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Legislation – Care

This is about the legislation relating to care, including metal heath, handling medicine and childcare. These laws have been arranged in alphabetical order for ease of use.

The Care Act 2014

The Act came into effect from 1st April 2015 and is the most significant reform of care and support in more than 60 years, putting people and their carers in control of their care and support.

The intention is that the Care Act will make it easier for people to understand why things happen in a particular way. It changes many aspects of how support is arranged and aims to give greater control and influence to those who need support.

Among the most significant developments are:

- A new set of criteria that makes it clearer when local authorities will have to provide support to people, and aims to provide a fairer national system that reaches those most in need.
- A change to the way in which local authorities complete assessment with those in need of support.
- New rights for carers which put them on the same level as the people they care for. All carers are entitled to an assessment. If they are eligible for support they have a legal right to receive it, just like the people they care for.
- Emphasis on protecting the most vulnerable people in society from abuse and neglect.
- Emphasis on prevention.
- Emphasis on local authorities providing clear information and advice to enable informed choices to be made.
- Emphasis on existing personal budgets to give people the power to spend allocated money on tailored care that suits their needs and support plan.
- Emphasis on those most in need being given access to someone to speak on their behalf when dealing with social care professionals.

- Greater regulation for those who provide professional care and support, and tougher penalties for those who do not provide it to a high enough standard.
- Change to when and how people will be asked to contribute to the cost of support which will come into effect in 2020.

The key principles set out how health and social care professionals should work with those who need care.

These principles are:

- Those who need care know best.
- The views, wishes, feelings and beliefs of those who need care should always be considered.
- The main aim of professionals should be on the well-being of those who need care and to reduce their need for care and support and reduce the likelihood that care and support will be needed in the future.
- Any decisions made should take into account all relevant circumstances.
- Any decisions should be made with the involvement of those in need of care.
- The well-being of the person who needs care should be balanced with that of any involved family and friends.
- Professionals should always work to protect those in need of care and other people from abuse and neglect.
- Professionals should ensure that any actions taken to support and protect those who need care do not affect their rights and freedom.

If carers are eligible for support they have a legal right to receive it, just like the people they care for.

The Children Act 2004

The Act states that the interests of children and young people are paramount in all considerations of welfare and safeguarding and that safeguarding children is everyone's responsibility. It provides the legal basis for how social services and other agencies deal with issues relating to children and the legal underpinning for 'Every Child Matters'.

The guidelines have been laid down so that everyone who is involved with children, in the home, the workplace, school or other local is aware of how children should be looked after in the eyes of the law.

The Act was designed with guiding principles for the care and support of children. These are:

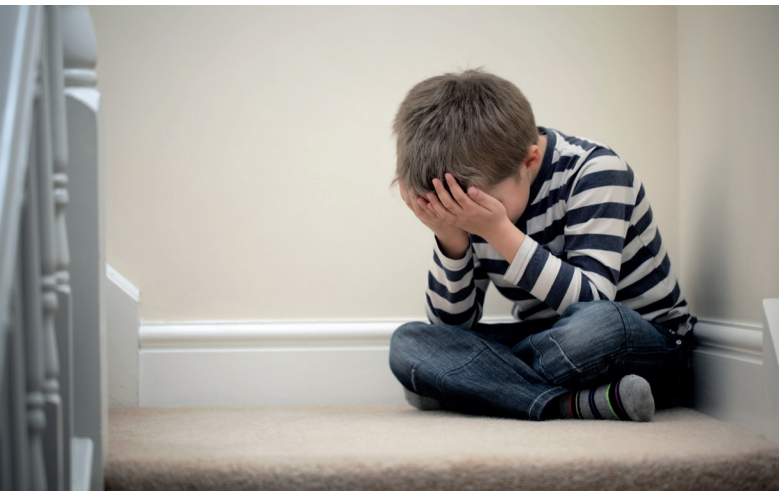
- To allow children to be healthy.
- Allowing children to remain safe in their environments.
- Helping children to enjoy life.
- Assist children in their quest to succeed.
- Help make a positive contribution to the lives of children.
- Help achieve economic stability for our children's future.

In response to the Children Act there have been some structural changes. From April 2006, education and social care services for children in each local authority have been brought together under a director of children's services.

