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SCOTTISH STATUTORY INSTRUMENTS

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**2018 No. 34**

**SOCIAL CARE**

**The Carers (Scotland) Act 2016  
(Transitional Provisions) Regulations 2018**

<i>Made</i>	- - - -	<i>31st January 2018</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>2nd February 2018</i>
<i>Coming into force</i>	- -	<i>1st April 2018</i>

The Scottish Ministers make the following Regulations in exercise of the power conferred by section 43(1) of the Carers (Scotland) Act 2016<sup>(1)</sup> and all other powers enabling them to do so.

**Citation, commencement and interpretation**

**1.**—(1) These Regulations may be cited as the Carers (Scotland) Act 2016 (Transitional Provisions) Regulations 2018 and come into force on 1st April 2018.

(2) In these Regulations—

“the Act” means the Carers (Scotland) Act 2016;

“the 2013 Act” means the Social Care (Self-directed Support) (Scotland) Act 2013<sup>(2)</sup>;

“the 1995 Act” means the Children (Scotland) Act 1995<sup>(3)</sup>;

“ACSP” means an adult carer support plan prepared under Part 2 of the Act;

“the appointed day” is 1st April 2018;

“carer’s assessment” means an assessment of ability to provide care for an adult made under section 12AA of the Social work (Scotland) Act 1968<sup>(4)</sup> or an assessment of ability to provide care for a disabled child made under section 24 of the 1995 Act<sup>(5)</sup>;

“services” means services provided under section 22 of the 1995 Act<sup>(6)</sup> where a child is in need because of the care which the child provides to another person;

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(1) [2016 asp 9](#).

(2) [2013 asp 1](#).

(3) [1995 c.36](#).

(4) [1968 c.49](#). Section 12AA was inserted by the Community Care and Health (Scotland) Act 2002 ([asp 5](#)) (“the 2002 Act”), section 9(2).

(5) Section 24 was amended by the 2002 Act, section 11.

(6) There are amendments to section 22 which are not relevant to this instrument.

“support”, other than in regulations 10 and 12, means support provided under section 3(4) of the 2013 Act; and

“YCS” means a young carer statement prepared under Part 2 of the Act.

### **Transitional provision in respect of persons in receipt of services or support**

2. Section 6(2) of the Act (duty to offer an ACSP) and section 12(2) of the Act (duty to offer a YCS) do not apply in the case of a person who, immediately before the appointed day, is in receipt of support or services.

3. A person who, immediately before the appointed day, is in receipt of support must continue to be provided with that support despite the repeal of section 3(4) of the 2013 Act until—

- (a) the person is provided with an ACSP;
- (b) the offer of an ACSP is rejected; or
- (c) the person no longer has needs for support.

4. A person who, immediately before the appointed day is in receipt of services must continue to be provided with those services until—

- (a) the person is provided with a YCS or ACSP;
- (b) the offer of a YCS or ACSP is rejected; or
- (c) the person no longer has needs for services.

5. A local authority providing support or services to a carer by virtue of regulation 3 or 4 must ensure arrangements are in place to keep that support or those services under review.

6. Where a local authority which is the responsible local authority in relation to a carer is providing support to that carer by virtue of regulation 3, the responsible local authority must, subject to regulation 11, offer that carer an ACSP within a period of 3 years beginning with the appointed day.

7. Where a local authority which is the responsible authority in relation to a carer is providing services to that carer by virtue of regulation 4, the responsible authority must, subject to regulation 12, offer that carer a YCS within a period of one year beginning with the appointed day.

8. Where a local authority which is not the responsible local authority is providing support to a carer by virtue of regulation 3, it must notify the responsible local authority in relation to that carer of this fact and the responsible local authority must, subject to regulation 11, offer that carer an ACSP within a period of 3 years beginning with the appointed day.

