

# **CARERS (SCOTLAND) ACT 2016**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

### **THE ACT**

3. The Act comprises 46 sections and is divided into eight parts as follows—
  - Part 1 – Key definitions
  - Part 2 – Adult carer support plans and young carer statements
  - Part 3 – Provision of support to carers
  - Part 4 – Carer involvement
  - Part 5 – Local carer strategies
  - Part 6 – Information and advice for carers
  - Part 7 – General provision
  - Part 8 – Final provisions
4. The Act also includes one schedule setting out consequential modifications including repeals of other enactments.

### **BACKGROUND**

5. The Scottish Government published, on 22 January 2014, its formal consultation for proposed legislation to support carers and young carers in Scotland. The consultation was open for 12 weeks and closed on 16 April 2014. The Act takes forward many of the issues that were raised in the consultation document. Explanation of the policy rationale behind the Act can be found in the Policy Memorandum that was published alongside the Bill at introduction. The Act makes provision in relation to the planning and provision of support for carers, about information and advice for carers and to facilitate carer involvement in certain services.

## **COMMENTARY ON PARTS**

### **Part 1 – Key Definitions**

#### **Meanings of “carer”, “young carer” and “adult carer”**

##### *Section 1 - Meaning of “carer”*

6. **Section 1(1)** defines a “carer” as an individual who provides or intends to provide care for another individual (a “cared-for person”). Subsection (2)(a) stipulates that subsection (1) will not apply, in the case of a cared-for person under 18 years old, to the extent that the care is or would be provided by virtue of the person’s age. This is to ensure that parents are not regarded as carers for the purposes of the Act, except where they are the caring for that child for a reason other than the child’s age. This will include parents of disabled children. Subsection (2)(b) stipulates that subsection (1) will not apply if the care is provided under or by virtue of a contract or as voluntary work.
7. Subsection (3) gives the Scottish Ministers a regulation-making power to set out what is meant by a contract for the purposes of subsection (2)(b)(i). For instance, this power might be used to provide that an agreement between a local authority and a kinship carer under the Looked After Children (Scotland) Regulations 2009 is not a “contract” for the purposes of subsection (2)(b)(i). That would mean that care provided under such an agreement would fall within the meaning of subsection (1) and the kinship carer would be a carer for the purposes of the Act.
8. Subsection (3) also allows regulations to permit a relevant authority to disregard subsection (2)(b) if the authority considers it appropriate. For instance, this power may be used to provide clarification in relation to carers who provide elements of both paid care, by way of a contract with the person they care for, and unpaid care to the same person. Regulations under this subsection will be subject to the affirmative procedure (see section 42(2)).
9. Subsection (4) defines “relevant authority” for the purposes of subsection (3) and of section 4 as a responsible local authority (which may be required to prepare adult carer support plans), and also a responsible authority (which may be required to prepare young carer statements), under Part 2 Chapter 1 and Part 2 Chapter 2 of the Act respectively: namely local authorities, health boards and, where applicable, directing authorities of grant-aided or independent schools.

##### *Section 2 - Meaning of “young carer”*

10. This section defines a “young carer” as a carer who is under 18 years old or who has reached 18 years while a pupil at school and remains a pupil at that or another school. This mirrors the definition of “young person” in section 22 of the Children and Young People (Scotland) Act 2014 so that the “named person service” under that Act and the provisions for young carers under this Act can be coordinated.

##### *Section 3 - Meaning of “adult carer”*

11. This section defines an “adult carer” as a carer who is at least 18 years old but who is not a young carer.

#### **Meanings of “personal outcomes” etc.**

##### *Section 4 – Meaning of “personal outcomes”*

12. Subsection (1) defines “personal outcomes”, in relation to carers, as including outcomes which would, if achieved, enable carers to provide or continue to provide care for the cared-for persons. Personal outcomes are relevant to the identification of a carer’s needs for support under Part 2 of the Act.

13. Under subsection (2), the Scottish Ministers have power to make further provision in regulations about personal outcomes, including about the things that the relevant authority is to have regard to in deciding which outcomes may count as personal outcomes for the purposes of the Act. Regulations under this subsection will be subject to the negative procedure (see section 42).

### ***Section 5 - Meaning of “identified personal outcomes” and “identified needs”***

14. Subsection (1) defines “identified personal outcomes”, in relation to a carer, as the personal outcomes identified by virtue of the adult carer support plan or young carer statement process in Part 2 of the Act and which are relevant to the carer.
15. Subsection (2) defines “identified needs”, in relation to carer, as the needs for support (if any) which are identified by virtue of the adult carer support plan or young carer statement process in Part 2 of the Act in order to meet the carer’s identified personal outcomes.
16. Subsection (3) defines “identified” with reference to sections 8 and 14 (under which the Scottish Ministers have powers to regulate the processes for identifying carers’ personal outcomes and needs for support).

## **Part 2 – Adult Carer Support Plans and Young Carer Statements**

### ***Chapter 1 – Adult carer support plans***

#### **Duty to prepare adult carer support plan**

### ***Section 6 - Duty to prepare adult carer support plan***

17. Subsection (1) defines what an “adult carer support plan” is, namely a plan prepared by a responsible local authority that sets out an adult carer’s identified personal outcomes, any identified needs and any support to be provided by the responsible local authority to meet those needs. The assessment process for identifying those outcomes and needs will be set out in regulations under section 8. Section 9 gives more information about the content of the adult carer support plan.
18. Subsection (2) places a duty on the responsible local authority so that where they identify a person as an adult carer, the responsible local authority must offer the person an adult carer support plan.
19. Subsection (3) states that a responsible local authority is required to prepare an adult carer support plan for a person if the person accepts an offer made under subsection (2) or the person requests a plan in accordance with subsection (4).
20. Subsection (4) applies if a person who appears to the responsible local authority to be an adult carer requests an adult carer support plan: that is, if an adult self-identifies as a carer and the responsible local authority agrees that the adult comes within the definition of carer under section 1 of the Act.
21. Subsection (5) requires responsible local authorities, when exercising their functions concerning the preparation of the adult carer support plan, to do so in a manner which encourages equal opportunities and in particular observance of the equal opportunity requirements. ‘Equal opportunity requirements’ means the requirements of the law for the time being relating to the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or opinions (which is the meaning given in Section L2 of Part 2 of schedule 5 of the Scotland Act 1998).
22. Subsection (6) defines the “responsible local authority”, in relation to an adult carer, as the local authority for the area in which the cared-for person lives. This will still be the

case where the adult carer lives in a different local authority area to the one in which the cared-for person lives.

