

# **Carers (Scotland) Act 2016**

## **Equality Impact Assessment**

**March 2018**



**Scottish Government**  
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**CARERS (SCOTLAND) ACT 2016**  
**EQUALITY IMPACT ASSESSMENT**  
**(REVIEWED AND UPDATED FOR COMMENCEMENT**  
**ON 1 APRIL 2018)**

<b>Title of Policy</b>	Carers (Scotland) Act 2016 (“the Act”)
<b>Summary of aims and desired outcomes of Policy</b>	<p>It is the intention of the Scottish Government that Scotland’s estimated 745,000 adult carers and 44,000 young carers<sup>1 2</sup> should be better supported on a more consistent basis so that they can continue to care, if they so wish, in good health and to have a life alongside caring. In relation to young carers, the intention is similar to that for adult carers but that young carers should have a childhood similar to their non-carer peers.</p> <p>The Act will realise this ambition by ensuring better and more consistent support for carers and young carers so that they can continue to care, if they so wish, in better health and to have a life alongside caring.</p>
<b>Directors: Division: Team</b>	Directorate for Health and Social Care Integration: Care, Support and Rights Division: Carers Policy Branch.

<sup>1</sup> Scottish Health Survey (SHeS). The number of carers identified through the SHeS is much higher than the number identified through the Census 2011. That figure stands at 492,231 adult carers and young carers combined. We believe that the difference is due primarily to the SHeS being an interview survey where each adult answers the question separately, rather than one person answering for the whole household: this more readily helps people to identify themselves as carers. The question is: “Do you look after, or give any regular help or support to family members, friends, neighbours, or others because of either a long-term physical condition, mental ill-health or disability; or problems related to old age?”

<sup>2</sup> The Scottish Government published Scotland’s Carers, An Official Statistics Publication for Scotland on 24 March 2015 <http://www.gov.scot/Resource/0047/00473691.pdf>. This data is presented on the basis of under 16s and over 16s, as the weighting in the SHeS is designed for this age split. Since the Act’s definition of young carer relates to under 18s (or a carer who has attained the age of 18 and is a pupil at school), the figures presented here make an estimate, based on the data, to include 16 and 17 year-olds.

## Executive summary

1. The public sector equality duty requires the Scottish Government to assess the impact of applying a proposed new or revised policy or practice. It is a legislative requirement. Policies should reflect that different people have different needs. Equality legislation covers the protected characteristics of: age, disability, gender reassignment, sex, gender including pregnancy and maternity, race, religion and belief, and sexual orientation.
2. This Equality Impact Assessment (EQIA) has considered the potential impacts of the Act on each of the protected characteristics. The provisions, Regulations, and how they impact on carers across the protected characteristics are set out below.
3. This impact assessment is one of a package to accompany the Carers (Scotland) Act 2016. The others are: Business and Regulatory Impact Assessment (BRIA); Childrens Rights and Wellbeing Impact Assessment (CRWIA); and Privacy Impact Assessment (PIA).
4. The original EQIA identified opportunities to improve our understanding of carers who belong to particular equality groups and their experiences of caring. This has been used to help inform policy, and to tailor communication with particular equality and representative stakeholder groups throughout implementation of the Act.
5. The Scottish Government has decided to use some of the regulation-making powers in the Act. Where regulation-making powers are not being used, the Government may consider these, where appropriate, in the future. Whilst the Act comes into force on 1 April 2018, certain provisions and regulations were commenced earlier to enable local authorities to fulfil their duties under the Act.
6. An Implementation Steering Group has been established to help inform successful implementation of the Act and to provide views on draft regulations and guidance. Several other working groups have also been established to help inform specific themes across the Act. Further information about membership of the ISG and working groups are described below at ***Who was involved in this EQIA?***

## **Background**

### **Policy Aims**

7. It is the intention of the Scottish Government that Scotland's 745,000 adult carers and 44,000 young carers should be better supported on a more consistent basis so that they can continue to care if they so wish, in good health and to have a life alongside caring. In relation to young carers, the intention is similar to that for adult carers, but that young carers should have a childhood similar to their non-carer peers. The objective of the Act is to make real this ambition by furthering the rights of both adult and young carers.

