



House of Commons
Women and Equalities
Committee

**Unequal impact?
Coronavirus, disability
and access to services:
interim Report on
temporary provisions in
the Coronavirus Act**

First Report of Session 2019–21

*Report, together with formal minutes relating
to the report*

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Women and Equalities Committee

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Summary

The temporary Coronavirus Act provisions considered in this interim Report have the potential to substantially restrict or curtail important, hard-won rights that disabled people rely on for their quality of life. They must not remain available in statute for any longer than is strictly necessary. They must not become new norms, setting back disabled people's rights by many years.

The primary aim of this interim Report is to inform Members of Parliament ahead of the first six-monthly parliamentary review of the Coronavirus Act's temporary provisions. Here, MPs will get the chance to debate the provisions and decide whether or not they should be continued. We consider the statutory arrangements for six-monthly reviews, which prescribe a vote on a binary "take all or leave all" motion, unsatisfactory. The Government should make arrangements to test, separately from the statutory vote, the view of MPs on the merits of continuing different, individual provisions, including those considered here, which have clear and obvious implications for disabled people's equality.

Had the pandemic been more clearly under control, we would have recommended repeal of the Care Act easement provisions. Given the current precarious stage of the pandemic and the fragility of the social care sector, we accept that they may need to remain in place over the winter period. They must be kept under constant review and the Government should publicly state its intention to use its power to suspend them immediately, should it become clear that a second peak of the virus has been avoided. Should the progress of the pandemic remain stable or improve, we recommend the provisions be repealed before or at the second six-monthly review in Spring 2021.

The Government must publish Think Local Act Personal's report and accompanying data on the effects of the pandemic on social care provision before the forthcoming six-monthly review, so they can be used to inform the debate in the House. Guidance to local authorities must make clear that, should Care Act easements become necessary again, notifications to the Department for Health and Social Care must be published before any easement can be triggered. Guidance must make clear that any pre-emptive triggering of easements would be a misuse of the provisions, leaving local authorities open to legal challenge.

The temporary Mental Health Act provisions have not been needed in England. Evidence suggests they are unlikely to be needed. The provisions go directly against the grain of much needed and long-awaited Mental Health Act reforms, intended to address inequalities in the system. This adds impetus to the call for their curtailment as soon as possible. The Government should, as a minimum, if not repeal the provisions, suspend them, leaving open the possibility of reinstating them should they become needed. Should the progress of the pandemic remain stable or improve, we recommend repeal of the measures at or before the next six-monthly review in Spring 2021.

We accept that, through the peak of the pandemic, local authorities needed some flexibility in relation to meeting their Education, Health and Care (EHC) Plan duties to children and young people with special educational needs and disabilities (SEND). It is less clear whether it was necessary for the relaxed "reasonable endeavours" duty

to remain in place until the end of July, leaving many children and young people with SEND with very little or no support for three months. The Department for Education must review its processes with a view to making faster decisions to return to full duties, should flexibilities become necessary again. The Government should publish much clearer guidance to local authorities on fulfilling the “reasonable endeavours” duty, including minimum standards and a range of examples of good practice. Local authorities must not be allowed to interpret a relaxed duty as leeway to do nothing to support children and young people’s needs. The Department must set out a clear national strategy for managing the backlog of EHC assessments and Plans and guidance on prioritising cases. Any further notices relaxing EHC Plan duties should be issued on a local basis only, in direct response to local effects of the pandemic, instead of the blanket, national approach taken earlier this year.

Introduction

1. In June, we launched three sub-inquiries to look in more detail at key issues arising from our broad inquiry into the emerging unequal effects of the coronavirus pandemic on people with protected characteristics under the Equality Act.¹ This is an interim Report on one of those sub-inquiries: *Unequal impact? Coronavirus, disability and access to services*.² It focuses on three sets of temporary provisions in the Coronavirus Act, which have had, are having or could have, unequal effects on disabled people: “easements” to duties, set out in the Care Act 2014, on local authorities to assess and provide for elderly and disabled adult residents’ social care and support needs; relaxed requirements and extended time limits for detention in hospital (“sectioning”) under the Mental Health Act 1983; and relaxation of duties on local authorities, and suspension of time limits, set out in the Children and Families Act 2014 in relation to needs assessments and provision of Education, Health and Care Plans for children and young people with special educational needs and disabilities.³

2. Our intention in this interim Report is to summarise the evidence we have received on the actual and potential unequal effects on disabled people of these temporary provisions. We consider: their continued justification and, where they remain justified, the adequacy of transparency and reporting requirements on their use, and the adequacy of mechanisms in place to review, suspend, reinstate or repeal the provisions during their two-year lifetime. Our starting point is that these temporary provisions have the potential to substantially restrict or curtail important, hard-won rights on which disabled people rely for their quality of life. Their use, even in the current emergency circumstances, must be robustly justified and subject to a proportionate level of transparency and accountability. They must not remain available in statute for any longer than is strictly necessary. They must not become new norms, setting back disabled people’s rights by many years.

3. Our primary aim in this interim Report is to inform the first six-monthly debate and vote in the House of Commons on the wide-ranging temporary provisions of the Act, including not only those discussed in this Report but also the very broad range of emergency measures, from the appointment of judicial commissioners to the suspension of port operations. The Act requires the Government to arrange for a motion on the continuation of the temporary measures to be debated and voted on within seven sitting days of 25 September.⁴

4. This interim Report examines evidence to our sub-inquiry on the operation and effects of the three sets of temporary provisions that are of most concern to disabled people. We then comment on the adequacy of the procedure for the six-monthly debates and votes in the House.

1 [‘Unequal impact of coronavirus: three new inquiries launched’](#), Women and Equalities Committee, 10 June 2020

2 [‘Unequal impact? Coronavirus, disability and access to services’](#), Women and Equalities Committee, accessed 29 July 2020

3 For more detailed summaries of these provisions, see *Coronavirus: Local authorities’ adult social care duties (the Care Act easements)*, briefing paper [8889](#), House of Commons Library, July 2020; *Coronavirus Bill: health and social care measures*, briefing paper [8861](#), House of Commons Library, March 2020, section 4; and [‘Coronavirus: Impact on special educational needs in England’](#), House of Commons Library, accessed 3 September 2020

4 Coronavirus Act 2020, section 98

5. We are very grateful to everyone who contributed evidence on which we draw for this interim Report, particularly representatives of Disability Rights UK, Mencap, the Centre for Mental Health, the Local Government Association, the Care Quality Commission, the Independent Provider of Special Education Advice, the Association of Directors of Children's Services (ADCS) and Ministers and officials from the Department for Health and Social Care, the Department for Education, the Department for the Environment, Food and Rural Affairs and the Minister for Disabled People, Health and Work in the Department for Work and Pensions. Witnesses are listed in full at the end of this Report. We also thank Catherine Casserley, Barrister at Cloisters Chambers, and Specialist Adviser to this sub-inquiry, for her contribution to this interim Report and look forward to working with her on the broader issues raised in our sub-inquiry.

6. We appreciate that the temporary measures discussed here, while a significant part of many disabled people's concerns about the unequal effects of the pandemic on them since March, do not provide anything like a full picture of their lived experience this year. We have heard a much wider range of evidence and intend to publish a main Report, considering our sub-inquiry's full terms of reference, later this year. Our main Report will consider: the effectiveness of efforts to protect disabled people from the virus, including in all social care settings; systemic weaknesses in the social care system, including issues around sustainable funding and fragmentation in the sector; the clarity of the Government's definitions of "clinically vulnerable" and "clinically extremely vulnerable" and the provision of advice, including in accessible formats, to disabled people who need to shield; and the experience of disabled people more broadly in accessing health and social care services, education and food during the pandemic.

