

Scottish Government Response to ‘Carers Legislation – Consultation on Proposals – January 2014’

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Ministerial Foreword



As a new Minister, I am proud to have responsibility within my portfolio for carers and young carers.

At the Carers Parliament in October 2013, the former First Minister, Alex Salmond MSP, announced the Scottish Government's intention to bring forward legislation to strengthen and extend the rights of carers and young carers.

We launched the *Carers Legislation – Consultation on Proposals* in January last year. I am pleased that during a 12 week period we had the opportunity to hear from a wide range of interests including carers and young carers, third sector organisations, local authorities, health boards and many others. I am very grateful to everyone who responded to this consultation and who participated in consultation events.

The insightful views of all respondents have provided us with a further understanding of the experiences and needs of carers and young carers, and of a range of issues affecting the statutory organisations and third sector bodies who continue to provide crucial services, support, advice and guidance.

I welcome the broad support that has been given for our proposals. By ensuring that this new legislation, subject to Parliamentary approval, has a key role to play as part of the wider approach to public service reform, we can successfully realise our aims as set out in the consultation paper. This response provides further detail on how we intend to proceed with the proposals.

The Scottish Government has provided significant funding of nearly £114 million between 2007-2015 to support carers and young carers. We recognise that more needs to be done to build on the progress achieved so far. Therefore, policy and practice developments will continue alongside the implementation of measures introduced through new legislation.

I look forward to working with all interests to ensure that carers can continue to care and to have a life alongside caring to help achieve their own personal outcomes. We want young carers too to achieve their own personal ambitions and goals.

A handwritten signature in black ink, appearing to read 'Jamie Hepburn', with a long horizontal flourish extending to the right.

Jamie Hepburn MSP
Minister for Sport, Health Improvement and Mental Health

Background

On 22 January 2014 the Scottish Government launched 'Carers Legislation – Consultation on Proposals'.¹ The consultation ran for 12 weeks and closed on 16 April 2014.

The Bill is an important part of the wider programme of health and social care reform.

We have consulted on a wide range of proposals relating to support planning, the provision of support, carer involvement and participation and other matters.

A detailed independent report outlining the findings of the consultation was published on the Scottish Government's website on 4 March 2015. This Scottish Government response sets out how Scottish Ministers have considered the findings of the consultation exercise and feedback from other engagement activity, and outlines what will be included in the Carers Bill.

The Scottish Government response

The Scottish Government is grateful for the time that carers, young carers, other individuals, and organisations have taken to consider the consultation proposals and submit responses.

In total, 165 written responses were received,² 32 from individuals and 133 from organisations. In addition, 513 respondents submitted their response using a template produced and distributed by the Coalition of Carers in Scotland (COCIS), and 909 responses were received through a campaign based on a questionnaire distributed by the Scottish Youth Parliament.

A series of 16 consultation events were also held across the country to ensure a wide representation of views from carers, young carers, public bodies and the third sector. Scottish Government officials also continued to engage with partners to help inform the development of the Bill.

Scottish Ministers have carefully considered all the views expressed throughout the consultation period. Overall, respondents were broadly positive about the proposals, and the Scottish Government will proceed with the introduction of a Carers Bill to the Scottish Parliament.

Views for further proposals that we did not consult on were also submitted, and a number of issues were raised during the consultation period. These are addressed in this response.

¹ <http://www.scotland.gov.uk/Publications/2014/01/4757>

² <http://www.scotland.gov.uk/Publications/2014/05/8784>

Chapter 1: The carer's assessment (the carer's support plan)

Question 1

Should we change the name of the carer's assessment to the Carer's Support Plan?

What we heard

Most respondents supported the proposal to change the name of the carer's assessment to the 'carer's support plan'. Some local authorities told us that they already use this naming convention, or similar, for assessments.

The broad consensus is that removing the term 'assessment' is a positive step, as many carers consider the terminology to have negative or stigmatising connotations. Some respondents did however express the view that the end result and outcomes for carers are more important than a change of name.

Some respondents suggested that the term 'support' may lead to a presumption that support will automatically follow the completion of an assessment.

The Scottish Government response

We intend to introduce the adult carer support plan (ACSP) for all identified adult carers if they wish to have this Plan. The ACSP will, amongst other things, set out the adult carer's identified personal outcomes, his or her identified needs (if any) and the support (if any) to be provided to meet the needs. With regard to the adult carer's personal outcomes, these will include outcomes which would, if achieved, enable the carer to provide or continue to provide care for the cared-for person. There is likely to be a focus on outcomes that are linked to maintaining and improving the health and wellbeing of the carer.

The implementation of the ACSP will provide a consistent approach across all local authority areas. It is intended to remove the stigma that some carers feel exists with the term 'assessment.'

Question 2

Should we remove the substantial and regular test so that all carers will be eligible for the Carer's Support Plan?

What we heard

Most respondents welcomed the proposal to remove from the face of statute what is commonly termed 'the regular and substantial test.' This will extend what is now the ACSP to all adult carers, including those who only have low-level or temporary support needs.

Some respondents commented that current practice has created a barrier preventing some carers from accessing assessment and potential support. We have heard that this is especially the case for carers of people with unpredictable or episodic

conditions and where a relapse or a change in the person's condition can result in support needed for the carer.