8. The Scottish Government is supporting unpaid adult and young carers through a range of policies as set out in their manifesto and Programme for Government. From 2007/08 to 2016/17 the Scottish Government has invested nearly £136 million towards a range of programmes and initiatives to support these policies.

9. The case for the Act is set out fully in the Policy Memorandum published alongside the Carers Bill on its introduction to the Scottish Parliament on 9 March 2015.

10. The Act provisions closely align with the Healthier, Wealthier and Fairer Strategic Objectives, but also cut across the Smarter objective.

11. The Act contributes to the following National Outcomes:

- We live longer, healthier lives;
- We have tackled the significant inequalities in Scottish society;
- We live in well-designed, sustainable places where we are able to access the amenities and services we need;
- Our children have the best start in life and are ready to succeed
- We have strong, resilient and supportive communities where people take responsibility for their own actions; and
- Our public services are high quality, continually improving, efficient and responsive to local people's needs.

### **Who was involved in this EQIA?**

12. The implementation of the Act has involved colleagues from within the Scottish Government and a range of external stakeholders.

13. The Implementation Steering Group membership and other working groups include carers, carer representatives, local authorities, health boards, COSLA, and other key interests including: Scottish Consortium for Learning Disabilities (SCLD); and Minority Ethnic Carers of Older People Project (MECOPP). Equality matters have been discussed across all working groups.

14. Stakeholders have had the opportunity to express views about the Act provisions and draft regulations, identifying areas of particular challenge in relation to protected characteristic groups.

15. These discussions have helped to identify the potential impact of the Act on other Scottish Government policy areas and on those in protected groups. It has also assisted in identifying available existing evidence about carers and carers in protected groups.

### **Scope of the EQIA**

16. The scope of this EQIA is focused on the possible impact on privacy from implementing the provisions in the Act. More particularly, this PIA has been reviewed and updated in readiness of the Act commencing on 1 April 2018.

17. The previous version of the EQIA describes all of the provisions which may have an impact on equality matters. For the purposes of this review and updated EQIA the Regulations (and associated provisions) which have already been laid, and the remaining Regulations laid in February 2018 are included.

### **Key findings and data sources**

18. A summary of the available evidence and data collected to help inform this EQIA is provided at **Annex A**. A variety of information sources were used including, but is not exclusive of :

- Scotland's Carers 2015<sup>3</sup>;
- Scottish Health Survey 2012/13<sup>4</sup>;
- Scottish Health and Care Experience Survey 2013/14<sup>5</sup>;
- Scotland's Census 2011<sup>6</sup>.

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<sup>3</sup> <http://www.gov.scot/Publications/2015/03/1081>

<sup>4</sup> <http://www.gov.scot/Publications/2016/09/2408>

<sup>5</sup> <http://www.gov.scot/Topics/Statistics/Browse/Health/GPPatientExperienceSurvey/Survey1314>

<sup>6</sup> <http://www.scotlandscensus.gov.uk/>

## **Regulations and possible impacts on protected characteristics**

### **The Carers (Scotland) Act 2016 (Agreements of a Specified Kind) Regulations 2017**

#### ***Regulations***

7. These Regulations provided for under section 1(3)(a) were made on 25<sup>th</sup> July 2017, and came into force on 1 October 2017.

8. This is because clear definitions under the Act, including for kinship carers, had to be in place in order for local authorities to undertake their duties under section 22(2) of the Act - 1 October 2017 being the start of the 6 month period during which local authorities must set their first local eligibility criteria.

#### ***Provision***

9. Section 1 describes the key definitions of “carer”, “young carer” and “adult carer” for the purposes of the Act.

#### ***Possible impact of regulations under section 1(3)(a)***

10. The Regulations under section 1(3)(a) specifies that a kinship care agreement under regulation 12 of the Looked After Children (Scotland) Regulations 2009 cannot be viewed as a “contract” for the purposes of the Act.

