

Carers (Scotland) Act 2016 – Informal Keeling schedule

This document is to aid understanding of sections 38 and 39 of the National Care Service (Scotland) Bill on rights to breaks for carers and other minor modifications. It shows the changes that the Bill (as introduced) would make to the Carers (Scotland) Act 2016.

Carers (Scotland) Act 2016

[AS AMENDED BY THE NATIONAL CARE SERVICE (SCOTLAND) BILL]

PART 1

KEY DEFINITIONS

“Carer”, “young carer” and “adult carer”

1 Meaning of “carer”

- (1) In this Act “carer” means an individual who provides or intends to provide care for another individual (the “cared-for person”).
- (2) But subsection (1) does not apply—
 - (a) 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, or
 - (b) in any case, to the extent that the care is or would be provided—
 - (i) under or by virtue of a contract, or
 - (ii) as voluntary work.
- (3) The Scottish Ministers may by regulations—
 - (a) provide that “contract” in subsection (2)(b)(i) does or, as the case may be, does not include agreements of a kind specified in the regulations,
 - (b) permit a relevant authority to disregard subsection (2)(b) where the authority considers that the relationship between the carer and the cared-for person is such that it would be appropriate to do so.
- (4) In this Part “relevant authority” means a responsible local authority or a responsible authority (see section 41(1)).

2 Meaning of “young carer”

In this Act “young carer” means a carer who—

- (a) is under 18 years old, or
- (b) has attained the age of 18 years while a pupil at a school, and has since attaining that age remained a pupil at that or another school.

3 Meaning of “adult carer”

In this Act “adult carer” means a carer who is at least 18 years old but is not a young carer.

“Personal outcomes” etc.

4 Meaning of “personal outcomes”

- (1) In this Act “personal outcomes”, in relation to carers, includes outcomes which would, if achieved, enable carers to provide or continue to provide care for cared-for persons.
- (2) The Scottish Ministers may by regulations make further provision about personal outcomes, including provision about—
 - (a) which outcomes may be personal outcomes,
 - (b) the matters to which a relevant authority is to have regard in considering which outcomes may be personal outcomes.

5 Meaning of “identified personal outcomes” and “identified needs”

- (1) In this Act “identified personal outcomes”, in relation to a carer, means the personal outcomes which are identified as relevant to the carer.
- (2) In this Act “identified needs”, in relation to a carer, means the needs for support (if any) which are identified in order to meet the carer’s identified personal outcomes.
- (3) In this section “identified” means identified by virtue of section 8 or 14.

PART 2

ADULT CARER SUPPORT PLANS AND YOUNG CARER STATEMENTS

CHAPTER 1

ADULT CARER SUPPORT PLANS

Duty to prepare adult carer support plan

6 Duty to prepare adult carer support plan

- (1) In this Act an “adult carer support plan” means a plan prepared by a responsible local authority setting out—
 - (a) an adult carer’s identified personal outcomes,
 - (b) an adult carer’s identified needs (if any), and
 - (c) the support (if any) to be provided by the responsible local authority to an adult carer to meet those needs.
- (2) If a responsible local authority identifies a person as an adult carer, the responsible local authority must offer the person an adult carer support plan.
- (3) The responsible local authority must prepare an adult carer support plan in relation to a person if—
 - (a) the person accepts an offer under subsection (2), or
 - (b) subsection (4) applies.
- (4) This subsection applies if a person who appears to the responsible local authority to be an adult carer requests an adult carer support plan.

- (5) A responsible local authority must exercise its functions under this section in a manner which encourages equal opportunities and in particular the observance of the equal opportunity requirements (within the meaning of Section L2 of Part 2 of schedule 5 of the Scotland Act 1998).

~~(6) For the purposes of this Chapter the “responsible local authority”, in relation to an adult carer, means the local authority for the area in which the cared-for person resides.~~

7 Adult carers of terminally ill cared-for persons

- (1) The Scottish Ministers must by regulations prescribe timescales for the preparation of adult carer support plans in relation to adult carers of terminally ill cared-for persons.
- (2) For the purposes of this section and section 13, a cared-for person is terminally ill at any time if at that time the person suffers from a progressive disease and death in consequence of that disease can reasonably be expected within 6 months.

8 Adult carers: identification of outcomes and needs for support

- (1) The Scottish Ministers may by regulations make provision about the identification of adult carers’ personal outcomes and their needs for support, including—
- (a) how personal outcomes and needs for support are to be identified,
 - (b) the process for doing so (including arrangements for the involvement of adult carers and cared-for persons),
 - (c) who may carry out identification,
 - (d) the sharing of information about adult carers and cared-for persons for the purpose of identifying personal outcomes and needs for support,
 - (e) the factors to be taken into account in identifying adult carers’ personal outcomes and needs for support,
 - (f) the circumstances in which adult carers’ personal outcomes and needs for support should be reviewed.
- (2) In identifying an adult carer’s personal outcomes and needs for support, a responsible local authority must, in particular, take into account any impact that having one or more protected characteristic (within the meaning of section 149(7) of the Equality Act 2010) has on the adult carer.
- (3) A responsible local authority must identify, as a personal outcome that is relevant to an adult carer, the outcome that the adult carer is able to take sufficient breaks from providing care for the cared-for person.
- (4) Where an adult carer is not able to take sufficient breaks from providing care for the cared-for person, a responsible local authority must identify the need for support to enable the adult carer to take sufficient breaks from providing that care.

