

Carers (Scotland) Bill

Carers UK is here to make life better for the 759,000 adults and 29,000 young people in Scotland who are providing unpaid care to a loved one who is older, disabled or seriously ill.

Carers Scotland is the Scottish nation office of Carers UK. We are the only national membership charity for carers, giving expert advice, information and support, connecting carers so no one has to care alone, campaigning for lasting change and innovating to find new ways to reach carers.

The Carers (Scotland) Bill was passed on 4 February 2016. The Bill will become an Act following Royal Assent ((4 weeks from the date it was passed) and it is expected it will be implemented from April 2017.

Objectives

When the Scottish Government published the Bill it said that its intention was to ensure that Scotland's carers and young carers should be better supported on a more consistent basis so that they could continue to care, if they wish, in good health and have a life alongside caring. In addition, for young carers, the intention is also to ensure that young carers should have a childhood similar to their non-carer peers. The Scottish Government also stated that the Bill is "founded on a preventative approach"¹

Summary

The Bill introduces a range of new provisions to identify, assess and support carers. These include:

- Carers Assessments will be replaced by new assessments called Adult Carer Support Plans and Young Carers Statements.
- Carers whose identified needs meet local eligibility criteria will have a right to support
- Carers whose identified needs do not meet local eligibility criteria should still have access to other forms of support and information and advice and local authorities will still have a power to provide support.
- The development of local eligibility criteria must involve consultation and involvement of carers and carer organisations.
- Carers cannot be charged for any support they receive
- Carers and carers' organisations must be involved in planning, shaping and review of services for carers and young carers in their area.

¹ Carers (Scotland) Bill: Policy Memorandum: 9 March 2015

- Carers must be involved and have their views and caring role considered when determining the need for support and services to be provided to the cared-for person (with their consent).
- Health boards will have a duty to inform and involve carers in the discharge planning of the person they care for, or intend to provide care for.
- Local authorities and health boards will be required to jointly produce local carers' strategies.
- Local authorities must publish a short breaks statement
- The Scottish Government must produce a carer's rights charter.

Main provisions of Bill

The new provisions to identify, assess and support carers and to set out plans in local areas to provide such support to carers and young carers, are outlined in more detail below.

Adult Carer Support Plans (ACSP)

Local authorities will have a duty to prepare an ACSP setting out an adult's personal outcomes², identified needs and the support to be provided to meet these needs. An adult carer is defined as being at least 18 years old but are not young carers who are 18 but still at school.

Young Carers Statements (YCS)

Local authorities will have a duty to prepare a YCS setting out a young carer's personal outcomes, identified needs and the support to be provided to meet these needs. Young carers are defined as being under 18 years old or are 18 but still pupils at school.

Young carers do not need to have a Child's Plan³ to have a YCS but, where one exists, their YCS can be appended to this plan (with the young carer's consent on the information to be shared). A YCS will continue to have effect until the carer is provided with an ACSP, for example, when they reach 18 and have left school

Adult Carers Support Plans and Young Carer Statements will be available to any unpaid carer who is providing or intends to provide care. The Bill removed the requirements for carers to be:

- **providing or intending to provide regular and substantial care and;**
- **providing care to someone receiving community care services.**

If the local authority identifies someone as being a carer or a person who appears to be a carer approaches the local authority, they must offer the person an ACSP or YCS. In promoting ACSP and YCS, the local authority must promote equal opportunities to ensure that carers with protected characteristics are aware of and have access to ACSP and YCS.

The local authority responsible for carrying out an ACSP will be the authority where the person receiving care lives. The local authority responsible for carrying out a YCS will be the authority where the young carer lives.

² Personal outcomes will be further detailed in regulations and guidance. For example, this might be matters which enable the carer to provide or continue to provide care, and to have a life alongside caring and/or be able to participate in activities unrelated to the caring role." They will be based on the approach enshrined in Talking Points Personal Outcome Approach <http://www.jitscotland.org.uk/resource/talking-points-personal-outcomes-approach-practical-guide/>

³ Under the Children & Young People (Scotland) Act 2014

There are some **specific rules for people caring for someone with a terminal illness**. Scottish Ministers will regulate to detail timescales for the preparation of ACSP and YCS in these circumstances. There are no set timescale for the preparation of other ACSP and YCS but local authorities and health boards must set these out in their local carers' strategies.

