

Draft Carers (Waiving of Charges for Support) (Scotland) Regulations 2014

A public consultation on draft regulations to accompany the Social Care (Self-directed Support) (Scotland) Act 2013

This document contains draft Regulations to accompany the Social Care (Self-directed Support) (Scotland) Act 2013.

The draft Regulations are published for consultation. The Scottish Government would like to hear from carers, service users, local authorities, Health Boards, the National Carers Organisations, other Third Sector organisations and the general public.

Following the consultation the Regulations may be amended. They will then be introduced to the Scottish Parliament.

Alongside the draft Regulations, the Scottish Government invites views on draft Statutory Guidance which will eventually accompany the Regulations and the Self-directed Support Act. Consultees are encouraged to provide their views on both the draft Regulations and the draft Guidance, which are being considered as part of one consultation.

Ministers have the power to make Regulations under section 87(5) of the Social Work (Scotland) Act 1968 to require local authorities to waive charges for the support provided to carers under section 3 of the Social Care (Self-directed) Support Scotland Act 2013. The Minister for Public Health, Michael Matheson MSP, made clear during the then Bill's Parliamentary process that Scottish Ministers would make the Regulations so that carers would not have to pay for support provided directly to them under the 2013 Act.

The draft Guidance and Regulations contain **Consultation Questions** throughout the documents.

Please submit your replies to the Consultation by 10th July 2013 to:

Alun Ellis
Carers Policy Branch, Adult Care and Support Division
The Scottish Government
Room 2ER
St Andrew's House
Edinburgh
EH1 3DG

Email: alun.ellis@scotland.gsi.gov.uk

Tel: 0131 244 4368

Please note that unless you state otherwise, all responses to this consultation will be made publicly available on the Scottish Government's website (www.scotland.gov.uk).

Draft Carers (Waiving of Charges for Support) (Scotland) Regulations 2014

A public consultation on draft guidance and regulations to accompany the Social Care (Self-directed Support) (Scotland) Act 2013

Draft Guidance

Consultation Paper

Introduction

1. Under section 3 of the Social Care (Self-directed Support) (Scotland) Act 2013 (“the 2013 Act”) local authorities have a power to provide support to carers following an assessment completed under section 12AA of the Social Work (Scotland) Act 1968 (“the 1968 Act”) (carer’s assessments relating to carers of those aged 18 or over) and under section 24 of the Children (Scotland) Act 1995 (“the 1995 Act”) (carer’s assessments relating to carers of those under the age of 18).
2. The local authority must consider the outcome of the assessment and decide if the carer has needs in relation to the care which he or she provides (or intends to provide) to another person. If it is then decided that those needs can be met either fully or partially by support, then the local authority can provide the support to the carer.
3. Where the local authority decides to provide support, the carer will then be given the choice of four options for self-directed support as follows:
 - Option 1: direct payment to the carer;
 - Option 2: the carer directs the available support;
 - Option 3: the local authority arranges support for the carer; or
 - Option 4: “Mix and match” meaning a combination of two or more of the options.
4. Further information on the meaning of these options is set out in the Statutory Guidance on Care and Support. [NB: this Statutory Guidance is being consulted on separately].
5. Section 18 of the 2013 Act brings support to carers within the scope of the rules in the 1968 Act which deal with when local authorities can charge for services they provide. This was done in order to give Ministers the power to make Regulations under section 87(5) of the 1968 Act to require local authorities to waive charges for the support provided to carers under section 3 of the 2013 Act.

Reasons not to charge carers

6. Carers are providers of services who save the health and social care system in Scotland over an estimated £10 billion each year.¹ Moreover, much of the support to carers should be preventative in nature. Providing preventative support helps to avoid more significant costs in the longer term, both in support to carers and in the cost of providing services to service users. There will, for example, be reduced hospital admissions and people will be living in their own homes and communities.²

The Carers (Waiving of Charges for Support) (Scotland) Regulations 2014

7. The Regulations are attached at **Annex A**. The schedule sets out various types of service³ with circumstances in which the local authority is required to waive the charge and the extent to which the charge is to be waived.

8. Local authorities may charge individuals for other services not listed in the Regulations, and do this in accordance with COSLA guidance. However, local authorities are not permitted to charge a service user any more than it appears practicable for him or her to pay.