The Scottish Government response

We propose to remove 'the regular and substantial test' to create a more consistent approach across Scotland. The legal requirement for local authorities to make a decision about a carer's eligibility for an assessment i.e. whether the carer is indeed caring for a substantial amount of time on a regular basis will no longer exist.

The effect of extending the ACSP to all adult carers who want one will be positive and will raise awareness of caring and the potential support available. It will also enable adult carers who care for someone on an intermittent or irregular basis to have access to the ACSP that they may otherwise not have had.

Question 3

Should we remove that part of the existing carer assessment process whereby the cared-for person is a person for whom the local authority must or may provide community care services/children's services?

What we heard

A recurring theme that respondents highlighted is that currently some potential cared-for people have health needs only and are not in receipt of community care services or are resistant to accepting support services. Examples cited were people with mental illness, those who are affected by substance misuse, people living with HIV, older people, or people from black and minority ethnic (BME) communities. In BME communities, family members, in particular, are often not recognised as being carers and can, as a result, find themselves isolated with little or no support.

Some respondents commented that by removing 'the substantial and regular test' together with the removal of this criteria, there would be better identification (and self-identification) of carers. This could lead to better outcomes for carers and, in the longer term, result in less demand for costly services intended for cared-for people.

The Scottish Government response

We propose to remove the criteria that the cared-for person must be in receipt of community care services. We are persuaded that removal of this criteria will encourage better identification (and self-identification) of adult carers leading to an increased uptake in ACSPs.

Question 4

Should we introduce two routes through to the Carer's Support Plan – at the carer's request and by the local authority making an offer?

What we heard

A two-route option of the adult carer being offered a carer's assessment or the adult carer requesting a carer's assessment is already well-established as good practice in

some areas. The majority of respondents feel that it would be helpful to have two routes through to the ACSP.

The Scottish Government response

In addition to the current pathway where a carer can request a carer's assessment, adult carers can be offered an ACSP. Providing two routes to the ACSP is expected to enhance accessibility of the ACSP, and facilitate a participatory and collaborative approach between the carer and the person or persons preparing the ACSP.

Question 5

Should we remove from statute the wording about the carer's ability to provide care?

What we heard

There was broad support for this proposal and in particular support for a move to an outcomes-based approach. It was suggested that the current wording creates negative connotations and acts as another barrier to carers accessing support. It was suggested that the concept of 'capacity' to care was more appropriate than 'ability.'

Some respondents suggested that in some cases it is important to consider or measure the 'ability' of someone as a carer.

The Scottish Government response

We have reflected on the use of the term 'ability.' It carries negative connotations. We do not propose however to use the term 'capacity' as it conveys mixed messages either about a carer's cognitive capacity or about his or her capacity in terms of their own health and wellbeing. On reflection, we do see merit in having in statute a requirement to take into account the extent to which the adult carer is 'able' to provide care for the cared-for person as opposed to making an assessment about the carer's 'ability' to provide care. If this is done then there will be discussions about whether the adult carer is able to care due to his or her availability, health and so on.

We will also make provision about an adult carer's willingness to provide care. In this respect, it is important that the carer is willing to provide care as well as being able to provide care.

Question 6

Should we introduce a duty for local authorities to inform the carer of the length of time it is likely to take to receive the Carer's Support Plan and if it exceeds this time, to be advised of the reasons?

What we heard

The majority of respondents supported this proposal. However, a significant number of local authority respondents suggested that introducing this duty would create

additional bureaucracy and pressure on resources which would cause unwanted delays in the offering, undertaking and completion of ACSPs. Some local authorities stated the importance of retaining the ability to manage demand and resources within their own areas.

A number of respondents, especially carers and carers groups, disagreed with a duty to inform carers of the length of time it is likely to take to receive the ACSP. Instead, they sought provision in law that the 'waiting time' for being offered the ACSP and the undertaking of the ACSP should take no more than a specified number of weeks with a maximum 12 weeks being cited as a possibility.

The Scottish Government response

We do not intend to introduce a specific duty for local authorities to inform the carer of the length of time it is likely to take to receive the ACSP. Nor will we set a specified time in law for offer of the ACSP. To do so could result in an artificial and inflexible management system where all or most adult carers are offered the ACSP at the maximum time limit e.g. 12 weeks. Our view is that some adult carers (e.g. those with complex caring situations including caring for someone with a terminal illness or at end of life) would require to be offered the ACSP very quickly and for the ACSP to be prepared quickly whereas longer, but not unacceptable, timescales would be the way forward in other circumstances.

We intend to introduce a requirement in law that each local carer strategy (see Chapter 6) must set out the authority's intended timescales for preparing ACSPs and young carer statements (YCSs). (See later in this chapter for young carer statements). Since each local authority must publish its local carer strategy, information will be available on a Scotland-wide basis about intended timescales. This in itself will act as a driver for consistency of approach whilst maintaining local discretion as appropriate.

This provision in law will be underpinned by statutory guidance covering, for example, good practice and expectations around timescales in different situations. Indeed following carer identification, timescales relate to different parts of the ACSP process as follows:

- offer of an ACSP and acceptance of the offer by the adult carer or request for an ACSP by the adult carer
- preparation of an ACSP
- completion of an ACSP
- review of an ACSP

In some cases it will not be known whether there are circumstances requiring speedy completion of the ACSP until the preparation of the ACSP is underway. In other cases, this will be known through the initial contact with the adult carer. This means that it is not acceptable for carers to have to wait a long time for the offer of the ACSP. We fully expect that there will be many more ACSPs prepared than carer's assessments currently and they should be provided within reasonable timescales. Likewise, support to carers should be provided within reasonable timescales.

