

## GUIDANCE

# Adult social services during the COVID-19 pandemic: guidance

How local authorities support adults and adult carers during COVID-19.

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Statutory guidance about the changes made to the Social Services and Well-being (Wales) Act 2014 by the Coronavirus Act 2020.

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# Introduction

This guidance sets out how local authorities can use the modifications to the Social Services and Well-being (Wales) Act 2014 (the 2014 Act) created under the Coronavirus Act 2020 (the 2020 Act), to ensure the best possible care for some of the most vulnerable people in our society during this exceptional period. It applies only in relation to adult social care. No similar provision has been made in relation to children's social care. However, [operational guidance](#) has been published.

The modifications should only be exercised as a last resort where this is essential in order to maintain the highest possible level of services. Local authorities should comply with the unmodified 2014 Act requirements and related Codes of Practice for as long and as far as possible.

These modifications are time-limited and there to be used as infrequently as possible with the clear expectation that any changes to individuals' care and / or support will be return to their pre-modification arrangements at the earliest possible opportunity. Local authorities need to establish arrangements and communicate to those impacted how this will be achieved. The onus should not be on individuals or their families/carers to ensure that their care and support is restored,

The modifications within the 2020 Act do not give authority to block, restrict or withdraw whole services. They enable local authorities to make temporary, person-centred decisions about care and / or support during the pandemic. These decisions seek to ensure those with highest need are prioritised using the overarching principles and core values for social care.

This guidance and the Ethical Framework for Social Care in the context of Covid-19 which covers all of the UK fall within the scope of paragraph 35 of Schedule 12 to the 2020 Act which permits the Welsh Ministers to issue guidance about how local authorities are to exercise functions under the 2014 Act in consequence of the provisions made by the 2020 Act.

Also need to signal that we are only looking at UK-level policy because of Covid, hence I've added 'in the context of Covid-19' a few times when this ethical framework is mentioned. Don't want people to get the idea we'll be too led by UKG.

Local authorities must have regard to this guidance. Paragraph 35(5) provides that a local authority may disregard any provision of a code issued under section 145 of the 2014 Act, so far as it is inconsistent with guidance issued under this paragraph. Local authorities should also observe other relevant COVID-19 related guidance published by the [Welsh Government](#) and [Public Health Wales](#) at this time.

The Welsh Government will keep the content of this guidance under review as part of its continuing discussions with the social care sector including user-led organisations, the Wales Council for Voluntary Action, providers of social care, local authorities, the workforce and service regulators, the Welsh Local Government Association and the Association of Directors of Social Services.

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## Purpose of the modifications

Local authorities and care providers are already facing rapidly growing pressures as more people need support because carers are unwell or unable to reach them, and as care workers are having to self-isolate or unable to work for other reasons. This guidance is one of a range of measures the Welsh Government has put in place to help the care system manage these pressures.

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## Optimising outcomes

Local authorities should continue to do everything they can to continue meeting their existing duties prior to the 2020 Act provisions coming into force. In the event that they are unable to do so, it is essential that they are able to streamline present assessment arrangements and prioritise care for those with needs using the overarching principles and core values for social care.

The provisions of the 2020 Act enable local authorities to prioritise where necessary more effectively than they could have done under the 2014 Act prior to its modification. These modifications are time-limited and there to be used as infrequently as possible with the clear expectation that individuals' care and / or support will return to their pre-modification arrangements at the earliest opportunity.

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## Overarching principles

The fundamental principles of the social care approach remain unmodified:

- prevention and early intervention - increasing preventative services within the community to minimise the escalation of critical need
- voice and control – putting the individual and their needs, at the centre of their care, and giving them a voice in, and control over reaching the outcomes that help them achieve well-being
- co-production – encouraging individuals to become more involved in the design and delivery of services

*In times of emergency, the need for rapid decision making can lead to the voice of the citizen being lost. Careful and considered consultation and communication are a*

*necessity not a luxury.* (Association of Directors of Social Services Cymru - April 2020)

## **Core values to inform planning and decision making for social care for all people in Wales**

More than ever, during the Covid19 Pandemic in Wales, the core value underpinning the approach for social care is 'equal concern and respect'.

This promotes the core constitutional commitment to equality, and the protections for all people, enshrined in law in Wales in respect of governance and language.

This means that:

- everyone matters – social care delivery will continue to follow the principles set out in equality and human rights legislation
- everyone matters equally – this does not mean that everyone is treated the same, but it does require all sectors to work effectively in partnership with each person, equitably according to their needs
- the interests of each person are the concern of all of us, and of our society
- the harm that may be suffered by any person matters, and so our actions aim to minimise the overall harm that a pandemic might cause

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## **What the powers actually change**

Based upon the analysis of the evidence, a local authority may determine the need to deploy one or more of the following modifications. Continued deployment must be reviewed fortnightly as specified in Annex A.