¹University of Leeds/Carers UK, Valuing Carers 2011, Calculating the Value of Unpaid Care <http://www.carersuk.org/professionals/resources/research-library/item/2123-valuing-carers-2011>

² Supporting Carers: the Case for Change, PRTC/Crossroads Care, 2011 <http://static.carers.org/files/supporting-carers-the-case-for-change-5728.pdf>

³ On terminology, the Scottish Government is clear that carers in their caring role are not service users but are providers of services who receive support to help them to sustain their caring role. The Regulations, however, refer in the main body to services rather than support for carers. This is because the support which may be provided under section 3 of the 2013 Act is defined as including 'any form of services or assistance which will help the adult to provide, or continue to provide care for the person cared for'. The charging rules in the 1968 Act, under which these Regulations are made, relate to services only. By referring to 'services', these Regulations deal with all forms of support for which local authorities would otherwise be able to make a charge.

9. Within the schedule to the Regulations:

- Line 1 means that adult carers will not pay any charge for the support they receive in their own right as an adult carer;
- Line 2 means that young carers will not pay any charge for the support they receive in their own right as a young carer;
- Line 3 deals with the charges that a local authority might otherwise make where it provides a holiday or short break to a cared-for person. It applies only where the holiday or short break is taken together with the carer, and the carer's holiday or short break is support which a local authority has decided to provide to the carer. It means that when adult carers or young carers of adults have a short break or holiday together with the person or persons they care for, then the local authority may not make any charge relating to the *extra* costs of the short break or holiday incurred because of the particular assessed needs of the cared-for person(s). The remaining costs of the short break or holiday which is provided by the local authority to the cared-for person may be charged for (subject to the rule that local authorities may not charge more than it is practicable for the person to pay). This means that the local authority may make a charge equivalent to the cost that the holiday or short break would have cost if taken by a person without the cared-for person's assessed needs. The cost of the short break or holiday for the carer or young carer herself or himself is waived as set out in Line 1 and Line 2;
- Line 4 means the same as Line 3 except that the cared-for person(s) is a child in need, including a disabled or ill child. In these circumstances, it is very likely that the carer, being an adult, rather than the child would meet the cost of the short break or holiday for the child (except in relation to that part which is exempted from charging);
- Line 5 deals with the charges that a local authority might otherwise make where it provides replacement care when the adult carer or young carer takes a break away from the cared-for person. This applies only when the carer's break is support which the local authority has decided to provide to the carer. The expectation is that, without local authority involvement, another person will provide the replacement care to enable the carer or young carer to have the break away. However, the policy is that in circumstances where there is no other person who will provide the replacement care, the local authority will assesses the individual as requiring replacement care, will provide or arrange the replacement care and will not charge for that replacement care; and
- Line 6 means the same as Line 5 except that the cared-for person is a child in need.

Question 1(a): Is paragraph 9 clear and easy to understand? (please tick)

Question 1(b): Do you agree with the waiving of charging circumstances as set out in paragraph 9? (please tick)

Question 1(c): If you do not agree with the waiving of charging circumstances as set out in paragraph 9, please state your reasons below:

Lines 1 and 2: Examples of support to carers where there will be no charges

10. Under Lines 1 and 2, examples of direct support to carers and young carers where charges will be waived include, but are not limited, to:

- the provision of information and advice, including signposting to other agencies;
- advocacy for carers and young carers;
- emotional support and counselling;
- training for carers and young carers;
- translation and interpretation services;
- support with housework or gardening or other similar activity (see paragraph 11 below);
- cost of taxi fares and driving lessons if special circumstances (see paragraph 12 below); and
- short breaks (see paragraphs 14 to 18 below)

Question 2(a): Are you content with the examples of support to carers and young carers, as set out in paragraph 10, where charges will be waived? (please tick)

Question 2(b): If you are not content, please state your reasons below:

Question 2(c): Are there further examples that you would like to add? (please tick)

Question 2(d): If there are further examples that you would like to include in the list, please state these below and also set out your reasons for suggesting their inclusion.

11. Sometimes local authorities provide direct payments to service users who have carers so that the service users can purchase help with housework and gardening. It is also entirely reasonable to provide this type of support directly to carers so that the carer, for example, has more time to provide personal care to the cared-for person. When the support is provided directly to carers, it will be free of charge.