The guidance will also be clear that it is good practice to advise carers on an individual basis about the expected timescale for offering the ACSP or YCS, for preparation and completion of the ACSP or YCS and for keeping adult and young carers informed of any significant delays.

Question 7

How significant an issue is portability of assessment for service users and carers?

Question 8

Should the Scottish Government and COSLA with relevant interests work together to take forward improvements to the portability of assessment?

What we heard

Portability of assessment for both service users and carers was thought to be a significant issue. Many respondents commented on what they regard as a lack of consistency in assessment and support. A small number of local authorities supported a move towards greater consistency whilst a similar number pointed out that differences exist due to different needs in different areas.

All respondents bar one supported the idea of the Scottish Government and COSLA working together to improve portability of assessment. Comments included the need for the ACSP to be portable in order to minimise stress for carers.

The Scottish Government response

We agree that the Scottish Government and COSLA should work together to improve portability of assessment and will do so.

What else we are doing

- **Young Carer Statement (YCS)**

What we heard

Many respondents highlighted the experiences of young carers and young adult carers.

A concern raised by some respondents was that young carers should have a specific young carer plan or carer support plan in addition to, or instead of, the child's plan.³ Others commented that the needs of young carers should sit within the GIRFEC

³ The child's plan is provided for under section 33 of the Children and Young People (Scotland) Act 2014. A child requires a child's plan if the child has a wellbeing need and if:

(a) the need is not capable of being met, or met fully, by the taking of action other than a targeted intervention in relation to the child and

(b) the need, or the remainder of the need, is capable of being met, or met to some extent, by one or more targeted interventions in relation to the child.

(Getting it Right for Every Child) approach, with consideration being given to the rights of young carers as they move into adulthood.

The Scottish Government response

After consideration of the views of young carers and bodies representing young carers, we will introduce a Young Carer's Statement (YCS).

The YCS will be very similar to the ACSP in terms of the identification of personal outcomes and identified needs (if any) and setting out the support (if any) to be provided to a young carer to meet those needs.

Moreover, because of a young carer's age, the YCS will contain information about the extent to which the 'responsible authority'⁴ considers that the nature and extent of the care provided by the young carer is *appropriate*. This will facilitate discussions about the appropriateness of the type of care provided and whether the caring is detrimental to the young carer's health and wellbeing.

In order to ensure continuity, if and when the young carer becomes an adult carer, the YCS will continue to have effect until the young carer who is now an adult carer is provided with an ACSP.

Young carers who are eligible for a child's plan under the Children and Young People (Scotland) Act 2014 (CYP Act) will be able to have a YCS too.

The ACSP will be available to young adult carers aged 18 and over. However, if a young carer has attained the age of 18 while a pupil at a school and is still at school he or she will be a young carer and will have the YCS. This is for consistency with the circumstances in which the named person service under the CYP Act applies. We will ensure that guidance covers the particular circumstances of young adult carers.

- **Review of ACSP and YCS**

What we heard

Many respondents commented that the plan should be reviewed as and when necessary to ensure that it is kept up-to-date to reflect carers' changing circumstances.

The Scottish Government response

We will make provision for both the ACSP and YCS to contain information about the circumstances in which the plan or statement is to be reviewed. The Scottish Ministers will also have a regulation-making power about the review of the ACSP

⁴ The Carers Bill will define 'responsible authority'. The Scottish Government proposal is that the authority which is responsible for preparing a YCS should be the same authority that provides the named person service under the Children and Young People (Scotland) Act 2014 in respect of the young carer in question.

and YCS. Therefore, it may well be the case that the ACSP and YCS should be reviewed when a cared-for person is discharged from hospital.

- **Other issues**

We see merit in the ACSP and the YCS containing information about whether support should be provided in the form of a break from caring. This will be provided for in the Carers Bill.

Some respondents called for the ACSP to include provisions about emergency planning. We recognise this as a concern for adult carers and young carers too. Since not all adult and young carers will however require discussion of, and arrangements for, emergency planning, we propose to enable emergency planning to take place on an individual basis. Emergency planning will therefore be covered in regulations.

We do not want the ACSP and YCS to be overly onerous or time-consuming to complete as we understand that an overly complicated plan and statement could in itself act as a barrier to support. Some carers are supported now without a carer's assessment although they are asked a few questions to establish needs for support. The ACSP and YCS will provide a transparent means of establishing needs for support. The provisions will ensure the preparation of a person-centred plan or statement which can be light-touch or more thorough as necessary providing certain key elements are covered in the plan and statement. This means that it is appropriate for certain information to be provided for in regulations rather than in the Bill itself.

Chapter 2: Information and advice

Question 9

Should we introduce a duty for local authorities to establish and maintain a service for providing people with information and advice relating to the CSP and support for carers and young carers?

What we heard

There is a need for providing good quality information and advice in the right way at the right time.

Most, but not all, respondents supported the establishment of an information and advice service.

Some carers and carer organisations suggested that third sector organisations may be well-placed to provide and maintain locally based information and advice services, especially to meet the needs of more isolated and hard-to-reach carers, including, for example, BME communities, traveller communities, and LGBTI carers.

