

The Care Act and Prisoners – Implications for Local Authorities

The Care Act heralds a historic change in local government's responsibility for adult prisoners. From April 2015 local authorities will be responsible for assessing and meeting the social care needs of adult prisoners (not just on discharge from prison but also while they are in custody).

This change in legislation is to be welcomed as to date it has been unclear who is responsible for meeting the social care needs of prisoners, with the result that such needs have often gone unrecognised or have not been met effectively. As a consequence individuals have been unable to participate as fully as they could in the day to day life of the prison, and could potentially have suffered a loss of dignity, been subject to abuse by other prisoners and have left prison less well equipped to return successfully into the community than they might have done.¹

The legislative change also clarifies local authority responsibility for residents of approved premises and for people who may move from their usual home as a condition of bail in criminal proceedings.

Context

This change in legislation will affect 58 local authorities in England which have prisons within their boundaries. All prisoners within those prisons will be treated as if they are resident in that area for purposes of the Care Act for as long as they reside in that prison. The four local authorities in Wales containing prisons are not in scope for this work and will be covered by the Social Services and Wellbeing (Wales) Bill.

Prisoners will enjoy most of the rights and responsibilities of people living in the rest of the community but with four notable exceptions:

1. Prisoners cannot receive direct payments and will have much less choice over how their eligible care needs are met.

¹ In this context, references to prisons should be taken to include young offender institutions as they may be holding 18 year old adults.

2. Adult Social Care departments will not be responsible for investigating safeguarding incidents in prisons.
3. Prisoners will not be able to express a preference for particular accommodation except when this is being arranged for after their release
4. Local Authorities will not have to protect the property of adults in prison or approved premises with care and support needs

The numbers of prisoners who will be eligible for support is currently uncertain and the Department of Health is working with NOMS to ascertain this. The best available information to date suggests that there are about 10,400 prisoners aged over 50 and 3,500 of these are aged over 60. This latter group is the fastest growing segment of the prisoner population, both as a result of individuals serving long sentences and older people being convicted of historical crimes. It is also known that the prisoner community tends to be affected by the impact of ageing significantly earlier than the rest of the population due to previous lifestyles and a history of poor engagement with, or access to, health services.

It must also be remembered that whilst older adults will make up the majority of those over the threshold for social care, all adults with disabilities or long term health conditions could be eligible for social care support. This would include someone in a Young Offenders Institution (YOIs) who is over 18. And just like people living in the community, prisoners and people living in approved premises will have to pay part of the full cost of their care, if they can afford to do so.

Councils with responsibility for prisons and YOIs in their area will receive additional funding from April 2015 to meet the anticipated need in their area.

The need in each prison will vary significantly according to the size and function of each prison. While establishments like Isle of Wight, Whatton (Nottinghamshire) and Wakefield have 145-190 prisoners aged over 60, local resettlement prisons will have far fewer older prisoners but will have a much higher throughput.

As the actual numbers of prisoners requiring support is likely to be limited in most prisons, local authorities may wish to explore the feasibility of developing an

integrated health and social care service with the specialist Health and Justice NHS England Commissioners for their area. This area of health provision is not the responsibility of CCGs and is not always provided by local NHS provider organisations.

The Care Act will also allow and encourage prison staff to be part of Local Adult Safeguarding Boards although Adult Social Care will not have a responsibility to investigate safeguarding concerns within prisons. The safety of individuals is the responsibility of the prisons and approved premises.

National Support

It is recognised that prisons and the specialist health commissioners have limited experience of working with local government especially with regard to prisoners currently in custody.

For this reason the Association of Directors of Adult Social Services (ADASS) has been working with colleagues at the Department of Health, Ministry of Justice and the National Offender Management Service (NOMS) to help shape the legislation and prepare for its implementation. This work has been led for ADASS by Mick Connell (Leicestershire) and Ian Anderson (ADASS Associate) and has been incorporated as one of the work streams of the Care Act Joint Programme Management Office. This compliments a wider piece of work being carried out by ADASS to support implementation of the Act, where there are several strands of work, each of which has a nominated ADASS rep and or associate.

We know that there are many examples of good practice and we would welcome details of any positive action that has been taken to meet the care and support needs of people who are detained in prison or who are resident in approved premises. Details on how to share this good practice are included at the end of this briefing note.

For more information or to share examples of good practice please contact:

- Ian Anderson, ADASS Associate at Ian.Anderson@adass.org.uk

- Dot Connellan, Ministry of Justice, Policy Advisor – Reducing Reoffending and Offender Health at Dorothy.Connellan@justice.gsi.gov.uk
- Rupert Bailie, National Offender Management Service, Health and Well Being Co-commissioning Senior Manager, NOMS c/o health.co-comissioning@noms.gsi.gov.uk
- Anne McDonald, Department of Health Deputy Director – Armed Forces, Offender Health and Mental Health Legislation, at anne.mcdonald@dh.gsi.gov.uk