12. It might be decided following a carer's assessment that the local authority will provide the carer with financial support to help pay for taxi fares. This might be in the following circumstances, for example:

- where the carer who lives in a remote part of Scotland can't rely on the public bus service to take him or her to and from the art class held in the primary school on the other side of the peninsula; or
- where the carer can't drive a car and there is also limited public transfer. The carer uses the taxi to take the cared-for person to hospital appointments.

13. It might similarly be decided following a carer's assessment that it would be helpful for the carer to be able to drive a car and that the local authority will provide support in the form of driving lessons up to an agreed financial limit. The Scottish Government would expect that this type of support, both driving lessons and use of taxis, will be very much the exception, but for very good reasons, rather than the norm.

Question 3(a): Do you agree with the exceptional circumstances set out in paragraphs 12 (with examples) and 13 about support to carers to help pay for driving lessons and taxi fares? (Please tick)

Question 3(b): If you do not agree, please state your reasons below:

Short Breaks (Respite)

14. It could be agreed through the carer's assessment that the carer or young carer will benefit from a short break or breaks away from the person they care for and that the local authority will provide support in that form. In these circumstances the whole cost of the short break or breaks provided or arranged by the local authority and taken by the carer or young carer will be met by the local authority. Examples of short breaks in these circumstances include holidays, invitations to weddings and swimming lessons.

15. Where it is agreed through the carer's assessment that the carer will benefit from, for example, weekly meetings with friends, and that the local authority will provide support in that form, the cost of any transportation involved (including taxi fares in the circumstances set out in paragraph 12 above) would be met by the local authority.

Question 4(a): Do you agree with the waiving of charges as set out in paragraphs 14 and 15 with regard to short breaks? (please tick)

Question 4(b): If you do not agree, please set out your reasons below:

Lines 3 and 4: Breaks or holidays together

16. Where the short break to be provided by the local authority is a holiday for the carer or young carer and cared-for person(s) together the local authority would meet the full cost of the holiday for the carer or young carer (Lines 1 and 2). Moreover, the additional costs of the holiday to enable the holiday to take place would be met by the local authority. The additional costs would include, for example, the cost of specialist equipment, agency care input, a larger more accessible room and specialist transport. Other than meeting the additional costs of the holiday, the local authority would be entitled to charge for the costs of the holiday for the cared-for person(s) in accordance with the normal guidance, irrespective of whether the cared-for person(s) is an adult or child. This is subject to the general rule in section 87(1A) of the 1968 Act that a local authority may not charge a service user any more than it appears practicable for him or her to pay.

Question 5(a): Do you agree with the position set out in paragraph 16 that when the carer and cared-for person take a break together, then as well as waiving the cost of the break for the carer, the additional costs of the break to enable the break to take place will also be met by the local authority? (please tick)

Question 5(b): If you do not agree, please state your reasons below:

Lines 5 and 6: Replacement Care

17. In order for carers or young carers to have a break away from their caring role without the cared-for person, then replacement care is often required. This replacement care enables the cared-for person to remain at home without the carer or young carer. In such circumstances, the expectation is that the replacement care will normally be provided by friends, relatives or neighbours.

18. Only where other people such as friends, relatives, neighbours or indeed, volunteers are not available to provide replacement care free of charge would the Scottish Government expect local authorities to decide to provide or commission replacement care. In those circumstances, the local authority must waive the whole of the charge. The circumstances where the local authority would step in are very likely to include those of **social isolation** where there is no one known to the carer, young carer or cared-for person. Some cared-for persons would not in any event be charged for the replacement care services because the local authority's financial assessment would exclude charging people in receipt of a certain level of income. The primary consideration though is social isolation rather than economic circumstances although in some cases the carer and cared-for person will be both socially isolated and in receipt of a low level of income. In circumstances of social isolation, the Scottish Government would expect that common sense would prevail and that there would be no lengthy or complicated assessment arrangements for the cared-for person.

