

Carers (Scotland) Act 2016 – Update on regulations, guidance and carers’ charter March 2018

Regulations

The following summary table provides an update on the status of the secondary legislation being prepared for Carers Act implementation.

Those statutory instruments yet to be made will be scheduled in time to take effect on 1 April 2018. The only exception to this is the regulations setting timescales for adult carer support plans and young carer statements for carers of terminally ill persons. A study is currently underway to inform the development of these regulations later in 2018.

Scottish Statutory Instrument	Purpose	Status
The Carers (Scotland) Act 2016 (Commencement No. 1) Regulations 2017	Brings into effect consequential amendments to update legal references in the Public Bodies (Joint Working) (Scotland) Act 2014.	Passed
The Carers (Scotland) Act 2016 (Commencement No. 2 and Savings Provision) Regulations 2017	Brings into effect remaining provisions of the Carers Act in time for local eligibility criteria to be set from 1 October 2017; and for guidance and regulations to be made before the main provisions of the Act to come into effect on 1 April 2018.	Passed
The Carers (Scotland) Act 2016 (Agreements of a Specified Kind) Regulations 2017	Ensures that a kinship carer agreement with a local authority does not exclude someone from being seen as a carer under the Act (as long they meet the other requirements of the definition).	Passed
The Public Bodies (Joint Working) (Prescribed Local Authority Functions etc.) (Scotland) Amendment Regulations 2017	Adds the responsibility for setting local eligibility criteria to the list of functions that must be delegated to Integrated Joint Boards.	Passed
The Carers (Scotland) Act 2016 (Prescribed Days) Regulations 2017	Sets 1 October 2017 as the start of the 6 month period for setting local eligibility criteria and sets the period for their first review at three years after publication.	Passed
The Public Bodies (Joint Working) (Prescribed Local Authority Functions etc.) (Scotland) Amendment (No. 2) Regulations 2017	Lists the remaining Local Authority functions under the Act that must be delegated to Integrated Joint Boards.	Passed
The Public Bodies (Joint Working) (Prescribed Health Board Functions) (Scotland) Amendment Regulations 2017	Lists further Health Board functions under the Act that may be delegated to Integrated Joint Boards.	Passed

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Scottish Statutory Instrument	Purpose	Status
The Carers (Scotland) Act 2016 (Review of Adult Carer Support Plans and Young Carer Statements) Regulations 2018	To set out those circumstances which must always lead to a review of Adult Carer Support Plans and Young Carer Statements.	All before Parliament Committee scrutiny due on 13 March
The Carers (Scotland) Act 2016 (Short Breaks Services Statements) Regulations 2018	To require certain information to be included in short breaks services statements, and to set out when and how the statements are to be published and reviewed.	
The Carers (Scotland) Act 2016 (Transitional Provisions) Regulations 2018	To set out how the duties under the Carers Act should apply to carers already assessed and receiving support.	
The Carers (Waiving of Charges for Support) (Scotland) Amendment Regulations 2018	Technical - To update the legal references in the Carers (Waiving of charges for support) (Scotland) Regulations 2014 to take account of the Carers Act.	
The Self-directed Support (Direct Payments) (Scotland) Amendment Regulations 2018	Technical - To update the legal references in the Self Directed Support (Direct Payments) (Scotland) Regulations 2014 to take account of the Carers Act.	
The Carers (Scotland) Act 2016 (Adult Carers and Young Carers: Identification of Outcomes and Needs for Support) Regulations 2018	To make provision about the identification of an adult carer and young carer's personal outcomes and needs for support. These are necessary to give operational effect to the definitions of "identified personal outcomes" and "identified needs" in section 5 of the Act.	
<i>Carers of terminally ill persons regulations.</i>	To set timescales for the preparation of adult carer support plans and young carer statements for carers of terminally ill persons.	

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Guidance

A near final draft of the full guidance package was circulated at the end of December. The contents are currently as follows.

Introduction

Part 1: Key Definitions

Chapter 1: Meaning of “carer”, “young carer” and “adult care”

Part 2: Adult Carer Support Plans and Young Carer Statements

Chapter 1 – Adult Carer Support Plans

Chapter 2 – Young Carer Statements

Part 3: Provision of support to carers

Chapter 1 – Local Eligibility Criteria – Existing Statutory Guidance

Chapter 2 – Duty to provide support to carers

Chapter 3 – Waiving of Charges & Replacement Care

Part 4: Carer involvement

Chapter 1 – Carer Involvement In Services and Service Planning

Chapter 2 – Carer Involvement In Hospital Discharge

Part 5: Local Carer Strategies

Chapter 1 – Local Carer Strategies

Part 6: Information and advice for carers, including short breaks services statements

Chapter 1 – Information and Advice for carers

Chapter 2 – Short Breaks Services Statement

Part 7: Delegation of functions

Part 8: Transitional provisions

Glossary

Annexes

Annex A – Support to carer or cared-for person

Annex B – Carers who are also service users (adults or children with support needs)

Annex C – Short Breaks – definition by Shared Care Scotland

Annex D – Carer Identification

The draft guidance on **transitional provisions** was circulated on 9 March, and will be included as Part 8 of the package.

The guidance needs to include advice on regulations, including those which are not scheduled to have passed through Parliament until March. Therefore it cannot be finalised and published as ‘statutory guidance’ until that time. However, we expect to circulate a finalised version (only subject to minor editing) week beginning 12 March.

Statutory guidance on the duty to set **local eligibility criteria** issued in November 2017. This guidance will not be amended further while initial local eligibility criteria are being set between now and 1 April 2018. After that date, the intention is to incorporate local eligibility criteria guidance into the main Carers Act guidance package so that it can be used when reviewing and revising local eligibility criteria under section 22.

Carers' charter

Section 36 of the Carers Act requires Scottish Ministers to prepare and publish a carers' charter, setting out the rights of carers in or under the Act.

A public consultation on a draft carers' charter was held from 31 July to 22 October 2017. All of the consultation responses have been considered, and the charter has been redrafted to take relevant comments into account.

Officials have also consulted with the National Carer Organisations (NCOs) to further inform the document. The NCOs have approved the final draft of the charter. COSLA has also been invited to comment on the final draft of the charter.

We may review the charter at a later date to take into account regulations in relation to carers of terminally ill cared-for persons.

Current status

Scottish Ministers have been asked to approve the carers' charter, in readiness for publication on 1 April.

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Scottish Government
March 2018