The Bill specifies key areas which must be included in ACSP and YCS. These include information about:

- each carer's **personal circumstances** including the nature and extent of care provided (or to be provided) and the impact of caring on the carer's wellbeing and day to day life.
- the extent to which the carers is **willing and able to provide care**.
- whether the carer has arrangements in place for the provision of care in the event of an emergency. If they do not, they should be supported to develop an **emergency plan**.
- whether the carer has arrangements in place for the provision of future care for the person they care for. If they do not, they should be supported to develop **future planning** arrangements.
- the identification of carer's **personal outcomes**
- the identification **of the carer's need for support** including the carer's identified needs and where no needs for support are identified
- consideration as to **whether support could include a break from caring** and have regard to these being provided on a planned basis.
- circumstances in which the plan is to be reviewed and, in subsequent **reviews**, the extent to which any previous plan has assisted in achieving the carer's personal outcomes.

In addition the plan will outline:

- if the carer's identified needs meet local eligibility criteria and information about the support the local authority intends to provide to meet these needs.
- if the carer's identified needs do not meet local eligibility criteria, information about what support the local authority provides or intends to provide to meet these needs.

The Scottish Government has the power to make further regulations in relation to ACSP and YCS including what other information these must contain and frequency and procedure for reviews.

Carers must be provided with a copy of their ACSP or YCS and can chose for this to be shared with any other person they request. This information is to be provided as soon as is practicable.

ACSP and YCS and services to be provided must take account of the impact on carers with one or more protected characteristics. Protected characteristics are defined under the Equality Act 2010⁴. Local authorities will need to consider whether the arrangements they put in place to prepare ACSP and YCS take into account any particular needs the carer has a result of having one or more protected characteristics. Examples given during the Stage 3 debate for the Bill include alternative arrangements for hearing impaired carers, or support required for a disabled carer to provide care.

The local authority will have the duty to prepare ACSP and YCS but can delegate this responsibility to other organisation to carry out. This may include to third sector organisations which will be detailed further in regulations and guidance.

⁴ For a full definition of protected characteristics under the Equality Act visit: <http://www.equalityhumanrights.com/your-rights/equal-rights/your-rights-under-equality-act-2010>

Information and Advice

Each local authority must establish and maintain, or where a service already exists (e.g. within a local carers centre) maintain an information and advice service for carers.

Each service must provide information and advice to carers about a range of topics and issues. These must include:

- Carers rights, including those set out in the carers' charter
- Income maximisation for carers
- Education and training for carers
- Advocacy for carers
- Health and wellbeing for carers, including counselling
- Bereavement support services for carers following the death of the cared for person
- Emergency and future care planning for carers.

Information and advice services must identify information of particular relevance to carers with one or more protected characteristic e.g. BME carers, disabled carers, LGBT carers.

Support

Carers who meet eligibility criteria must be provided with support to meet their identified needs. Where carers do not meet eligibility criteria, local authorities must still detail in the ACSP how they intend to meet these needs. This may be, for example, through referral to local carer support services and the provision of information and advice or the local authority may choose to provide additional support through their general powers.

Each local authority must set out local eligibility criteria which are to apply in its area. These are the criteria which determine whether local authorities are required under the Bill to provide support. Local authorities must consult and involve carers and representative organisations in developing criteria for their area.

When setting their criteria, local authorities must also have regard to matters specified by Scottish Ministers in regulation. These national matters may include ensuring that criteria encourage a preventative approach. There will be further consultation and guidance on issues which may be included in these national matters.

Local eligibility criteria must be published and reviewed within a specified period.

