

CARERS (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON PARTS

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.