Some respondents suggested that further legislation is not needed. This is because the Social Care (Self-directed Support) (Scotland) Act 2013 (the SDS Act)⁵ already places a duty on local authorities to ensure the provision of information and advice in relation to self-directed support.

The Scottish Government response

We recognise the issues concerning the provision of information and advice and that there is quite a lot of information and advice available to carers. Nonetheless, it is sometimes not well co-ordinated or not given at the right time and in the right way. We intend to address these issues through information and advice provisions in the Bill. Workforce development will play a part too.

We therefore intend that information will be made available to adult and young carers through the ACSP and YCS. The information will relate to a wide range of matters including information about the support available to carers and cared-for persons in the area.

Local authorities will also have a responsibility to establish and maintain an information and advice service for adult and young carers. The service will provide information and advice in a number of key areas including the rights of all carers. The information and advice service is to be accessible and proportionate.

Local authorities will also be required to prepare and publish a short breaks services statement. This will enable local authorities to provide information to adult and

⁵ http://www.legislation.gov.uk/asp/2013/1/pdfs/asp_20130001_en.pdf

young carers about the different types and the range of short breaks that might be available.

There are short breaks bureaux in about six local authority areas. They provide information about short breaks and other short breaks' services too. They are all funded and modelled in different ways. Where they exist, they can be used to help ensure the availability of the right information on local authority websites so that the information presented in the statement is immediately accessible to carers and young carers. Or the short breaks bureau can individually host the short breaks services statement.

Given the role that health boards and the third sector play already in the provision of information and advice, we would expect local authorities to pay particular attention to the continuing role that health boards and the third sector have in this area.

Question 10

Should we repeal section 12 of the Community Care and Health (Scotland) Act 2002 about the submission of Carer information strategies to Scottish Ministers, subject to reassurances, which are subject in turn to Spending Review decisions, about the continuation of funding to health boards for support to carers and young carers?

What we heard

The majority of respondents favoured the repeal of section 12 since it will effectively become redundant with the integration of health and social care. However, some carer organisation respondents suggested that it is too early to do so in the context of health and social care integration. Assurances were sought from some respondents for core funding from the Scottish Government to continue in order to protect services targeted at carers and young carers.

The Scottish Government response

We intend to repeal section 12 of the Community Care and Health (Scotland) Act 2002⁶ as many local authorities and health boards already bring together CIS and carer strategy activity in a holistic way.

We recognise the concerns raised during the consultation relating to future funding. The Financial Memorandum accompanying the Bill will set out the costs of Bill implementation and how it is expected to meet the costs.

Furthermore, under section 4(2)(d) of The Public Bodies (Joint Working) (Content of Performance Reports) (Scotland) Regulations 2014,⁷ performance reports must include information on "the proportion of the total amount paid to or set aside for use by the integration authority spent on....social care services provided in pursuance of integration functions to support unpaid carers in relation to needs arising from their

⁶ http://www.legislation.gov.uk/asp/2002/5/pdfs/asp_20020005_en.pdf

⁷ <http://www.legislation.gov.uk/ssi/2014/326/regulation/4/made>

caring role.” This means that there will be transparency about the funding with regard to carers.

Chapter 3: Support to carers (other than information and advice)

Question 11

Should we introduce a duty to support carers and young carers, linked to an eligibility framework?

Question 12

Alternatively, should we retain the existing discretionary power to support carers and young carers?

Question 13

Should we introduce a duty to provide short breaks?

What we heard

Many respondents commented that a duty to support both adult and young carers would bring clarity and transparency to the decision-making processes about supporting carers. Both the local authority and health board response was split exactly 50/50 with some wanting to continue with the existing discretionary power to support carers in the SDS Act. Some respondents, both in support of and against introduction of a duty, sought assurances about the funding of the duty.

Many carers and carers organisations consider short breaks as a vital source of support for carers. The majority of respondents supported the introduction of legislation to improve the provision of short breaks but within this the majority of local authorities and health boards were against a duty.

The Scottish Government response

We propose to introduce both a duty and a power to support adult and young carers.

This duty will apply where carers and young carers have identified needs which cannot be met by the information and advice service or by services generally available to people in the community, and which meet local eligibility criteria. We fully expect that some carers' needs will be met, wholly or partly, by the provision of information and advice and/or by services in the community. Indeed, local carer organisations are very good at connecting carers to services in the community.

There will be a determination about whether any of the needs are eligible needs. The question of whether needs are eligible will be determined by reference to local eligibility criteria which each local authority must set for its own area (as explained further below). If the needs are eligible, then support must be provided to meet the eligible needs.

In determining which support to provide to adult and young carers to meet their eligible needs, it will be a requirement that consideration must be given in particular

as to whether the support should take the form of or include a break from caring. Short breaks are one important form of support to carers and they should be provided to meet carers' needs where there is particular consideration resulting in a decision to support carers or young carers by the provision of short breaks.

Moreover, we are aware that local authorities are experiencing understandable challenges in implementing The Carers (Waiving of Charges for Support) (Scotland) Regulations 2014⁸ under the SDS Act. Those regulations require local authorities not to charge for services provided to a carer following a carer's assessment. The main challenge is the categorisation of replacement care provided to a cared-for person at the point when a carer takes a break. It is not always clear if replacement care is provided to the carer following a carer's assessment in order to meet the needs of the carer (where charges would be waived) or provided to the cared-for person in order to meet their assessed needs (and therefore chargeable). We understand that this may have an impact on the extent to which some areas are able to exercise the power to support carers. We are actively working with COSLA to resolve the difficulties. Resolution would be expected to result in a favourable position regarding breaks from caring.