### ***Section 7 – Adult carers of terminally ill cared-for persons***

23. This section imposes a duty on the Scottish Ministers so that they must, by regulations, prescribe timescales for the preparation of adult carer support plans in relation to adult carers of terminally ill cared-for persons. This section also sets out a definition of terminally ill cared for persons. The power is subject to the affirmative procedure (see section 42(2)).

### ***Section 8 – Adult carers: identification of outcomes and needs for support***

24. Under this section, the Scottish Ministers may make regulations about the identification of adult carers' personal outcomes and need for support. Such regulations could include provision about—
- how personal outcomes and needs for support are to be identified;
  - the process for doing so (including arrangements for the involvement of adult carers and cared-for persons);
  - who may carry out identification;
  - the sharing of information about adult carers and cared-for persons for the purpose of identifying personal outcomes and needs for support;
  - the factors to be taken into account in identifying adult carers' personal outcomes and needs for support; and
  - the circumstances in which adult carers' personal outcomes and needs for support should be reviewed.
25. Regulations under this section will be subject to the affirmative procedure (see section 42(2)).
26. Subsection (2) also requires the local authority to consider the impact on the adult carer of having one or more protected characteristics (within the meaning of section 149(7) of the Equality Act 2010) when assessing an adult carer's personal outcomes and needs for support. The protected characteristics in section 149(7) of the Equality Act 2010 are age, disability, gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation. Content and review of adult carer support plan

### ***Section 9 - Content of adult carer support plan***

27. Subsection (1) sets out what information the adult carer support plan must contain, namely information about—
- the adult carer's personal circumstances at the time of preparation of the plan;
  - the extent to which the adult carer is able and willing to provide care for the cared-for person; whether the adult carer has arrangements in place for the provision of care to the cared-for person in an emergency;
  - information on whether the adult carer has any arrangements in place for the future care of the cared-for person;
  - the adult carer's personal outcomes identified in the adult carer support plan process;
  - the adult carer's needs for support, included any needs identified in the adult carer support plan process, to meet those outcomes. If no needs are identified, this should be stated;

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which received Royal Assent on 9 March 2016*

- the support available to adult carers and the cared-for persons in the area of the responsible local authority;
  - information about the support available to adult carers in the area where the adult carer resides if the adult carer does not reside in the responsible local authority's area;
  - the support that the responsible local authority provides or intends to provide to the adult carer to meet such of the adult carer's identified needs as meet the local eligibility criteria (set under Part 3 of the Act);
  - the support the responsible local authority provides or intends to provide to the adult carer to meet the adult carer's other identified needs (that is, the identified needs that do not meet the local eligibility criteria but which the responsible local authority nevertheless plans to meet by virtue of section 24(4)(b));
  - whether support provided should take the form of a break from caring for the cared-for person; and
  - the circumstances in which the plan is to be reviewed.
28. Subsection (2) provides that the second and subsequent adult carer support plan prepared for a carer must contain information on the extent to which any support provided under a previous plan has assisted in achieving the carer's identified personal outcomes.
29. Subsection (3) gives the Scottish Ministers power to make regulations about any other information an adult carer support plan must (or must not) contain, and the form adult carer support plans should take. Such regulations will be subject to the negative procedure (see section 42).

***Section 10 - Review of adult carer support plans***

30. This section enables the Scottish Ministers to make regulations about the review of adult carer support plans, including circumstances for review; frequency of review; procedure for review; and arrangements for obtaining the views of adult carers and cared for persons. Such regulations could for example include provision for review when the cared-for person is going to be discharged from hospital. Regulations under this subsection will be subject to the negative procedure (see section 42).

**Provision of information about plan**

***Section 11 - Adult carer support plan: provision of information to carer etc.***

31. Subsections (1) and (2) require the responsible local authority to provide the information contained in the adult carer support plan to the adult carer to whom the plan relates and to any other person(s) at the carer's request.
32. Subsection (3) provides that subsection (1) does not apply where the responsible local authority considers that provision of the information would not be appropriate. For instance, the local authority may consider that it is appropriate to remove sensitive information relating to the carer or the cared-for person, before providing the adult carer support plan to someone other than the carer.
33. Subsection (4) provides that the information provided under subsection (1) is to be provided as soon as practicable after the plan is prepared or, in the case of a revised plan, as soon as practicable after the revised plan is prepared.