9. Where a local authority which is not the responsible authority or the responsible local authority in relation to a carer is providing services to that carer by virtue of regulation 4, it must notify the responsible authority and, where appropriate, the responsible local authority in relation to that carer of this fact and, subject to regulation 12, within a period of one year beginning with the appointed day—

- (a) the responsible authority must offer that carer, if they are a young carer, a YCS; or
- (b) the responsible local authority must offer that carer, if they are an adult carer, an ACSP.

10.—(1) Where a person is in receipt of services by virtue of regulation 4 from a local authority which is not the responsible authority in relation to that carer but is the responsible local authority for providing support to that carer—

- (a) the local authority providing those services must notify the responsible authority in relation to that carer that it is providing those services; and
- (b) subject to regulation 12, within a period of one year beginning with the appointed day—

- (i) the responsible authority must offer that carer, if they are a young carer, a YCS; or
- (ii) the responsible local authority must offer that carer, if they are an adult carer, an ACSP.

(2) In this regulation, “support” means support provided under section 24 of the Act.

**11.** Where a local authority is providing support to a carer by virtue of regulation 3 and, in consequence of a review of that support under regulation 5, it appears to the local authority that there has been a change in the circumstances of the carer and/or the cared for person which has had or could have a material impact on the care provided by the carer—

- (a) where that local authority is the responsible local authority in relation to that carer and the carer is an adult carer, the responsible local authority must offer that carer an ACSP; or
- (b) where that local authority is not the responsible local authority in relation to that carer it must notify the responsible local authority of the change in circumstances and, provided that carer is an adult carer, the responsible local authority must offer that carer an ACSP.

**12.—(1)** Where a local authority is providing services to a carer by virtue of regulation 4 and, in consequence of a review of those services under regulation 5, it appears to the local authority that there has been a change in the carer and/or cared for person’s circumstances which has had or could have a material impact on the care provided by the carer—

- (a) where that local authority is—
  - (i) the responsible authority in relation to the carer and the carer is a young carer, the responsible authority must offer that young carer a YCS; or
  - (ii) the responsible local authority in relation to the carer and the carer is an adult carer, the responsible local authority must offer that adult carer an ACSP;
- (b) where that local authority is not the responsible authority or responsible local authority in relation to that carer it must notify the responsible authority and, where appropriate, the responsible local authority of the fact that it is providing services to that carer by virtue of regulation 4 and the change in circumstances and—
  - (i) where the carer is a young carer, the responsible authority must offer that young carer a YCS; or
  - (ii) where the carer is an adult carer, the responsible local authority must offer that adult carer an ACSP.
- (c) where that local authority is not the responsible authority in relation to that carer but is the responsible local authority for providing support to that carer, the local authority providing those services must notify the responsible authority in relation to that carer of the fact that it is providing those services and the change in circumstances and—
  - (i) where the carer is a young carer, the responsible authority must offer that young carer a YCS; or
  - (ii) where the carer is an adult carer, the responsible local authority must offer that adult carer an ACSP.

(2) In this regulation, “support” means support provided under section 24 of the Act.

**13.** The offer of an ACSP under these Regulations is deemed to be an offer under section 6(2) of the Act.

**14.** The offer of a YCS under these Regulations is deemed to be an offer under section 12(2) of the Act.

**15.—**(1) A local authority must waive any payment which it would otherwise be entitled to charge under section 87(1) of the Social Work (Scotland) Act 1968 in the circumstances specified in paragraph (2).

(2) The circumstances are that the services are provided under—

- (a) section 3(4) of the 2013 Act (support for adult carers); or
- (b) section 22 of the 1995 Act (promotion of welfare of children in need).

**16.—**(1) A local authority may not—

- (a) assess a direct payment user's ability to contribute to the cost of securing support or services to which a direct payment relates; or
- (b) require a direct payment user to contribute to a direct payment where the direct payment relates to support or services.

(2) In this regulation—

“direct payment” has the meaning given by section 4(2)(7) of the 2013 Act; and

“direct payment user” has the meaning given by regulation 2(2) of the Self-directed Support (Direct Payments) (Scotland) Regulations 2014(8).