Temporary Coronavirus Act provisions affecting disabled people

Care Act easements

7. The Coronavirus Act 2020 contains provisions intended to help local authorities prioritise support for elderly and disabled people with the highest levels of social care needs, should resources become stretched to a potentially life-threatening degree during the pandemic. The provisions are in place for two years from the passing of the Act on 25 March 2020, subject to parliamentary review every six months. Government Ministers can suspend and reactivate the provisions during the two-year period by Regulations. They can also extend the provisions by up to six months after the end of the two-year period.⁵

A substantial raising of the threshold for social care

8. Under the Care Act 2014, local authorities have duties to assess and meet care and support needs that meet prescribed eligibility criteria. Where local authorities' resources are severely affected by the pandemic, temporary provisions in the Coronavirus Act can essentially replace Care Act duties with a duty to meet care and support needs only where not doing so would be a breach of an individual's human rights.⁶ In all other cases, the duty to assess and meet needs can be replaced by a mere power to do so.⁷ Any use of Care Act easements therefore represents a very substantial raising of the threshold at which the care and support needs of disabled people must be assessed and met.

Reaction to the provisions

9. On publication of the Bill in March, there was widespread concern from disability organisations and others. For example, Disability Rights UK (DRUK) said:

[...] this bill will almost inevitably leave many thousands of disabled people without essential support or any rights to request this support. Rolling back our rights is not good for anyone and in the current circumstances will put many lives at risk.

Rather than removing disabled people's rights to social care support, the government must treat our essential social care service as key infrastructure, alongside the NHS, and as such it must immediately provide the necessary funding to keep this vital service running.⁸

5 *Coronavirus: Local authorities' adult social care duties (the Care Act easements)*, briefing paper [8889](#), House of Commons Library, July 2020

6 The rights likely to be engaged are the right to life under Article 2 of the European Convention on Human Rights, the right to freedom from inhuman and degrading treatment under Article 3 and the right to private and family life under Article 8.

7 Coronavirus Act 2020: Explanatory Notes, para 34; '[Care Act easements: guidance for local authorities](#)', Gov.uk, section 4, accessed 27 August 2020

8 "[UK's emergency coronavirus bill 'will put vulnerable at risk'](#)", *The Guardian*, 23 March 2020

Process and safeguards

10. Government guidance states that local authorities should only trigger easements to Care Act duties:

“[...] when the workforce is significantly depleted, or demand on social care increased, to an extent that it is no longer reasonably practicable for it to comply with its Care Act duties (as they stand prior to amendment by the Coronavirus Act) and where to continue to try to do so is likely to result in urgent or acute needs not being met, potentially risking life.”⁹

It makes clear that, “Local authorities should do everything they can to continue meeting their existing duties prior to the Coronavirus Act provisions coming into force.”¹⁰

11. The provisions mean that local authorities can operate their social care services at one of four stages:

- Stage one: business as usual, full Care Act duties being met;
- Stage two: applying limited flexibilities provided for in the Care Act;
- Stage three: applying easements as provided for in the Coronavirus Act to the extent of “streamlining” some services; and
- Stage four: applying easements to the extent of “whole system prioritisation”, for example reducing care and support for one individual so that another’s higher care and support needs, such as help with eating, can be met.¹¹

12. Guidance states that local authorities should keep a record of decisions to operate using easements at stages three or four, including, “where possible”:¹²

- 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 help to avoid breaches of people’s human rights at a population level;
- the individuals involved in the decision-making process; and
- the points at which the decision will be reviewed again.

The decision to operate easements at stages three or four should be communicated to all local social care providers, service users, carers and local MPs and, at the point at which services start to be prioritised under the easement, notified to the Department for Health and Social Care via email.¹³

9 [‘Care Act easements: guidance for local authorities’](#), Gov.uk, section 6, accessed 27 August 2020

10 *Ibid.*, section 2

11 *Ibid.*, Annex A: Local decision-making relating to the easements

12 *Ibid.*, section 6

13 *Ibid.*, section 6

Extent of use and effects on disabled people

13. Eight English local authorities triggered Care Act easements at some stage in the period from the end of March until July: Birmingham, Coventry, Derbyshire, Middlesbrough, Solihull, Staffordshire, Sunderland and Warwickshire. This is a little over five per cent of the 151 English local authorities with social services responsibilities. The small number of authorities using the easements was welcomed as “good news” by Mencap.¹⁴ Since early July up to the time of writing, there have been no local authorities using the easements.¹⁵

14. We found detailed information about the number and groups of disabled people, and the types of services, affected by Care Act easements impossible to find. The local authorities in question published some information on their websites, for example Solihull Metropolitan Borough Council confirmed that it had reduced support for some people and had worked with individuals and their families to “help find alternative arrangements, including making use of support from the voluntary and community sector.”¹⁶ There was no detailed information about how many or which categories of people or services were being affected.

15. Neither the Local Government Association (LGA) nor the Care Quality Commission (CQC) were collating or publishing such data.¹⁷ The LGA told us that it had no power to do so; the only holders of the information were the local authorities themselves and the Department for Health and Social Care.¹⁸

16. The LGA noted that Think Local Act Personal (TLAP), the national partnership organisation comprising members across local government, health services and social care providers, was collating information from organisations and partners to establish an understanding of how local authority social care services were coping during the pandemic, including the effects of Care Act easements.¹⁹ We understand the information included research-based survey data and reports gathered from people working on the ground across the sector. The data were not comprehensive, they were collated into a “rapid evidence review”, which provided a summary of available information covering the period from April to June.²⁰ Initial findings from this work included concerns about the communication of decisions to trigger easements, but the LGA was not yet able to share the full results of this work.²¹

17. Helen Whately MP, Minister for Care in the Department for Health and Social Care, confirmed that TLAP was leading work with local authority Chief Social Workers and the Association of Directors of Adult Social Services to assess how the easements were being used and the effects on disabled people, and had reported back to the Department.²² This information had not yet been published. The Minister confirmed that TLAP’s report

14 [Q27](#) [Edel Harris]

15 “[No council left suspending Care Act duties](#)”, *Community Care*, 6 July 2020

16 ‘[How Covid-19 is affecting care and support for adults](#)’, Solihull Metropolitan Borough Council, accessed 3 September 2020

17 [Q45](#) [Kate Terroni and Simon Williams]

18 [Q45](#) [Simon Williams]

19 [Q46](#) [Simon Williams]

20 ‘[Foolhardy or Foresight?](#)’, blog piece by Tim Parkin, TLAP, accessed 17 September 2020

21 [Q46](#) [Simon Williams]

22 [Q150](#)

would be published later this month, ahead of the six-monthly review.²³ The Department also intended to publish updated guidance and “FAQs based on the lessons learned from the use of the Care Act easements”, though no timescale was given for this.²⁴

18. We were unable properly to scrutinise the effects of Care Act easements on disabled people because there are no published data, for example on the number and categories of people, or the types of social care services, affected. *The Government must demonstrate that it is keeping local authorities’ use of Care Act easements under thorough review and allow for proper scrutiny of data on the effects on disabled people. We welcome the Government’s commitment to publishing Think Local Act Personal’s report on the effects as part of the six-monthly review process. We urge the Government to ensure the report and all the accompanying data are published before the forthcoming six-monthly review and vote in the House, and each subsequent six-monthly review debate and vote, on temporary Coronavirus Act provisions, so that they can be used to inform the debates.*

Pre-emptive triggering of easements

19. We asked the Local Government Association about the decision-making process for councils triggering the easements. The LGA told us that:

Some councils adopted a wait-and-see policy. Some councils felt it was better to make that easement decision right at the beginning. Both stances were entirely reasonable. It is entirely reasonable, and I do not think there is anything to justify for councils that decided, on that precautionary basis, to switch on the easements, even if, in the light of experience, they then found that the Care Act gave them enough flexibility to do the prioritisation they needed to do.²⁵

20. We asked Ministers whether they believed this approach was reasonable and in accordance with the Government’s guidance. Ministers appeared unaware that this pre-emptive approach had been taken, but Justin Tomlinson MP, Minister for Disabled People, Health and Work in the Department for Work and Pensions, was clear that it was not in line with the Government’s guidance.²⁶

Transparency and accountability of the decision-making process

21. In written evidence submitted on 28 May, DRUK expressed concern that local authorities that had triggered easements had not made clear the reasons for their decisions.²⁷

22. The Government’s two-monthly reports on Coronavirus Act provisions set out the number of local authorities that were currently using easements but no information about the decision-making process.²⁸ The CQC also published and updated a list of local

23 [Q156](#)

24 [Q151](#)

25 [Q45](#) [Simon Williams]

26 [Qq157–8](#)

27 Written evidence to Coronavirus (Covid-19) and the impact on people with protected characteristics inquiry, DRUK ([Mrs0200](#))

28 See, for example, ‘[Two monthly report on the status on the non-devolved provisions of the Coronavirus Act 2020: July 2020](#)’, Gov.uk, accessed 3 September 2020, status table, section 15, schedule 12

authorities operating under the easements but no further information.²⁹ It was therefore impossible for us to assess whether all decisions were reasonable and in accordance with the Government’s guidance.

23. Justin Tomlinson suggested that disability organisations’ concerns about a lack of transparency and accountability in local authority decision-making, while a “hot topic” at the beginning of the pandemic, had been addressed quickly:

We flagged that up with [the Department for Health and Social Care], and very quickly—from memory, it was within hours—that information was then provided. This was not brought up again in follow-up meetings, because they felt empowered to check that no local authority was abusing those powers and they were genuinely being used as a last resort to make sure frontline care was done.

The Minister believed this was “a good example of how, on a very serious issue, everybody was working together.”³⁰

24. Both Justin Tomlinson and Helen Whately supported a greater level of transparency. We asked them if it would be proportionate to require local authorities to publish notifications submitted to the Department, setting out their justifications, should triggering of easements become necessary again. Helen Whately said she would “encourage local authorities to be transparent with their electorate about the decisions they have made” and emphasised steps already taken to increase transparency, such as publication of an updated list of authorities operating under easements.³¹ Justin Tomlinson was clearer; he said it was “an unequivocal yes [...], they should publish why they took those decisions. It was always meant to be only as a last resort, so they should have nothing to hide.”³²

25. Care Act easements are available as a last resort for local authorities, to help them prioritise care and support for people with higher levels of need, should resources become overstretched to a dangerous degree, potentially threatening life. We were concerned about evidence from the Local Government Association that some local authorities had taken a pre-emptive approach, triggering an easement in case it became necessary. We were disappointed to hear that Ministers were unaware that this approach had been taken. The Minister for Disabled People was clear that it was against the Government’s guidance.

26. We acknowledge that steps have been taken towards greater transparency in the Care Act easement process, notably the publication of an updated list of local authorities using the easements; however, we believe this falls short of a proportionate level of transparency and accountability. The current process is not stringent enough to provide confidence that easements cannot be triggered for anything other than severe demand or resource issues caused by the pandemic. As such, it is impossible to scrutinise whether easements are being mis-used. We recommend guidance to local authorities on use of Care Act easements be updated to state that local authorities should keep a record of the reasons for their decisions and the anticipated effects on people and services, as set out in the current guidance but omitting the phrase “where possible”.

29 See ‘The Care Act and the ‘easements’ to it’, CQC, accessed 7 September 2020

30 [Q150](#)

31 [Q156](#)

32 [Q156](#)

Local authorities should in all circumstances keep such a record. We recommend the guidance be updated to state that local authorities should publish the information contained in the record prior to notification to the Department for Health and Social Care. We further recommend the guidance be updated to state explicitly that pre-emptive triggering of easements prior to publication of the decision record would be a misuse of the provisions, leaving local authorities open to legal challenge.

Addressing systemic weaknesses in the social care system

27. Fazilet Hadi, Head of Policy at DRUK, said she was less concerned about Care Act easements than she was about a general trend towards reductions in social care packages. She was worried that many local authorities were operating social care at stage two, within the more limited flexibilities allowed by the Care Act, just short of having to trigger an easement. She told us this included closure of “various day services”, for example. In that sense, she believed the use of easements by a handful of local authorities during the pandemic was “a little bit of a red herring”. Her view was that:

The real issue is chronic underfunding of social care and disabled people not getting enough money to do more than survive and nowhere near living full lives in the community.³³

Kate Terroni, Chief Inspector of Adult Social Care, noted that the CQC had been calling for a “long-term sustainable funding solution for social care” since its annual State of Care report in 2016.³⁴ Simon Williams, the LGA’s Director of Social Care Improvement, emphasised that the LGA’s calculation, even after a “comparatively generous” financial settlement this year, was that there would be a funding shortfall of around £1 billion for local authorities’ adult social care services, rising to around £4 billion over the next three years.³⁵

28. A wide range of witnesses agreed with the assessment of Sir Simon Stevens, Chief Executive Officer of the NHS, who told the Health and Social Care Committee in June that the coronavirus pandemic had “shone a very sharp spotlight on some longstanding weaknesses and lack of investment and resilience in the social care sector.”³⁶ He emphasised that these issues could not be addressed by funding alone; it was also an issue of “the way in which care itself is provided”, including workforce issues.³⁷ Edel Harris, Chief Executive of Mencap, told us that addressing concerns about low pay in the sector ought to be an “immediate priority”.³⁸ Kate Terroni and Simon Williams agreed that valuing social care and its workforce was key, as was greater integration with the NHS to provide “joined up care”.³⁹ The Minister for Care acknowledged that the pandemic had highlighted the fragility of the sector and emphasised the Government’s “absolute commitment “ to social care reform.⁴⁰ On 15 September, Lord Bethel, Minister in the Department for Health and

33 [Q28](#)

34 [Q48](#)

35 [Q50](#)

36 Oral evidence taken before Health and Social Care Committee on 30 June 2020, HC (2019–21) 320, [Q245](#)

37 Oral evidence taken before Health and Social Care Committee on 30 June 2020, HC (2019–21) 320, [Q245](#)

38 [Q27](#)

39 [Qq48–50](#)

40 [Q161](#)

Social Care, said he “could not commit” to a plan for social care before the end of this year, because it would “require a huge amount of political collaboration and I suspect it will take longer than the next few months.”⁴¹

29. The coronavirus pandemic has highlighted and exacerbated pre-existing systemic problems in the social care system, including urgent need for: a more sustainable funding solution; resolution of workforce issues, including low pay, poor progression and high staff turnover; and much closer integration with health services. The pandemic has demonstrated the need to place a much greater value on social care and its workforce. None of these issues are new, but they have been brought into sharp focus by the pandemic and require urgent attention. We intend to return to these issues in our main Report.