Content and review of adult carer support plan

9 Content of adult carer support plan

- (1) An adult carer support plan must contain—
- (a) information about the adult carer’s personal circumstances at the time of preparation of the plan, including—
 - (i) the nature and extent of the care provided or to be provided,
 - (ii) the impact of caring on the adult carer’s wellbeing and day-to-day life,
 - (b) information about the extent to which the adult carer is able and willing to provide care for the cared-for person,
 - (c) information about whether the adult carer has arrangements in place for the provision of care to the cared-for person in an emergency,
 - (d) information about whether the adult carer has arrangements in place for the future care of the cared-for person,
 - (e) information about the identification of the adult carer’s personal outcomes, including about the carer’s identified personal outcomes,
 - (f) information about the identification of the adult carer’s needs for support, including—
 - (i) if the adult carer has identified needs, those needs,
 - (ii) if no needs for support are identified, that fact,
 - (g) information about the support available to adult carers and cared-for persons in the responsible local authority’s area,
 - (h) if the adult carer does not reside in the responsible local authority’s area, information about the support available to adult carers in the area where the adult carer resides,
 - (ha) if the adult carer’s identified needs include the need for support to enable the adult carer to take sufficient breaks from providing care by virtue of section 8(4), information about the support which the responsible local authority provides or intends to provide to the adult carer to meet that need,
 - (i) if the adult carer’s identified needs meet the local eligibility criteria, information about the support which the responsible local authority provides or intends to provide to the adult carer to meet those needs,
 - (j) if the adult carer’s identified needs do not meet the local eligibility criteria (except in the case of an identified need as mentioned in paragraph (ha)), information about the support which the responsible local authority provides or intends to provide to the adult carer,
 - ~~(k) information about whether support should be provided in the form of a break from caring;~~
 - (l) information about the circumstances in which the plan is to be reviewed.
- (2) Each second and subsequent adult carer support plan must also contain information about the extent to which any support provided under a previous plan has assisted in the achievement of the adult carer’s identified personal outcomes.

This material is for guidance only and its accuracy is not warranted.

- (3) The Scottish Ministers may by regulations make provision about—
- (a) other information which an adult carer support plan must (or must not) contain,
 - (b) the form of adult carer support plans.

10 Review of adult carer support plans

The Scottish Ministers may by regulations make provision about the review of adult carer support plans, including—

- (a) the circumstances in which plans are to be reviewed,
- (b) the frequency of review,
- (c) the procedure for review,
- (d) arrangements for obtaining the views of adult carers and cared-for persons.

Provision of information about plan

11 Adult carer support plan: provision of information to carer etc.

- (1) The responsible local authority must provide the persons mentioned in subsection (2) with the information contained in the adult carer support plan.
- (2) Those persons are—
 - (a) the adult carer to whom the plan relates, and
 - (b) any other person the adult carer requests.
- (3) Subsection (1) does not apply to the extent that the responsible local authority considers that provision of the information would not be appropriate.
- (4) The information is to be provided as soon as practicable after—
 - (a) the plan is prepared, or
 - (b) in the case of a revised plan, the revised plan is prepared.

CHAPTER 2

YOUNG CARER STATEMENTS

Duty to prepare young carer statement

12 Duty to prepare young carer statement

- (1) In this Act a “young carer statement” means a statement prepared by a responsible authority setting out—
 - (a) a young carer’s identified personal outcomes,
 - (b) a young carer’s identified needs (if any), and
 - (c) the support (if any) to be provided by the responsible local authority to a young carer to meet those needs.
- (2) If a responsible authority identifies a person as a young carer, the responsible authority must offer the person a young carer statement.

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- (3) The responsible authority must prepare a young carer statement in relation to a person if—
- (a) the person accepts an offer under subsection (2), or
 - (b) subsection (4) applies.
- (4) This subsection applies if a person who appears to the responsible authority to be a young carer requests a young carer statement.
- (5) Subsection (3) applies whether or not the young carer requires a child's plan in accordance with section 33 of the 2014 Act.
- (6) Where the responsible authority, in relation to a young carer, is not the responsible local authority, the responsible authority must not provide the young carer statement to the young carer without the approval of the responsible local authority.
- (7) A responsible authority must exercise its functions under this section in a manner which encourages equal opportunities and in particular the observance of the equal opportunity requirements (within the meaning of Section L2 of Part 2 of schedule 5 of the Scotland Act 1998).
- ~~(8) For the purposes of this Chapter—~~
- ~~“responsible authority” has the meaning given by sections 19 and 20;~~
- ~~“responsible local authority” means the local authority for the area in which the cared-for person resides.~~

13 Young carers of terminally ill cared-for persons

The Scottish Ministers must by regulations prescribe timescales for the preparation of young carer statements in relation to young carers of terminally ill cared-for persons.

14 Young carers: identification of outcomes and needs for support

- (1) The Scottish Ministers may by regulations make provision about the identification of young carers' personal outcomes and their needs for support, including—
- (a) how personal outcomes and needs for support are to be identified,
 - (b) the process for doing so (including arrangements for the involvement of young carers and cared-for persons),
 - (c) who may carry out identification,
 - (d) the sharing of information about young carers and cared-for persons for the purpose of identifying personal outcomes and needs for support,
 - (e) the factors to be taken into account in identifying young carers' personal outcomes and needs for support,
 - (f) the circumstances in which young carers' personal outcomes and needs for support should be reviewed.
- (2) In identifying a young carer's personal outcomes and needs for support, a responsible authority must, in particular, take into account any impact that having one or more protected characteristic (within the meaning of section 149(7) of the Equality Act 2010) has on the young carer.