Scottish Ministers have the powers to set national eligibility criteria and the Minister, Jamie Hepburn MSP has stated that *"We will monitor the efficacy of the approach in the bill of using local eligibility criteria, and I will have no hesitation in using the power and instituting national eligibility criteria if this is found to be necessary"*⁵

Where carers are provided with support to meet their identified needs e.g. a break from caring, they should be offered choice through the four options under self-directed support⁶. These are:

- Option 1: Direct payment
- Option 2: Directing the available support

⁵ Stage 3 Debate: Carers (Scotland) Bill: 4/2/16

⁶ For more about self directed support and options visit: <http://www.selfdirectedsupportscotland.org.uk/>

- Option 3: The local authority arranges support for the supported person
- Option 4: A mixture of options.

Waiving Charges

Where support is provided to carers, including replacement care to enable the carer to take a break, charges for such support must be waived.

Short Breaks Statements

Each local authority must publish a short breaks services statement which provide information about short breaks services available in Scotland for carers and cared for persons. The definition of short breaks will be clarified in regulations and guidance as will further details on how these statements will be prepared, published and reviewed.

Carer Involvement

There are a range of provisions to improve the involvement of carers in both developing and planning services locally and in care planning and hospital discharge.

- **Development of services for carers**

Carers and carer organisations must be involved in the planning, shaping, delivery and review of services. This duty will extend beyond the provisions within the Public Bodies (Joint Working) Act where this is already required.

- **Care Assessments**

A duty will be placed on local authorities and health boards to involve carers (with consent of the cared-for person) and take account of their views in determining the needs of the person being assessed, deciding what services to provide, how to provide these services and evaluating the outcomes of this support.

Local Authorities will be required to take into account the care provided by an unpaid carer when conducting an assessment of the cared-for person. Where there is an ACSP or YCS in place they must take account of this and where there is not they must still take account of the care provided and ascertain that this is what the carer is 'able and willing' to provide.

- **Hospital Discharge**

The Bill brings in a duty on health boards to ensure that before a cared-for person is discharged from hospital that they involve any carer of that person in the discharge. They must:

- Inform the carer, as soon as is reasonably practicable, of the intention to discharge the cared-for person and invite the carer to give views about the discharge of the cared for person.
- take account, as far as is reasonable and practicable to do so, of any views given by the carer in making decisions relating to the discharge.

This duty applies to all health boards, including the State Hospital, or where a person is receiving services in a hospital other than a NHS hospital under arrangements made by the health board.

Guidance and an improvement programme will underpin this new duty.

Local Carers Strategies

Every local authority and relevant health board must jointly prepare a local carers strategy. This strategy will set out:

- plans for identifying carers and obtaining information about the care they provide
- an assessment of demand for support for carers and of the extent to which demand for support is currently not met
- the support available to carers in the area from:
 - the local authority
 - the health board
 - any other bodies which are deemed appropriate
- plans for supporting carers
- plans for helping carers put in place emergency plans
- an assessment of the extent to which plans for supporting carers may reduce any impact of caring on health and wellbeing.
- intended timescales for preparing ACSP and YCS
- information on the particular needs and circumstances of young carers
- information on preventative support

When producing their strategy, the local authority and health board must take steps to consult and involve carers and carers' organisations. They can also involve other organisations, for example, educational bodies in the area.

Strategies must be reviewed within a set period, likely to be three years and following review, revised strategies may be produced.

Carers Charter

The Scottish Government will produce a carers' charter. This is a document which will set out carers' rights under the Carers Bill and is likely to also include carers' rights under other legislation and carers' rights as citizens. The Scottish Government will consult with carers and carers' organisations in its development.

Monitoring and Evaluation

Whilst the Bill does not set out how the Bill will be monitored and evaluated, regulations and guidance will be developed to ensure that there is a robust system put in place to measure the impact of the Bill. Data gathered as part of this process will be publicly available and available to the Scottish Parliament for scrutiny.

Complaints

Although not covered under the Carers Bill, during the parliamentary process, reassurance was given that under the current review of social work complaints and complaints to integrated services, a review process would be built in. Consideration of complaints, including streamlining complaints procedures for social work and health are currently under consideration at the Scottish Parliament.

Further information

The full Bill including information on discussions and amendments that took place throughout the process can be found at: www.scottish.parliament.uk/parliamentarybusiness/Bills/86987.aspx

Contact us

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