The case for repeal or suspension

30. While witnesses understood that the fragile social care system faced an unprecedented threat from the pandemic, most agreed that the easements should be repealed immediately or “as soon as possible”.⁴² Witnesses felt that the provisions should be curtailed as an important matter of principle and to prevent any longer-term erosion of disabled people’s rights.⁴³

31. The argument against immediate curtailment of the provisions emphasised the current precarious stage of the pandemic, in particular uncertainty about whether there would be a second peak of cases in the autumn and winter, which could put local authorities’ social care services under severe pressure again. Simon Williams of the LGA, while agreeing that the provisions should be repealed as soon as possible, warned that “we must not think we are out of the woods yet”.⁴⁴ Since then, local and national restrictions, including the “rule of six”, have been introduced to address a worrying spike in case numbers.⁴⁵ On 18 September, the Prime Minister said the UK was “now seeing a second wave” of coronavirus cases.⁴⁶ He announced additional restrictions on 22 September, to address the sharp rise in cases.⁴⁷

32. Ministers echoed the point about uncertainty, particularly over the autumn and winter. Helen Whately reiterated that the Government would shortly conduct the first six-month review of the Care Act provisions, drawing on TLAP’s imminent report on the effects. She would not be drawn on the case for repeal or suspension of the provisions in the meantime.⁴⁸

33. There is broad agreement that the Coronavirus Act’s Care Act easement provisions should be curtailed as soon as possible. They represent a substantial raising of the threshold at which disabled people’s care and support needs must be met. This regression of disabled people’s rights must not be allowed to become the norm.

41 HL Deb, 15 September 2020, [col 1121](#)

42 Oxford University Disability Law and Policy Project ([CVD0008](#))

43 See, for example, [Q27](#) [Edel Harris]; [Q27](#) [Fazilet Hadi]; [Q51](#) [Simon Williams]

44 [Q51](#)

45 “Coronavirus: ‘We must act’ to prevent second lockdown, says PM”, *BBC News*, 9 September 2020

46 “Covid: UK seeing second wave, says Boris Johnson”, *BBC News*, 18 September 2020

47 “Covid rules: What are the new coronavirus restrictions?”, *BBC News*, 22 September

48 [Qq159–60](#)

34. Had the pandemic been more clearly under control, we would have recommended repeal of the Care Act easements at the first six-monthly review. However, the current precarious state of the pandemic, combined with the fragility of the social care system, makes repeal a finely balanced judgement call. Throughout the peak of the pandemic earlier this year, only around five per cent of English local authorities triggered easements to their Care Act duties, and none have been relying on them since early July. There is, however, considerable uncertainty about how the virus might progress through the autumn and winter and what the effects might be on local authorities' capacity to cope with social care demand.

35. *On balance, and subject to our other recommendations to tighten guidance and increase transparency being implemented, we accept that the Care Act easement provisions may need to remain in place over the winter period. The Government should keep the need for the Care Act easement provisions under constant review over the autumn and winter. It should use its power to suspend them immediately should it become clear that a second peak of the virus has been avoided. Should the progress of the pandemic remain stable or improve, we recommend the provisions be repealed before or at the second six-monthly review in Spring 2021. We recommend the Government state publicly that it intends to take this approach. This would provide greater clarity, and some reassurance, to disabled people and be an important marker of the Government's determination to fully restore disabled people's absolute rights to the care and support they need.*

Sectioning under the Mental Health Act 1983

36. The Coronavirus Act made temporary changes to the Mental Health Act 1983. These were intended “to ensure that those who were a risk to themselves or others would still get the treatment they need, when fewer doctors are available to undertake this function” and to “provide some flexibility to help support the continued safe running of services under the Mental Health Act” in the event that mental health staff numbers were severely affected by the pandemic.⁴⁹

Relaxed requirements for authorisation and extended time limits

37. The key changes were allowing applications for temporary detention (sectioning) under the Mental Health Act to be made by a single doctor instead of the usual minimum of two required by the 1983 Act; and removal or extension of time limits for detention under the Act, for example extension of the maximum time a patient can be detained in hospital awaiting assessment from 72 to 120 hours and removal of the 12-week time limit for remand to hospital.⁵⁰

49 [‘What the Coronavirus Bill will do’](#), Gov.uk, accessed 3 September 2020, see Easing the burden on frontline staff
50 *Coronavirus Bill: health and social care measures*, House of Commons Library, briefing paper [8861](#), March 2020, section 4

38. Similar to the Care Act provisions, the Mental Health Act provisions are intended to be commenced only when needed. Ministers can suspend them by Regulations “when it makes sense to do so” and reinstate them if circumstances change.⁵¹ Ministers can also permanently repeal them before the end of the Act’s two-year lifetime and extend them by up to six months after that period.⁵²

Adaptability of the system

39. The provisions came into force in Wales on 27 March. They came into force in Northern Ireland on 2 April, then were suspended by the Department of Health Northern Ireland, with effect from 10 August. At the time of writing these temporary provisions have not come into force in England. The Government’s last bi-monthly report on non-devolved provisions in the Coronavirus Act, published on 31 July, stated:

To date, these provisions have not been needed in England. Mental health services have made arrangements to adapt service approaches, for example use of video for medical assessments, and overall the system has coped with staff shortages. Government has worked closely with [NHS England and NHS Improvement] to monitor service pressures [...].⁵³

Reaction from the mental health sector

40. Responding to the emergency Mental Health provisions when the Bill was published in March, the mental health charity Mind said:

We recognise that these steps might be necessary to enable the health system to operate with extreme staff shortages, but this cannot be at the expense of safeguarding the some of the most vulnerable people in our society [...].⁵⁴

The Royal College of Psychiatrists’ view, submitted in mid-May, was that “on balance” provisions should remain in place as a last resort, for use “only where patients would otherwise be put at risk”, with “continued review and monitoring”.⁵⁵

41. In oral evidence on 24 June, Sarah Hughes, Chief Executive of the Centre for Mental Health, described the emergency mental health provisions as “a very difficult area”.⁵⁶ She was “thankful” that the emergency measures had not been used in England and said that the sector would “push with every fibre of our being” to resist their use “for as long as possible”.⁵⁷ She emphasised that the existing processes in England had coped through what was probably the peak of the crisis earlier this year, without the emergency powers

51 *Coronavirus Bill: health and social care measures*, House of Commons Library, briefing paper [8861](#), March 2020, section 4

52 *Coronavirus Bill: health and social care measures*, House of Commons Library, briefing paper [8861](#), March 2020, section 4

53 *‘Two monthly report on the status of the non-devolved provisions of the Coronavirus Act 2020: July 2020’*, Gov. uk, accessed 8 September 2020, progress and status tables, section 10 and schedules 8, 10 and 11

54 *‘Mind responds to changes to the Mental Health Act in emergency Covid-19 legislation’*, Mind, accessed 9 September 2020

55 Written evidence to Coronavirus (Covid-19) and the impact on people with protected characteristics inquiry, Royal College of Psychiatrists ([Mrs0475](#))

56 [Q21](#)

57 [Q21](#)

coming into force. Her view was that the evidence was showing that the emergency powers would never be needed; however, she acknowledged that this had to be balanced against the uncertainty about the progress of the pandemic.⁵⁸

The direction of travel in Mental Health Act reform

42. A key concern about the provisions was that they went against the direction of travel in Mental Health Act reform, particularly the need for “a more balanced system with more safeguards, more choice and less restriction”, as set out in the final report of the Independent Review of the Mental Health Act 1983 in December 2018.⁵⁹ The Royal College of Psychiatrists emphasised that any use of the emergency mental health provisions would disproportionately affect Black people, whose contacts with mental health services are “disproportionately based on detention orders requiring them to stay in hospital”.⁶⁰ Mind noted that a White Paper with proposals to tackle “pre-existing injustices in the way people are sectioned and treated in hospital” was long overdue.⁶¹ The Government announced its intention to bring forward a White Paper in June 2019.⁶²

43. Sarah Hughes told us that the Independent Review had shifted the direction of travel in Mental Health Act reform towards a human rights approach, with the balance of power more equally distributed between the patient and those delivering care. She was clear that:

We do not want the Government or the system to think that moving further and further away [from a human rights approach] is a direction of travel that we are all comfortable with. We absolutely would not be comfortable with that. The reform of the Mental Health Act was about giving power back to the patient in the way that it should be and that is ethically right.⁶³

44. Helen Whately, Minister for Care, told us the emergency provisions were under “continual review”. She would not answer as to whether the Government intended to suspend or repeal them immediately or in the forthcoming six-monthly review process.⁶⁴

45. The Coronavirus Act’s emergency changes to the Mental Health Act 1983 were intended for use as a last resort should mental health staff resources be depleted by the pandemic to the extent that people needing assessment or detention in hospital become a risk to themselves or others. These provisions have not come into force in England because, through the peak of the pandemic earlier this year and to date, existing processes have proved sufficiently robust and adaptable to make them unnecessary. In these circumstances, Ministers have the power to suspend the measures and, if absolutely necessary, reinstate them at a later date. While we acknowledge that the current precarious stage of the pandemic means that the future is uncertain, evidence suggests the measures are unlikely to be needed. Furthermore, relaxing requirements for authorising people’s detention in hospital and extending or suspending time

58 [Qq21–2](#)

59 [Modernising the Mental Health Act: Increasing choice, reducing compulsion](#), Final report of the Independent Review of the Mental Health Act 1983, December 2018

60 Written evidence to Coronavirus (Covid-19) and the impact on people with protected characteristics inquiry, Royal College of Psychiatrists ([Mrs0475](#))

61 [‘Mind responds to changes to the Mental Health Act in emergency Covid-19 legislation’](#), Mind, accessed 9 September 2020

62 [‘Measures to end unequal mental health treatment kickstarted by PM’](#), Gov.uk, accessed 9 September 2020

63 [Q23](#)

64 [Qq163–5](#)

limits for detention goes directly against the grain of much-needed Mental Health Act reform. This is intended to address inequalities in the existing system, as set out in the final report of the Independent Review of the Mental Health Act 1983 in December 2018. This adds impetus to the call for the emergency powers to be curtailed as soon as possible. They should not be left available “just in case”. *We recommend the Government should, as a minimum, if not repeal the provisions, use its power to suspend the Mental Health Act provisions in England by Regulations and only reinstate them should mental health service providers call for their reintroduction. This would send an important signal of the Government’s support for a more just and equitable system, while leaving open the possibility of reinstating emergency measures should they be needed. Should the progress of the pandemic remain stable or improve, we recommend repeal of the measures at or before the next six-monthly review in Spring 2021. We further recommend the Government prioritise Mental Health Act reform; it should indicate in its response to this Report when it intends to bring forward its long-awaited White Paper.*

Education, Health and Care (EHC) Plans: relaxed duties and modified time limits

EHC Plan duties in the Children and Families Act 2014

46. The Children and Families Act 2014 introduced a right for parents of children, and young people aged 16 to 25 years, with special educational needs or disabilities (SEND) to request their local authority carry out an assessment of their child’s (or their own, if aged 16 to 25 years) education, health and care needs. Where needs meet the threshold, local authorities are under a duty to secure a package of integrated support known as an Education, Health and Care (EHC) Plan. Local authorities are required to conclude their assessment and reach a decision on eligibility within 16 weeks and secure the provision set out in an EHC Plan within 20 weeks of the original request where there is an assessed need.⁶⁵

Pre-existing problems in SEND provision

47. We heard evidence that the pandemic had brought into focus and exacerbated pre-existing and widely acknowledged systemic issues in the wider SEND system, including not only for children and young people meeting the threshold for EHC Plans but also for children with lower-level needs receiving SEN Support in schools.⁶⁶ These include issues around the sustainability of funding, inconsistencies in provision, poor integration of education, health and care services and a lack of accountability in the system, as identified by the Education Committee last year and acknowledged by the Government’s SEND Review launched in September 2019.⁶⁷ We intend to return to these issues, and the Government’s plans to help children and young people with SEND catch up on education lost to the pandemic, in more detail in our main Report.

65 [‘Children with special educational needs and disabilities \(SEND\)’](#), Gov.uk, accessed 9 September 2020

66 See, for example, [Q77](#) [Ali Fiddy]; [Q80](#) [Charlotte Ramsden]

67 [Special educational needs and disabilities](#), First Report of the Education Committee, Session 2019, HC 20, October 2019

Coronavirus Act: section 42 (Children and Families Act 2014) notices

48. The Coronavirus Act gives the Secretary of State for Education the power to issue national notices to temporarily disapply educational requirements usually required by law, including local authorities' duties to assess children and young people's needs for EHC Plans and secure the requisite provision. When a national notice is made, local authorities' absolute duties to assess and provide for needs in EHC Plans are replaced with duties to make "reasonable endeavours" to fulfil the requirements. The notices can last for up to one month at a time.⁶⁸ The Secretary of State issued three such notices, covering May, June and July, before the Government announced that, unless evidence about the progress of the pandemic changes, notices would not extend beyond that, thereby reinstating full EHC Plan duties on local authorities from August.⁶⁹

49. Charlotte Ramsden of the Association of Directors of Children's Services (ADCS) described the relaxation of the duty as "very welcome" and a "reflection of the reality of what was possible and achievable in the midst of a crisis" and lockdown, while dealing with staff shortages and health service staff redeployed to the coronavirus effort.⁷⁰ While accepting the extreme difficulties faced by local authorities during the peak of the pandemic earlier this year, Ali Fiddy, Chief Executive of the Independent Provider of Special Education Advice (IPSEA), noted on 22 July, during the third month in which the relaxed duty was in place, that, "It has been some time since we have been in that position".⁷¹

50. Assessing needs and securing provision for children and young people meeting the threshold for EHC Plans was an extreme challenge for local authorities during the peak of the pandemic earlier this year. Local authorities could not have been expected to meet their EHC Plan duties fully in these circumstances; some flexibility was needed. It is less clear whether it was necessary for the relaxed "reasonable endeavours" duty to remain in place until the end of July, leaving many children and young people with special educational needs and disabilities with very little or no support for three months. We recommend the Department review the information-gathering and decision-making processes in place with a view to making a faster decision to return to full EHC Plan duties, should flexibilities be introduced again.

Wide variation in provision and interpretation of "reasonable endeavours"

51. In written evidence to our broader *Unequal impact: Coronavirus (Covid-19) and the impact on people with protected characteristics* inquiry, the LGA and charities including the National Deaf Children's Society called for greater clarity from the Government about how the "reasonable endeavours" duty should be interpreted in practice.⁷² On 1 July, concerns were raised in oral evidence to the Education Committee that varied interpretation of the duty was leading to wide inconsistencies in practice and leaving some children and young people with little or no support. Philippa Stobbs of the Council for Disabled Children reported that:

68 ['Coronavirus: Impact on special educational needs in England'](#), House of Commons Library, accessed 3 September 2020

69 See ['Education, health and care needs assessments and plans: guidance on temporary legislative changes relating to coronavirus \(COVID-19\)'](#), Gov.uk, accessed 9 September

70 [Q82](#)

71 [Q82](#)

72 Written evidence to Coronavirus (Covid-19) and the impact on people with protected characteristics inquiry, LGA ([Mrs0140](#)); National Deaf Children's Society ([Mrs0109](#))

There is some stunning provision [...] for some children and families in some areas. The difficulty is that in other areas parents have had no contact with either their child's school or their local authority about what is going to be provided for them through that reasonable endeavours duty. The impact of that [...] is absolutely devastating.⁷³

The Alliance for Inclusive Education wrote that many disabled children were left in this situation, as their local authorities made “no effort to secure SEND provision for disabled students with EHC Plans” after the issuing of the first national notice in May.⁷⁴ While emphasising that providing integrated education, health and care support during a public health crisis was “incredibly complex”, and welcoming the flexibility to adapt to local circumstances afforded by the relaxed duty, Charlotte Ramsden accepted that variation in the quality of EHC Plan provision between local authority areas was “indisputable”.⁷⁵