11. The health and wellbeing of children being cared for will be improved by virtue of support being provided to eligible kinship carers. No adverse impact on those who may have protected characteristics is expected as a result of these provisions.

### **The Carers (Scotland) Act 2016 (Prescribed Days) Regulations 2017**

#### ***Regulations***

12. These Regulations provided for under section 22(2) were laid on 16 June 2017, and came into force on 1 October 2017.

#### ***Provision***

13. Section 21 provides that each local authority must set local eligibility criteria to apply in its area. The local eligibility criteria is the criteria by which the local authority determines whether it is required to provide support to meet the identified needs of carers.

14. Section 22 provides that each local authority must publish its local eligibility criteria.

#### ***Possible impact of regulations under section 22(2)***

15. The intention of this regulation is to prescribe to local authorities (a) that local eligibility criteria should be published within 6 months from 1 October 2017 and (b) that the first review of these criteria should be within three years. No adverse impact on those who may have protected characteristics is expected as a result of these provisions.

## **The Carers (Scotland) Act 2016 (Adult Carers and Young Carers: Identification of Outcomes and Needs for Support) Regulations 2018**

### ***Regulations***

16. These Regulations provided for under sections 8 and 14 were laid on 2 February 2018, and will come into force on 1 April 2018.

### ***Provision***

17. These Regulations provide for further clarity about the identification of an adult carer's or young carer's personal outcomes and needs for support to be undertaken by the responsible (local) authority.

18. An adult carer's or young carer's personal outcomes and needs for support must be identified through conversation between the responsible (local) authority and the carer. An adult carer's or young carer's personal outcomes and needs for support must be reviewed when the adult carer support plan or young carer statement is reviewed.

### ***Possible impact of regulations under sections 8 and 14***

19. The identification of personal outcomes and needs for support are integral to the duty to prepare the adult carer support plan and young carer statement. The responsible local authority (under section 8(2)) and the responsible authority (under section 14(2)) must take into account requirements under section 149(7) of the Equality Act 2010 when identifying the adult carer's or young carer's personal outcomes and needs for support.

20. These provisions ensure that adult carers and young carers have the opportunity to have any protected characteristic they may have identified and considered as part of their adult carer support plan or young carer statement. The Scottish Government believes there will be a positive impact on those who may have protected characteristics as a result of these provisions.

## **The Carers (Scotland) Act 2016 (Review of Adult Carer Support Plans and Young Carer Statements) Regulations 2018**

### ***Regulations***

21. These Regulations provided for under sections 10 and 16 were laid on 2 February 2018, and will come into force on 1 April 2018.

### ***Provision***

22. These Regulations provide for the "trigger" circumstances in which an adult carer support plan or young carer statement must be reviewed outwith planned review times.

### ***Possible impact of regulations under sections 10 and 16***

23. Similar to 20. above, the Scottish Government believes there will be a positive impact on those who may have protected characteristics as a result of these provisions.

## **The Carers (Scotland) Act 2016 (Short Breaks Services Statements) Regulations 2018**

### ***Regulations***

24. These Regulations provided for under section 35(4) were laid on 2 February 2018, and will come into force on 1 April 2018.

### ***Provision***

25. These Regulations make provision about the preparation, publication and review of short breaks services statements.

### ***Possible impact of regulations under section 35(4)***

26. One of the intentions of the short breaks services statement is to encourage each local authority to consider more innovative approaches and to establish a range of appropriate short breaks provision that meet the needs of carers in their local area.

27. In doing so, carers will be better informed when making decisions about short breaks that they may wish to access. It is expected that protected characteristics will be considered when local authorities plan for short breaks services, and subsequently in publishing information about these services.

28. The Scottish Government believes there will be a positive impact on those who may have protected characteristics as a result of these provisions.