Local authorities will not have to carry out detailed assessments of people's care and support needs in compliance with the unmodified 2014 Act requirements. However, they will still be expected to respond as soon as possible to requests for care and/or support, consider the needs and wishes of people needing care and their families and carers, and make an assessment of what care needs to be provided. Annex B provides more information.

Local authorities will not have to carry out financial assessments in compliance with the unmodified 2014 Act requirements. They will, however, have powers to charge people retrospectively for the care and / or support they receive during this period, subject to giving reasonable information in advance about this, and a later financial assessment. This will ensure fairness between people already receiving care and / or support before this period, and people entering the care and support system during this period. Annex B provides more information.



Local authorities will not have to prepare or review care and / or support plans in line with the unmodified 2014 Act requirements. Local authorities will however still be expected to carry out proportionate, person-centred care-planning which provides sufficient information to all concerned, particularly those providing care and support often at short notice. Annex B provides more information.

Local authorities are still expected to take all reasonable steps to continue to comply with their duties to assess and meet needs in line with the unmodified 2014 Act. In the event that they are unable to do so, the 2020 Act provisions will enable them to prioritise needs, for example enhanced support for people who are ill or self-isolating, and to temporarily delay or reduce other care provision. Consistent with the overarching principles above, every reasonable effort must be taken to work with the individual and their families and carers in these situations to explore and identify alternative opportunities to enhance capacity and resilience. Annex C provides further guidance about the principles and approaches which underpin this.

Local authorities do not have to comply with requests to provide or arrange an individual's preferred choice of accommodation.

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## **Protections and safeguards**

There is evidence that local authorities and providers of social care are already experiencing significant absences in their workforces as a direct result of the COVID-19 pandemic. The overriding purpose of these modifications is to ensure the best possible provision of care to people in these exceptional circumstances. In order to help ensure local authorities apply these provisions consistently and appropriately, with the greatest regard towards the needs and wishes of people and their families and carers, the following protections and safeguards will apply.

The modifications take legal effect on 1 April 2020 but should only be exercised by local authorities where this is essential in order to maintain the highest possible level of services. They should comply with the unmodified 2014 Act requirements and related Codes of Practice for as long and as far as possible.

The modifications are temporary. The Welsh Ministers will keep them under review and disapply them as soon as possible, drawing on relevant advice and evidence.

All assessments and reviews that are delayed or not completed must be followed up and completed in full once the 2014 Act modifications are disapplied. Local authorities must ensure that care and / or support arrangements are sustainable. Local authorities must also ensure that decisions made by individuals and their families as a direct result of the pandemic are not used as evidence for determining whether or how to meet needs for the future. The abilities of people to cope during a period of crisis is not an indication of their ability to provide care and / or support for prolonged periods.

## Maintaining the overarching principles and core values

Local authorities remain under a duty to meet needs in order to protect a person from experiencing or being at risk of abuse or neglect. These criteria are embedded throughout the 2014 Act. They are well established and understood across local authorities as well as the wider social care sector.

Local authorities also have continuing duties under the European Convention on Human Rights. These include, for example, the right to life under Article 2, the right to freedom from inhuman and degrading treatment under Article 3, the right to private and family life under Article 8 and the right to enjoy rights and freedoms without discrimination, under Article 14.

Local authorities' duties to promote well-being as well as their general and specific over-arching duties under Part 2 of the 2014 Act and the associated Code of Practice remain in place. This includes the duties to have regard to the UN Principles for Older People, and where applicable the UN Convention on the rights of the Child. The [Part 2 Code of Practice \(General Functions\)](#) states:

In addition to those UN conventions and principles set out in the Act, when exercising social services functions in relation to disabled people who need care and support and disabled carers who need support, local authorities must have due regard to the UN Convention on the Rights of Persons with Disabilities.

Paragraphs 59 to 62 of the [Part 2 Code of Practice \(General Functions\)](#) provide advice for local authorities on the duty to have regard.

The Care Inspectorate Wales (CIW) will continue to provide oversight of social care under existing legislation. Throughout this period CIW will take a pragmatic approach to inspection and proportionate action as necessary while maintaining its overriding purpose of keeping people safe. A copy of the [Chief Inspector's communications with the sector](#) is available.