The voluntary sector short breaks fund of £3 million per annum managed on behalf of the Scottish Government by Shared Care Scotland and the Family Fund is supporting carers and young carers throughout Scotland. Subject to Spending Review decisions, we would want to continue with this fund to complement the provisions in the Bill concerning support to carers and young carers.

We want local authorities to be able to take into account and to respond to local need. Therefore, we propose that each local authority must set local eligibility criteria. There must be consultation with carers and carers organisations before setting the criteria. Each local authority will be required to publish its eligibility criteria as well as review the eligibility criteria. We also want to ensure that the local eligibility criteria are set within the context of important Scotland-wide matters. Therefore, national matters will be set out in regulations which will be consulted on. These national matters could include the need for preventative approaches to supporting carers, a crucial point which was made by respondents to the consultation. They might also include a need to support carers living in the most deprived economic and social circumstances, whilst taking into account the impact of caring on each individual carer.

The local eligibility criteria overlaid with key national matters will help to ensure an approach to supporting carers which has due regard to Scotland-wide considerations.

We will also have a regulation-making power for Scottish Ministers to set out national eligibility criteria which could be used if necessary in the future in place of the local eligibility criteria.

⁸ http://www.legislation.gov.uk/ssi/2014/65/pdfs/ssi_20140065_en.pdf

Chapter 4: Stages and transitions

Question 14

Should we issue statutory guidance on the Carer's Support Plan which will include guidance for those undertaking the Carer's Support Plan on managing stages of caring?

What we heard

The majority of respondents supported guidance on the Carer's Support Plan, including on managing stages of caring. They saw advantages such as helping to identify changing needs and allowing for responses to changes in circumstances. Guidance would help support the workforce to achieve consistent good practice across local authority areas.

The Scottish Government response

The consultation paper brought out the differences between stages of caring and transitions. It explained that stages relate to different stages experienced by cared-for people and carers such as the development of a new health condition in the cared-for person or the carer caring for more hours each week.

Transitions mean transition of service for cared-for people usually required because of the cared-for person's age (for example, when the cared-for person moves from being provided with children's services to adult's services).

Some changes to the stages of caring might require a review of the ACSP and YCS. We propose that the ACSP and YCS will contain information about the circumstances in which the plan is to be reviewed. We also propose regulations about the review of the ACSP and YCS.

Transitions involving a change in service for young people from children's services to adult services may also necessitate a review of the ACSP and YCS especially if the transition has an impact on the carer, which may be beneficial, neutral or detrimental.

We see merit too in issuing guidance on stages of caring and will include information on stages of caring in guidance on the ACSP and YCS.

Question 15

Should new carer's legislation provide for young carers to have a Carer's Support Plan if they seem likely to become an adult carer?

What we heard

A large majority of respondents favoured this proposal. It was stated that this would help to ease the difficulties of transition, that it would mean a more integrated approach to planning with all agencies working together to help the young carer, or

that it could prevent potentially long delays in young carers being able to access appropriate support when they become an adult carer.

The Scottish Government response

This question was posed before we proposed the YCS for young carers. As stated previously, young carers on becoming adult carers will still have the YCS and the YCS will continue to have effect until he or she has an ACSP. This means that there will be no break in provision for young carers on becoming adult carers. The support set out in the YCS will continue to apply. However, if the support needs to be changed or updated to reflect new circumstances, then the young carer who is now an adult carer will be able to request an ACSP or will be offered one.

Chapter 5: Carer involvement

Question 16

Should there be carer involvement in the planning, shaping and delivery of services for the people they care for and support for carers in areas outwith the scope of integration?

Question 17

Should we make provision for the involvement of carers organisations in the planning, shaping and delivery of services and support falling outwith the scope of integration?

What we heard

All (100 per cent) respondents supported carer involvement. Carers are best placed to understand and comment on the services required for those they care for. Their knowledge and expertise is seen to be a crucial element in the planning of local service delivery. This is especially important in specific carer groups where there may be a lack of knowledge including for example about some BME communities.

The vast majority of respondents supported the involvement of carers organisations. They are regarded as having good knowledge and expertise, as well as trusted relationships with carers themselves. However, there was a suggestion from some respondents that organisations could positively encompass knowledge of all carer groups.

It was recognised by many respondents that new duties would be placed on authorities to involve individuals and organisations in relation to health and social care functions which are integrated under the Public Bodies (Joint Working) (Scotland) Act 2014 (Public Bodies Act). There are likely to be gaps in carer involvement where services do not fall within the scope of integration schemes.

A small number of respondents suggested that there should be consideration of the provisions in the Community Empowerment (Scotland) Bill regarding community participation.

The Scottish Government response

We propose to introduce a duty for local authorities and health boards to involve adult carers, young carers, carer organisations and other relevant organisations in the planning, shaping and delivery and review of services. This will help ensure that all services delivered for carers and the people they care for are designed and shaped by the individuals that use them.

The duty will be framed in such a way as to avoid duplication of provisions in the Public Bodies Act.