- (3) [A responsible authority must identify, as a personal outcome that is relevant to a young carer, the outcome that the young carer is able to take sufficient breaks from providing care for the cared-for person.](#)
- (4) [Where a young carer is not able to take sufficient breaks from providing care for the cared-for person, a responsible authority must identify the need for support to enable the young carer to take sufficient breaks from providing that care.](#)

Content and review of young carer statement

15 Content of young carer statement

- (1) A young carer statement must contain—
 - (a) information about the young carer’s personal circumstances at the time of the preparation of the statement, including—
 - (i) the nature and extent of the care provided or to be provided,
 - (ii) the impact of caring on the young carer’s wellbeing and day-to-day life,
 - (b) information about the extent to which the young carer is able and willing to provide care for the cared-for person,
 - (c) information about the extent to which the responsible authority considers that the nature and extent of the care provided by the young carer is appropriate,
 - (d) information about whether the young carer has arrangements in place for the provision of care to the cared-for person in an emergency,
 - (e) information about whether the young carer has arrangements in place for the future care of the cared-for person,
 - (f) information about the identification of the young carer’s personal outcomes, including about the young carer’s identified personal outcomes,
 - (g) information about the identification of the young carer’s needs for support, including—
 - (i) if the young carer has identified needs, those needs,
 - (ii) if no needs for support are identified, that fact,
 - (h) information about the support available to young carers and cared-for persons in the responsible local authority’s area,
 - (i) if the young carer does not reside in the responsible local authority’s area, information about the support available to young carers in the area where the young carer resides,
 - (ia) [if the young carer’s identified needs include the need for support to enable the young carer to take sufficient breaks from providing care by virtue of section 14\(4\), information about the support which the responsible local authority provides or intends to provide to the young carer to meet that need,](#)
 - (j) if the young carer’s identified needs meet the local eligibility criteria, information about the support which the responsible local authority provides or intends to provide to the young carer to meet those needs,

- (k) if the young carer's identified needs do not meet the local eligibility criteria ([except in the case of an identified need as mentioned in paragraph \(ia\)](#)), information about the support which the responsible local authority provides or intends to provide to the young carer to meet those needs,
 - ~~(l) information about whether support should be provided in the form of a break from caring;~~
 - (m) information about the circumstances in which the young carer statement is to be reviewed.
- (2) Each second and subsequent young carer statement must also contain information about the extent to which any support provided under a previous statement has assisted in the achievement of the young carer's identified personal outcomes.
- (3) For the purpose of subsection (1)(a)(ii), the responsible authority is—
- (a) to assess the wellbeing of a young carer by reference to the extent to which the matters listed in section 96(2) of the 2014 Act are or, as the case may be, would be satisfied in relation to the young carer, and
 - (b) in doing so, to have regard to the guidance issued under section 96(3) of the 2014 Act.
- (4) The Scottish Ministers may by regulations make provision about—
- (a) other information which a young carer statement must (or must not) contain,
 - (b) the form of young carer statements.

16 **Review of young carer statements**

The Scottish Ministers may by regulations make provision about the review of young carer statements, including—

- (a) the circumstances in which statements are to be reviewed,
- (b) the frequency of review,
- (c) the procedure for review,
- (d) arrangements for obtaining the views of young carers and cared-for persons.

Provision of information about statement

17 **Young carer statement: provision of information to carer etc.**

- (1) A responsible authority must provide the persons mentioned in subsection (2) with the information contained in the young carer statement.
- (2) Those persons are—
 - (a) the young carer to whom the young carer statement relates,
 - (b) any other person the young carer requests.
- (3) Subsection (1) does not apply to the extent that the responsible authority considers that provision of the information would not be appropriate.
- (4) The information is to be provided as soon as practicable after—
 - (a) the statement is prepared, or

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- (b) in the case of a revised statement, the revised statement is prepared.

Continuation of young carer statement

18 Continuation of young carer statement

Despite the fact that a young carer has attained the age of 18 years, any young carer statement prepared in relation to that carer continues to have effect until the carer is provided with an adult carer support plan.

Meaning of responsible authority: young carers

19 Responsible authority: general

- (1) For the purposes of this Chapter the “responsible authority”, in relation to a young carer, is—
- (a) where the young carer is a pre-school child, the health board for the area in which the child resides,
 - (b) where the young carer is not a pre-school child, the local authority for the area in which the child resides.
- (2) Subsection (1) is subject to section 20.
- (3) In this section and section 20 “pre-school child” has the meaning given by section 36(3) of the 2014 Act.

20 Responsible authority: special cases

- (1) Where in pursuance of a decision of a local authority or health board a young carer who is a pre-school child resides in the area of a health board which is different to that in which the young carer would otherwise reside, the health board for the area in which the young carer would otherwise reside is the responsible authority in relation to the young carer.
- (2) Where the young carer is a pupil at a public school which is managed by a local authority other than the one for the area in which the young carer resides, that other authority is the responsible authority in relation to the young carer.
- (3) Where the young carer is a pupil at a grant-aided school or an independent school, the directing authority of that school is the responsible authority in relation to the young carer.
- (4) Subsection (3) does not apply where the young carer is such a pupil by virtue of a placement by the local authority for the area in which the young carer resides.
- (5) In this section “grant-aided school”, “independent school” and “public school” have the meanings given by section 135 of the Education (Scotland) Act 1980.

PART 3

PROVISION OF SUPPORT TO CARERS

CHAPTER 1

ELIGIBILITY CRITERIA

Local eligibility criteria

21 Duty to set local eligibility criteria

- (1) Each local authority must set the local eligibility criteria which it is to apply in its area.
- (2) Local eligibility criteria are the criteria by which the local authority must determine whether it is required to provide support to carers to meet carers' ~~identified~~[relevant](#) needs.
- (3) Before setting its local eligibility criteria, a local authority must—
 - (a) consult such persons and bodies representative of carers as the local authority considers appropriate, and
 - (b) take such steps as it considers appropriate to involve carers.
- (4) A local authority must, when setting its local eligibility criteria, have regard among other things to such matters as the Scottish Ministers may by regulations specify.
- (5) [In subsection \(2\), “relevant needs” means identified needs other than any need for support to enable carers to take sufficient breaks from providing care that is identified by virtue of section 8\(4\) or 14\(4\).](#)