Other important duties on local authorities and the associated Codes of Practice remain in place:

- local authorities' duties under Part 2 of the 2014 Act relating to preventive services and providing information, advice and assistance remain in place. The provision of information and advice for public reassurance will be particularly important during this period. To aid good communications local authorities should continue to draw on their helpful relationships with trusted partners in the voluntary sector and a full range of digital and other channels which help reach people with differing needs and in different circumstances during this period (for example to make up for the closure of libraries). Organisations representing older people, carers and disabled people can help engage specific cohorts
- local authorities' duties to establish and maintain registers of sight-impaired, hearing impaired and other disabled people remain unmodified and will provide important information and evidence to ensure inform care and / or support for individuals

- Part 2 duties in the 2014 Act to promote well-being and Part 7 duties relating to safeguarding adults at risk remain in place. No parallel modifications have been made to assessments, meeting needs or care and / or support plans for children or child carers. No modifications have been made to Part 6 (Looked after and accommodated children) or Part 7 (Safeguarding). Guidance reinforcing existing safeguarding duties during this period is at Annex D
- duties in the Mental Capacity Act 2005 relating to Deprivation of Liberty Safeguards (DoLS) remain in place. [Guidance on the operation of DoLS during the emergency period has been published separately](#)
- duties imposed under the Equality Act 2010 also remain, including duties to make reasonable adjustments, the Public Sector Equality Duty and duties towards people with protected characteristics. These duties underpin any decisions made with regard to the care and support someone receives during this period. Early and continued engagement with representative organisations will also provide local authorities with clear advice about the impact the pandemic is having on specific individuals and groups and to inform alternative or additional services that reflect the specific risks and impacts

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## Principles to govern use of the powers

The 2014 Act and the associated Codes of Practice establish a principled, people-centred and values-based approach to all aspect of the provision of social care. It is essential that these principles and values are maintained during this period.

Local authorities will be expected to observe the all-UK [Ethical Framework](#) for the COVID-19 context, published on 20 March 2020. This provides a clear structure for local authorities to measure their decisions against and reinforces that the needs and well-being of individuals are be central to decision-making. In particular, the Ethical Framework underpins challenging decisions about the prioritisation of resources where they are most needed.

The Ethical Framework reinforces the practice principles set out in the Part 3 Code of Practice (Assessing the Needs of Individuals) for person-centred planning and delivery across social care:

- to support people's right to have respectful conversations about their well-being, and to take a full part in decisions about their care
- to support practitioners to exercise their professional judgement working in partnership with people to agree solutions that are in the best interests of the individual

It will be imperative that practitioners, as far as they reasonably can, work with the person, their carer, family, and any other relevant individuals to understand their needs, capacity, resources and the outcomes they need to achieve, and then to identify how they can best be supported to achieve them.



Providing pre-determined solutions is not consistent with person-centred planning. Where support is provided to people in their own homes, practitioners should continue to empower people to influence the choices about the regularity and / or duration of their support.

Individuals, their families and carers, social care providers and local authorities are already putting in place contingency plans to respond to the range of additional pressures as a direct result of the COVID-19 pandemic. These contingency plans will help local authorities manage the pressures during the pandemic.

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## **Steps local authorities should take before exercising the 2014 Act Modifications**

A local authority should only take a decision to begin exercising its modified duties when

1. the workforce is depleted, or demand on social care increased, to an extent that it is no longer reasonably practicable for it to comply with its 2014 Act duties (as they stand prior to modification by the 2020 Act)
2. where to continue to try to do so is likely to result in needs not being met, potentially risking life.

Any changes resulting from such a decision should be proportionate to the circumstances in a particular local authority.

Social care varies greatly across local authorities and the decision to operate the 2014 Act modifications should be taken locally. Implementation should be agreed by the Director of Social Services taking account of the availability of, and impact on wider local authority functions as well as the social care sector. Lead elected members must be briefed and involved as part of this decision making process. All providers and partners (including organisations supporting people) should be engaged at the earliest possible opportunity to ensure that they are able to understand, respond and offer additional or alternative solutions to the prevailing pressure.

Local authorities must maintain a record of the decision with evidence that was taken into account. Where reasonably possible the record should include the following:

- the nature of the changes to demand or the workforce
- the steps that have been taken to mitigate against the need for this to happen
- the expected impact of the measures taken
- how the changes will enable the local authority to prioritise care and / or support at a population level
- the individuals involved in the decision-making process
- the known views of local partners and individuals



- the points at which this decision will be reviewed again including as required in the decision matrix

The accessibility of communication should be recognised when planning and delivering communications with individuals, families and carers and be appropriate to their age, level of understanding and take into account their specific condition and/or any communication impairment.

The decision must also be reported to the Welsh Government Social Services and Integration Department when local authorities are considering enacting the modifications and decide to start prioritising the provision of services in accordance with the modifications, explaining why the decision has been taken and briefly providing the information specified in the bullets above together with any other relevant information. This should be communicated to [SocialCareCoordination@gov.wales](mailto:SocialCareCoordination@gov.wales).

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## Annex A

### Local decision-making relating to the 2014 Act Modifications

This Annex sets out recommended governance and decision-making for Directors of Social Services in relation to the Social Services and Well-being (Wales) Act 2014 (the 2014 Act) modifications introduced by the Coronavirus Act 2020 (the 2020 Act).