Question 18

Should we establish a principle about carer and young carer involvement in care planning for service users (subject to consent) and support for themselves in areas not covered in existing legislation?

What we heard

Almost all respondents favoured such a principle being established in law.

Many respondents noted that carers have valuable knowledge and experience which should be used in order to provide the right services and support.

A small number of respondents commented on the potential for conflicting views from the carer and cared-for person about what is considered to be good care. It was also felt that the issue of consent from the cared-for person for the carer to be involved in care planning for service users could be problematic.

Comments were made that young carers need to be involved in a way that is appropriate to their age and development.

The Scottish Government response

We recognise all points made.

We propose to amend the SDS Act so that local authorities will be required to have regard to the general principles set out in section 1 of that Act when exercising functions in relation to ACSPs and YCSs and the provision of support to carers.

These general principles are that the carer must have as much involvement as he or she wishes in relation to the preparation of the ACSP or YCS and the provision of support and that the local authority must collaborate with the carer in respect of those matters. The carer must also be provided with any assistance reasonably required in order to be able to express views or make an informed choice about options for self-directed support.

We intend that the local authority will also be required to take into account the views of the carer, so far as it is reasonable and practicable to do so, when determining the needs of the person being assessed and deciding what services to provide and how to provide them. We will replace narrower obligations that already exist about taking a carer's views into account in the current assessment provisions.

We will issue guidance especially in relation to young carer involvement in care assessments.

Question 19

What are your views on making provision for young carer involvement in the planning, shaping and delivery of services for cared-for people and support for young carers?

What we heard

There was overwhelming support for this proposal. There was recognition across all respondent groups that services for young carers need to be age-appropriate and therefore, young carers should be involved in decision-making processes.

Some respondents commented that any involvement needs to reflect young carers' rights to a childhood

The Scottish Government response

As stated above, and in relation to Question 16, we propose to make provision for young carer involvement in the relevant decision-making processes. We will also issue guidance about young carer involvement to ensure that the particular needs of young carers regarding involvement are taken into account.

Chapter 6: Local carer strategies

Question 20

Should we introduce statutory provision to the effect that a local authority and each relevant health board must collaborate and involve relevant organisations and carers in the development of local carer strategies which must be kept under review and updated every three years?

What we heard

Many respondents supported a duty to develop, publish and review local carer strategies. They saw merit in ensuring that unmet carer needs at local level are identified, potential demand for services assessed, consistency in service provision promoted and progress in providing a range of services and achieving outcomes monitored and evaluated.

Some respondents suggested that the requirement to prepare strategic plans under the Public Bodies Act and to prepare children's services plans under the CYP Act negated the need for local carer strategies. Also, some respondents noted that they had already introduced local carer strategies.

The involvement of carers, young carers and relevant organisations in the design, development and review of local carer strategies is seen as critical to the delivery of services which more effectively meet carers' needs and was widely supported by a majority of respondents.

Some respondents representing young carers suggested that specific stand-alone young carer strategies should be developed, while others suggested that specific reference to young carers should be included within any local carer strategy that local authorities produce.

Views were divided about the three year period proposed for review of the local carer strategy. Some suggested that three years was too long a period between reviews whilst others suggested that there should be sufficient flexibility to ensure that local carer strategies could be amended to take account of changing needs occurring between reviews.

The Scottish Government response

We intend to introduce a duty that requires local authorities to develop and publish local carer strategies. We recognise, however, that local authorities are working within the context of health and social care integration and that carers' issues will inevitably be considered as part of the analysis necessary to produce strategic plans.

Nevertheless we see merit in, and a distinct role for, local carer strategies which focus specifically on identifying carers' needs, assessing the type and level of demand for carer support and services and considering the availability and sustainability of supply.

Given the positive support expressed, particularly (though not exclusively) by carer organisations and individual carers, for the involvement of carers, young carers and carer organisations in the development and review of local carer strategies, our

intention is to introduce such a duty on local authorities. We believe that there is a strong argument for statutory provision to ensure carer involvement in the development and review of local carer strategies. The duty on carer involvement will facilitate more consistent, more informed and more effective planning, resulting in the delivery of services which more closely meet carers' needs.

It is our intention that local authorities also collaborate and consult widely with others in the development of local carer strategies. In part this is to ensure the identification and adoption of best practice and innovation and also to ensure that the local authority takes account of other wider plans or national initiatives relevant to the provision of services for carers or young carers.

We recognise that some aspects of a caring role are common to adult and young carers. There are also distinct differences. This was reflected in and emphasised by a number of responses to the consultation, where there were some calls for statutory provision for the development and delivery of specific young carer strategies.

It is our intention that the local carer strategy must contain information relating to the particular needs and circumstances of young carers. In practice, this can be achieved either through one local strategy covering both adult and young carers or by separate adult and young carer strategies.

We intend to place a duty on local authorities to review their local carer strategy at least every three years. We believe that a three year period strikes the right balance between ensuring that the local carer strategy is relevant and up-to-date whilst not imposing an onerous requirement to review more frequently. Local authorities will have flexibility to review their local carer strategy more frequently, should they choose to do so, in response to local circumstances.

The publication of each local carer strategy will enable each local authority with its partners to see the local carer strategies for other areas. This will enable the sharing of good ideas and practice across local authorities.

Question 21

Should we introduce statutory provision to the effect that local authorities with health boards must take steps to ensure, in so far as is reasonably practicable, that a sufficient range of services is available for meeting the needs for support to carers and young carers in the area?