22 Publication and review of criteria

- (1) Each local authority must publish its local eligibility criteria.
- (2) The first local eligibility criteria must be published before the end of the period of 6 months beginning with the day prescribed by the Scottish Ministers by regulations.
- (3) Each local authority must carry out a first review of its local eligibility criteria before the end of the period, prescribed by the Scottish Ministers by regulations, beginning with the day on which the criteria are published.
- (4) Each local authority—
 - (a) must thereafter review its local eligibility criteria before the end of the relevant period,
 - (b) may from time to time carry out such a review.
- (5) The relevant period is the period of 3 years beginning with whichever is the later of the day on which the local authority last published—
 - (a) its local eligibility criteria, or
 - (b) a statement under subsection (6)(b).
- (6) Following a review under subsection (3) or (4), the local authority—
 - (a) may set revised local eligibility criteria,
 - (b) must, where it does not set revised criteria, publish a statement to that effect.

- (7) Subsection (1) and section 21(4) apply to revised local eligibility criteria set under this section as they apply to criteria set under section 21.

National eligibility criteria

23 National eligibility criteria

- (1) The Scottish Ministers may make regulations setting out national eligibility criteria.
- (2) National eligibility criteria are the criteria by which each local authority must assess whether it is required to provide support to carers to meet carers' ~~identified~~relevant needs.
- (3) Where regulations under this section are made and have not been revoked—
- (a) the national eligibility criteria set out in them apply in place of any local eligibility criteria published under section 22,
 - (b) sections 21 and 22 do not apply, and
 - (c) references in sections 9(1)(i) and (j), 15(1)(j) and (k) and ~~24(3)~~24(2) and (4) to local eligibility criteria are to be read as references to national eligibility criteria.
- (4) Regulations under this section may modify any enactment (including this Act).
- (5) In subsection (2), “relevant needs” means identified needs other than any need for support to enable carers to take sufficient breaks from providing care that is identified by virtue of section 8(4) or 14(4).

CHAPTER 2

DUTY TO PROVIDE SUPPORT TO CARERS

24 Duty to provide support

- (1) This section applies where a carer has identified needs which cannot be met by services or assistance—
- (a) 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~~this section in order to enable the carer to take a break from providing care for the cared-for person), or
 - (b) provided generally to persons in the area of the responsible local authority or, where the carer does not reside in the area of that authority, in the area where the carer resides.
- (2) The responsible local authority must determine whether any of those needs are ~~eligible needs~~relevant needs that meet the local eligibility criteria.
- ~~(3) A carer's eligible needs are the carer's identified needs which meet the local eligibility criteria.~~
- (4) The responsible local authority—
- (a) must provide support to the carer to meet ~~the carer's eligible needs~~any relevant needs of the carer that meet the local eligibility criteria, and
 - (b) may provide support to the carer to meet ~~the carer's other identified needs~~any relevant needs of the carer that do not meet the local eligibility criteria.

- (4A) The responsible local authority must also provide support to the carer to meet any need for support to enable the carer to take sufficient breaks from providing care for the cared-for person that is identified by virtue of section 8(4) or 14(4).
- (5) ~~Subsection (4)(a) applies~~ Subsections (4)(a) and (4A) apply—
- (a) in the case of an adult carer, whether or not the carer’s ~~eligible needs~~identified needs in question may also, following assessment under section 12A(1) of the 1968 Act, call for the provision of community care services to the carer under that section,
 - (b) in the case of a young carer, whether or not the carer’s ~~eligible needs~~identified needs in question may also be met by the provision of services to the carer under section 22(1) of the 1995 Act.
- (6) In this section ~~the “responsible local authority”, in relation to a carer, means the local authority for the area in which the cared-for person resides~~“relevant needs”, in relation to a carer, means the carer’s identified needs other than any need for support to enable the carer to take sufficient breaks from providing care that is identified by virtue of section 8(4) or 14(4).

25 Provision of support to carers: breaks from caring

- ~~(1) A local authority, in determining which support to provide to a carer under section 24(4), must consider in particular whether the support should take the form of or include a break from caring.~~
- ~~(2) The Scottish Ministers may by regulations make provision—~~
- ~~(a) about the form of support that may be provided as a break from caring;~~
 - ~~(b) where the regulations provide for a break from caring to take the form of the provision of care for the cared-for person, about the role of the cared-for person in relation to how that care is provided.~~
- (2) The Scottish Ministers may by regulations make further provision in connection with the support to be provided to a carer under section 24(4A).
- (2A) Regulations under subsection (2) may in particular make provision about—
- (a) the meaning of any reference to sufficient breaks in this Act,
 - (b) standards or criteria in relation to the sufficiency of such breaks (including the nature, frequency or duration of breaks),
 - (c) forms of support that may enable a carer to take such breaks,
 - (d) where the support is the provision of care for the cared-for person, the role of the cared-for person in relation to how the care is provided.
- (3) Support provided ~~by virtue of subsection (1)~~under section 24(4A) may be provided on a regular basis or on a temporary basis and may be provided for varying periods of time.
- (4) In providing support ~~by virtue of subsection (1)~~under section 24(4A), a local authority must have regard to the desirability of breaks from ~~earing~~providing care being provided on a planned basis.

- (5) Section 19(2) of the Social Care (Self-directed Support) (Scotland) Act 2013 applies in relation to support provided ~~as a break from caring~~ [to enable a carer to take a break from providing care for the cared-for person](#) as it applies in relation to any other support.

26 Charging for support provided to carers

In section 87 of the 1968 Act (power of local authority to charge for services and accommodation provided under certain enactments)—

- (a) in subsection (1), for “section 3(4) of the Social Care (Self-directed Support) (Scotland) Act 2013 (asp 1)” substitute “section 24(4) of the Carers (Scotland) Act 2016”,
- (b) in subsection (1A)(a), for “section 3(4) of the Social Care (Self-directed Support) (Scotland) Act 2013 (asp 1)” substitute “section 24(4) of the Carers (Scotland) Act 2016”.