## **Chapter 2 – Young carer statements**

### **Duty to prepare young carer statement**

#### **Section 12 - Duty to prepare young carer statement**

34. This section creates an equivalent in relation to young carers to section 6 in relation to adult carers. Subsection (1) defines what a “young carer statement” is, namely a statement prepared by the responsible authority that sets out a young carer’s identified personal outcomes, any identified needs and any support to be provided by the responsible local authority to the young carer to meet those needs. Subsection (2) places a duty on the responsible authority so that where they identify a person as a young carer, the responsible authority must offer the person a young carer statement. The process for identifying those outcomes and needs will be set out in regulations under section 14. Section 15 gives more information about the content of the young carer statement. Sections 19 and 20 determine who the responsible authority is in relation to a young carer.
35. Subsection (3) requires the responsible authority to prepare a young carer statement if the person accepts an offer made under subsection (2) or the person requests a plan in accordance with subsection (4).
36. Subsection (4) applies where a person who appears to the responsible authority to be a young carer requests a young carer statement: that is, if a young person self-identifies as a young carer and the responsible local authority agrees that the young person comes within the definition of young carer under section 2 of the Act.
37. Subsection (5) provides that subsection (3) will apply whether or not the young carer also requires a child’s plan in accordance with section 33 of the Children and Young People (Scotland) Act 2014. So a young carer, who may have a child’s plan under that Act because he or she has a wellbeing need which requires a targeted intervention, will always have a young carer statement as well, focussing distinctly on the young carer’s needs as a carer.
38. Subsection (6) provides that where the responsible authority, in relation to a young carer, is not also the responsible local authority, the responsible authority must not provide the young carer statement to the young carer without the approval of the responsible local authority. This is because it is the responsible local authority which would actually provide support to the young carer to meet any needs that are identified.
39. Subsection (7) requires responsible local authorities, when exercising their functions concerning the preparation of the young carer statement, to do so in a manner which encourages equal opportunities and in particular observance of the equal opportunity requirements. ‘Equal opportunity requirements’ means the requirements of the law for the time being relating to the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or opinions (which is the meaning given in Section L2 of Part 2 of schedule 5 of the Scotland Act 1998).
40. Subsection (8) defines “responsible authority” for the purposes of Chapter 2 as having the meaning given by sections 19 and 20. It also defines “responsible local authority” for the purposes of Chapter 2 as the local authority for the area in which the cared-for person resides.

#### **Section 13 – Young carers of terminally ill cared-for persons**

41. This section imposes a duty on the Scottish Ministers so they must by regulations prescribe timescales for the preparation of young carer statements in relation to young carers of cared-for persons with a terminal illness. The meaning of ‘terminally ill cared-

for person' is given in section 7(2). This power is subject to the affirmative procedure (see section 42(2)).

### ***Section 14 – Young carers: identification of outcomes and needs for support***

42. This section is equivalent to section 8 in relation to adult carer support plans. Under this section, the Scottish Ministers may make regulations about the identification of young carers' personal outcomes and their needs for support. Such regulations could include provision about—
- how personal outcomes and needs for support are to be identified;
  - the process for doing so (including arrangements for the involvement of young carers and cared-for persons);
  - who may carry out identification;
  - the sharing of information about young carers and cared-for persons for the purpose of identifying personal outcomes and needs for support;
  - the factors to be taken into account in identifying young carers' personal outcomes and needs for support;
  - the circumstances in which young carers' personal outcomes and needs for support should be reviewed.
43. Regulations under this section will be subject to the affirmative procedure (see section 42(2)).
44. Subsection (2) also requires the local authority to consider the impact on the young carer of having one or more protected characteristic (within the meaning of section 149(7) of the Equality Act 2010) when assessing a young carer's personal outcomes and needs for support. The protected characteristics in section 149(7) of the Equality Act 2010 are age, disability, gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

## **Content and review of young carer statement**

### ***Section 15 – Content of young carer statement***

45. This section is equivalent to section 9 in relation to adult carer support plans. Subsection (1) sets out what information the young carer statement must contain, namely information about—
- the young carer's personal circumstances at the time of the preparation of the statement, including the impact on the young carer's wellbeing of caring for the cared-for person;
  - the extent to which the young carer is able and willing to provide support for the cared-for person;
  - the extent to which the responsible authority considers that the nature and extent of the care provided by the young carer is appropriate;
  - whether the young carer has arrangements in place for the provision of care to the cared-for person in an emergency;
  - information on whether the young carer has any arrangements in place for the future care of the cared-for person; the young carer's personal outcomes identified in the young carer statement process;



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- the young carer’s needs for support, including any needs identified in the young carer statement process, to meet those outcomes. If no needs are identified, this should be stated;
  - the support generally available to the young carer and the cared-for person in the responsible local authority’s area;
  - the support available to young carers in the area where the young carer resides if the young carer does not reside in the responsible local authority’s area;
  - the support which the responsible local authority provides or intends to provide to the young carer to meet such of the young carer’s identified needs as meet the local eligibility criteria (set under Part 3 of the Act);
  - the support which the responsible local authority provides or intends to provide to the young carer to meet the carer’s other identified needs (that is, the identified needs that do not meet the local eligibility criteria but which the responsible local authority nevertheless plans to meet by virtue of section 24(4)(b));
  - whether support should be provided in the form of a break from caring for the cared-for person;
  - the circumstances in which the young carer statement is to be reviewed.
46. Subsection (2) provides that the second and subsequent young carer statement prepared for the young carer must contain information on the extent to which any support provided under a previous statement has assisted in achieving the young carer’s identified personal outcomes.
47. Subsection (3) provides that the responsible authority, in assessing the impact of a young carer’s caring role on the wellbeing of the young carer for the purposes of subsection (1)(a)(ii), must do so by reference to the matters listed in section 96(2) of the Children and Young People (Scotland) Act 2014 and have regard to any guidance issued under section 96(3) of that Act. These matters are known as the ‘SHANARRI’ indicators. They are the extent to which a child or young person is—
- Safe,
  - Healthy,
  - Achieving
  - Nurtured,
  - Active,
  - Respected,
  - Responsible, and
  - Included
48. Subsection (4) gives the Scottish Ministers a regulation-making power to make provision about other information which the young carer statement must (or must not) contain and the form the young carer statement should take. Regulations under this subsection will be subject to the negative procedure (see section 42).