Question 6(a): Do you agree with the position set out in paragraphs 17 and 18 that local authorities will waive the cost of replacement care when they provide or commission replacement care in circumstances when others cannot provide replacement care free of charge? (please tick)

Question 6(b): If you do not agree with the position, please set out your reasons below:

Additional information

19. The support to carers which will not be charged for will be agreed following the carer's assessment. Any further support not to be charged for will also be agreed through revisiting the carer's assessment. If carers want to supplement the agreed level of support they will receive from the local authority with more support (for example, another holiday) and are willing to pay for that support themselves, then that is a matter entirely for the individual carer. Any replacement care which the local authority provides to the cared-for person while the carer is away on an additional holiday may be charged for. This is because it will not fall within the circumstances set out in lines 5 and 6.

20. Charges will not be made for support provided to carers either directly by local authorities or commissioned by the local authority through other statutory, independent and Third Sector bodies.

21. There are circumstances where individuals who are carers can be charged but these circumstances are not related to their role as carers. Therefore, where individuals are in receipt of services themselves because they are service users (as well as having a caring role) local authorities' financial assessment and charging policies apply. Moreover, some local authorities also take the income of partners, which can include carers, into account when reaching decisions on the charging of services such as the provision of meals, housework support and care support to service users. This too is outwith the scope of the Regulations and the Guidance.

Question 7: Do you have any additional comments? If so, please use the space below to provide these further comments. Local authorities may wish to comment on any financial consequences arising from the Regulations. If so, please set out estimates of anticipated support to be provided to carers and cost estimates.

Question 8 at end of Draft Regulations in Annex A attached.

SCOTTISH STATUTORY INSTRUMENTS

2014 No. xxx

SOCIAL CARE

The Carers (Waiving of Charges for Support) (Scotland) Regulations
2014

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Scottish Ministers make the following Regulations in exercise of the powers conferred on them by section 87(5) of the Social Work (Scotland) Act 1968⁽⁴⁾ and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Carers (Waiving of Charges for Support)(Scotland) Regulations 2014 and shall come into force on 1st April 2014.

Interpretation

2. In these Regulations—

“holiday” includes any break away from the environment in which carer normally provides care to the person or the child, regardless of the duration of the break.

Waiving of charges in connection with support to carers

3. A local authority shall waive the charge which would otherwise be payable by virtue of section 87(1) of the Social Work (Scotland) Act 1968 in the circumstances and to the extent specified in relation to each service listed in the schedule.

Name

Authorised to sign on behalf of the Scottish Ministers

St Andrew's House,
Edinburgh
Date

⁽⁴⁾ 1968 c.49. Section 87 was relevantly amended by the Social Care (Self-directed Support) (Scotland) Act 2013 (asp 1), section 18. The functions of the Secretary of State in section 87 were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46). The requirement to obtain the consent of the Treasury has ceased to apply by virtue of section 55(1) of that Act.

SCHEDULE

Regulation 2

<i>Nature of service</i>	<i>Circumstances in which the charge is to be waived</i>	<i>Extent to which the charge is to be waived</i>
<p>1. A service provided to an adult under section 3(4) of the Social Care (Self-directed Support)(Scotland) Act 2013^(a) (support for adult carers).</p>	<p>In all circumstances.</p>	<p>The whole of the charge.</p>
<p>2. A service provided to a child under section 22 of the Children (Scotland) Act 1995^(b) (promotion of welfare of children in need).</p>	<p>In circumstances where the service is provided to meet needs in relation to the care which the child provides, or intends to provide, to another person.</p>	<p>The whole of the charge.</p>
<p>3. A community care service within the meaning of section 5A of the Social Work (Scotland) Act 1968 which is provided to facilitate a person to take a holiday.</p>	<p>In circumstances where—</p> <ul style="list-style-type: none"> (a) the person takes a holiday together with a carer; and (b) the carer's holiday is support which a local authority provides, or secures the provision of, to the carer under section 3(4) of the Social Care (Self-directed Support)(Scotland) Act 2013 or section 22 of the Children (Scotland) Act 1995. 	<p>That part of the charge which represents the costs of the holiday which are incurred as a result of the person's assessed needs and which are additional to the costs that would have been incurred if a person without those needs had taken an equivalent holiday.</p>
<p>4. A service provided to a child under section 22 of the Children (Scotland) Act 1995 (promotion of welfare of children in need) which is provided to facilitate the child to take a holiday.</p>	<p>In circumstances where—</p> <ul style="list-style-type: none"> (a) the child takes a holiday together with a carer; and (b) the carer's holiday is support which a local authority provides, or secures the provision of, to the carer under section 3(4) of the Social Care (Self-directed Support)(Scotland) Act 2013 or section 22 of the Children (Scotland) Act 1995. 	<p>That part of the charge which represents the costs of the holiday which are incurred as a result of the child's needs and which are additional to the costs that would have been incurred if a person without those needs had taken an equivalent holiday.</p>
<p>5. A community care service within the meaning of section 5A of the Social Work (Scotland) Act 1968 to provide assistance to a person whose</p>	<p>In circumstances where—</p> <ul style="list-style-type: none"> (a) the person has been assessed as needing the replacement care because the normal 	<p>The whole of the charge.</p>