#### Introduction

During the pandemic, local authorities may need to take difficult decisions that impact on the way they respond to their responsibilities for care and / or support and their statutory functions. There should therefore be clear professional oversight and where relevant, professional sign-off, for such decisions as well as evidence that due consideration has been given to the possible consequences of decisions.

The 2020 Act does not give authority to block, restrict or withdraw whole services. It enables local authorities to make and apply person-centred decisions about who is most in need of care and / or support and who might need to have care and /or support temporarily reduced or withdrawn in order to make sure those with highest need are prioritised.

Such decisions will, in some cases be challenging and therefore should always be made within the remit of the [Ethical Framework for Social Care](#) in the context of COVID-19. Importantly, they should be taken only when demand pressures and availability of staff mean that the full range of duties under the 2014 Act can no longer be safely discharged.

Deployment of modifications should be differentiated from the decisions that need to be made in response to the [Welsh Government's guidance about social distancing](#). For example, it may be decided to close a service because it is no longer safe to keep people together in a building. However, this does not mean those people do not need the equivalent level of support at this time. In this example, staff might be asked to provide the equivalent level of support. The equivalent service might be an alternative, but it is to reduce the risk of breaching the social distancing guidance.

In direct response to the pandemic a range of alternative sources of support beyond traditional social care services and family - including volunteers and re-deployed staff within partner agencies can make a significant real contribution during this period and free up more highly-qualified and experienced staff for more intensive care provision.

## **Assessments, reviews and changes to care packages**

The 2014 Act currently allows local authorities to prioritise and review in differing ways. Local authorities should continue to be as flexible as possible, and ensure they stay within Government guidelines around social distancing, shielding and self-isolating.

Decisions about assessments or reviews and decisions to either reduce or alter care packages will have an impact on the person being supported as well as their carers and wider family. Such decisions must also take account of risks, both current and potential, should the situation change for the person and / or their carers.

Where people decide to cancel or suspend their own care and support and manage alone or with support of their own family and community networks, this will for the most part be for the person to decide themselves. However, where there are concerns that this may lead to unmanageable risk or safeguarding issues, practice oversight should be applied. This is not to undermine the views of the person in making decisions about their care but to ensure that where necessary, they have considered the possible consequences and the principles of safeguarding have been upheld.

Professional judgement will also continue to be applied where the individual is a carer and the impact of their decisions may undermine the sustainability of those arrangements both for them as a carer and the person they care for. This is not to undermine the views of the person in making decisions about their care but to ensure that where necessary, the individual has considered the possible consequences and the principles of safeguarding have been upheld.

## **Determining implementation of the modifications**

It is important that any decisions made in relation to 2014 Act modifications are informed by discussions with local partners and stakeholders.

Local authority recording remains a priority and will enable local authorities to ensure accountability and provide evidence for the thought processes behind the decisions being made.

## Decision making table

### Operating under pre-amendment 2014

Stage	Decision	Process
Stage 1 Operating under the pre-Social Services and Well-being (Wales) Act 2014	Business as usual	To continue at this stage for as long as is feasible.
Stage 2: Applying flexibilities under the unmodified 2014 Act	Decision for individual service type to prioritise short-term allocation of care and support using current flexibilities within the 2014 Act.	<p>Where COVID-19 related pressures means service types need to be changed, restricted or cancelled short-term within that service type e.g. domiciliary care or supported living, the Director of Social Services should authorise arrangements for determining and recording:</p> <ul style="list-style-type: none"> <li>• the reason the decision needs to be taken</li> <li>• the impact of the decision on the people who ordinarily use the service</li> <li>• the impact of the decision on families and carers of people who ordinarily use the service</li> <li>• the possible alternative sources of care and support and the likelihood of this being available</li> </ul> <p>The Director of Social Services should determine whether to consult wider local authority departments or partners before determining whether to escalate into Stage</p>

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3. This will be particularly relevant where decisions taken will impact on others.

Partners across the social care sector should be kept fully informed including organisations supporting people, providers and Regional Partnership Boards.

It is important to note that all other services may well continue to deliver their services as business as usual.