52. In oral evidence to the Education Committee, Ali Fiddy, Chief Executive of the Independent Provider of Special Education Advice (IPSEA) said a likely consequence of the relaxed duty was that children and young people in need of the highest levels of more complex support were least likely to receive it through “reasonable endeavours”.⁷⁶ Amanda Batten, Chair of the Disabled Children's Partnership, told the Education Committee that “reasonable endeavours” set “such a low bar legally that it does not leave parents with a lot of scope to negotiate” with local authorities about the provision their children could expect.⁷⁷

53. The “reasonable endeavours” duty in relation to Education, Health and Care (EHC) Plans is a nebulous concept, which has been inconsistently interpreted and poorly understood by some local authorities, whose support for children and young people with special educational needs and disabilities fell far short of an acceptable standard after the issuing of national section 42 notices from May to July. There were extreme examples of local authorities failing to communicate at all with children and young people and their families. This is clearly unacceptable. We understand and support the intention to provide local authorities with flexibility to adapt to local circumstances during the pandemic, but they must not be allowed to interpret a relaxed duty as leeway to do nothing to support children and young people's needs.

54. *If the Secretary of State for Education's power to invoke the “reasonable endeavours” duty in relation to EHC Plans is to remain in place, we recommend the Department for Education update its guidance to local authorities to include the factors which must be considered in deciding how the relaxed duty can best be fulfilled. The guidance should include a set of minimum standards and a range of examples of good practice in supporting children and young people with special educational needs and disabilities (SEND) when resources are stretched by the pandemic. We further recommend that, should flexibilities in EHC Plan duties become necessary again, notices be issued on a local basis only, in direct response to local effects of the pandemic, instead of the blanket, national approach taken earlier this year. We further recommend that guidance to local authorities operating EHC assessments and Plans under reasonable endeavours be updated to state that they should publish information about what this will mean in*

73 Oral evidence taken before the Education Committee on 1 July 2020, HC (2019–21) 254, [Q710](#)

74 The Alliance for Inclusive Education ([CVD0025](#))

75 [Q82](#)

76 Oral evidence taken before the Education Committee on 1 July 2020, HC (2019–21) 254, [Q706](#)

77 Oral evidence taken before the Education Committee on 1 July 2020, HC (2019–21) 254, [Q717](#)

practice for children and young people with SEND and the minimum level of provision they expect to be able to provide. We believe the time is right for this change of approach. It would be in line with the more local approach to coronavirus-related restrictions since the end of national lockdown and would offer some reassurance to children and young people with SEND and their families that any changes to support will only occur when strictly necessary as a result of the pandemic.

The Special Educational Needs and Disability (Coronavirus) (Amendment) Regulations 2020

55. The Special Educational Needs and Disability (Coronavirus) (Amendment) Regulations 2020 temporarily modify the time limits in relation to needs assessments and issuing of EHC Plans, meaning that local authorities and other bodies need only meet the requirements “as soon as reasonably practicable”.⁷⁸ At the time of writing, these Regulations are due to expire on 25 September “unless there is a clear need to extend them.”⁷⁹

56. On 15 July, Vicky Ford MP, Parliamentary Under Secretary of State for Children and Families in the Department for Education, wrote to all MPs representing English constituencies stating that, “We expect to decide next month as to how long the changes to timescales should continue.”⁸⁰ When we heard oral evidence from Ministers on 2 September, no such decision had been announced. Minister Ford told us that the Department was collecting data from local authorities on levels of demand and capacity for EHC Plan assessments. She indicated that the Department would be considering these data during September, “as we watch the return to school”.⁸¹

57. Ali Fiddy of IPSEA did not believe there was any justifiable cause to extend the Regulations beyond 25 September. She told us:

It is really important to remember that what we have got here is a backlog of a massive proportion of children and young people who have been identified as needing additional support who, because of the temporary relaxation of the timeframes, are stuck in limbo waiting for their needs to be assessed, for a plan to be produced or for assessments to be undertaken.⁸²

78 [Special Educational Needs and Disability \(Coronavirus\) \(Amendment\) Regulations 2020](#)

79 [PQ HL5422](#) [on Children: Coronavirus], 8 June 2020

80 Letter from Vicky Ford MP, Parliamentary Under Secretary of State for Children and Families, Department for Education, to all English MPs, dated 15 July 2020 [not published]

81 [Q122](#)

82 [Q87](#)

Dealing with EHC Plan backlogs

58. Given that full EHC Plan duties were back in place for the return of schools in September, and with the prospect of Regulations suspending strict time limits expiring on 25 September, Ali Fiddy was concerned that local authorities would face a huge challenge dealing with the backlog of assessments and Plans.⁸³ She told the Education Committee that there needed to be a “proper, co-ordinated approach to dealing with that backlog”.⁸⁴ In oral evidence to us, she said the approach required a “really clear set of priorities”.⁸⁵

59. Charlotte Ramsden agreed that local authorities would be under “real pressure”, particularly when the Regulations on time limits expire. She believed there would need to be trade-offs between timeliness and quality because:

We do not suddenly have a lot of extra people to do that work. We can refocus and move around the resources we have. That has all been discussed, but we do not suddenly have an influx of additional resources that mean we can clear the backlog more quickly than we would otherwise have done. All we can do is reprioritise what we do.⁸⁶

60. **At the time of writing, the Special Educational Needs and Disability (Coronavirus) (Amendment) Regulations 2020, which temporarily modify the time limits in relation to EHC assessment and Plans, were due to expire on 25 September. This will add further pressure to local authorities already facing the huge challenge of dealing with an inevitable backlog of cases. The Department must set out a clear national strategy for managing the backlog of EHC assessments and Plans, to ensure children and young people with special educational needs and disabilities get the support they need, within the statutory timescales. It should also set out in guidance to local authorities clear criteria for prioritising EHC cases.**

Procedure for six-monthly parliamentary reviews of temporary provisions

61. Section 98 of the Coronavirus Act requires that, so far as is practical, the Government table a motion on the continuation of temporary provisions in the Coronavirus Act to be debated and voted on by the House of Commons within seven sitting days of 25 September, six months after the passing of the Act, and each six months thereafter during the two-year lifetime of the Act. The relevant motion prescribed in section 98 is as follows:

That the temporary provisions of the Coronavirus Act 2020 should not yet expire.

62. This motion would ask MPs to make a binary choice between continuing the very broad range of temporary measures or discontinuing all of them, including vital powers intended to help contain and slow the spread of the virus. A vote to reject all the temporary provisions would require the Government to ensure they expire within 21 days of the vote, leaving its response to coronavirus in disarray.⁸⁷ MPs will have an opportunity to debate

83 [Q87](#)

84 Oral evidence taken before the Education Committee on 1 July 2020, HC (2019–21) 254, [Q704](#)

85 [Q87](#)

86 [Q88](#)

87 Coronavirus Act 2020, section 98

the effects and continued justification for the more contentious temporary provisions, such as those discussed in this Report that have clear and obvious implications for equal treatment of disabled people, but the Act does not provide an opportunity to vote separately on them.