A key area of the Act when it comes to matters relating to the wellbeing of children ensures that any agency that is made aware of the maltreatment of a child or the misconduct of a child's legal guardian, should make their findings known to other agencies that might have a hand in the protection of a child who would normally go unmonitored.

In addition the Children Act 2004 also made provision for a Children's fund deigned to aid the eradication of poverty and financial hardship felt by underprivileged children or children whose family's financial circumstances leave them disadvantaged.

The idea of the fund is to ensure that children between the ages of 5 and 13 regularly attend school. It also helps to reduce the risk of crime between these ages and to ensure, where possible that these children have the best possible start in life.



The Children and Young Person Act 2008

In addition to the Children Act 2004 the Children and Young Person Act 2008 was also introduced. The main purpose of this Act is to extend the existing framework of children in care in England and Wales and to make sure the care they receive is well supported, of high quality and tailored to their needs.

It also aims to improve the stability of placements for children and young people in care whilst improving their educational experience and achievements.

The Childcare Act 2006 and 2016

The Act provides the legal framework for the Government's ten year strategy for childcare. It reforms and simplifies the regulatory framework, and place new duties of care on local authorities to:

- Improve outcomes for under 5s and reduce inequalities and to ensure that there is sufficient high quality integrated early years provision and childcare for parents locally.
- Secure sufficient childcare to meet needs in partnership with private, voluntary and independent sectors.
- Provide access to information and advice for parents on childcare and other services, facilities or publications.

The Act has seen amendements In 2016 it made 30 hours of free childcare for qualifying parents of three- and four-year-olds a legal right.This extended the 15 hours entitlement to 30 hours free childcare over 38 weeks of the year.Children qualify at the start of the school term following their third birthday. Under the act, local authorities must publish information about free childcare in an area on the internet and in other forms.

From April 2006, education and social care services for children in each local authority have been brought together under a director of children's services.

The Medicines Act 1968

The Medicines Act covers all substances or ingredients used in medicinal products.

This Act divides medicines into three categories:

1. *Prescription-only medicine (POM)* - This includes controlled drugs, although they are subject to the additional regulations as discussed previously. These may be prescribed for a patient and then supplied by a pharmacist.
2. *Pharmacy medicine (P)* - This is supplied by a pharmacist but can be dispensed without a prescription.
3. *General sale list (GSL)* - These medicines need not be obtained through a Pharmacist.

The prescription-only medicines obtained from a GP or dentist includes the majority of medicines which are used to control or relieve the symptoms of a wide range of diseases.

The pharmacy medicines include a wide range of products, such as very strong painkillers and some forms of cold and flu remedies, designed to alleviate the symptoms of common illnesses.

The general sale list includes, mild painkillers, throat lozenges, medicines to clear congestion, and preparations designed to temporarily alleviate the symptoms of some mild common illnesses.

In hospitals or nursing home settings all drugs are kept in lockable cupboards and if used, fridges, freezers and drugs trolleys need to be lockable. In a home setting drugs do not normally need to be kept in locked containers/cupboards, but should where possible be kept in a secure area out of the reach of children. Doctors and dentists may supply or administer prescription-only medicines directly to the patient; midwives may administer specified controlled drugs under certain conditions.
When prescription drugs are supplied by a pharmacist they must be labelled and the label must show:

- Name of the patient.
- Date of the prescription.
- Name of the drug.
- Quantity in the container.
- Dosage to be taken.
- Any specific instructions on how to take the medication.
- Name of the pharmacist supplying the medication.

If the drugs are for someone who is in hospital may also show:

- His/her unit number.
- Date of birth.
- Name of the consultant.

The Human Medicines Regulations 2012

This act partially repealed some of the Medicines Act 1968 and 200 separate legal instruments with a simplified set of rules. The new regulations set out a comprehensive regime for the authorisation of medicinal products for human use, the manufacture, import, distribution, sale and supply of those products and the labelling and advertising and for pharmacovigilanc.