***Section 16 - Review of young carer statements***

49. This section is equivalent to section 10 in relation to adult carer support plans. It enables the Scottish Ministers to make regulations about the review of young carer statements, including circumstances for review; frequency of review; procedure for review; and arrangements for obtaining the views of young carers and cared-for



persons. Regulations under this subsection will be subject to the negative procedure (see section 42).

## **Provision of information about statement**

### ***Section 17 - Young carer statement: provision of information to carer etc.***

50. This section is equivalent to section 11 in relation to adult carer support plans. Subsections (1) and (2) provide that the responsible authority must provide the information contained in the young carer statement to certain persons. They are—
- the young carer to whom the young carer statement relates, and
  - any other person the young carer requests.
51. Subsection (3) provides that subsection (1) will not apply where the responsible authority considers that provision of the information would not be appropriate. As with section 11, the local authority may, for example, consider that it is appropriate to remove sensitive information relating to the young carer or the cared-for person, before providing the young carer statement to someone other than the young carer.
52. Subsection (4) requires the information to be provided as soon as practicable after the statement has been prepared, or in the case of a revised statement, after the revised statement is prepared.

## **Continuation of young carer statement**

### ***Section 18 - Continuation of young carer statement***

53. This section provides that if a young carer has reached 18 years, any young carer statement prepared will continue to have effect until the carer is provided with an adult carer support plan. The purpose of this is to ensure that there will be no gap in statement/plan coverage or a break in the continuation of support where the young carer's needs for support continue.

## **Meaning of responsible authority: young carers**

### ***Section 19 - Responsible authority: general***

54. Subsection (1) sets out who the “responsible authority” is in relation to a young carer. Where the young carer is a pre-school child, the responsible authority will be the health board for the area in which the child resides. In any other case, the responsible authority will be the local authority for the area in which the young carer resides.
55. Subsection (2) provides that subsection (1) is subject to section 20 – Responsible authority: special cases.
56. Subsection (3) provides what this section and section 20 mean by “pre-school child”. This is defined by reference to section 36(3) of the Children and Young People (Scotland) Act 2014 and means—
- a child who has not commenced attendance at a primary school, or
  - if the child is of school age, a child who has not commenced attendance at a primary school because the relevant local authority has consented to the child's commencement at primary school being delayed.
57. A child is of school age if the child has attained the age of five years but is under the age of 16 years (see section 31 of the Education (Scotland) Act 1980).

### ***Section 20 - Responsible authority: special cases***

58. Subsection (1) provides that where a young carer who is a pre-school child resides in the area of a different health board, by virtue of a placement by another health board or local authority, the health board for the area in which the young carer resided immediately before that placement is the responsible authority in relation to the young carer. “Pre-school child” has the meaning given by section 19(3).
59. Subsection (2) provides that where the young carer is a pupil at a public school which is managed by a local authority other than the one for the area in which the young carer lives, the other authority is the responsible authority in relation to the young carer.
60. Subsection (3) provides that where the young carer is a pupil at a grant-aided school or an independent school, the directing authority of that school is the responsible authority in relation to the young carer. “Directing authority” is defined in section 41(1) as having the same meaning as in section 45 of the Children and Young People (Scotland) Act 2014, that is the managers of a grant-aided school or the proprietor of an independent school.
61. Subsection (4) provides that subsection (3) will not apply where the young carer is a pupil by virtue of a placement by the local authority for the area in which the young carer lives.
62. Subsection (5) sets out that “grant aided school”, “independent school” and “public school” have the meanings given by section 135 of the Education (Scotland) Act 1980, as follows—
  - “grant-aided school” means, with the exceptions specified there, a school in respect of which grants are made by the Scottish Ministers to the managers of the school;
  - “independent school” means a school at which full-time education is provided for five or more pupils of school age (whether or not such education is also provided for pupils under or over that age), not being a public school, a grant-aided school, or a self-governing school under the Self-Governing Schools etc (Scotland) Act 1989;
  - “public school” means any school under the management of an education authority, that is a local authority.

## **Part 3 – Provision of Support to Carers**

### ***Chapter 1 – Eligibility Criteria***

#### **Local eligibility criteria**

##### ***Section 21 - Duty to set local eligibility criteria***

63. Subsection (1) requires each local authority to set the local eligibility criteria which it is to apply for its area. The local eligibility criteria are defined by subsection (2) as the conditions which a local authority must use to establish whether it is required to provide support to a carer to meet the carer’s identified needs.
64. Subsection (3) makes provision about who a local authority must involve and consult before setting its eligibility criteria. It must consult such persons and bodies representative of carers as considered appropriate by the local authority and it must take the steps it considers appropriate to involve carers.
65. Subsection (4) states that a local authority must have regard to such matters as the Scottish Ministers may by regulations specify, when setting its local eligibility criteria. Regulations under this section will be subject to the affirmative procedure (see section 42(2)).

### ***Section 22 - Publication and review of criteria***

66. Subsection (1) requires each local authority to publish its eligibility criteria. Publication must be in accordance with the timescales prescribed in regulations made under subsection (2). It is intended that they will be used to require local authorities to have eligibility criteria in place before section 24 (which imposes the duty to support) is commenced. Those regulations will be subject to the negative procedure.
67. The local authority is required to review its eligibility criteria in accordance with subsections (3) to (5). Regulations subject to the negative procedure will set the time frame within which the first review must be undertaken. It is intended that this will be used to bring timing of reviews of eligibility criteria into line with reviews of local carer strategies under Part 5 of the Act. Following a review, the local authority may set revised local eligibility criteria or publish a statement explaining that it does not intend to revise the criteria on this occasion. If the local authority revises the local eligibility criteria, it must have regard to the matters specified in regulations under section 21 and must publish the revised criteria.