PART 4

CARER INVOLVEMENT

27 Duty to involve carers in carer services

- (1) Each local authority must take such steps as it considers appropriate to involve the persons mentioned in subsection (3) in carer services of that local authority.
- (2) Each health board must take such steps as it considers appropriate to involve the persons mentioned in subsection (3) in carer services of that health board.
- (3) Those persons are—
 - (a) carers in the area of the local authority or, as the case may be, the health board, and
 - (b) such persons and bodies representative of carers as the local authority or, as the case may be, the health board considers appropriate.
- (4) “Carer services” “Carer services” means services provided, or to be provided, by the local authority or, as the case may be, the health board to—
 - (a) carers in relation to the care they provide, or intend to provide, for cared-for persons,
 - (b) cared-for persons in relation to the care they receive.
- (5) Subsection (4) does not apply to—
 - (a) services which are contained in a children’s services plan (within the meaning of section 8 of the 2014 Act) if the persons mentioned in subsection (3) have been consulted in relation to the preparation of that plan,
 - (b) services provided by virtue of functions which have been delegated under an integration scheme (within the meaning of section 1(3) of the Public Bodies (Joint Working) (Scotland) Act 2014) or which are to be carried out in conjunction with those functions.

- (6) “Involvement”^{“Involvement”}, in relation to carer services, includes involvement in considering—
- (a) what needs might call for the provision of services,
 - (b) what services might be provided to meet those needs,
 - (c) how those services might be provided, and
 - (d) how the provision of those services might be evaluated.

28 Carer involvement in hospital discharge of cared-for persons

- (1) Each health board must ensure that, before a cared-for person is discharged from hospital, it involves any carer of that person in the discharge.
- (2) A health board fulfils the duty in subsection (1) by—
 - (a) taking such steps as it considers appropriate to—
 - (i) inform the carer, as soon as reasonably practicable, of the intention to discharge the cared-for person, and
 - (ii) invite the carer to give views about the discharge of the cared-for person, and
 - (b) taking account, so far as it is reasonable and practicable to do so, of any views given by the carer in making decisions relating to the discharge of the cared-for person.
- (3) This section applies only—
 - (a) where the health board can identify without delay that a person is the carer of the cared-for person, and
 - (b) where it appears to the health board that the cared-for person is likely to require care following discharge.
- (4) In this section “health board” means—
 - (a) in the case of the state hospital (within the meaning given by section 102 of the National Health Service (Scotland) Act 1978), the State Hospitals Board for Scotland constituted by order under section 2(1)(b) of that Act,
 - (b) in the case of a hospital mentioned in subsection (5), a health board constituted under section 2(1)(a) of that Act.
- (5) The hospitals referred to in subsection (4)(b) are—
 - (a) a health service hospital (within the meaning given by section 108(1) of the National Health Service (Scotland) Act 1978), or
 - (b) where a person receives accommodation or services in a hospital other than a health service hospital under arrangements made by a health board, such a hospital.

29 Involvement of, assistance to and collaboration with carers

In section 1(1) of the Social Care (Self-directed Support) (Scotland) Act 2013 (general principles applicable in carrying out certain care functions), after paragraph (c) insert—

“(d) Part 2 or 3 of the Carers (Scotland) Act 2016.”.

This material is for guidance only and its accuracy is not warranted.

30 Care assessments: duty to take account of care and views of carers

- (1) Section 12A of the 1968 Act (duty of local authority to assess needs) is amended in accordance with subsections (2) to (4).
- (2) In subsection (1)(b)—
 - (a) for sub-paragraph (i) substitute—
 - “(i) if an adult carer provides, or intends to provide, care for that person, of the care provided by that carer,
 - (ia) if a young carer provides, or intends to provide, care for that person, of the care provided by that carer,”
 - (b) in sub-paragraph (ii)—
 - (i) “both” is repealed,
 - (ii) “and of the views of the carer” is repealed,
 - (iii) “, in either case,” is repealed.
- (3) After subsection (1) insert—
 - “(1A) In subsection (1)(b)(i) and (ia), the reference to the care provided by a carer means—
 - (a) in the case of an adult carer who has an adult carer support plan, the information about that care set out in that plan,
 - (b) in the case of a young carer who has a young carer statement, the information about that care set out in that statement.
 - (1B) In—
 - (a) assessing the needs of a person for services under subsection (1)(a),
 - (b) deciding under subsection (1)(b) whether those needs call for the provision of any services, and
 - (c) deciding how any such services are to be provided, a local authority must take account of the views of the carer, in so far as it is reasonable and practicable to do so.”
- (4) In subsection (8)—
 - (a) before the definition of “community care services” insert—

““adult carer” and “adult carer support plan” have the meanings given by the Carers (Scotland) Act 2016,”
 - (b) after the definition of “person” insert—

““young carer” and “young carer statement” have the meanings given by the Carers (Scotland) Act 2016.”
- (5) Section 23 of the 1995 Act (children affected by disability) is amended in accordance with subsections (6) and (7).
- (6) In subsection (4)—
 - (a) for paragraph (a) substitute—

- “(a) if an adult carer provides, or intends to provide, care for the child, of the care provided by that carer,
 - (aa) if a young carer provides, or intends to provide, care for the child, of the care provided by that carer,”
 - (b) in paragraph (b)—
 - (i) sub-paragraph (ii) is repealed (together with the “and” immediately before it),
 - (ii) for “child or carer” substitute “or child”.
- (7) After subsection (4) insert—
 - “(5) In subsection (4)(a) and (aa), the reference to the care provided by a carer means—
 - (a) in the case of an adult carer who has an adult carer support plan, the information about that care set out in that plan,
 - (b) in the case of a young carer who has a young carer statement, the information about that care set out in that statement.
 - (6) In—
 - (a) determining the needs of a child under subsection (3),
 - (b) deciding whether to provide any services under section 22(1), and
 - (c) deciding how any such services are to be provided, a local authority must take account of the views of the carer, in so far as it is reasonable and practicable to do so.
 - (7) In this section—
 - “adult carer” and “adult carer support plan” have the meanings given by the Carers (Scotland) Act 2016,
 - “young carer” and “young carer statement” have the meanings given by the Carers (Scotland) Act 2016.”.