St Andrew's House,  
Edinburgh  
31st January 2018

*AILEEN CAMPBELL*  
Authorised to sign by the Scottish Ministers

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(7) Section 4(2) includes a definition of “supported person” and “support” which is also relevant.

(8) [S.S.I. 2014/25](#).

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make transitional provision in relation to support provided to a person pursuant to a carer's assessment under section 12AA of the Social Work (Scotland) Act 1968 as a result of the repeal of this section and of section 3 of the Social Care (Self-directed) Support (Scotland) Act 2013 ("the 2013 Act") by the Carers (Scotland) Act 2016 ("the Act"). They also make transitional provision in relation to services under section 22 of the Children (Scotland) Act 1995 ("the 1995 Act") where a child has been assessed as in need because of the care that child provides to another person, as a result of the new framework for providing support to young carers under the Act.

Regulation 2 disapplies the duty on a responsible local authority to offer an ACSP and the duty on a responsible authority to offer a YCS to a person who, immediately before the appointed day, is in receipt of support or services pursuant to a carer's assessment.

Regulation 3 provides that in relation to a person who, immediately before the appointed day, is in receipt of support pursuant to a carer's assessment, that support must continue to be provided to the person despite the repeal of section 3(4) of the 2013 Act until they are provided with an ACSP, the offer of an ACSP is rejected, or the person no longer needs support.

Regulation 4 provides that in relation to a person who, on the appointed day is in receipt of services pursuant to a carer's assessment, those services must continue to be provided to the person until they are provided either with a YCS or an ACSP, the offer of a YCS or ACSP is rejected, or the person is no longer in need of services.

Regulation 5 provides that support or services that continue to be provided to a carer pursuant to a carer's assessment after the appointed day must be kept under review.

Regulation 6 provides that where a local authority which is the responsible local authority in relation to a carer is providing support to that carer by virtue of regulation 3, it must offer that carer an ACSP within 3 years of the appointed day.

Regulation 7 provides that where a local authority which is the responsible authority in relation to a carer is providing services to that carer by virtue of regulation 4, it must offer that carer a YCS within one year of the appointed day.

Regulation 8 provides that where a local authority which is not the responsible local authority in relation to a carer is providing support to that carer by virtue of regulation 3, it must notify the responsible local authority of this fact and the responsible local authority must, subject to regulation 10, offer the carer an ACSP within 3 years of the Act coming into force.

Regulation 9 provides that where a local authority which is not the responsible authority or the responsible local authority in relation to a carer is providing services to that carer under regulation 4, it must notify the responsible authority and, where appropriate, the responsible local authority of this fact and, subject to regulation 11, either the responsible authority must offer a YCS within one year of the Act coming into force or the responsible local authority must offer that carer an ACSP within one year of the Act coming into force.

Regulation 10 provides that where a person is in receipt of services by virtue of regulation 4 from a local authority which is not the responsible authority in relation to that carer but is the responsible local authority for providing support to that carer, then the local authority providing those services must notify the responsible authority in relation to that carer of the fact that it is providing those services and, within a period of one year beginning with the appointed day, the responsible authority

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must, subject to regulation 12, offer that carer, if they are a young carer, a YCS, or the responsible local authority must, subject to regulation 12, offer that carer, if they are an adult carer, an ACSP.

Regulations 11 and 12 make general transitional provision as to when the duty on a responsible local authority to offer an ACSP applies to an adult carer who, after the appointed day is in receipt of support, and the duty on a responsible authority to offer a YCS applies to a person who, after the appointed day is in receipt of services.

Regulations 13 and 14 provide that the offer of an ACSP or YCS under these Regulations is deemed to be an offer of an ACSP or YCS under section 6(2) or 12(2) of the Act respectively.

Regulation 15 provides that a local authority is not to charge for the support that they continue to provide to a carer under section 3(4) of the 2013 Act or services they provide to a child under section 22 of the 1995 Act after the Act comes into force.

Regulation 16 provides that a local authority may not carry out a means test or require a direct payment user to make a contribution where the direct payment relates to support under section 3(4) of the 2013 Act or services under section 22 of the 1995 Act.