### **National eligibility criteria**

#### ***Section 23 - National eligibility criteria***

68. Subsection (1) confers a power on the Scottish Ministers to make regulations setting out national eligibility criteria. Regulations under this subsection will be subject to affirmative procedure (see section 42(2)).
69. Subsection (2) provides that the national eligibility criteria are the criteria by which each local authority must assess whether it is required to provide support to carers to meet their identified needs.
70. Subsection (3) sets out that, where regulations are made under this section and have not been revoked, the national eligibility criteria set out in them apply in place of any local eligibility criteria published under section 22. In such a situation, references elsewhere in the Act to local eligibility criteria are to be read as references to the national eligibility criteria.
71. Subsection (4) sets out that regulations made under this section may modify any enactment, including this Act.

### ***Chapter 2 – Duty to provide support to carers***

#### ***Section 24 - Duty to provide support***

72. Where a carer has needs which have been identified in the course of preparing an adult carer support plan or a young carer statement and which cannot be met by services or assistance provided to the cared-for person (other than care provided by virtue of section 25 in order to provide the carer with a break from caring) or cannot be met through the provision of general services in the responsible local authority's area, for example information and advice, this section requires the authority to apply its local eligibility criteria. The needs which meet the local eligibility criteria are referred to as "eligible needs".
73. Subsection (4)(a) places a duty on the responsible local authority to provide support to the carer to meet those eligible needs. The responsible local authority also has a power under subsection (4)(b) to provide support to meet needs which do not meet the eligibility criteria.
74. Subsection (5) applies where a carer's eligible needs might also be met through community care services provided to the carer and assessed under section 12A of the Social Work (Scotland) Act 1968 or services for children and their families provided to the carer under section 22 of the Children (Scotland) Act 1995. If the needs meet the

eligibility criteria, then the duty in subsection (4)(a) applies regardless of whether the carer's needs may also be met separately under the 1968 or 1995 Acts.

75. Subsection (6) sets out that the “responsible local authority” in relation to a carer, means the local authority for the area in which the cared-for person resides.

### ***Section 25 - Provision of support to carers: breaks from caring***

76. Subsection (1) requires a local authority to consider whether any support provided under section 24 should include support which provides a break from caring.
77. Subsection (2) confers a power on the Scottish Ministers to make regulations (subject to the affirmative procedure (see section 42(2)) about the forms of support that would constitute a break from caring. Where the regulations provide for a break from caring to take the form of the provision of care for the cared-for person, they may also make provision about the role of the cared-for person in relation to how that care is provided.
78. Subsection (4) requires that each local authority must have regard to the desirability of breaks from caring being provided on a planned basis.
79. Subsection (5) refers to section 19(2) of the Social Care (Self-directed Support) (Scotland) Act 2013 (promotion of options for support). It provides that the duty on local authorities in that section to promote a variety of support and support providers applies equally in relation to support provided as a break from caring.

### ***Section 26 - Charging for support provided to carers***

80. This provision amends section 87 of the 1968 Act. It allows local authorities to make charges when providing services which support carers under section 24(4) of the Act. Such charges cannot exceed what is practicable for a person to pay if the person satisfies the local authority that the person's means are insufficient to meet the charge that would otherwise be made. Charges are also subject to any regulations made by the Scottish Ministers under section 87(5) of the 1968 Act. Such regulations are subject to the negative procedure. They may modify or adjust charges or require them to be waived altogether.

## **Part 4 – Carer Involvement**

### ***Section 27 - Duty to involve carers in carer services***

81. Subsections (1) and (2) require each local authority and health board to take steps to involve the persons mentioned in subsection (3) in carer services.
82. Subsection (3) defines those persons as carers in the area of the local authority or health board, and such persons and bodies representatives of carers as the local authority or health board considers appropriate.
83. Subsection (4) defines what is meant by “carer services” provided by the local authority or health board. It covers all services provided by the local authority or health board to carers (in their role as such) and cared-for persons (in relation to care which they receive).
84. Subsection (5) makes two exceptions. Subsection (4) does not cover services set out in a children's services plan under the Children and Young People (Scotland) Act 2014, provided that consultation with the same persons has been carried out in connection with that plan. Nor does it cover services which are provided in pursuance of functions included in an integration scheme under the Public Bodies (Joint Working) (Scotland) Act 2014. That Act places other obligations on integration authorities about carrying out such functions which include obligations to involve carers and organisations representing carers.

85. Subsection (6) sets out what amounts to “involvement” in relation to carer services.

***Section 28 – Carer involvement in hospital discharge of cared-for persons***

86. Subsection (1) requires that health boards must involve any carer in the planning of discharge from hospital of a cared-for person.
87. Subsection (2) sets out how each health board must fulfil the duty in subsection (1). It requires the health board to take appropriate steps to inform the carer of the intention to discharge the cared-for person and to invite the carer to give views about the discharge. The health board must also take account, so far as is reasonable and practicable to do so, of the views of the carer during the discharge process.
88. Subsection (3) sets out that this section applies only where a health board can identify without delay that a person is a carer of the cared-for person and where it appears to the health board that the cared-for person is likely to require care following discharge from hospital.
89. Subsection (4) defines what is meant by a “health board” for the purposes of this section. This is an area health board or, in the case of the state hospital, the State Hospitals Boards for Scotland.
90. Subsection (5) describes the types of hospitals that are referred to as part of subsection (4). This is a health service hospital or any other hospital where a person receives accommodation or services under arrangements made by a health board.