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### **Operating under 2014 Act Modifications**

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Stage	Process	Deliver
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Stage 3: Streamlining services under the 2014 Act modifications	Decision to enact 2014 Act modifications as laid out by the Coronavirus Act	<p>The 2014 Act modifications allow local authorities to cease formal assessments, the application of eligibility criteria and the preparation and review of care plans under the 2014 Act. However, there is an expectation in the 2020 Act that local authorities will do everything they can to continue to meet need as was originally set out in the 2014 Act.</p> <p>Where the impact of the pandemic is making this unachievable or untenable, local authorities will need to make the decision to whether to cease carrying out those Stage 2 flexibilities under the 2014 Act and move to a position of proportionate assessment and planning.</p> <p>The Director of Social Services should authorise arrangements for determining and recording:</p> <ul style="list-style-type: none"><li>• the reason the decision needs to be taken</li><li>• the impact of the decision on the people who ordinarily use the service</li><li>• the impact of the decision on families and carers of people who ordinarily use the service</li><li>• the possible alternative sources of care and support and the likelihood of this being available.</li></ul>

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Any decisions taken to streamline services should be reviewed every two weeks and recorded. De-escalation and re-establishment of full duties and rights under the 2014 Act should be implemented as soon as is reasonably possible.

The Director of Social Services should determine the need to consult wider local authority departments or partners as well as external local partners. This will be particularly relevant where decisions taken will impact on others.

Partners across the social care sector should be kept fully informed including organisations supporting people, providers and Regional Partnership Boards.

The Director of Social Services must ensure that their Lead Elected Member has been involved and briefed as part of this decision-making process.

Welsh Government must be notified:-  
[SocialCareCoordination@gov.wales](mailto:SocialCareCoordination@gov.wales).

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Stage 4:  
Prioritisation  
under the 2014  
Act  
modifications

Whole system  
prioritising care  
and support

Where local authorities need to make decisions about changing support for people, they should consider and allocate capacity across the whole of adult social care or all of social care. This may mean allocating resource from some service types that may not be under pressure, but could support those that are.

An example might be where a local authority is faced with a decision about reducing personal care for one person so that another gets the help they need to eat.

Sufficient care and support will have to remain in place at all times in order to ensure that people are protected from abuse or neglect and the Convention rights of all those in need of care and support, and of carers, are respected. Consistent with the overarching principles, individuals should participate in and influence these

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decisions for example the choices in the regularity and duration of their support.

In this situation, the Director of Social Services should authorise arrangements for determining and recording:

- the reason the decision needs to be taken
- the impact of the decision on the people who ordinarily use the service
- the impact of the decision on families and carers of people who ordinarily use the service
- the possible alternative sources of care and support and the likelihood of this being available.

Any decisions taken to prioritise or reduce support should be reviewed every two weeks and recorded. De-escalation and re-establishment of full duties and rights under the 2014 Act should be implemented as soon as is reasonably possible.

The Director of Social Services should determine the need to consult wider local authority departments or partners as well as external local partners. This will be particularly relevant where decisions taken will impact on others.

Partners across the social care sector should be kept fully informed including organisations supporting people, providers and Regional Partnership Boards.

The Director of Social Services must ensure that their Lead Elected Member has been involved and briefed as part of this decision-making process.

Welsh Government should be notified:-  
[SocialCareCoordination@gov.wales](mailto:SocialCareCoordination@gov.wales)

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## **De-escalation**

Decisions should be reviewed every two weeks and recorded. De-escalation and re-establishment of full duties and rights under the 2014 Act should be implemented as soon as is reasonably possible.

Equivalent arrangements to consult and inform partners should also be implemented for de-escalation – in advance if possible, to allow them to make necessary adjustments to their services. IAA services should also be regularly updated.

Local authorities should take into account any relevant feedback (including complaints) received about the impacts of changes as part of their review of decisions.

## **Business continuity planning**

Where provider services have submitted business continuity plans that have implications on direct services for people with care and support needs, professional practice as well as business oversight is needed. Accountability for all such decisions lies with the local authority, and provider services should not be making decisions about restricting or removing care. Any such decisions should be made in accordance with the process laid out in the decision matrix above.

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## **Annex B: guidance on streamlining assessments and reviews**

During this period, local authorities will still be expected to consider people's needs and the modifications will only apply when it is no longer possible to carry out unmodified 2014 Act duties in full.

The points in this Annex apply equally to people likely to be in need of care and support and carers likely to be in need of support.

Local authorities will remain under a duty to meet needs in order to protect an adult or an adult carer from abuse or neglect or the risk of abuse or neglect. These are the existing criteria within the 2014 Act as defined by section 197 of that Act.

'abuse' ('camdriniaeth', 'cam-drin') means physical, sexual, psychological, emotional or financial abuse (and includes abuse taking place in any setting, whether in a private dwelling, an institution or any other place), and 'financial abuse' ('camdriniaeth ariannol') includes:

- (a) having money or other property stolen
- (b) being defrauded
- (c) being put under pressure in relation to money or other property
- (d) having money or other property misused

'neglect' ('esgeulustod') means a failure to meet a person's basic physical, emotional, social or psychological needs, which is likely to result in an impairment of the person's well-being (for example, an impairment of the person's health or, in the case of a child, an impairment of the child's development).

