

CARERS (SCOTLAND) ACT 2016

EXPLANATORY NOTES

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).