normal carer is temporarily unable to provide assistance (“replacement care”).

- (b) the other activity is support which a local authority provides, or secures the provision of, to the carer under section 3(4) of the Social Care (Self-directed Support)(Scotland) Act 2013 or section 22 of the Children (Scotland) Act 1995; and
- (c) there is no one who will provide the replacement care free of charge to the person unless it is provided or arranged by the local authority.

6. A service provided to a child under section 22 of the Children (Scotland) Act 1995 (promotion of welfare of children in need) to provide assistance to a child whose normal carer is temporarily unable to provide assistance (“replacement care”).

In circumstances where—

The whole of the charge.

- (a) the child has been assessed as needing the replacement care because the normal carer is carrying out another activity;
- (b) the other activity is support which a local authority provides, or secures the provision of, to the carer under section 3(4) of the Social Care (Self-directed Support)(Scotland) Act 2013 or section 22 of the Children (Scotland) Act 1995; and
- (c) there is no one who will provide the replacement care free of charge to the child unless it is provided or arranged by the local authority.

^(a) 2013 asp 1.

^(b) 1995 c.36.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations specify the circumstances and extent to which a local authority is obliged to waive charges for certain services provided under the Social Work (Scotland) Act 1968, Part II of the Children (Scotland) Act 1995 and section 3(4) of the Social Care (Self-directed Support) (Scotland) Act 2013. Section 87(1) allows a local authority to make charges in respect of services provided under those enactments. However, the power to charge is subject (among other things) to regulations made under section 87(5) modifying or adjusting the rates at which payments are made.

These Regulations require local authorities to waive all charges in respect of services provided directly to carers under section 3(4) of the Social Care (Self-directed Support) (Scotland) Act 2013 or section 22 of the Children (Scotland) Act 1995. Those provisions are concerned with services to unpaid carers who do not provide the care in question under or by virtue of a contract or as a volunteer for a voluntary organisation. The Regulations also require local authorities to waive specified charges in respect of certain services to cared-for persons where those services are provided in connection with services provided directly to such carers.

Question 8: Do you have any comments on the draft Regulations as set out in this Annex A? If so, please use the space below to set out these comments:

Consultation Questions

Question 1(a): Is paragraph 9 clear and easy to understand? (please tick)

Yes	No
x	

Question 1(b): Do you agree with the waiving of charging circumstances as set out in paragraph 9? (please tick)

Yes	No
x	

Question 1(c): If you do not agree with the waiving of charging circumstances as set out in paragraph 9, please state your reasons below:

Comments

Question 2(a): Are you content with the examples of support to carers and young carers, as set out in paragraph 10, where charges will be waived? (please tick)

Yes	No
x	

Comments

Question 2(b): If you are not content, please state your reasons below:

Comments

Question 2(c): Are there further examples that you would like to add? (please tick)

Yes	No

Question 2(d): If there are further examples that you would like to include in the list, please state these below and also set out your reasons for suggesting their inclusion.