Local authorities also have continuing duties under the European Convention on Human Rights. These include, for example, the right to life under Article 2, the right to freedom from inhuman and degrading treatment under Article 3 and the right to private and family life under Article 8 and the right to enjoy rights and freedoms without discrimination, under Article 14. Local authorities also have continuing duties to have regard to the UN Principles for Older People and the UN Convention on the Rights of Persons with Disabilities.

Further guidance on protecting people from abuse and neglect is published in the [statutory guidance](#) issued under Part 7 of the 2014 Act which are unmodified by the 2020 Act and remain fully in force. [The Wales Safeguarding Procedures](#) should continue to be followed.

However, to ensure that local authorities are able to respond to increased pressures on the social care sector due to COVID-19, for the duration of the 2020 Act provisions, local authorities may have to reduce the level of comprehensiveness with which they would ordinarily undertake a needs or carer's assessment, determine that people's needs are eligible, conduct a financial assessment and prepare or review an care and / or support plan.

Local authorities should still assess people's social care and support needs throughout this period and should make a written record of this assessment. Directors of Social Services should ensure that proportionate professional recording is maintained and may consider a single alternate document for local use.

It is crucial that local authorities are able to evidence their decision, demonstrate their professional judgement, apply the [Ethical Framework for Adult Social Care](#) in the context of COVID-19, and where necessary, record that they have considered protections including relevant Convention Rights.

It may not be possible or necessary for assessments themselves to be face-to-face. Local authorities should therefore consider whether assessments could be delivered through other means, taking into consideration people's cognitive and communication needs and mental capacity, including:

- use of a third party/allied professional to carry out needs assessments as trusted assessors. It would also be appropriate for adults in need of care and support, or carers who are being assessed, to ask the local authority to liaise with other persons or professionals to help complete the check.
- assessments using the telephone or, if possible, other technology such as video calls, if available, if people are comfortable with this, and if they can be made available at the location where people are living.
- be appropriate to the person's age, level of understanding and take into account their specific condition and/or any communication impairment.



It should be explained that the current context is extremely unusual and that arrangements may be temporary and change when this period is over. Views should also be sought from those who are concerned for the individual's care and / or support.

It will be imperative that individuals understand the current context, that the nature of the arrangements may change including that at a future point it will be necessary to determine whether their needs are eligible under the 2014 Act. This may mean that at a future date the local authority may on the basis of an assessment of the individual's needs and the application of the national eligibility criteria no longer believe it is necessary to meet those needs, and that if this is the case, it will be necessary to agree alternative arrangements.

Local authorities need to ensure that there is a clear and transparent pathway for people with care and support needs, carers and providers to quickly raise concerns should they believe either the decision or the care and / or support package will impact on the protections from abuse or neglect for that person. The robust application of the overarching social care principles of Voice, Control and Co-production can help mitigate against such concerns by empowering individuals to influence and inform their care and / or support.

Complaints and escalation procedures remain the same as under the unmodified 2014 Act. Under the 202 Act, once the emergency period has ended, if local authorities do not comply with their duty to carry out a relevant assessment within a reasonable period, action can be taken in court. Paragraph 24 of Part 2 of Schedule 12 to the 2020 Act allows a court to take into account the length of time the modifications to the relevant duties were in place and the number of assessments that the local authority is required to undertake.

## **Care planning and delivery by providers**

Care planning should be person-led, person-centred and proportionate to the complexity of individual need with paperwork, bureaucracy and process kept to a minimum, whilst ensuring adequate records are kept.

The 2014 Act modifications relieve local authorities of the duty to prepare compliant care and / or support plans.

More than ever, it will be imperative that local authorities provide sufficient information to potential providers to allow them to make an informed decision as to whether to accept a referral. This decision must ensure whether providers can meet people's needs and comply with their own legal obligations under the relevant regulatory frameworks. This will also help providers in drawing up their own plan for people's care and support. This information should be evidenced within whatever form of assessment is completed and there is a clear expectation that this information is shared with individuals, their families and carers.

The local authority should ensure that providers receive enough information to develop a care plan with the person. This should give an overview of the person's wishes and feelings, and outcomes that need to be considered and achieved. Information on key aspects of daily living, personal care, nutrition and hydration needs as well as any other medical conditions should be shared. Specific care needs that the provider will need to consider are also important such as communication, mobility, and behavioural, cognitive and mental health needs. The assessment should also consider and share any safeguarding concerns and risk assessments. The assessment provided should enable the care provider to develop an appropriate care and / or support plan and local authorities must ensure that any streamlining or modification arrangements continue to provide information to ensure providers are able to comply with their governance and accountability frameworks.

Local areas may choose to agree a minimum standard that local authorities and care providers should work towards and which reflects their local situation.