63. We consider the section 98 arrangements for six-monthly parliamentary review of temporary Coronavirus Act provisions unsatisfactory. The Act prescribes a binary “take all or leave all” vote, which will present MPs with no real choice over provisions which have clear and obvious equality impacts on their disabled constituents and which, they may take the view, are no longer justified, either this autumn or later in the two-year lifetime of the Act. Continuing these provisions has the potential to further restrict or curtail important and hard-won rights relied upon by disabled people and deserves proper consideration, separately from the statutory vote. Arranging for the House to express its view on temporary provisions with clear and obvious implications for disabled people would be an opportunity for the Government to demonstrate its commitment to equality. *The Government should not only to give MPs the chance to debate the temporary provisions discussed in this Report but should also make arrangements to test, separately from the statutory vote required by section 98 of the Coronavirus Act, the view of the whole House on the merits of continuing different, individual provisions for a further six months and each subsequent six-month period until the sunset provision of the Act. Arrangements should be made for this to happen before the second six-monthly review in spring 2021.*

Conclusions and recommendations

Care Act easements

1. We were unable properly to scrutinise the effects of Care Act easements on disabled people because there are no published data, for example on the number and categories of people, or the types of social care services, affected. *The Government must demonstrate that it is keeping local authorities' use of Care Act easements under thorough review and allow for proper scrutiny of data on the effects on disabled people. We welcome the Government's commitment to publishing Think Local Act Personal's report on the effects as part of the six-monthly review process. We urge the Government to ensure the report and all the accompanying data are published before the forthcoming six-monthly review and vote in the House, and each subsequent six-monthly review debate and vote, on temporary Coronavirus Act provisions, so that they can be used to inform the debates.* (Paragraph 18)
2. Care Act easements are available as a last resort for local authorities, to help them prioritise care and support for people with higher levels of need, should resources become overstretched to a dangerous degree, potentially threatening life. We were concerned about evidence from the Local Government Association that some local authorities had taken a pre-emptive approach, triggering an easement in case it became necessary. We were disappointed to hear that Ministers were unaware that this approach had been taken. The Minister for Disabled People was clear that it was against the Government's guidance. (Paragraph 25)
3. We acknowledge that steps have been taken towards greater transparency in the Care Act easement process, notably the publication of an updated list of local authorities using the easements; however, we believe this falls short of a proportionate level of transparency and accountability. The current process is not stringent enough to provide confidence that easements cannot be triggered for anything other than severe demand or resource issues caused by the pandemic. As such, it is impossible to scrutinise whether easements are being mis-used. *We recommend guidance to local authorities on use of Care Act easements be updated to state that local authorities should keep a record of the reasons for their decisions and the anticipated effects on people and services, as set out in the current guidance but omitting the phrase "where possible". Local authorities should in all circumstances keep such a record. We recommend the guidance be updated to state that local authorities should publish the information contained in the record prior to notification to the Department for Health and Social Care. We further recommend the guidance be updated to state explicitly that pre-emptive triggering of easements prior to publication of the decision record would be a misuse of the provisions, leaving local authorities open to legal challenge.* (Paragraph 26)
4. The coronavirus pandemic has highlighted and exacerbated pre-existing systemic problems in the social care system, including urgent need for: a more sustainable funding solution; resolution of workforce issues, including low pay, poor progression and high staff turnover; and much closer integration with health services. The pandemic has demonstrated the need to place a much greater value on social care

and its workforce. None of these issues are new, but they have been brought into sharp focus by the pandemic and require urgent attention. We intend to return to these issues in our main Report. (Paragraph 29)

5. There is broad agreement that the Coronavirus Act's Care Act easement provisions should be curtailed as soon as possible. They represent a substantial raising of the threshold at which disabled people's care and support needs must be met. This regression of disabled people's rights must not be allowed to become the norm. (Paragraph 33)
6. Had the pandemic been more clearly under control, we would have recommended repeal of the Care Act easements at the first six-monthly review. However, the current precarious state of the pandemic, combined with the fragility of the social care system, makes repeal a finely balanced judgement call. Throughout the peak of the pandemic earlier this year, only around five per cent of English local authorities triggered easements to their Care Act duties, and none have been relying on them since early July. There is, however, considerable uncertainty about how the virus might progress through the autumn and winter and what the effects might be on local authorities' capacity to cope with social care demand. (Paragraph 34)
7. *On balance, and subject to our other recommendations to tighten guidance and increase transparency being implemented, we accept that the Care Act easement provisions may need to remain in place over the winter period. The Government should keep the need for the Care Act easement provisions under constant review over the autumn and winter. It should use its power to suspend them immediately should it become clear that a second peak of the virus has been avoided. Should the progress of the pandemic remain stable or improve, we recommend the provisions be repealed before or at the second six-monthly review in Spring 2021. We recommend the Government state publicly that it intends to take this approach. This would provide greater clarity, and some reassurance, to disabled people and be an important marker of the Government's determination to fully restore disabled people's absolute rights to the care and support they need.* (Paragraph 35)

Mental Health Act

8. The Coronavirus Act's emergency changes to the Mental Health Act 1983 were intended for use as a last resort should mental health staff resources be depleted by the pandemic to the extent that people needing assessment or detention in hospital become a risk to themselves or others. These provisions have not come into force in England because, through the peak of the pandemic earlier this year and to date, existing processes have proved sufficiently robust and adaptable to make them unnecessary. In these circumstances, Ministers have the power to suspend the measures and, if absolutely necessary, reinstate them at a later date. While we acknowledge that the current precarious stage of the pandemic means that the future is uncertain, evidence suggests the measures are unlikely to be needed. Furthermore, relaxing requirements for authorising people's detention in hospital and extending or suspending time limits for detention goes directly against the grain of much-needed Mental Health Act reform. This is intended to address inequalities in the existing system, as set out in the final report of the Independent Review of the Mental

Health Act 1983 in December 2018. This adds impetus to the call for the emergency powers to be curtailed as soon as possible. They should not be left available “just in case”. *We recommend the Government should, as a minimum, if not repeal the provisions, use its power to suspend the Mental Health Act provisions in England by Regulations and only reinstate them should mental health service providers call for their reintroduction. This would send an important signal of the Government’s support for a more just and equitable system, while leaving open the possibility of reinstating emergency measures should they be needed. Should the progress of the pandemic remain stable or improve, we recommend repeal of the measures at or before the next six-monthly review in Spring 2021. We further recommend the Government prioritise Mental Health Act reform; it should indicate in its response to this Report when it intends to bring forward its long-awaited White Paper.* (Paragraph 45)

Education, Health and Care Plans

9. Assessing needs and securing provision for children and young people meeting the threshold for EHC Plans was an extreme challenge for local authorities during the peak of the pandemic earlier this year. Local authorities could not have been expected to meet their EHC Plan duties fully in these circumstances; some flexibility was needed. It is less clear whether it was necessary for the relaxed “reasonable endeavours” duty to remain in place until the end of July, leaving many children and young people with special educational needs and disabilities with very little or no support for three months. *We recommend the Department review the information-gathering and decision-making processes in place with a view to making a faster decision to return to full EHC Plan duties, should flexibilities be introduced again.* (Paragraph 50)
10. The “reasonable endeavours” duty in relation to Education, Health and Care (EHC) Plans is a nebulous concept, which has been inconsistently interpreted and poorly understood by some local authorities, whose support for children and young people with special educational needs and disabilities fell far short of an acceptable standard after the issuing of national section 42 notices from May to July. There were extreme examples of local authorities failing to communicate at all with children and young people and their families. This is clearly unacceptable. We understand and support the intention to provide local authorities with flexibility to adapt to local circumstances during the pandemic, but they must not be allowed to interpret a relaxed duty as leeway to do nothing to support children and young people’s needs. (Paragraph 53)
11. *If the Secretary of State for Education’s power to invoke the “reasonable endeavours” duty in relation to EHC Plans is to remain in place, we recommend the Department for Education update its guidance to local authorities to include the factors which must be considered in deciding how the relaxed duty can best be fulfilled. The guidance should include a set of minimum standards and a range of examples of good practice in supporting children and young people with special educational needs and disabilities (SEND) when resources are stretched by the pandemic. We further recommend that, should flexibilities in EHC Plan duties become necessary again, notices be issued on a local basis only, in direct response to local effects of the pandemic, instead of the blanket, national approach taken earlier this year. We further recommend that*

guidance to local authorities operating EHC assessments and Plans under reasonable endeavours be updated to state that they should publish information about what this will mean in practice for children and young people with SEND and the minimum level of provision they expect to be able to provide. We believe the time is right for this change of approach. It would be in line with the more local approach to coronavirus-related restrictions since the end of national lockdown and would offer some reassurance to children and young people with SEND and their families that any changes to support will only occur when strictly necessary as a result of the pandemic. (Paragraph 54)