Comments

Question 3(a): Do you agree with the exceptional circumstances set out in paragraphs 12 (with examples) and 13 about support to carers to help pay for driving lessons and taxi fares? (please tick)

Yes	No
x	

Question 3(b): If you do not agree, please state your reasons below:

Comments

Question 4(a): Do you agree with the waiving of charges as set out in paragraphs 14 and 15 with regard to short breaks? (please tick)

Yes	No
x	

Question 4(b): If you do not agree, please set out your reasons below:

Comments

Question 5(a): Do you agree with the position set out in paragraph 16 that when the carer and cared-for person take a break together, then as well as waiving the cost of the break for the carer, the additional costs of the break to enable the break to take place will also be met by the local authority? (please tick)

Yes	No
x	

Question 5(b): If you do not agree, please state your reasons below:

Comments

Question 6(a): Do you agree with the position set out in paragraphs 17 and 18 that local authorities will waive the cost of replacement care when they provide or commission replacement care in circumstances when others cannot provide replacement care free of charge? (please tick)

Yes	No
x	

Question 6(b): If you do not agree with the position, please set out your reasons below:

Comments

Question 7: Do you have any additional comments? If so, please use the space below to provide these further comments. Local authorities may wish to comment on any financial consequences arising from the Regulations. If so, please set out estimates of anticipated support to be provided to carers and cost estimates.

Comments

The Fragile X Society welcomes the changes and proposals set in the Draft Carers (Waiving of charges for support) (Scotland) Regulations 2014 Consultation. However we would like to offer the following points for consideration in support of the questions outlined above.

Question One

It is important when considering the waiving of charging circumstances that this is embedded in legislation and is carried out consistently and fairly across the local authority areas in Scotland. The assessment process is essential and should always see the family at the centre. It is vital that those carrying out the assessment are afforded the time to work with the family to ensure a comprehensive assessment is carried out that truly reflects their needs.

Question Two

An increased opportunity for development of more support groups for carers especially with genetic conditions would be welcomed. Although groups exist for a number of generic conditions, the need for more specialised groups, especially at the point of diagnosis is paramount to many carers. The opportunity to increase partnership working with other organisations experienced within their individual fields should be encouraged and welcomed.

Question Three

Flexibility in providing financial support in exceptional circumstances is welcomed. Carers living in remote areas are very often faced with different challenges from those living inland and it is encouraging that this is being acknowledged. When looking at assessing carer's need it is important that there is a degree of flexibility to respond to individual and geographical issues that may be hindering carers from accessing services. For many carers supporting individuals with Fragile X Syndrome and Autism one of the issues is that it might be too stressful for them to use more traditional modes of transport for example, so for carers and young people to have the flexibility and choice to plan their support according to their individual needs is a step in the right direction. Carers with more than one member of the family with a disability will find it even more challenging to manage

on public transport.

Question Four

It is good to see us moving away from traditional modes of respite and the inclusion of more flexible ways of individuals accessing support which feels more inclusive and tailored around need. It affords more choice to people and allows for more flexibility however the challenges of budget cuts and the ability to access a range of services within assessed needs should be addressed. Honesty and transparency is essential to allow people to make informed choices within budgets being offered.

A carer's break for themselves could give a much needed rest/break for the carer. Also time to spend with non-disabled family members such as partners, other children, grandchildren etc.

Question Five

Allows the opportunity for the carer to get support to enable them to take a break with the individual they care for. It is good for families to have time together and having the opportunity to take holidays together like a lot of other families.

Question Six

Voluntary replacement care may be difficult to find if individual has complex needs. Time needs to be factored in for individual to meet/get used to replacement carer.

Local authorities need to be afforded the time and resources to enable them to carry out robust assessments. Individuals with Fragile X and autism need time for relationships to build and a coherent and holistic assessment cannot be made in a couple of visits to families. Professionals also need training to enable them to understand the specific needs of those with Fragile X Syndrome and Autism Spectrum Disorder. Champions within services would increase quality support planning and increase good practice. It is essential that this is embedded and formulated in plans from the onset.

Increased partnership should be encouraged using local expertise within communities working alongside local authorities. Voluntary organisations already working with carers can help formulate and input into more robust assessments and effective care plans based on need and choice.

Also consideration in terms of what family means for different people. There needs to be some flexibility around what is meant by family/carers especially if individuals are estranged from traditional family models.

Question 8: Do you have any comments on the draft Regulations as set out in this Annex A? If so, please use the space below to set out these comments:

Comments

Thank you for completing this consultation. Please return your completed 'Respondent Information Form' and this 'Consultation Response Form' to alun.ellis@scotland.gsi.gov.uk by **Wednesday 10th July 2013**.