What we heard

The majority of respondents supported this proposal with some of these noting the need to be able to offer a range of services to carers in order to meet their needs.

The Scottish Government response

As noted by some respondents there is already statutory provision in the SDS Act about market sufficiency. Section 19 requires local authorities to promote the availability of the options for self-directed support and to promote a variety of providers of support and the variety of support provided. This provision applies to

carers and young carers as well as to service users. This function is one which must be delegated under integration arrangements and so in practice local authorities and health boards will be required to work together in order to promote a range of services to meet carers' needs in their area. We do not therefore propose to introduce further statutory provision.

Local commissioning strategies should set out how current provision needs to change to meet future needs. Moreover, as self-directed support develops further, it is anticipated that the market will grow to reflect the demand from carers and young carers for support services. The local carer strategies will also need to set out local authorities' assessment of the demand for support to carers and the extent to which demand for support to carers is not being met. There will therefore need to be a focus on developing the market in new and innovative ways in order to provide choice in support services for carers and young carers.

Chapter 7: Identification of carers and young carers

Question 22

Should there be no legislative provision for GPs or local authorities to maintain a Carers Register in order to support the identification of carers?

Question 23

Should the Scottish Government ensure that good practice is widely spread amongst health boards about the proactive use of Registers of Carers within GP practices?

Question 24

Should the Scottish Government ask health boards to monitor compliance with the core contractual elements of the GP contract?

What we heard

There was support amongst respondents for legislative provision for GPs or local authorities to maintain a register of carers, in order to support the identification of carers. However as the requirement to hold a register of carers is already a contractual element of the GP contract, we did not consult on this.

GPs were felt to be in a strong position to be able to identify carers. However there were comments that such a register would need to be kept up to date and that guidelines may be needed to underpin its use. Concerns were expressed about access to the register and data protection.

Almost all respondents supported the idea that good practice about how to use the carers register in a proactive way should be widely spread among health boards and GP practices, with the aim of ensuring that carers were identified and referred on for a carer's assessment (ACSP and YCS) and potential support. There was evidence that this was already happening in some areas.

Where GP practices already maintained a register of carers, respondents saw advantage in sharing best practice across health boards (and other NHS bodies and other agencies responsible for providing support to carers) which they considered would lead to a more joined-up approach to the provision of services. Some also thought this would lead to greater consistency of approach across Scotland.

A large majority of respondents agreed that the Scottish Government should ask health boards to monitor compliance with the core contractual elements of the GP contract. This was felt to increase accountability of GP practices for the requirement to maintain a carers register, help to identify areas of non-compliance and be beneficial to carers.

The Scottish Government response

Although we did not consult on specific legislative proposals relating to the setting up and maintenance of a register of carers, we did seek views on the way forward to help support the identification of carers and young carers.

We recognise that GPs in particular and other health professionals too are key to identifying and supporting carers through interaction with carers in their own right, and with those they care for.

Given the widespread support amongst respondents for the sharing of best practice, the Scottish Government will continue to work with key stakeholders including health boards and GP practices to ensure that this is shared. We intend to embed this aspiration in carer policies we are developing alongside the Bill.

Health boards are already required to monitor the contractual and statutory requirements under the GP Contract. We will build on what we have already done to date by contacting health boards to follow up on the role of GPs and other health professionals in identifying carers. We will consider other non-legislative measures about the role of GPs.

It should be noted that many of the provisions we intend to set out in the Bill will support the identification of carers and young carers and facilitate their access to an ACSP and YCS. Where the local authority identifies a carer or young carer for example, there will be a duty on the local authority to offer a carer or young carer an ACSP or YCS (and to provide one if the carer or young carer accepts the offer). Individuals will also have a right to request an ACSP or YCS and local authorities will be under a duty to provide one, once the individual has been identified as a carer. Local authorities will also be obliged to set out in their local carer strategies their plans for identifying carers. We fully expect local authorities to take the views of the health board on this part of the local carer strategy to ensure that the role of GPs and other health professionals in identifying carers is fully addressed.

Chapter 8: Carer and cared-for person(s) in different local authority areas

Question 25

What are the views of respondents on which local authority should take the lead in undertaking the carer's support plan, and agreeing support to the carer where the carer lives in a different local authority area to the cared-for person(s)?

Question 26

What are the views of respondents on which local authority should cover the costs of support to the carer in these circumstances?

Question 27

Should the Scottish Government with COSLA produce guidance for local authorities?

What we heard

There were split views about which local authority should have responsibility for preparing an ACSP or YCS and agreeing the provision of support, where a carer lives in a different area from the cared-for person. There were almost equal numbers of respondents expressing a preference for either the local authority in which the carer resides or where the cared-for person resides. Some respondents noted that regardless of which option was chosen, it was important that there was a clear and transparent process for deciding which authority was responsible and there were calls for detailed guidance to underpin any such decision-making.

There were also some calls for collaboration between local authorities "to ensure the process is person-centred and flexible to meet the needs of carers."

Views on which local authority should provide support were less polarised. Many, but not all respondents, thought the local authority responsible for meeting the cost of support should be the same local authority with lead responsibility for preparing an ACSP or YCS.

A small number of respondents who expressed a preference for the local authority which supports the cared-for person to carry the costs of support also commented that the costs of short breaks or respite should be paid for by that local authority.