Decision-making about direct payments and care and / or support plans should be kept as close to the front line as possible with minimum restraints on flexibility and innovation in how needs can be met. Restrictive administrative practice should be avoided as much as possible.

The modifications relieve local authorities of the duty to revise care and support plans under section 54 of the 2014 Act during this period. Local authorities will have to consider how they respond to reviews where need has significantly changed alongside the all-UK [Ethical Framework for Adult Social Care](#) in the context of Covid-19 and the prioritisation guidance (see Annex C below).

These reviews may be more important than new assessments. Consistent with the decision matrix, local authorities should continue to comply with unmodified duties under section 54 as far as it is reasonably practicable to do so. Local authorities should, whenever reasonably practical to do so, continue to include the person, their families and carers in decisions about revising care plans including unscheduled reviews where needs have changed, reviews may need to be conducted in similar ways to assessments.

Local authorities, providers and direct payment recipients should work together to agree the circumstances in which, and by how much, the care package and direct payments can be varied without review to ease administrative burdens on the workforce. Local authorities' duties to support individuals and ensure their needs are met are the same whether the individual receives their care via a direct payment or commissioned or provided by the local authority. This includes the agreed arrangements in place for the social care sector for ensuring access to PPE equipment and monitoring and reporting on its use. Personal assistants are an integral part of the social care workforce family.

## **Financial assessment modifications and retrospective charging**

Modifications have been put in place under the 2020 Act to enable local authorities to meet people's social care and support needs without a financial assessment of their means. The legislation enables local authorities to conduct assessments at a later date and to charge retrospectively for meeting needs subject to those assessments, so long as the authority informs the person that there may be a charge and does so at the time or in advance of care and support being provided.

None of the fundamental principles underpinning the 2014 Act, the five sets of regulations relating to aspects of charging and financial assessment or the Part 4 and 5 Code of Practice (Charging and Financial Assessment) (the Codes) are removed or diluted. Therefore, if a person is charged retrospectively, this should be on the basis of a financial assessment in line with the arrangements in place under 2014 Act and by ensuring a person's charge is affordable to them and the arrangements are clear and transparent.

As set out in the Codes, local authorities should always ensure sufficient information and advice about their charging policies is available and is in appropriate formats to help people understand why they are being charged and how such charges have been calculated. Local authorities should also make the person aware of the availability of independent financial information and advice. This will be especially important where modifications are used and will be critical in helping people understand potential future costs, particularly when they may already be anxious and needing as much reassurance as possible.

Social workers, and others providing this information, should also consider what information can be given to illustrate estimated likely charges for the type of care and support required, for instance alerting the person to the maximum weekly charge provision in non-residential care and a brief description of the arrangements that apply to residential care charging. This will help people to have a good initial understanding of the type of charges in place.

In line with the Codes, local authorities are always expected, where appropriate, to consult and engage with family members and / or the person who has legal authority to make financial decisions on behalf of a person who lacks capacity. This engagement should still take place as part of the financial assessment, which may be deferred until after the emergency period. Where the financial assessment is deferred in this way, it will be important, as a minimum, to make people aware that there may be costs associated with the care and support provided. People should be assured that no charges will be made until after a financial assessment has been completed.

The Codes make it clear that local authorities are not required to charge carers for support and that in many cases it would be a false economy to do so. Carers already play a vital role in the provision of care and support and their contribution during this emergency period will be even more critical. In line with the requirements of the Codes, local authorities should therefore ensure that any charges do not impact negatively on a carer's ability to look after their own health and well-being and to care effectively and safely for the cared for person.

The emergency provisions do not change existing requirements on, for instance, complaints, deliberate deprivation of assets, administrative fees and additional costs payments in residential care.

Deferred payment agreements (DPAs) as set out in the Codes should still be made available for eligible people once the financial assessment is completed at a later date. DPAs do require some financial information to enable local authorities to be sure they are not taking on an unsecured risk and to place a legal charge on a person's property. DPAs should be raised as part of routine sharing of relevant information and advice.

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## **Annex C: prioritisation guidance**

### **Guidance on the prioritisation and timeliness of the delivery of social care within the 2014 Act Modifications**

Local authority social care departments will be well practised in responding to emergencies where there is an incident or provider failure that means they need to provide rapid support. On occasion they may have to prioritise the delivery of that support to ensure those most in need and at highest risk, receive this support as a priority.

This guidance must be read in conjunction with the all-UK [Ethical Framework for Adult Social Care](#) in the context of COVID-19.

The current challenge that local authorities face with COVID-19 means that prioritisation may need to be considered over a longer period with rapidly changing scenarios.

This guidance has been produced to provide a helpful tool for Directors of Social Services when considering how to prioritise care and support should the local authority have decided that they need to exercise its functions in accordance with the 2014 Act modifications. It is vital that practitioners across social care continue to use their skills, experiences and professional judgement and oversight to evaluate and address the breadth of scenarios that may arise. It aims to support practitioners determine and deliver care and / or support in a risk informed way, ensuring everyone, where possible, gets the care and support they require but that those most in need receive this support as a priority.