## **The Carers (Scotland) Act 2016 (Transitional Provisions) Regulations 2018**

### ***Regulations***

29. These Regulations provided for under section 43 were laid on 2 February 2018, and will come into force on 1 April 2018.

### ***Provision***

30. These Regulations provide for the transition from the provision of support to carers under existing legislation to support provided under the Carers Act.

31. These Regulations provide that existing support to the adult carer or young carer must continue until “trigger” circumstances require an adult carer support plan (ACSP) or young carer statement (YCS) to be prepared, as well as the periods within which an ACSP or YCS must be offered to the carer.

### ***Possible impact of regulations under section 43***

32. Continuity of support to carers will ensure their health and wellbeing (and of those being cared-for) are sustained. The Scottish Government believes there is no adverse impact on those who may have protected characteristics as a result of these provisions.



## **The Carers (Waiving of Charges for Support) (Scotland) (Amendment) Regulations 2018**

### ***Regulations***

33. These Regulations provided for under section 87(5) were laid on 2 February 2018, and will come into force on 1 April 2018.

### ***Provision***

34. These Regulations ensure that costs incurred by a local authority in the provision of support to a carer are not charged to that carer.

### ***Possible impact of regulations under section 87(5)***

35. The Scottish Government believes there is no adverse impact on those who may have protected characteristics as a result of these provisions.

## **The Self-directed Support (Direct Payments) (Scotland) Amendment Regulations 2018**

### ***Regulations***

36. These Regulations provided for under sections 15 and 22(1) of the Social Care (Self-directed Support) (Scotland) Act 2013 were laid on 2 February 2018, and are due to come into force on 1 April 2018.

### ***Provision***

37. These Regulations to maintain the requirement that local authorities cannot means test or require a contribution from a carer where carer support is being delivered by way of a direct payment.

### ***Possible impact of regulations under section 87(5)***

38. The Scottish Government believes there is no adverse impact on children and young people as a result of these provisions.

## **The Public Bodies (Joint Working) (Prescribed Local Authority Functions etc.) (Scotland) Amendment (No. 2) Regulations 2017**

### ***Regulations***

39. These amending Regulations were laid on 7 November 2017, and will come into force on 1 April 2018.

### ***Provision***

40. These Regulations remove section 3 from the entry for the Social Care (Self-directed support) (Scotland) Act 2013 from the list of enactments in the schedule of the Public Bodies (Joint Working) (Scotland) Act 2014, as this provision is repealed by the Carers Act. It also provides that the functions conferred on a local authority under sections 6, 24, 25, 31, 34 and 35 of the Carers Act are ones which must be delegated to Integration Authorities. This amendment ensures that provisions in the Carers Act are consistent with the way other social care functions have been delegated to Integration Authorities.

### ***Possible impact of regulations under section 87(5)***

41. These amending Regulations allow responsibility for a number of local authority related functions for carers to be passed to Integrated Authorities so that they can direct their the way they are carried out, updating existing legislation in order for the Carers Act to function as intended. The Scottish Government believes there is no adverse impact on those who may have protected characteristics as a result of these provisions.

## Further considerations

19. The evidence provided in the table at **Annex A** illustrates the diversity of carers and their caring responsibilities. The Act provisions will have a positive impact on all of Scotland's carers, including those who fall into one or more protected groups.

20. No negative impacts on any of the protected groups have been identified. However, it is clear that data and evidence needs to be identified and gathered to help inform how carers from some of the protected groups are better supported. In particular, LGBTI and Gypsy/Traveller communities.

21. It is also recognised that there may be other factors affecting those in protected groups which although not a consequence of the Act provisions may, in comparison to those in non-protected groups, impact on the extent to which they can access and benefit from the provisions when implemented. For example, although adult carers in the LGBTI group are entitled to an adult carer support plan in the same way as a carer in a non-protected group, the particular issues facing that group (such as the fear of homophobia or discrimination) may imply additional barriers to accessing a support.

22. The widening of access to support resulting from the implementation of the Act including, for example: the introduction of the adult carer support plan and young carer statement; the requirement for information and advice services; and carer involvement, are all expected to positively impact on adult and young carers, including those who have one or more protected characteristics.