PART 5

LOCAL CARER STRATEGIES

31 Duty to prepare local carer strategy

- (1) Each local authority and relevant health board must jointly prepare a local carer strategy.
- (2) A local carer strategy means a document setting out—
 - (a) plans for identifying relevant carers and obtaining information about the care they provide or intend to provide to cared-for persons in the local authority’s area,
 - (b) an assessment of the demand for support to relevant carers,
 - (c) the support available to relevant carers in the authority’s area from—
 - (i) the authority,
 - (ii) the relevant health board,

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- (iii) such other persons and bodies as the authority and relevant health board consider appropriate,
 - (d) an assessment of the extent to which demand for support to relevant carers is currently not being met,
 - (e) plans for supporting relevant carers,
 - (f) plans for helping relevant carers put arrangements in place for the provision of care to cared-for persons in emergencies,
 - (g) an assessment of the extent to which plans for supporting relevant carers may reduce any impact of caring on relevant carers' health and wellbeing,
 - (h) the intended timescales for preparing adult carer support plans and young carer statements,
 - [\(ha\) plans to promote a variety of providers of support to relevant carers and to promote the variety of support provided.](#)
 - (i) such other information as the authority and relevant health board consider appropriate.
- [\(2A\) In subsection \(2\), references to support to relevant carers include references to support to enable carers to take a break from providing care for cared-for persons.](#)
- (3) A local carer strategy must contain information relating to the particular needs and circumstances of young carers.
 - (4) Before preparing a local carer strategy, the local authority and the relevant health board must jointly—
 - (a) consult such persons and bodies representative of carers as they consider appropriate, and
 - (b) take such steps as they consider appropriate to involve relevant carers.
 - (5) In this section “relevant carers” means—
 - (a) carers who reside in the area of a local authority (whether or not they provide or intend to provide care for cared-for persons in that area), and
 - (b) carers who do not reside in the authority's area but who provide or intend to provide care to cared-for persons in that area.
 - (6) In this Part “relevant health board”, in relation to a local authority, means—
 - (a) if the area of the local authority is the same as that of a health board, that health board,
 - (b) if the area of the local authority is not the same as that of a health board, the health board within whose area the area of the local authority falls.

32 Preparation of local carer strategy

In preparing a local carer strategy, the local authority and the relevant health board must have regard among other things to—

- (a) any plans for the provision of services relevant to young carers which are set out in the children's services plan prepared for the area of the local authority under section 8 of the 2014 Act,

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- (b) the aims set out in section 9(2) of the 2014 Act,
- (c) the criteria for assessing the wellbeing of children and young people set out in section 96 of the 2014 Act,
- (d) any national health and wellbeing outcomes prescribed under section 5 of the Public Bodies (Joint Working) (Scotland) Act 2014,
- (e) any arrangements for the carrying out of integration functions relevant to carers which are set out in the strategic plan prepared for the area of the local authority under section 29 of the Public Bodies (Joint Working) (Scotland) Act 2014,
- (f) any other local or national plans relating to the provision of social work services and health services as the authority and relevant health board consider appropriate.

33 Publication and review of local carer strategy

- (1) Each local authority and relevant health board must jointly publish their local carer strategy.
- (2) The first local carer strategy is to be published before the end of the relevant period (within the meaning of section 37(10) of the Public Bodies (Joint Working) (Scotland) Act 2014) during which section 31 comes into force.
- (3) Each local authority and relevant health board—
 - (a) must jointly review their strategy before the end of the period mentioned in subsection (4),
 - (b) may from time to time carry out such a review.
- (4) That period is the period of 3 years beginning with whichever is the later of the day on which the local authority and relevant health board last published—
 - (a) their local carer strategy, or
 - (b) a statement under subsection (6)(b).
- (5) In reviewing their local carer strategy, section 31(4) applies.
- (6) Following a review under subsection (3), the local authority and relevant health board—
 - (a) may prepare a revised local carer strategy,
 - (b) must, where they do not prepare a revised strategy, publish a statement to that effect.
- (7) Subsection (1) and section 32 apply to a revised local carer strategy prepared under this section as they apply to a local carer strategy prepared under section 31.

PART 6

INFORMATION AND ADVICE FOR CARERS

Information and advice service

34 Information and advice service for carers

- (1) Each local authority must establish and maintain, or ensure the establishment and maintenance of, an information and advice service for relevant carers.

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- (2) The service must provide information and advice in particular about—
 - (a) carers’ rights, including those set out in the carers’ charter,
 - (b) income maximisation for carers,
 - (c) education and training for carers,
 - (d) advocacy for carers,
 - (e) health and wellbeing (including counselling) for carers,
 - (f) bereavement support services for carers following the death of a cared-for person,
 - (g) emergency care planning and future care planning for carers.
- (3) The information and advice must be accessible to, and proportionate to the needs of, the persons to whom it is provided.
- (4) In providing information and advice about the matters mentioned in subsection (2), the service must, in particular, identify information and advice likely to be of particular relevance to persons who have one or more protected characteristics (within the meaning of section 149(7) of the Equality Act 2010).
- (5) In this section “relevant carers” has the meaning given by section 31(5).

