALTERNATIVE OPTIONS

6.1 The Care Act Easements are used only as a last resort to mitigate risk, and where there are no alternative options.

7 FINANCIAL IMPLICATIONS

7.1 Any support provided within the period of the Care Act Easements being in force will

be retrospectively charged once the Easements are no longer required.

- 7.2 There may be a delay in assessing adults within the Fairer Charging regulations to determine whether they are eligible to pay for the cost of their care, and therefore in the time period these costs are recouped.

8 LEGAL AND GOVERNANCE CONSIDERATIONS

- 8.1 The processes set out in this paper provide delegated powers to enable the Council to meet the requirements of the duties under the Care Act and the Coronavirus Act's Care Act Easements.

9 DATA PROTECTION IMPLICATIONS

- 9.1 Data Protection will be considered when officers review the requirements for the Council to meet the new legislation.

10 EQUALITY IMPACT ASSESSMENT

- 10.1 An Equality Impact Assessment will be undertaken when implementing any changes to service to meet the new legislation requirements.

11 COMMUNITY SAFETY IMPLICATIONS

- 11.1 Safeguarding duties still apply if the Care Act Easements are used, and Adult Social Care will continue to prioritise the safety and to reduce any risk to vulnerable people.

12 HEALTH AND WELLBEING IMPLICATIONS

- 12.1 Any use of the Care Act Easements will be to ensure that the health and wellbeing needs of vulnerable people are met.

13 CONCLUSION AND SUMMARY OF REASONS FOR THE RECOMMENDATIONS

- 13.1 The Care Act Easements may only be used as a last resort. Currently we are confident that the Easements are not required and will attempt to avoid using these new powers unless necessary. Adult Social Care has, for several years, operated a preventative approach to care and support and are working proactively to respond to the needs of our community at this time.

- 13.2 The impact and requirements of the new Care Act Easements are to manage service impact during the Coronavirus crisis. The Easements allow for certain Local Authority duties to be suspended in order to prioritise for those most in need during this time. Delegation to the Strategic Director for People will enable the Easements to be agreed quickly to manage increased demand on statutory services.

14 BACKGROUND PAPERS

- 14.1 There are no background papers to the report.

15 APPENDICES

- 15.1 There are no appendices to this report.

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