

POLICY NOTE

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

SSI 2020/377

The above instrument was made in exercise of the powers conferred on Scottish Ministers by section 88(1) of the Coronavirus Act 2020.

Purpose of Instrument

Sections 16 and 17 of the Coronavirus Act 2020 (the “2020 Act”) allow Local Authorities to dispense with particular social care assessment duties where it would not be practical to comply with them, or to do so would cause unnecessary delay in providing community care services to any person. The provision covers social care for adults and children and support for carers. It is intended to allow Local Authorities to provide urgent care without delay.

These Regulations partially suspend the operation of section 16 (duty of local authority to assess needs: Scotland) of the Coronavirus Act 2020 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 brought back into effect by an order to revive the operation of a provision under section 88(3) of the 2020 Act.

Legislative background

1. The Coronavirus Act received Royal Assent on 25th March 2020. Sections 16 and 17 of the Act allow Local Authorities to dispense with particular social care assessment duties where it would not be practical to comply with them, or to do so would cause unnecessary delay in providing community care services to any person. The provision covers social care for adults and children and support for carers. It is intended to allow Local Authorities to provide urgent care without delay.

2. Scottish Ministers made the Coronavirus Act 2020 (Commencement No. 1) (Scotland) Regulations 2020 (SSI 2020/121), which came into force on 5 April 2020. Statutory guidance on these powers was issued on 3 April 2020, and the Deputy First Minister and Cabinet Secretary for Health and Sport wrote jointly to key stakeholders ahead of commencement which was on 5 April 2020.

Policy objectives

3. Sections 16 and 17 of the Coronavirus Act 2020 are intended to allow Local Authorities the flexibility to focus on prioritising the most urgent need and protecting the lives of those who are most vulnerable while ensuring effective safeguards. Both sections were commenced in April 2020 but there is scope to suspend section 16 when it is not required. When section 16 is in force Local Authorities are still expected to do as much as they can to meet people’s needs. While section 16 relaxes assessment duties, the main duties on authorities under section 12 of the Social Work (Scotland) Act 1968 remain in place.

4. Following liaison with COSLA and Social Work Scotland, the Scottish Government developed and has issued regular surveys of Chief Social Work Officers to identify the extent of use of the powers under section 16 and the justification for this over the period from commencement of the regulations. These surveys have informed the two-monthly reports to the Scottish Parliament on use of powers under the Coronavirus Acts. Responses to the third survey were received from all 31 Health and Social Care Partnership areas. Of these, four reported they were using the powers under section 16.

5. Reasons given for using the powers under section 16 included: to allow staff to support front line duties, to provide flexibility to enable targeting of resources on those with most needs, and to ensure people receive appropriate care promptly. Local Authorities that used the powers highlighted their importance in enabling them to effectively manage their response to coronavirus against the backdrop of significant pressures and thus enabling the provision of urgent care and support to those most in need.

6. Statutory guidance and communications from Ministers made clear that these section 16 powers in respect of assessment duties would remain in operation only while absolutely necessary to protect people. While challenges remain, significant progress has been made in tackling the virus and the Scottish Government wants to move as soon as possible to a position where all those in need of social care receive full assessments.

7. In relation to children's services, child protection activity has been monitored on a weekly basis since early in lockdown. Social Work Scotland and the Office of the Chief Social Work Adviser believe that there is a potential for demand in children's services to increase over the winter and that any delays in response times could leave children unprotected or families without prompt support.

8. Scottish Ministers have therefore decided to make these regulations which suspend section 16 in respect of adult social care and adult carers, while leaving it in force in respect of children. This will retain the ability for the powers to be used for children's services. Section 16 could be brought back into effect for adult social care and adult carers by an order to revive the operation of a provision under section 88(3) of the 2020 Act, should the response to the virus require this.

Consultation

9. There has been no public consultation in relation to this instrument. In reaching a decision to suspend the powers in relation to adult services, Scottish Ministers considered a range of evidence. This included the outcome of the surveys of Chief Social Work Officers on use of the powers, as outlined above; the views of Social Work Scotland; and the views of human rights and carers' organisations. Social Work Scotland were consulted on the regulations and the revised statutory guidance developed to reflect the suspension.

Impact Assessment

10. An Equality Impact Assessment has been completed.

Scottish Government
Directorate for Mental Health and Social Care and Office of Chief Social Work Adviser
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