23. Under section 36 of the Act Scottish Ministers must prepare and publish a Carers' charter, setting out the rights of carers as provided for in or under the Act. The charter will not give rise to any new rights or alter existing rights under law. This will be an important source of information for carers, practitioners, and anyone with an interest in the provision of support and services for carers. In addition to a public consultation, in preparing the charter the Scottish Government has consulted with the National Carer Organisations and COSLA.

## Conclusion

24. This EQIA has confirmed that the provisions of the Act and the regulations will not directly or indirectly discriminate on the basis of age, disability, gender, gender re-assignment, sexual orientation or race and belief. The Act applies equally to those affected by its provisions.

25. Moreover, section 149(7) of the Equality Act 2010 is included in provisions of the Act for the delivery of the adult carer support plan, young carer statement, and information and advice service. Local authorities, health boards, and other providers of services have existing equality processes.

## Authorisation

I confirm that the impact of the Carers (Scotland) Act has been sufficiently assessed against the needs of the equality duty:

<p><b>Name and job title of a Deputy Director or equivalent:</b></p> <p><i>Jamie MacDougall</i></p> <p><b>Jamie MacDougall Deputy Director Care Support and Rights Division</b></p>	<p><b>Date this version authorised:</b> 20 March 2018</p>
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## ANNEX A

### KEY FINDINGS

Protected characteristic	Available evidence gathered
AGE	<ul style="list-style-type: none"> <li>• The age group where someone is most likely to be a carer is 50-64 years old<sup>7</sup>.</li> <li>• Those aged 65 and over are most likely to provide more intensive care (35+ hours per week) with over half of these carers doing so<sup>8</sup>.</li> <li>• Poor carer health and wellbeing is concerning for both the carer and the cared-for person. It can result in greater use of health and care services, particularly older people, for example: through admission and delayed discharge at hospital; referral to a day hospital or other unit; and admission to institutional care.<sup>9</sup></li> <li>• It is estimated there are 44,000 young carers aged 4-17.<sup>10</sup></li> <li>• It is estimated there are 29,000 young carers aged under 16<sup>11</sup>.</li> </ul>
DISABILITY	<ul style="list-style-type: none"> <li>• 41% of carers have a long-term health condition.<sup>12</sup></li> <li>• 16% were deaf or had partial hearing loss; 16% had a physical disability; 11% had a mental health condition; and 44% had another condition not listed.<sup>13</sup></li> <li>• Nearly 6% of carers report having a long-term mental health condition compared with 4% of non-carers<sup>14</sup>.</li> <li>• The percentage of carers with one or more long-term health condition increases with the number of hours caring – from 36% of those caring for 1-19 hours to 50% of those caring for 35+ hours.<sup>15</sup></li> </ul>
SEX	<ul style="list-style-type: none"> <li>• For carers aged 16 and over, 59% are women and 41% are men.</li> <li>• Women are more likely to be carers than men until retirement age when equally 19% of both women and men are providing care. In the oldest age group (75+) more men than women (12% and 9% respectively) provide care.</li> <li>• 62% of male carers providing care of 35+ hours a week are aged 25-64. This compares with 69% of women carers.</li> </ul>

<sup>7</sup> <http://www.gov.scot/Resource/0047/00473691.pdf>

<sup>8</sup> ibid

<sup>9</sup> Pearson, B., Skelly, R., Wileman, D. and Masud, T. (2002) Unplanned readmission to hospital: A comparison of the views of general practitioners and hospital staff. Age & Ageing <http://ageing.oxfordjournals.org/content/31/2/141.full.pdf+html>

<sup>10</sup> ibid

<sup>11</sup> ibid

<sup>12</sup> Census 2011. A long-term condition was defined as one which lasted 12 months or more.

Respondents were asked to self-select from a list of options comprising: deafness or partial hearing loss, blindness or partial sight loss, learning disability, learning difficulty, developmental disorder, physical disability, mental health condition, long term illness, disease or condition, other condition (respondent to specify), and no condition.