Short breaks services statements

35 Short breaks services statements

- (1) Each local authority must prepare and publish a short breaks services statement.
- (2) A short breaks services statement means a statement of information about the short breaks services available in Scotland for carers and cared-for persons.
- (3) The information must be accessible to, and proportionate to the needs of, the persons to whom it is provided.
- (4) The Scottish Ministers may by regulations make further provision about the preparation, publication and review of short breaks services statements.

Carers’ charter

36 Carers’ charter

- (1) The Scottish Ministers must prepare a carers’ charter.
- (2) A carers’ charter is a document setting out the rights of carers as provided for in or under this Act.
- (3) Nothing in the charter is to—
 - (a) give rise to any new rights, or
 - (b) alter any existing rights.
- (4) The charter may also contain such other information as the Scottish Ministers consider appropriate.
- (5) The Scottish Ministers may from time to time revise the charter prepared under subsection (1).

- (6) The Scottish Ministers must—
- (a) before preparing the charter under subsection (1) or revising it under subsection (5)—
 - (i) consult such persons and bodies representative of carers as the Scottish Ministers consider appropriate,
 - (ii) consult such other persons as the Scottish Ministers consider appropriate,
 - (iii) take such steps as they consider appropriate to involve carers,
 - (b) lay the charter or revised charter before the Scottish Parliament, and
 - (c) publish the charter or revised charter in such manner as they consider appropriate.

PART 7

GENERAL PROVISION

Guidance and directions

37 Guidance and directions to local authorities

- (1) Section 5 of the 1968 Act (powers of the Scottish Ministers) is amended as follows.
- (2) In subsection (1), after “Children’s Hearings (Scotland) Act 2011 (asp 1)” insert “and the Carers (Scotland) Act 2016”.
- (3) In subsection (1B), after paragraph (t) insert—

“(u) the Carers (Scotland) Act 2016.”.

38 Guidance and directions to health boards and directing authorities

- (1) Each health board and each directing authority must have regard to any guidance issued by the Scottish Ministers about the exercise of functions conferred by this Act.
- (2) The Scottish Ministers may issue directions to health boards and directing authorities, either individually or collectively, about the exercise of functions conferred by this Act.
- (3) Each health board must comply with any direction issued to it under this section.
- (4) Each directing authority must comply with any direction issued to it under this section.

Assistance to and by voluntary organisations etc.

39 Financial and other assistance to voluntary organisations etc.

In section 10(1) of the 1968 Act (financial and other assistance to voluntary organisations etc.), for “and (p)” substitute “, (p) and (u)”.

40 Assistance by voluntary organisations etc.

In section 4 of the 1968 Act (provisions relating to performance of functions by local authorities), after “Children’s Hearings (Scotland) Act 2011 (asp 1)” insert “or Part 2, 3, 4, 5 or 6 of the Carers (Scotland) Act 2016”.

PART 8
FINAL PROVISIONS

41 Interpretation

- (1) In this Act—
- “1968 Act” means the Social Work (Scotland) Act 1968,
 - “1995 Act” means the Children (Scotland) Act 1995,
 - “2014 Act” means the Children and Young People (Scotland) Act 2014,
 - “adult carer” has the meaning given by section 3,
 - “adult carer support plan” has the meaning given by section 6,
 - “carer” has the meaning given by section 1,
 - “directing authority” has the meaning given by section 45 of the 2014 Act,
 - “grant-aided school” has the meaning given by section 20(5),
 - “health board” (except in section 28) means a health board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978,
 - “identified needs”, in relation to a carer, has the meaning given by section 5(2),
 - “identified personal outcomes”, in relation to a carer, has the meaning given by section 5(1),
 - “independent school” has the meaning given by section 20(5),
 - “local eligibility criteria” has the meaning given by section 21(2),
 - “named person”, in relation to a young carer, has the meaning given by section 32 of the 2014 Act,
 - “national eligibility criteria” has the meaning given by section 23(2),
 - “personal outcomes” has the meaning given by section 4,
 - “public school” has the meaning given by section 20(5),
 - “relevant authority” has the meaning given by section 1(4),
 - “relevant carers” has the meaning given by section 31(5),
 - “responsible authority”, for the purposes of Chapter 2 of Part 2 (young carer statements), has the meaning given by sections 19 and 20,
 - “responsible local authority”, in relation to a carer, means the local authority for the area in which the cared-for person resides,
 - “terminally ill”, in relation to a cared-for person, has the meaning given by section 7(2), “young carer” has the meaning given by section 2,
 - “young carer statement” has the meaning given by section 12.
- (2) In this Act references to the provision of support by a responsible local authority include references to support the provision of which is secured by the authority..

42 Regulations

- (1) Any power of the Scottish Ministers to make regulations under this Act includes power to make—
 - (a) different provision for different purposes,
 - (b) incidental, supplementary, consequential, transitional, transitory or saving provision.
- (2) Regulations under—
 - (a) section 1(3),
 - (b) section 7(1),
 - (c) section 8(1),
 - (d) section 13,
 - (e) section 14(1),
 - (f) section 21(4),
 - (g) section 23(1),
 - (h) section 25(2),
 - (i) section 43(1) which add to, replace or omit the text of an Act,are subject to the affirmative procedure.
- (3) All other regulations under this Act are subject to the negative procedure.
- (4) This section does not apply to regulations under section 45.

43 Ancillary provision

- (1) The Scottish Ministers may by regulations make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, or in connection with, any provision made by or under this Act.
- (2) Regulations under subsection (1) may modify any enactment (including this Act).

44 Consequential modifications

The schedule contains modifications consequential on the provisions of this Act.

45 Commencement

- (1) This section and sections 41 to 43 and 46 come into force on the day after Royal Assent.
- (2) The remaining provisions of this Act come into force on such date as the Scottish Ministers may by regulations appoint.
- (3) Different days may be appointed for different purposes.
- (4) Regulations under subsection (2) may include transitional, transitory or saving provision.

