

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.