***Section 29 - Involvement of, assistance to and collaboration with carers***

91. This section requires a local authority to have regard to the general principles in section 1 of the Social Care (Self-directed Support) (Scotland) Act 2013 when exercising functions under Part 2 (adult carer support plans and young carer statements) and Part 3 (provision of support to carers) of this Act.
92. These general principles are that the carer must have as much involvement as he or she wishes in relation to the preparation of the adult carer support plan or young carer statement and the provision of support under section 24 of the Act, and that the local authority must collaborate with the carer in respect of those matters. The carer must also be provided with any assistance reasonably required in order to be able to express views or make an informed choice about options for self-directed support.

***Section 30 - Care assessments: duty to take account of care and views of carers***

93. This section makes consequential amendments to section 12A of the 1968 Act and section 23 of the 1995 Act, which concern assessments of people in need of community care services and of children affected by disability respectively. The amendments require the authority preparing such assessments to take into account the care which is provided, or to be provided by any carer. Where the carer has an adult carer support plan or young carer statement, that care is to be identified by reference to the information contained in the plan or statement.
94. This section also inserts a new subsection (1B) into section 12A of the 1968 Act and a new subsection (6) into section 23 of the 1995 Act. Those new subsections require the local authority to take into account the views of the carer, so far as it is reasonable and practicable to do so, when determining the needs of the person being assessed and deciding what services to provide and how to provide them. These new subsections replace narrower obligations about taking a carer’s views into account in the current assessment provisions.

## **Part 5 – Local Carer Strategies**

### ***Section 31 - Duty to prepare local carer strategy***

95. Subsection (1) provides that each local authority and relevant health board must jointly prepare a local carer strategy.
96. Subsection (2) sets out what the strategy is and what information it must contain. This must include—
- plans for identifying relevant carers and obtaining information about the care they provide or intend to provide to cared-for persons in the local authority’s area;
  - an assessment of the demand for support to carers in the authority’s area;
  - the support which is available to carers in the authority’s area, whether from the authority itself, the relevant health board or any other persons or bodies that the local authority and relevant health board consider appropriate;
  - an assessment of the extent to which demand for support to relevant carers is currently not being met;
  - plans for supporting relevant carers;
  - plans for helping relevant carers put arrangements in place for the provision of care to cared-for persons in emergencies;
  - an assessment of the extent to which plans for supporting relevant carers may reduce any impact of caring in relevant carers’ health and wellbeing;
  - the intended timescales for preparing adult carer support plans and young carers statements; and
  - any other information as the authority and relevant health board consider appropriate.
97. Subsection (3) requires that a local carer strategy must contain information relating to the particular needs and circumstances of young carers in its area.
98. Subsection (4) requires that, before preparing its local carer strategy, a local authority and relevant health board must jointly consult with such persons and bodies representatives of carers they consider appropriate. They must also take such steps as they consider appropriate to involve carers. Subsection (5) defines what is meant by “relevant carers”: these are carers who reside in the authority’s area (regardless of where they provide care), and carers who live outwith the authority’s area but provide care to a cared-for person in the area.
99. Subsection (6) defines what is meant by “relevant health board”.

### ***Section 32 - Preparation of local carer strategy***

100. This section sets out a non-exhaustive list of factors to which the local authority and relevant health board must have regard in preparing their local carer strategy. For instance, this includes the aims set out in section 9(2) of the 2014 Act. They are—
- (a) that children’s services are provided in a way which—
- best safeguards, supports and promotes the wellbeing of children in the area concerned,
  - ensures that any action to meet needs is taken at the earliest appropriate time and that, where appropriate, action is taken to prevent needs arising,
  - is most integrated from the point of view of recipients, and



- constitutes the best use of available resources, and
  - (b) that services are provided in a way which, so far as consistent with the objects and proper delivery of the service concerned, safeguards, supports and promotes the wellbeing of children in the area concerned.
101. The list of factors also includes, amongst other things, the national health and wellbeing outcomes that are prescribed under section 5 of the Public Bodies (Joint Working) (Scotland) Act 2014.

### ***Section 33 - Publication and review of local carer strategy***

102. Subsection (1) requires each local authority and relevant health board to jointly publish the local carer strategy.
103. Subsection (2) sets the date by which the first local carer strategy must be published. This is the date by which the integration authority relevant to the local authority in question must publish its next strategic plan under the Public Bodies (Joint Working) (Scotland) Act 2014. The timing for the publication of the strategic plans under that Act is determined by reference to the date (the “integration start day”) on which the health and social care integration arrangements take effect: this date has been prescribed by the Public Bodies (Joint Working) (Prescribed Days) (Scotland) Regulations 2014<sup>1</sup>.
104. Subsection (3) requires the local authority and relevant health board jointly to review their local carer strategy at least every three years. By virtue of subsection (5), the same obligations to consult and involve carers set out in section 31(4) also apply when the local authority and relevant health board reviews their strategy. Following a review, subsection (6) provides that the local authority and relevant health board may decide to prepare a revised strategy or to publish a statement to the effect that they are not revising the strategy. Where the local authority and relevant health board prepare a revised strategy, subsection (7) requires them to take into account the factors specified in section 32 and to publish the revised strategy.

## **Part 6 – Information and Advice for Carers**

### **Information and advice service**

#### ***Section 34 - Information and advice service for carers***

105. Subsection (1) provides that each local authority must establish and maintain, or ensure the establishment and maintenance of an information and advice service for relevant carers in its area.
106. Subsection (2)(a) to (g) sets out in general terms the sort of information and advice that the service must provide.
107. Subsection (3) provides that the information and advice must be provided in a manner that it is accessible to, and proportionate to the needs of, the persons to whom it is provided.
108. Subsection (4) requires that, in providing the information and advice set out in subsection (2), each local authority must identify information and advice that is likely to be of particular relevance to persons who have one or more protected characteristics (within the meaning of section 149(7) of the Equality Act 2010). These protected characteristics are age, disability, gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

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<sup>1</sup> (SSI 2014/284).