<sup>13</sup> ibid

<sup>14</sup> ibid

<sup>15</sup> ibid

<b>SEXUAL ORIENTATION</b>	<ul style="list-style-type: none"> <li>• Research published in 2007 by the Lesbian, Gay, Bisexual Transgender and Intersex (LGBTI) Centre for Health and Wellbeing<sup>16</sup> reported that 0.8% of respondents from Edinburgh, the Lothians and the Borders provided full-time caring.</li> <li>• Some LGBTI parents/carers felt that reporting incidents affecting them would 'out' their children in the neighbourhood and make their children a target for bullying or harassment.</li> <li>• The LGBT Youth Scotland written response to the Carers (Scotland) Bill consultation<sup>17</sup> provided further evidence of issues affecting LGBT carers: <ul style="list-style-type: none"> <li>○ Many LGBT carers or the LGBT people they are caring for may have reduced social networks due to a lack of acceptance of their sexual orientation or gender identity. This can result in accessing less support than other carers.</li> <li>○ Many LGBT people fear potentially experiencing homophobia, biphobia and transphobia from services or have previous experience of discrimination from a service.</li> <li>○ There is often a lack of visibility of LGBT identities within services which are necessary to counter LGBT people's expectations of discrimination, or a lack of confidence that service services are able to meet their needs.</li> </ul> </li> </ul>
<b>RACE</b>	<ul style="list-style-type: none"> <li>• The Pakistani community who make up 0.9% of Scotland's population is the largest BME group. This is followed by the Chinese community with 0.6% and then by the Indian community with 0.6%. The Gypsy/Traveller population account for 0.1% of the total population.<sup>18</sup></li> <li>• 96% of carers are of a "White Scottish / British / Irish" ethnicity, while 4% are of "Other" ethnic backgrounds.<sup>19</sup></li> <li>• 8.7% of the Pakistani population in Scotland provide some form of unpaid caring. This compares with 4.3% of the Chinese and 5.5% of the Indian communities.</li> <li>• People from older ethnic groups such as "White: Scottish" and "White: Other British" were the most likely to provide unpaid care. People from ethnic groups with younger age profiles, such as the "Arab" and "White: Polish" groups, were least likely to provide unpaid care.<sup>20</sup></li> <li>• There is evidence that Gypsy/Travellers experience significant health inequalities, high infant mortality rates, premature deaths and higher than average rates of major long-term conditions such as diabetes and cardiovascular disease.<sup>21</sup></li> </ul>

<sup>16</sup> Arskey H Hirst, M (2005) Unpaid Carers Access to and Use of Primary Care Services, Primary Health Care Research and Development <http://php.york.ac.uk/inst/spru/pubs/2/>

<sup>17</sup> <http://www.gov.scot/Resource/0045/00450457.pdf>

<sup>18</sup> ibid

<sup>19</sup> ibid

<sup>20</sup> Analysis of Equality Results from the 2011 Census <http://www.gov.scot/Publications/2014/10/8378>

<sup>21</sup> Hidden Carers – Unheard Voices – Informal caring within the Gypsy/Traveller Community in Scotland [http://www.scottish.parliament.uk/S4\\_EqualOpportunitiesCommittee/Inquiries/MECOPP.pdf](http://www.scottish.parliament.uk/S4_EqualOpportunitiesCommittee/Inquiries/MECOPP.pdf)

<b>GENDER RE-ASSIGNMENT</b>	No data is available about adult carers or young carers under this protected characteristic grouping.
<b>RELIGION OR BELIEF</b>	No data is available about adult carers or young carers under this protected characteristic grouping.
<b>MARRIAGE AND CIVIL PARTNERSHIP</b>	No data is available about adult carers or young carers under this protected characteristic grouping.
<b>PREGNANCY AND MATERNITY</b>	No data is available about adult carers or young carers under this protected characteristic grouping.



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