The regulations introduce a small number of limited policy changes to ensure that the legislation is fit for purpose. These changes relate to statutory warnings for over the counter products, membership of review panels, health professionals' exemptions, provisions for patient group directions, pharmacist-instigated changes to prescriptions and repeal of section 10(7) of the Medicines Act 1968 which permitted pharmacy businesses to undertake limited wholesale dealing without a license. The Regulations implement EU Directive 2010/84/EU which introduces a strengthened, clarified and more proportionate regime for pharmacovigilance in the EU market.

Policy changes include:

- Statutory warnings have been removed for most over the counter products in their place are warnings specific to products.
- Pharmacists are allowed to make changes to a prescription relating to the name of the product, directions for the use and precautions relating to its use without the need to contact the prescriber enabling pharmacists to make us of their professional judgement and expertise.

Nurses and other health care workers may only supply medicines under the direction of the doctor.

The Mental Health Act 2007

The 1983 Mental Health Act was previously amended by the Mental Health (Patients in the community) Act 1995 which created supervised discharges or after care under supervision.

This 1995 Act was replaced by the 2007 Act and aftercare is to end and is replaced by Supervised Community Treatment.

The 2007 Act amends the 1983 Act but it does not replace it. The 1983 Act was accompanied by a Code of Practice revised

in 1999, which gives guidance on how the Act should be applied and offers statutory guidance.

The Act is the law in England and Wales that allows people with a 'mental disorder' to be admitted to hospital, detained and treated without consent, either for their own health and safety, or for the protection of other people.

People can be admitted, detained and treated under different sections of the Mental Health Act, depending on the circumstances, which is why the term 'sectioned' I used to describe a compulsory admission to hospital.
The Mental Health Act allows people to be out on Community Treatment Orders (CTO) following a period of compulsory treatment in hospital. This decision to detain someone in hospital or to put someone on a CTO is taken by doctors and other mental health professionals who are approved to carry out certain duties under the Act and must follow specific procedures.

Someone can also be admitted to hospital under the Mental Health Act following an order by a Crown Court or in restricted circumstances (for assessment only) a Magistrates' Court.

What has not changed from the 1983 Act are the sections used:

- To admit and detain a person in hospital for assessment for up to 28 days.
- To admit and detain a person in hospital for treatment for up to 6 months.
- In an emergency to admit and detain a person in hospital for 3 days.

- In an emergency to detain a person already in hospital for up to 3 days by a doctor or 6 hours by a nurse.
- To receive a person into guardianship.
- For people who come before a court.
- Placing a duty on authorities to provide aftercare to a person who has been detained for treatment.
- Taking a person to a place of safety for assessment.

What has changed in the 2007 Act?

- How mental disorder is defined.
- The professionals who have specific roles within the Act.
- Additional rights for patients to displace their nearest relative.
- How treatment is defined and when it can be given.
- The introduction of Supervised Community Treatment and Community treatment order.
- A new right for patients to have an advocate.
- Some changes about how Mental Health Review Tribunals operate.

The Mental Health (Care and Treatment) (Scotland) Act 2003 updated 2015

This Act came into effect in 2005 together with a Code of Practice and other guidance to give people more detail about how the Act works in practice.

These guiding principles take into account:

- Non-discrimination.
- Equality.
- Respect for diversity.
- *Reciprocity* - Where society imposes an obligation on an individual to comply with a programme of treatment of care, it should impose a parallel obligation on the health and social care authorities to provide safe and appropriate services.
- *Informal care* - Where possible care, treatment and support should be provided to people with mental disorder without the use of compulsory powers.
- *Participation* - Service users should be fully involved, so far as they are able to, in all aspects of their assessment, care, treatment and support.
- Respect for carers.
- *Least restrictive alternative* - Service users should be provided with any necessary care, treatment and support both in the least invasive manner and environment compatible with the delivery of safe and effective care, taking account where appropriate the safety of others.
- *Benefit* - Any intervention under the Act should be likely to produce for the service user a benefit that cannot reasonably be achieved other than by the intervention.
- Child Welfare - The welfare of a child with mental disorder should be paramount in any interventions imposed on the child under the Act.

The Act applies to people with a 'mental disorder' This term is used to cover mental health problems, personality disorders and learning disabilities.

