

CARERS (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON PARTS

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;
 - 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;

*These notes relate to the Carers (Scotland) Act 2016
(asp 9) which received Royal Assent on 9 March 2016*

- 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 youngcarer.
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.