109. Subsection (5) sets out the meaning of “relevant carers”: these are carers who reside in the authority’s area (regardless of where they provide care), and carers who live outwith the authority’s area but provide care to a cared-for person in the area.

## **Short breaks services statements**

### ***Section 35 - Short breaks services statements***

110. Subsection (1) requires each local authority to prepare and publish a short breaks services statement. Subsection (2) defines what a “short breaks services statement” means: that is a statement setting out the short break services available in Scotland for carers and cared-for persons.
111. Subsection (3) requires the short breaks services statement to be published in an accessible format and that the information contained within it should be proportionate to the needs of persons within the local authority area. This means that the statement does not need to contain information relating to every short break service in Scotland, only those relevant to the persons who live in that area.
112. Subsection (4) gives the Scottish Ministers a regulation-making power to make further provision about the preparation, publication and review of short breaks services statements. Regulations under this subsection will be subject to the negative procedure (see section 42).

## **Carers’ Charter**

### ***Section 36 – Carers’ charter***

113. Subsection (1) requires that the Scottish Ministers must prepare a carers’ charter. Subsection (2) defines what a carers’ charter is. It must set out the rights of carers as provided for in or under the Act, but may also include such other information as the Scottish Ministers consider appropriate (see subsection (4)). For example, this might include rights under other legislation.
114. Subsection (3) makes clear that the charter is not to give rise to new rights or alter any existing rights.
115. Subsection (5) provides that the Scottish Ministers may from time to time revise the charter.
116. Subsection (6) requires that the Scottish Ministers must consult such persons and bodies representatives of carers, consult other persons as the Scottish Ministers consider appropriate and take such steps as they consider appropriate to involve carers before preparing or revising the carers’ charter. This section also states that the Scottish Ministers are required to lay the charter or revised charter before the Scottish Parliament and publish the charter or revised charter in the manner they consider appropriate.

## **Part 7 – General Provision**

### **Guidance and directions**

#### ***Section 37 - Guidance and directions to local authorities***

117. This section amends section 5 of the 1968 Act so that the Scottish Ministers may issue guidance or directions to local authorities about the exercise of functions under this Act. Guidance and directions about the exercise of functions under the Act will be issued in accordance with the procedures as laid out in section 5 of the 1968 Act.
118. Subsection (3) adds the Act to the list of enactments in section 5(1B). This has a number of consequences. First, the Scottish Ministers may issue directions to local authorities under section 5(1A) of the 1968 Act about the manner in which they are to exercise their

functions under the Act. Local authorities are required to comply with such directions. Adding the Act to this list also brings functions under the Act within the scope of social work complaints procedures. The power of the Scottish Ministers to cause inquiries to be held under section 6A of the 1968 Act and the power of a local authority to cause inquiries to be held under section 6B of the 1968 Act are also extended so that they cover inquiries into the functions under the Act.

### ***Section 38 – Guidance and directions to health boards and directing authorities***

119. This section provides that each health board and each directing authority must have regard to any guidance issued by the Scottish Ministers about the exercise of functions conferred by this Act. It also provides that the Scottish Ministers may issue directions to health boards and directing authorities, either individually or collectively, about the exercise of functions conferred by this Act. Each health board and directing authority must comply with any direction issued to it under this section.

### **Assistance to and by voluntary organisations etc.**

#### ***Section 39 - Financial and other assistance to voluntary organisations etc.***

120. This section amends section 10 of the 1968 Act, to allow grants and loans to be made to voluntary organisations in connection with things they do which assist local authorities in exercising their functions under this Act. The effect of the amendment is also that local authorities will be able to provide non-financial assistance to voluntary organisations, such as allowing them the use of premises.

#### ***Section 40 - Assistance by voluntary organisations etc.***

121. This section amends section 4 of the 1968 Act to ensure Parts 2 to 6 of this Act are considered as part of provisions relating to the performance of functions by local authorities for the purposes of that section. This will then allow local authorities to make arrangements with voluntary organisations and other bodies so that they can provide assistance to local authorities exercising functions under the Act.

### **Part 8 – Final Provisions**

#### ***Section 41 - Interpretation***

122. This section defines terms that are used frequently in the Act. For example “1968 Act” means the Social Work (Scotland) Act 1968; “1995 Act” means the Children (Scotland) Act 1995; “2014 Act” means the Children and Young People (Scotland) Act 2014.
123. Subsection (2) defines support provided by a responsible local authority as including support that the authority secures from another service provider.

#### ***Section 42 - Regulations***

124. Subsection (1) provides that any power of the Scottish Ministers to make regulations under this Act includes power to make different provision for different purposes and to make incidental, supplementary, consequential, transitional, transitory or saving provision.
125. Subsection (2) provides that regulations under sections 1(3), 7(1), 8(1), 13, 14(1), 21(4), 23(1) and 25(2) are subject to the affirmative procedure. Regulations under section 43(1) which add to, replace or omit the text of an Act are also subject to that procedure.
126. Subsection (3) provides that all other regulations under this Act are subject to the negative procedure. But subsection (3) does not apply to commencement regulations

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under section 45 (see subsection (4)). Such commencement regulations are subject to no parliamentary procedure.

***Section 43 - Ancillary provision***

127. This section gives the Scottish Ministers a freestanding regulation-making power to make incidental, supplementary, consequential, transitional, transitory or saving provision that they consider necessary or expedient for the purposes of or in connection with the Act. Such regulations may modify any enactment (including in the Act itself). Regulations under this section which amend the text of primary legislation will be subject to the affirmative procedure (see section 42(2)(i)). Otherwise they will be subject to the negative procedure (see section 42(3)).