The new Act covers issues like:

- When a person can be taken into hospital against their will.
- When a person can be given treatment against their will.
- What their rights are.
- Safeguards to make sure their rights are protected.
- Three main kinds of compulsory powers; emergency detention, short-term detention, compulsory treatment order. Other powers under the new act include nurses' holding power and removal to a place of safety. However, there are strict conditions about when these powers might be used.

The kep provisions of the 2015 act were :

- Part 1about the operation of the Mental Health (Care and Treatment) (Scotland) Act 2003
- Part 2 amends the Criminal Procedure (Scotland) Act 1995 in relation to the treatment of mentally disordered offenders.
- Part 3 of the Act creates a new notification scheme for victims of some mentally disordered offenders.

Scotland and Northern Ireland have their own laws about compulsory treatment for mental health illness.

Mental Health (Northern Ireland) Order 1986

This legislation governs the assessment, treatment and rights of people with a mental disorder in Northern Ireland.

In most situations people will choose whether or not to seek help for a mental disorder. They will have the right to accept or decline care and treatments, to choose to be treated in hospital or in the community, to leave hospital at any time and to live independently and without interference in the community.

The Order provides a framework for the care, treatment and protection of all persons with a mental disorder and establishes systems through which the statutory rights of individuals and their relatives are protected and the duties, responsibilities and powers of professionals regulated.

The powers and protections set out in this legislation apply to all persons with a mental disorder in Northern Ireland, adults and children, regardless of whether they are a resident in the jurisdiction or not.

The Order contains provisions in relation to some individuals who may, because of the nature and degree of their mental disorder, place themselves and or/others at risk. When this occurs, and when the individual is deemed to be unable or unwilling to accept care and treatment, the law places a responsibility on certain health and social care professionals and others to intervene.

The Mental Health (Northern Ireland) Order 1986 sets out statutory rights, powers and responsibilities, the Guide and the Code of Practice to the Mental Health (Northern Ireland) Order 1986 contain guidance for medical practitioners, Health and Social Care Trusts, hospital staff, approved social workers and others in relation to the admission of patients to hospitals and treatment of persons with a mental disorder and the reception of individuals into Guardianship.

People can only be detained if the strict criteria laid down in the Order are met. The person must be suffering from a mental disorder as defined by the Order.

An application for assessment or treatment must be supported in writing by two registered medical practitioners and must include a statement about why an assessment or treatment is necessary and why other methods of dealing with the patient are not appropriate.

A small number of patients may need to be compulsory detained. The Order explains who is involved in the decision about compulsory admission or detention and the individual or nearest relative's right of appeal.

There is currently consultation over a draft bill the Mental Capacity Bill. This will develop a single legislative framework for the reform of mental health legislation in Northern Ireland and will replace the 1986 order. This will introduce a new framework governing all decision making on the care, treatment, whether for physical or mental illness, and the personal welfare, including welfare in financial matters of persons aged 16 or over who lack the capacity to make a specific decision for themselves.

Mental Capacity Act 2005 (MCA)

The MCA provides a statutory framework to protect and empower adults who may lack capacity (ability) to make all or some decisions about their lives. It also governs the way decisions can be made for an individual who lacks the capacity to make specific decisions at specific times.

Section 1 of the MCA sets out five principles to support decision-making either by, or on behalf of a person who may lack capacity. In brief:

- There is a presumption of capacity – every adult has the right to make his or her own decisions and must be assumed to have capacity to do so unless it is proved otherwise.
- Individuals should be supported to make their own decisions.
- People have the right to make unwise decisions and making an unwise decision does not mean they lack capacity to make that decision.
- If someone lacks capacity then an act done or a decision made for them under the Act must be done in their best interests.

These principles promote the human rights of people who may lack capacity because they enshrine respect for individual autonomy and make it clear that we should always presume that a person has the capacity to make decisions unless it is established otherwise.
People can only be detained if the strict criteria laid down in the Order are met. The person must be suffering from a mental disorder as defined by the Order.

The government has published a Code of Practice to the Act, which provides guidance and information on how the Act will work on a day-to-day basis, for anyone who works with or cares for people who lack he capacity to make decisions, including family, friends and unpaid carers.