12. At the time of writing, the Special Educational Needs and Disability (Coronavirus) (Amendment) Regulations 2020, which temporarily modify the time limits in relation to EHC assessment and Plans, were due to expire on 25 September. This will add further pressure to local authorities already facing the huge challenge of dealing with an inevitable backlog of cases. *The Department must set out a clear national strategy for managing the backlog of EHC assessments and Plans, to ensure children and young people with special educational needs and disabilities get the support they need, within the statutory timescales. It should also set out in guidance to local authorities clear criteria for prioritising EHC cases. (Paragraph 60)*

Parliamentary review

13. We consider the section 98 arrangements for six-monthly parliamentary review of temporary Coronavirus Act provisions unsatisfactory. The Act prescribes a binary “take all or leave all” vote, which will present MPs with no real choice over provisions which have clear and obvious equality impacts on their disabled constituents and which, they may take the view, are no longer justified, either this autumn or later in the two-year lifetime of the Act. Continuing these provisions has the potential to further restrict or curtail important and hard-won rights relied upon by disabled people and deserves proper consideration, separately from the statutory vote. Arranging for the House to express its view on temporary provisions with clear and obvious implications for disabled people would be an opportunity for the Government to demonstrate its commitment to equality. *The Government should not only to give MPs the chance to debate the temporary provisions discussed in this Report but should also make arrangements to test, separately from the statutory vote required by section 98 of the Coronavirus Act, the view of the whole House on the merits of continuing different, individual provisions for a further six months and each subsequent six-month period until the sunset provision of the Act. Arrangements should be made for this to happen before the second six-monthly review in spring 2021. (Paragraph 63)*

Formal minutes

Tuesday 22 September 2020

Members present:

Caroline Nokes, in the Chair

Sara Britcliffe	Kim Johnson
Elliott Colburn	Kate Osborne
Alex Davies-Jones	Bell Ribeiro-Addy
Peter Gibson	Nicola Richards

Draft Report (*Unequal impact? Coronavirus, disability and access to services: interim Report on temporary provisions in the Coronavirus Act*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 63 read and agreed to.

Summary agreed to.

Resolved, That the Report be the First Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available (Standing Order No. 134).

[Adjourned till Wednesday 23 September 2020 at 2.30 p.m.]

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

Wednesday 24 June 2020

Fazilet Hadi, Policy Manager, Disability Rights UK; **Ms Ayla Ozmen**, Head of Research and Policy, Action on Hearing Loss; **Edel Harris**, Chief Executive, Mencap; **Sarah Hughes**, Chief Executive, Centre for Mental Health

[Q1–36](#)

Wednesday 22 July 2020

Professor Gillian Leng CBE, Chief Executive, NICE (National Institute for Health and Care Excellence); **Kate Terroni**, Chief Inspector of Adult Social Care, Care Quality Commission; **Simon Williams**, Director of Social Care Improvement, Local Government Association; **Celia Ingham-Clark MBE**, Medical Director for Clinical Effectiveness, NHS England

[Q37–76](#)

Ali Fiddy, Chief Executive, Independent Provider of Special Education Advice; **Charlotte Ramsden**, Vice President, Association of Directors of Children's Services

[Q77–93](#)

Wednesday 02 September 2020

Vicky Ford, Parliamentary Under Secretary of State for Children and Families, Department of Education; **Victoria Prentis**, Parliamentary Under Secretary of State, Department for Environment Food and Rural Affairs; **Helen Whately**, Minister of State (Minister for Care), Department of Health and Social Care; **Justin Tomlinson**, Minister of State (Minister for Disabled People, Health and Work), Department for Work and Pensions; **Martin Woolhead**, Deputy Director for Vulnerabilities, Department for Environment, Food and Rural Affairs; **Antonia Williams**, Director of Mental Health, Dementia and Disabilities, Department of Health and Social Care; **Sarah Baker**, Deputy Director, Disability Unit

[Q94–165](#)

Published written evidence

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

CVD numbers are generated by the evidence processing system and so may not be complete.

- 1 A member of the public ([CVD0007](#))
- 2 A member of the public ([CVD0032](#))
- 3 A member of the public ([CVD0005](#))
- 4 Action on Hearing Loss ([CVD0033](#))
- 5 Action on Hearing Loss ([CVD0018](#))
- 6 Action on Hearing Loss, and Sense ([CVD0017](#))
- 7 Alliance for Inclusive Education ([CVD0040](#))
- 8 Bennetton, A ([CVD0002](#))
- 9 The British Pregnancy Advisory Service, BPAS ([CVD0024](#))
- 10 British Retail Consortium ([CVD0041](#))
- 11 Leeds Trinity University, British Families in Lockdown survey ([CVD0001](#))
- 12 Cornwall Advocacy (Mr Neil Carpenter, Volunteer Advocate) ([CVD0014](#))
- 13 Department for Education ([CVD0042](#))
- 14 Diabetes UK ([CVD0021](#))
- 15 Disability Law Service ([CVD0015](#))
- 16 End Violence Against Women Coalition ([CVD0031](#))
- 17 Equality and Human Rights Commission ([CVD0023](#))
- 18 Fawcett Society, UK Women's Budget Group, London School of Economics Department of Health Policy, and Mile End Institute, Queen Mary University of London ([CVD0010](#))
- 19 Greater Manchester Disabled People's Panel (a Panel of 14 Disabled People's Organisations advising the GM Mayor) (Jane Bevan, Strategic Lead) ([CVD0034](#))
- 20 Guide dogs ([CVD0035](#))
- 21 Inclusion London ([CVD0036](#))
- 22 Inclusion London (Rachel O'Brien, Policy and Public Affairs Officer) ([CVD0037](#))
- 23 The Law Society of England and Wales ([CVD0028](#))
- 24 Mental Health Foundation ([CVD0020](#))
- 25 Motor Neurone Disease Association ([CVD0026](#))
- 26 Mudhar, M ([CVD0004](#))
- 27 NAHT ([CVD0022](#))
- 28 NHS England ([CVD0038](#))
- 29 Northern Ireland Women's European Platform ([CVD0013](#))
- 30 The Oxford University Disability Law and Policy Project ([CVD0008](#))
- 31 Parkinson's UK ([CVD0027](#))

- 32 People First Dorset (Ms Laura Kerr, Manager) ([CVD0030](#))
- 33 Royal National Institute of Blind People ([CVD0029](#))
- 34 Scope ([CVD0039](#))
- 35 Turning Point ([CVD0016](#))
- 36 UN CRPD Independent Mechanism in Northern Ireland (NIHRC and ECNI) ([CVD0011](#))
- 37 UNISON ([CVD0019](#))
- 38 University of Southampton (Dr Andrew Power, Associate Professor in Human Geography) ([CVD0030](#))
- 39 Wetwheels Foundation, and Rose Road Association ([CVD0003](#))
- 40 Wheels for Wellbeing ([CVD0012](#))

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

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First Special Report	Body Image Survey Results	HC 805
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