***Section 44 - Consequential modifications***

128. This section introduces the schedule, which contains amendments (including repeals) of other legislation that are consequential on the provisions of this Act.

***Section 45 - Commencement***

129. Subsection (1) provides that this section and sections 41 to 43 and 46 come into force on the day after Royal Assent. The remainder of the Act comes into force on the day or days appointed by the Scottish Ministers in regulations made under subsection (2). Subsection (4) provides that commencement regulations may also include transitional, transitory or saving provision. Such regulations will be subject to no parliamentary procedure, as is normal for subordinate legislation commencing Acts of the Scottish Parliament (see section 42(4)).

***Section 46 - Short title***

130. This section provides that the Act is to be referred to as the Carers (Scotland) Act -2016.

***Schedule – Consequential Modifications***

131. The schedule to the Act makes consequential amendments and repeals of other enactments to take account of the provisions of the Act. The enactments affected are—
- the Social Work (Scotland) Act 1968;
  - the Children (Scotland) Act 1995;
  - the Community Care and Health (Scotland) Act 2002;
  - the Public Services Reform (Scotland) Act 2010;
  - the Social Care (Self-directed Support) (Scotland) Act 2013; and
  - the Public Bodies (Joint Working) (Scotland) Act 2014.
132. Sections 12AA and 12AB of the Social Work (Scotland) Act 1968, and sections 24 and 24A of the Children (Scotland) Act 1995, and subsequent revisions under sections 9(2), 11 and 12 of the Community Care and Health (Scotland) Act 2002 are repealed. The functions covered by those sections, relating to the assessment of adult carers and young carers needs, are replaced by the provisions contained within Part 2 of the Act (adult carer support plans and young carer statements).
133. The amendment to schedule 13 of the Public Services Reform (Scotland) Act 2010 has the effect of making local authority functions under the Act “social work services functions” for the purposes of Part 5 of the 2010 Act. That change allows the Care Inspectorate to carry out inspections of services provided or procured by local authorities in order to discharge the functions.

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134. The amendments to section 7 of the Social Care (Self-directed Support) (Scotland) Act 2013 made by paragraph 5 of the schedule have the effect that any support provided under section 24 of the Act may be provided through whichever of the options for self-directed support is chosen by a carer.
135. The amendments to the Public Bodies (Joint Working) (Scotland) Act 2014 have the effect that the functions of preparing an adult carer support plan or a young carer statement, providing support to carers, preparing local carer strategies, providing an information and advice service and publishing short breaks statements are capable of being delegated under an integration scheme under that Act.

## PARLIAMENTARY HISTORY

136. The following table sets out, for each Stage of the proceedings in the Scottish Parliament on the Bill for this Act, the dates on which the proceedings of that Stage took place and the references to the official report of those proceedings. The table also sets out the relevant publications for each Stage of the Bill for this Act.

<i>Proceedings and Reports</i>	<i>References</i>
<b><i>Introduction</i></b>	
9th March 2015 – Bill as introduced	SP Bill 61 Session 4 (2015) <a href="#">Carers (Scotland) Bill as introduced</a>
9th March 2015 – Research briefings on Bill	SB 15-24 Session 4 (2015) <a href="#">SPICe Briefing Carers (Scotland) Bill</a>
<b><i>Stage 1</i></b>	
<b><i>(a) Lead Committee – Health and Sport Committee</i></b>	
10th Meeting, 24th March 2015	Col 1 <a href="#">Official Report 24th March 2015</a>
14th Meeting, 5th May 2015	Cols 9 to 36 <a href="#">Official Report 5th May 2015</a>
15th Meeting, 12th May 2015 (evidence)	Cols 4 to 35 <a href="#">Official Report 12th May 2015</a>
18th Meeting, 2nd June 2015	Cols 27 to 33 <a href="#">Official Report 2nd June 2015</a>
21st Meeting, 23rd June 2015 (evidence)	Cols 4 to 28 <a href="#">Official Report 23rd June 2015</a>
24th Meeting, 15th September 2015 (in private)	
<b><i>(b) Consideration by other Committees</i></b>	
10th Meeting, 18th March 2015 (Finance) (in private)	
14th Meeting, 28th April 2015 (Delegated Powers and Law Reform) (in private)	
14th Meeting, 13th May 2015 (Finance)	Cols 46 to 70 <a href="#">Official Report 13th May 2015</a>
17th Meeting, 3rd June 2015 (Finance)	Cols 43 to 60 <a href="#">Official Report 3rd June 2015</a>

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<b><i>Proceedings and Reports</i></b>	<b><i>References</i></b>
18th Meeting, 17th June 2015 (Finance) (in private)	
24th Meeting, 30th September 2015 (Finance)	Cols 36 to 44 <a href="#">Official Report 30th September 2015</a>
25th Meeting, 7th October 2015 (Finance) (in private)	
<b><i>Stage 2</i></b>	
1st December 2015 – Bill as amended	SP Bill 61A Session 4 (2015) <a href="#">Carers (Scotland) Bill as amended at Stage 2</a>
<b><i>(a) Lead Committee – Health and Sport Committee</i></b>	
33rd Meeting, 1st December 2015	Cols 2 to 14 <a href="#">Official Report 1st December 2015</a>
<b><i>Stage 3</i></b>	
<b><i>(a) Meeting of the Parliament</i></b>	Cols 35 to 105 <a href="#">Official Report 4th February 2016</a>
4th February 2016 – Bill (as passed)	SP Bill 61B Session 4 (2016) <a href="#">Carers (Scotland) Bill as passed</a>
<b><i>Carers (Scotland) Act 2016</i></b>	
9 <sup>th</sup> March 2016 – Act (Royal Assent)	<a href="#">Carers (Scotland) Act 2016 (asp 9)</a>