Certain categories of people are legally required to 'have regard to' relevant guidance in the Code of Practice. That means they must be aware of the Code of Practice when acting or making decisions on behalf of someone who lacks capacity to make a decision for themselves, and they should be able to explain how they have had regard to the Code when acting or making decisions.
Those categories include people acting in a professional capacity for, or in relation to, a person who lacks capacity and people being paid for 'acts' for or in relation to a person who lacks capacity.
These categories include a variety of healthcare staff, social care staff (social workers, care managers, support workers) and others who may occasionally be involved in caring for people who lack capacity, such as ambulance crew, housing workers or police officers. They will often include care assistants in a care home and home-care workers.

People can only be detained if the strict criteria laid down in the Order are met. The person must be suffering from a mental disorder as defined by the Order.

Mental Capacity (Amendment) Act 2019 introduces Liberty Protection Safeguards to replace Deprivation of Liberty Safeguards. The LPS establishes a process for authorising arrangements enabling care or treatment which give rise to a deprivation of liberty where the person lacks capacity to consent to the arrangements. It also provides for safeguards to be delivered to people subject to the scheme.

The Misuse of Drugs Act 1971

The Misuse of Drugs Act is designed to check and reduce the unlawful use of the type of drugs that could produce dependence if they are misused. These drugs are referred to as controlled drugs and they include cocaine, heroin (diamorphine), morphine, opium, pethidine, methadone, levorphanol, amphetamine, dexamphetamine, dihydrocodeine injection, mephentermine and methylphenidates.

Controlled drugs may be prescribed by medical practitioners and registered dentists. Every GP or dentist is required to keep a record of all the controlled drugs that are issued. Hospital pharmacies are also responsible for the supply of controlled drugs and are administered under strict control in a hospital setting. The regulations that govern the administration of controlled drugs are as follows:

- A special cupboard must be used for storing controlled drugs and it should be clearly marked 'Controlled Drugs Cupboard'.
- The cupboard should be locked and the key must be held by a state registered nurse or midwife who is in charge of the setting in which the drugs cupboards are kept.
- Supplies of controlled drugs should only be obtained on the signature of a medical practitioner and the drugs only administered to patients if there are written instructions from a medical practitioner.
- Each dose of controlled drugs that is administered must be entered into the special register with the date, the patients name and the time the dose was given.
- The practitioner who gives the drugs and the person who checks the drugs must both sign the entry.
- In most hospitals the doses must be checked by two people, one of whom should be a state registered nurse or midwife.

- The person checking should see the bottle from which the drugs are taken and check the dose against the written prescription.
- All packages or bottle containing controlled drugs must be clearly labelled.
- The nurse or midwife in charge of the ward should check the controlled drugs and the accompanying records every seven days.

Since 2010, the Misuse of Drugs Act 1971 has been amended to control new drugs, including a number of new psychoactive substances:

- A new range of synthetic cannabinoids, methoxetamine and other related compounds and O-desmethyltramadol.
- Desoxypipradrol (2-DPMP), its related compounds and phenazepam.
- Naphyrone and other synthetic cathinones, tapentadol and amineptine.

The National Assistance Act 1948

Under Section 21 of this Act, a local authority may provide accommodation for people who, by reason, are in need of care or attention that is not usually available to them.

Local authorities are also empowered to make arrangements with private and voluntary homes for the elderly. Under Section 47 of the Act, adults can be forcibly placed in institutional care to 'secure the necessary care and attention' if they:

- Are suffering from grave chronic disease or being aged, infirm or physically incapacitated or are living in unsanitary conditions.
- Are unable to devote to themselves, and are not receiving from other people, proper care and attention.

This act was replaced by the Care Act 2014.

Public Interest Disclosure Act 1998 amended 2013

An important part of promoting dignity is ensuring a working environment that encourages people to challenge practices
in their own workplace. The law offers some protection from victimisation to people who blow the whistle under the Public Interest Disclosure Act (PIDA) 1998.

The parameters of 'protected disclosure' are set out in the Employment Rights Act (ERA) 1996. The person making the disclosure should not commit an offence in doing so (e.g. breach the Official Secrets Act 1989) and must reasonably believe one or more of the following:

- That a criminal offence has been committed, is being committed or is likely to be committed.
- That a person has failed, is failing or is likely to fail to comply with any legal obligation to which he or she is subject.