46 Short title

The short title of this Act is the Carers (Scotland) Act 2016.

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SCHEDULE
(introduced by section 44)

CONSEQUENTIAL MODIFICATIONS

Social Work (Scotland) Act 1968

- 1 (1) The Social Work (Scotland) Act 1968 is amended as follows.
- (2) Sections 12AA and 12AB are repealed.

Children (Scotland) Act 1995

- 2 (1) The Children (Scotland) Act 1995 is amended as follows.
- (2) Sections 24 and 24A are repealed.

Community Care and Health (Scotland) Act 2002

- 3 (1) The Community Care and Health (Scotland) Act 2002 is amended as follows.
- (2) Section 9(2) is repealed.
- (3) Sections 11 and 12 are repealed.

Public Services Reform (Scotland) Act 2010

- 4 In schedule 13 of the Public Services Reform (Scotland) Act 2010, after the entry relating to the Adoption and Children (Scotland) Act 2007, insert—
“Carers (Scotland) Act 2016”.

Social Care (Self-directed Support) (Scotland) Act 2013

- 5 (1) The Social Care (Self-directed Support) (Scotland) Act 2013 is amended as follows.
- (2) In section 1 (general principles)—
 - (a) in subsection (1)(b), for “to 24” substitute “and 23”,
 - (b) in subsection (6)(a)—
 - (i) for “or, as the case may be, section 12AA of that Act or section 23(3) or 24” substitute “, section 23(3)”,
 - (ii) after “1995 Act” insert “or by virtue of section 8 or 14 of the Carers (Scotland) Act 2016,”,
 - (c) in subsection (6)(b), for “section 3(4)” substitute “section 24 of the Carers (Scotland) Act 2016”.
- (3) Section 3 (support for adult carers) is repealed.
- (4) In section 7 (choice of options: adult carers)—
 - (a) in subsection (1), for “(the “supported person”) under section 3(4)” substitute “an adult carer or, as the case may be, a young carer under section 24(4) of the Carers (Scotland) Act 2016”,
 - (b) after subsection (4) insert—

- “(4A) Subsection (4B) applies where the supported person is an appropriate person in relation to the young carer.
- (4B) Before making a choice in pursuance of subsection (2) or (3)(b), the supported person must, so far as practicable and taking account of the maturity of the young carer—
- (a) give the young carer an opportunity to indicate whether the young carer wishes to express the young carer’s views,
 - (b) if the young carer wishes to do so, give the young carer an opportunity to express them, and
 - (c) have regard to any views expressed by the young carer.”
- (c) after subsection (6) insert—
- “(7) In this section—
- “the 1989 Act” means the Children Act 1989,
- “the 1995 Order” means the Children (Northern Ireland) Order 1995 (S.I. 1995/755),
- “adult carer” has the meaning given by section 3 of the Carers (Scotland) Act 2016,
- “appropriate person”, in relation to a young carer, means—
- (a) a parent or guardian having parental responsibilities or parental rights in relation to the young carer under Part 1 of the 1995 Act,
 - (b) a person in whom parental responsibilities or parental rights are vested by virtue of section 11(2)(b) of the 1995 Act,
 - (c) a person having parental responsibilities or parental rights by virtue of section 11(12) of the 1995 Act,
 - (d) a parent having parental responsibility for the young carer under Part 1 of the 1989 Act,
 - (e) a person having parental responsibility for the young carer by virtue of—
 - (i) section 12(2) of the 1989 Act,
 - (ii) section 14C of the 1989 Act, or
 - (iii) section 25(3) of the Adoption and Children Act 2002,
 - (f) a parent having parental responsibility for the young carer under Part 2 of the 1995 Order,
 - (g) a person having parental responsibility for the young carer under Article 12(2) of the 1995 Order,
 - (h) a person in whom parental responsibilities or parental rights are vested by virtue of a permanence order (as defined in section 80(2) of the Adoption and Children (Scotland) Act 2007),
- “supported person” means—
- (a) where the support is to be provided to an adult carer, the adult carer,

- (b) where the support is to be provided to a young carer—
 - (i) if the young carer is under 16 years of age, an appropriate person,
 - (ii) if the young carer is 16 years of age or over, the young carer,“young carer” has the meaning given in section 2 of the Carers (Scotland) Act 2016.”,
 - (d) the title to that section becomes “Choice of options: adult carers and young carers”.
- (5) In section 10 (provision of information: children under 16)—
- (a) in subsection (1), for “section 8” substitute “section 7 or 8”,
 - (b) in subsection (2)—
 - (i) before first “child” insert “young carer or, as the case may be,”,
 - (ii) before second “child” insert “young carer or”,
 - (c) in subsection (3), before “child” insert “young carer or”,
 - (d) in subsection (4), after “meaning” insert “—
 - (a) in relation to a young carer, as in section 7(7),
 - (b) in relation to a child,”.
- (6) In section 11(3) (local authority functions), after “1968 Act” insert “, section 24 of the Carers (Scotland) Act 2016”.

Public Bodies (Joint Working) (Scotland) Act 2014

- 6 (1) The Public Bodies (Joint Working) (Scotland) Act 2014 is amended as follows.
- (2) In Part 1 of the schedule—
- (a) in the entry for the Social Work (Scotland) Act 1968, “12AA, 12AB,” is repealed,
 - (b) in the entry for the Children (Scotland) Act 1995, after “19” insert “to 23, 25”,
 - (c) after the entry relating to the Social Care (Self-directed Support) (Scotland) Act 2013, insert—
“Sections 6, 12, 21, 24, 25, 31, 34 and 35 of the Carers (Scotland) Act 2016.”.

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