

POLICY NOTE

THE CARERS (SCOTLAND) ACT 2016 (ADULT CARERS AND YOUNG CARERS OF TERMINALLY ILL PERSONS: TIMESCALES FOR ADULT CARER SUPPORT PLANS AND YOUNG CARER STATEMENTS ETC.) REGULATIONS 2021

SSI 2021/XXX

1. The above instrument was made in exercise of the powers conferred by section sections 7, 8, 13 and 14 of the Carers (Scotland) Act 2016 (“the Act”). The instrument is subject to affirmative procedure.

These Regulations prescribe timescales for the preparation of adult carer support plans and young carer statements for unpaid carers of people who are terminally ill.

Policy Objectives

2. In line with the Scottish Government’s consultation, the overall outcome these Regulations seek to achieve, is that ‘carers of a terminally ill person receive a plan or statement and associated support in an efficient and timely manner’. They are also designed to take account of the following principles:

- The time limits set should not compromise the quality and personalisation of support for carers of people with a terminal illness.
- The time limits set for this group of carers should take into account the impact this may have on prioritisation of other urgent cases.
- The legislation should not prevent plans or statements being completed quicker, in line with existing good practice.
- It should also avoid unnecessary bureaucracy for both professionals and carers.

3. The consensus following consultation had been that timescales for preparation should be triggered either (a) when an authority receives information to indicate that a carer is caring for a person with a terminal illness; or (b) when such a carer requests a plan or statement.

4. The duty on a responsible local authority and a responsible authority to prepare a plan or a statement arises under sections 6 and 12 once a such a carer has requested, or accepted an offer of, a plan or statement. Accordingly, the Regulations set out the timescales within which a responsible local authority or a responsible authority must prepare such a plan or statement from the point this duty arises. To achieve the overall policy, alongside these Regulations, Ministers also intend to issue directions about the timescales for offering plans or statements to carers of people with terminal illness. This will protect vulnerable carers by reducing scope for delay in offering plans or statements.

5. The Regulations amend the Carers (Scotland) Act 2016 (Adult Carers and Young Carers: Identification of Outcomes and Needs for Support) Regulations 2018 (“the 2018 Regulations”) to ensure that when a responsible local authority has its first conversation with an adult carer of a cared-for person who is terminally ill (“relevant adult carer”) or a responsible authority has a first conversation with a young carer of a cared for person who is terminally ill (“relevant young carer”), any immediate or urgent personal outcomes and needs for support are identified.

6. The Regulations provide that a responsible local authority must hold a first conversation with a relevant adult carer (“substantive conversation”), within 5 working days of the date on which the relevant adult carer requests, or accepts the offer of, a plan (the “notification date”). It is recognised that not all relevant adult carers may want to have a substantive conversation within this five day working period so flexibility is built into the Regulations so a relevant adult carer can request that a substantive conversation is held on a more suitable date. The Regulations provide for the same timescales in relation to a responsible authority holding a first conversation with a relevant young carer (“substantive young carer conversation”). Holding these conversations within 5 working days, or on a different date which a relevant adult or young carer requests, should itself provide support and reassurance to carers at an early opportunity and enable urgent issues to be identified, prioritised and discussed. This timescale has been selected in line with the overall outcome and principles set out above.

7. Where a substantive conversation takes place within 5 working days of the notification date, the Regulations require that the responsible local authority must prepare a plan which contains key information (“light touch plan”) within 10 working days of the notification date. The Regulations provide for the same timescales in relation to a responsible authority preparing a statement, provided a substantive young carer conversation takes place within 5 working days of the date on which a relevant young carer requests, or accepts an offer of, a statement (“relevant date”). This 10 day working timescale was selected to help ensure that any urgent needs can be addressed quickly, in line with the overall outcome and principles set out above.

8. Where a substantive conversation does not take place within 5 working days as a result of the carer requesting a different date, a responsible local authority must prepare a light touch plan within 10 “qualifying working days” of the notification date. The Regulations make reciprocal provision in relation to preparation of a statement for a relevant young carer. Once a carer requests a different date, the Regulations pause the time in which 10 working days for preparing the plan or statement is calculated. Any working days from the day on which this request is made up to the day on which the substantive conversation is held are not counted as working days. This is because the information which is needed to prepare the plan or statement is generally obtained from the first conversation with the carer.

9. The light touch plan is intended to focus on immediate or urgent personal outcomes and needs. The Regulations therefore require a responsible local authority and the carer to agree when the plan should be revised to include the rest of the information which should be contained in a plan under section 9 of the 2016 Act. This is to ensure that carers know what to expect from the finalised plan or statement and when those issues will be addressed.

Consultation

10. The Scottish Government consulted on approaches to these Regulations from January to April 2019, seeking feedback on:

- the overall outcome the Regulations should seek to support and the principles they should follow;
- when the timescales in the Regulations should be triggered;
- time limits for holding the first substantive conversation with the carer to start preparing an adult carer support plan or young carer statement; and
- time limits for completing an adult carer support plan or young carer statement.

11. The development of the consultation document, and subsequent policy decisions were both informed by discussions with a group of representatives from Palliative Care Scotland, Marie Curie, Macmillan Cancer Support, Association of Palliative Care Social Workers, Children's Hospices Across Scotland, Carers Trust Scotland, carer centres, local authority/HSCP social work staff and COSLA. The Carers Act Implementation Steering Group and the network of statutory sector Carer Leads have also been kept informed.

12. The consultation analysis report is published on the Scottish Government website¹.

Impact Assessments

13. The Equality Impact Assessment and Children's Rights and Wellbeing Impact Assessment for the Carers Act have been reviewed and updated in January 2021 to take account of these Regulations and are attached. There are no additional equality, children's rights or data protection issues arising from these Regulations.

Financial Effects

14. The Business and Regulatory Impact Assessment (BRIA) for the Act has also been reviewed and updated in January 2021 to take account of these Regulations and is attached. There are no additional financial effects on the Scottish Government, local government or on business as a result of these Regulations.

Scottish Government
Mental Health and Social Care Directorate

January 2021

¹ Timescales for adult carer support plans and young carer statements: consultation analysis, Scottish Government, 2019: <https://www.gov.scot/publications/analysis-consultation-timescales-adult-carer-support-plans-young-carer-statements-carers-terminally-ill-persons/>