- That a miscarriage of justice has occurred, is occurring or is likely to occur.
- That the health or safety of any individual has been, is being or is likely to be endangered.
- That the environment has been, is being or is likely to be damaged.
- That information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed. (ERA1996).

Until the Public Interest Disclosure Act 1998 was amended in 2013, the only place where the words "public interest" appeared was in the title. As such, if an employee found something they reasonably believed to be the breach of a legal obligation (including a breach of their own employment contract) and then complained about it, they had all the protections of a whistleblower, even if the breach only affected their own interests.

Because of the whistleblower protections, any dismissal would be automatically unfair if the reason for the dismissal was because such a complaint was made. The employee would not require any qualifying minimum period of service, and tribunals would not be restricted by the usual upper limit on compensation. It would also be unlawful for an employer to subject the employee to foe example threats, disciplinary action, loss of work or pay, or damage to career prospects on the ground that they made such a complaint.

In 2013 the legislation was amended to prevent employees complaining about matters of pure self-interest. As a result, an employee must now also show that he reasonably believes that their complaint or disclosure is made "in the public interest" in order to attract the above protections.

Safeguarding Vulnerable Groups Act 2006 and the Protection of Freedoms Bill

This Safeguarding Vulnerable Groups Act (SVGA) 2006 was passed to help avoid harm, or risk of harm, by preventing people whoare deemed unsuitable to work with children and vulnerable adults from gaining access to them through their work. The Independent Safeguarding Authority was established as a result of this Act. On 1 December 2012 the Criminal Records Bureau and Independent Safeguarding Authority merged to become the Disclosure and Barring Service (DBS). Organisations with responsibility for providing services or personnel to vulnerable groups have a legal obligation to refer relevant information to the service.

Ill treatment or wilful neglect

It is an offence under section 127 of the MHA1983 for staff employed in hospitals or mental nursing homes to ill treat or wilfully neglect a person with a mental disorder. The MCA 2005 (s44) extends this, creating two new criminal offences of ill treatment or wilful neglect of a person who lacks capacity to make relevant decisions.
This applies to all people who lack mental capacity in whatever setting, thus offering protection to people with learning disabilities, brain injury or dementia. The offences may apply to all people, paid or unpaid, who care for a person who may lack capacity and those with deputyship, LPA or EPA. The maximum sentence for such offences is now five years.

Ill treatment and wilful neglect are different.

Ill treatment must be deliberate, is an offence irrespective of whether it causes harm, and involves an appreciation by the perpetrator that they were inexcusably ill treating the person or being reckless Ill treatment includes acts such as hitting, administering sedatives to keep people quiet, pulling hair, rough treatment, verbal abuse or humiliation.

Wilful neglect is a failure to act rather than a deliberate act to commit harm. Examples of wilful neglect could include not administering the correct medication, failing to take someone to hospital when they have fallen and hurt themselves, not providing adequate pressure sore care or leaving someone locked and unattended in a vehicle.

The protection of freedoms is now a law. The Protection of Freedoms Act 2012 marks the next step in the government's legislative programme to safeguard civil liberties and reduce the burden of government intrusion into the lives of individuals.

Sexual Offences Act 2003

In the past there have been difficulties in bringing prosecutions against individuals who committed sexual offences against people with mental disorders. The Sexual Offences Act (SOA) 2003 modernised the law by prohibiting any sexual activity between a care worker and a person with a mental disorder while the relationship of care continues. A 'relationship of care' exists where one person has a mental disorder and another person provides care. It applies to people working both on a paid and an unpaid basis and includes doctors, nurses, care workers in homes, workers providing services in clinics or hospitals and volunteers.

A 'relationship of care' exists where one person has a mental disorder and another person provides care.

The offences in the Act relating to care workers apply whether or not the victim appears to consent, and whether or not they have the legal capacity to consent.

This does not prevent care workers from providing intimate personal care so long as the behaviour is not intended to be sexual. The Act is not intended to interfere with the right of people with a mental disorder who have the capacity to consent to engage in sexual activity with anyone who is not in a caring relationship with them.

The Act also attempts to make the prosecution of rape easier by clarifying the meaning of consent. Section 74 of the Act provides that someone consents to a sexual act if, and only if, he or she agrees by choice and has the freedom and capacity to make that choice.