The Scottish Government response

We intend that where the carer and the cared-for person live in different local authority areas, that the local authority in which the carer resides should prepare the ACSP or YCS.

We believe that placing responsibility for preparing the ACSP and YCS with the local authority in which the carer, rather than in which the cared for person lives, reinforces our aspiration to ensure that carers' needs are considered in their own

right, rather than solely through the lens of the cared-for person's needs, although we recognise the close relationship between the carer and cared-for person.

We recognise that some carers may prefer to have any agreed support delivered in the local authority area in which the cared-for person lives and we therefore intend to build in sufficient flexibility in law to enable this.

We also intend that the local authority within which the carer lives should be responsible for the cost of providing any agreed support.

There was overwhelming support from respondents for guidance and it is therefore our intention to produce such guidance. Guidance will set out the detail of what we are aiming to achieve for carers by way of the new laws and how those duties and obligations can best be delivered. We also believe it provides an opportunity to promote consistency of approach and to share best practice and innovative approaches.

Chapter 9: Links between ACSP/YCS and cared-for person's assessment

There is one other key issue we did not consult on that we want to clarify in law.

We propose that regard should be had to the ACSP/YCS when conducting a cared-for person's assessment under section 12A of the Social Work (Scotland) Act 1968 Act or section 23 of the Children (Scotland) Act 1995.

There should be a consistent understanding between the ACSP/YCS and the cared-for person's assessment about the care that is to be provided by the carer (and the extent to which the carer is willing and able to continue providing such care). The local authority should have regard to the part of the ACSP/YCS which records the nature of the 'caring role' which is being or is to be undertaken by the carer.

The first stage of the cared-for person's assessment should be for his or her needs to be assessed independently and in isolation of any support or services (including care from an unpaid carer) which might be available to him or her. This should mean that the totality of the cared-for person's needs are identified. This is what is currently set out at section 12A(1)(a) of the 1968 Act.

The second stage is (in very general terms) to consider what types of services may need to be put in place to meet those needs. Section 12A of the 1968 Act and section 23 of the 1995 Act take different approaches here. Section 12A(1)(b) requires the local authority to decide whether the needs to be met call for the provision of services. In so doing, the local authority is required to take into account what care is being provided by an unpaid carer (12A(1)(b)) or information received in relation to health or housing services which may be available to the person (section 12A(3)).

Section 12A works on the basis that the cared-for person still has the 'needs' which are met by the unpaid care or health or housing services, but they are not needs which call for the provision of community care services. This is because they are being met from another source.

By contrast, section 23(3) and (4) of the 1995 Act imply that the child has no 'needs' in respect of assistance that he or she might require as a result of a disability if those needs are in fact being met by an unpaid carer. In the 1968 Act, 'needs' means a requirement that the person has by virtue of his or her condition/illness/disability etc. In the 1995 Act, 'needs' has the more narrow meaning of the requirements which exist once unpaid care is taken into account.

We envisage that one of the results of the ACSP/YCS process should be a clearer statement than exists under the current carer's assessment processes of the nature of the caring role that is to be undertaken by the carer. The personal outcomes agreed in the context of each ACSP/YCS will be intended to identify a state of affairs which, if achieved, will sustain the carer in that caring role. It is quite possible that the caring role which is identified during the course of the ACSP/YCS process may be different from the extent of the care which the carer is currently providing. This is

because it must take into account what the carer is able and willing to do (and, in the case of a young carer, what is appropriate for them to do).

Take the example of a cared-for person who is unable to prepare meals or feed him- or herself without assistance. At the beginning of the community care and ACSP/YCS process, it might be the case that there is no support in place other than that being provided by the carer and so the carer is preparing all of the meals and assisting the person to eat.

However, the carer may be unable or unwilling to do that (e.g. an elderly spouse who is themselves struggling to cope) or it may be inappropriate (e.g. a young carer who is missing large parts of the school day because he travels home each lunchtime to help his disabled mother to eat). In such a case, we would envisage that the prospective 'caring role' identified in the course of the ACSP/YCS process would be less than is currently being undertaken by the carer. It might, instead, be agreed that it is appropriate for the young carer to assist his mother most evenings and some weekends (and that he is able and willing to do so), but that he will not do so on weekdays at breakfast or lunchtime because that is incompatible with his education. The mother would therefore have needs for assistance with eating at those times which would not, in future, be met through the provision of unpaid care. The local authority would have to have regard to this fact in deciding what community care services to provide to her.

The local authority will need to take into account the care which will in fact be provided by the carer when making the decision at 12A(1)(b) of the 1968 Act (or applying the factors set out in section 23(4) of the 1995 Act before making its decision under section 23(3)).

We recognise that some carers may choose not to have an ACSP or YCS. In all cases, the local authority would take into account the care actually being provided by the carer or young carer. In cases where the carer has an ACSP or YCS which sets this out, it makes sense for the local authority to obtain the relevant information by looking at that plan/statement.

We will bring forward changes to the existing legislation to allow for the above to happen.

Next steps and conclusion

The Scottish Government will continue to engage with carers, carer organisations, COSLA, local authorities, health boards and other relevant stakeholders once the Carers Bill is introduced to Parliament and on the development of other policies for carers alongside the Bill. It will be especially important to continue to engage with stakeholders to be involved with the young carer statement since this is a completely new development.



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