Social care is a locally delivered and led service built on a detailed understanding of individuals, their families and carers and local communities and cultures. Social workers, occupational therapists and nurses form the core professional group and therefore have clear professional responsibilities and accountabilities. Local professional leaders will be key in ensuring this guidance is applied and understood.



The skills and experience of these professionals should be used to help develop, agree and review locally agreed processes that would be informed by this guidance.

## **Understanding local care needs and prioritisation**

### **Underpinning principle**

Most local authorities have already mapped all existing known packages for complexity and need including those who have chosen to manage their own care and support using a direct payment.

It is important that early mapping considers the complexity, risk and level of need within the care package and not just the current delivery. This should allow for a better understanding of the risk should there be an impact on care delivery. Mapping must include the vital role played by informal carers and the risks and pressures that will result if the critical care and support provided by an individual carer is diminished. This will ensure local authorities' knowledge of an individual and their personal circumstances informs any prioritisation work required should the situation require it.

Local authorities should also consider the additional benefits of mapping the care and support needs of those that self-fund where they are aware of particular complexities and / or risks; whether those individuals have contingency plans in place to respond to the pandemic; and what advice or support they could reasonably provide or facilitate should contingencies need to be made.

Local authorities may choose to adopt a RAG rating approach. For those with a mixed care package, it may be appropriate to note all elements but focus on the most essential element of care and / or support for mapping.

### **Prioritisation**

If operating under the 2014 Act modifications, local authorities may need to prioritise packages of care and / or support. In the first instance you would consider those noted as high and moderate care packages already mapped. Prioritising individual care may be fluid, as risk and need levels may fluctuate. New information such as carer involvement and the sustainability of that care or whether a person has now become unwell with COVID-19, will need to be considered.

Local authorities have already confirmed they have undertaken prioritisation exercises that reflects the distinct needs and services in their immediate and neighbouring areas. The Welsh Government does not wish to propose alternative methodologies in place of the well-established arrangements including cross-authority mutual aid.

The Ethical Framework for Adult Social Care is clear that local authorities must retain an approach to working with individuals in a personalised and effective way and ensuring they are engaged in this process as much as possible.

The overarching principles for social care of Voice, Control and Co-production remain unmodified. Local authorities should take into account all elements of a person's life that may impact on their needs and their personal circumstances. These can include social issues such as domestic abuse, financial issues and the critical support that their families and carers provide which may not be possible, appropriate or sustainable in the current climate. Local authorities should also understand what resources, assets/offers the person has at their disposal, including knowledge of and access to forms of community and neighbourhood support, for example whether they are receiving support from the local authority or volunteers in terms of collection of prescriptions and delivery of food supplies, and whether the person (or their carer) may be shielding at this time.

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## **Annex D: safeguarding guidance**

Safeguarding adults remains a statutory duty of local authorities to keep the most vulnerable safe from abuse or neglect. The Coronavirus Act 2020 does not affect any of the safeguarding protections in the 2014 Act, particularly Part 7 and the [Wales Safeguarding Procedures](#). It is also important that safeguarding teams are able to be proportionate in their responses and mindful of the additional challenges the pandemic will place upon social care providers and the decisions they are likely face in managing a person's dignity.

The Welsh Government recognises that safeguarding concerns and referrals may increase during the Covid-19 outbreak, with more people receiving support and support needs changing, which may prompt concerns. Safeguarding is everyone's business, so it is important that we remain alert to possible abuse or neglect concerns. Local authorities, social care providers, the health voluntary sector and our communities must continue work to prevent and reduce the risk of harm to people with care and support needs, including those affected by Covid-19.

The immediate safety of the adult at risk and their carers must always be prioritised. Where decisions are taken to prioritise responses to safeguarding concerns, such decisions must be authorised by the Director of Social Services in discussion wherever reasonable possible with the Safeguarding Board partners.

The Ethical Framework for Adult Social Care provides support to ongoing response planning and decision-making to ensure that ample consideration is given to a core set of ethical values and principles when organising and delivering social care for adults, including for safeguarding.

All providers of adult social care or health care have a key role in safeguarding adults in their care, and all agencies have a duty to ensure adults with care and

support needs, their families and carers are not placed at risk of abuse or neglect by delays in care and support planning.

Employers must ensure that staff, including volunteers, are trained in recognising the signs and symptoms of abuse or neglect, how to respond, and where to go for advice and assistance.

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## **Annex E: Link to Coronavirus Act and associated explanatory notes**

[Coronavirus Act 2020](#)

[Coronavirus Bill explanatory notes](#)

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