
SCOTTISH STATUTORY INSTRUMENTS

2020 No. 377

SOCIAL CARE

The Coronavirus Act 2020 (Suspension: Adult Social Care) (Scotland) Regulations 2020

Made - - - - 12th November 2020
Laid before the Scottish
Parliament - - - - 16th November 2020
Coming into force - - 30th November 2020

The Scottish Ministers make the following Regulations in exercise of the powers conferred on them by section 88(1) and (5) of the Coronavirus Act 2020⁽¹⁾ and all other powers enabling them to do so. The Scottish Ministers are satisfied that the conditions specified in section 88(11) of that Act are satisfied in relation to the provisions suspended by these Regulations.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Coronavirus Act 2020 (Suspension: Adult Social Care) (Scotland) Regulations 2020 and come into force on 30 November 2020.

(2) In these Regulations—

“adult carer” has the meaning given by section 3 of the Carers (Scotland) Act 2016⁽²⁾,

“ACSP” means adult carer support plan,

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994⁽³⁾,

“the 1968 Act” means the Social Care (Scotland) Act 1968⁽⁴⁾,

“the 2013 Act” means the Social Care (Self-directed Support) (Scotland) Act 2013⁽⁵⁾,

“the 2016 Act” means the Carers (Scotland) Act 2016,

“the 2020 Act” means the Coronavirus Act 2020.

(1) 2020 c.7.

(2) 2016 asp 9.

(3) 1994 c.39. Section 2 was amended by paragraph 232(1) of schedule 22 of the Environment Act 1996 (c.25).

(4) 1968 c.49.

(5) 2013 asp 1.

Suspension of modifications under the 2020 Act in relation to certain duties of local authorities

2. The following provisions of the 2020 Act are suspended—
- (a) section 16(1) and (2),
 - (b) section 16(4)(a) and (b),
 - (c) section 16(4)(e) insofar as it relates to an adult carer.

Transitional provisions

- 3.—(1) A local authority which has—
- (a) relied on section 16(1) of the 2020 Act together with either of the following provisions of the 2020 Act—
 - (i) section 16(2)(a), or
 - (ii) section 16(2)(b),
 in relation to a person, and
 - (b) provided community care services to the person under section 12A of the 1968 Act, pursuant to the reliance,

must continue to provide those community care services until one of the events mentioned in paragraph (2) occurs.

- (2) The events referred to in paragraph (1) are—
- (a) the local authority has fulfilled the duty under section 12A of the 1968 Act (duty of local authorities to assess needs) in relation to the person, with regard to section 1 of the 2013 Act (general principles regarding provision of social care) insofar it relates to Part 2 of the 1968 Act, or
 - (b) the person no longer has a requirement for those community care services.

- 4.—(1) A local authority which has—
- (a) relied on section 16(3) of the 2020 Act together with any of the following provisions of the 2020 Act—
 - (i) section 16(4)(a),
 - (ii) section 16(4)(b), or
 - (iii) section 16(4)(e) (insofar as it relates to an adult carer),
 in relation to a person, and
 - (b) provided support to the person under section 24 of the 2016 Act pursuant to the reliance,

must continue to provide that support until one of the events mentioned in paragraph (2) occurs.

- (2) The events referred to in paragraph (1) are—
- (a) the local authority has prepared an ACSP under section 6 of the 2016 Act (duty to prepare adult carer support plan) in relation to the person and has identified the person's outcomes and needs under the Carers (Scotland) Act 2016 (Adult Carers and Young Carers: Identification of Outcomes and Needs for Support) Regulations 2018(6), with regard to section 1 of the 2013 Act (general principles regarding provision of social care) insofar it relates to Part 2 and Part 3 of the 2016 Act,
 - (b) the person no longer has a requirement for the support,

- (c) the person has refused an ACSP, or
- (d) the person's existing ACSP has been reviewed in accordance with the Carers (Scotland) Act 2016 (Review of Adult Carer Support Plan and Young Carer Statement) Regulations 2018(7).

St Andrew's House,
Edinburgh
12th November 2020

JEANE FREEMAN
A member of the Scottish Government

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations partially suspend the operation of section 16 (duty of local authority to assess needs: Scotland) of the Coronavirus Act 2020 (“the 2020 Act”) insofar it relates to adult social care and adult carers. The partial suspension of section 16 of the 2020 Act means that the suspended provisions no longer have effect in Scotland but are capable of being revived under section 88(3) of the 2020 Act.

Regulation 2 suspends the following provisions—

- section 16(1) and (2) (which permits a local authority to dispense with its duty to conduct a needs assessments under section 12A of the Social Work (Scotland) Act 1968 if it would be impractical or cause delay in the provision of community care services),
- section 16(4)(a) and (b) (which permits a local authority to dispense with its duty to prepare an adult carer support plan under section 6 of the Carers (Scotland) Act 2016 (“the 2016 Act”) if it would be impractical or cause delay in the provision of support), and
- section 16(4)(e) insofar it relates to an adult carer (which permits a local authority not to comply with section 1 of the Social Care (Self-directed Support) (Scotland) Act 2013 insofar it relates to Part 2 and 3 of the 2016 Act).

Regulation 3 provides for the transition where a local authority has relied on section 16(1) of the 2020 Act, together with either section 16(2)(a) or 16(2)(b), and provided community care services to a person. The local authority must continue to provide those services until it fulfils the duty to assess the person’s needs or the person no longer has a requirement for those services.

Regulation 4 provides for the transition where a local authority has relied on section 16(3) of the 2020 Act, together with either section 16(4)(a) or 16(4)(b) or, insofar as it applies to an adult carer, section 16(4)(3), in relation to a person and provided support to that person. The local authority must continue to provide that support until it has prepared an adult carer support plan, the person no longer has a requirement for support, the person has refused the offer of an adult carer support plan or the person’s existing adult carer support plan has been reviewed under the Carers (Scotland) Act 2016 (Review of Adult Carer Support Plan and Young Carer Statement) Regulations 2018.

An Equality Impact Assessment has been produced for this instrument.