

# **Carers (Scotland) Act 2016:**

## **Consultation on Draft Regulations**

**August 2017**



**Scottish Government**  
Riaghaltas na h-Alba  
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## EXECUTIVE SUMMARY

The Carers (Scotland) Act 2016 (“the Act”)<sup>1</sup> will come into force on 1<sup>st</sup> April 2018.

The intention of the Act is to ensure that Scotland’s estimated 745,000 adult carers and 44,000 young carers<sup>2</sup> are 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.

Moreover, in relation to young carers, the intention is that young carers should have a childhood similar to their non-carer peers.

The Act sits within the wider context of the Scottish Government’s intention to build a fairer Scotland and strong sustainable economy; tackling inequalities in society; and delivering public services in communities.

The case for supporting carers and the potential impact of caring is recognised in national health and well-being outcome 6, which the Carers Act supports:-

*“People who provide unpaid care are supported to look after their own health and wellbeing, including to reduce any negative impact of their caring role on their own health and wellbeing.”*

Through the Carers Act Implementation Steering Group and a number of specific working groups, the Scottish Government is collaborating with key partners including COSLA, local authorities, health boards, carers, and National Carer Organisations to help inform the regulations and guidance to accompany the Act.

In preparing the content of this consultation, we have carefully considered the views of these stakeholders and working groups. It is important to note that the regulations in this consultation document are in draft.

Following discussion and informal consultation with these stakeholders, we have decided not to exercise all of the regulation-making powers provided under the Act at this stage. In particular, we have decided that further work is required before regulating on timescales for the preparation of adult carer support plans and young carer statements for carers of a terminally ill cared-for person (sections 7 and 13 of the Act). Due to the lack of an adequate evidence base with which to determine appropriate timescales to regulate for, research is underway which will inform the preparation of these regulations in due course.

This consultation will run in parallel with a separate consultation on the draft Carers’ Charter setting out carers’ and young carers’ rights under the Act, which can also be found on the Citizen Space area of the Scottish Government website. Please note, to align with legislative timeframes, this consultation on draft regulations will close on 24 September, while the Carers’ Charter consultation will remain open until 22 October.

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<sup>1</sup> <http://www.legislation.gov.uk/asp/2016/9/contents>

<sup>2</sup> <http://www.gov.scot/Publications/2015/03/1081>

### **Future Opportunities**

Analysis of the responses to this consultation will be considered by the Scottish Ministers. We intend for the Carers Act Implementation Steering Group to remain – not only to help inform successful implementation of the Act, but to also help inform the Scottish Government of how the legislation is having an impact ‘on the ground’ in the period following commencement on 1 April 2018.

### **ABOUT THIS CONSULTATION**

The purpose of this consultation is to seek stakeholder views on the Carers (Scotland) Act 2016 draft regulations to ensure they are appropriate, fit for purpose and avoid any potential unintended consequences.

This consultation is open for a period from 1 August to 24 September.

**We invite your views to each of the draft regulations in this document.**

**2017 No.**

**SOCIAL CARE**

**The Carers (Scotland) Act 2016 (Review of Adult Carer Support Plans and Young Carer Statements) Regulations 2017**

*Made* - - - - - \*\*\*  
*Laid before the Scottish Parliament* \*\*\*  
*Coming into force* - - - *1st April 2018*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 10 and 16 of the Carers (Scotland) Act 2016<sup>(3)</sup> and all other powers enabling them to do so.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Carers (Scotland) Act 2016 (Review of Adult Carer Support Plans and Young Carer Statements) Regulations 2017 and come into force on 1st April 2018.

(2) In these Regulations, “the Act” means the Carers (Scotland) Act 2016.

**Circumstances in which adult carer support plans must be reviewed**

2.—(1) The circumstances in which an adult carer support plan must be reviewed are:

- (a) The cared-for person moves to reside in a different local authority area;
- (b) The adult carer moves to reside in a different local authority area;
- (c) The cared-for person moves into accommodation provided under
  - (i) Part 2 of the Social Work (Scotland) Act 1968;
  - (ii) Section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003; or
  - (iii) Part 2 of the Children (Scotland) Act 1995;
- (d) Any other change in the adult carer or cared-for person’s circumstances which, in the view of the responsible local authority, has had a material impact on the care provided by the adult carer to the cared-for person.

**Circumstances in which young carer statements must be reviewed**

3.—(1) The circumstances in which a young carer statement must be reviewed are:

- (a) The cared-for person moves to reside in a different local authority area;
- (b) The young carer moves to reside in a different health board or local authority area;

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<sup>(3)</sup> 2016 asp.9

- (c) The young carer, if a pupil at a public school which is managed by a local authority other than the one for the area in which the young carer resides, is no longer a pupil at that school and does not attend any other public school located within that schools local authority area;
- (d) The young carer, if a pupil at a grant-aided or an independent school, except by virtue of a placement by the local authority for the area in which the young carer resides, is no longer a pupil at that school;
- (e) The cared-for person moves into accommodation provided under
  - (i) Part 2 of the Social Work (Scotland) Act 1968;
  - (ii) Section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003; or
  - (iii) Part 2 of the Children (Scotland) Act 1995;
- (f) Any other change in the young carer or cared-for person's circumstances which, in the view of the responsible authority, has had a material impact on the care provided by the young carer to the cared-for person.

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## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations are made under the Carers (Scotland) Act 2016 (“the Act”) and come into force on 1st April 2018.

Regulation 2 provides for the circumstances in which an adult carer support plan must be reviewed.

Regulation 3 provides for the circumstances in which a young carer statement must be reviewed.

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## QUESTIONS

### THE CARERS (SCOTLAND) ACT 2016 (REVIEW OF ADULT CARER SUPPORT PLANS AND YOUNG CARER STATEMENTS) REGULATIONS 2017

#### Review of adult carer support plans Section 10(a)

##### Intention of this draft regulation

To set out the specific circumstances in which an adult carer support plan must be reviewed.

An adult carer support plan is the combination of identification of a carer's personal outcomes, an assessment of a carer's need for support to help them achieve their personal outcomes and the preparation of a support plan to monitor the need and manage the administration of support to a carer. The local authority of the cared-for person is responsible for offering a carer an adult carer support plan and agreeing when and how the adult carer support plan conversation is to take place. The requirements for an adult carer support plan are set out in the Carers Act (with guidance to be issued to support local areas). Each plan must contain, amongst other things, information about the nature and impact of the caring role, the extent to which the carer is able and willing to provide care and whether the carer has arrangements in place for the future. Local authorities will be under a duty to offer an adult carer support plan to anyone identified as an adult carer and also to prepare such a plan for any other adult carer who requests one.

It is the intention that information contained in the adult carer support plan will be kept up to date and relevant. This is to ensure that the adult carer's needs for support are reviewed when a material change in circumstance occurs and results in a change in the caring role.

##### Questions

1) The circumstances in which plans must be reviewed are specified in **regulation 2 of the draft Carers (Scotland) Act 2016 (Review of Adult Carer Support Plans and Young Carer Statements) Regulations 2017**. It will be for the responsible local authority to decide whether to review an adult carer support plan in other circumstances not specified in the draft regulations.

The draft regulations specify the following circumstances in which an adult carer support plan must be reviewed:

- a) The cared-for person moves to live in a different local authority area;
- b) The adult carer moves to live in a different local authority area;
- c) The cared-for person moves into various listed types of long-term residential care;
- d) Any other change in the adult carer or cared-for person's circumstances which, in the view of the local authority, has had a material impact on the care provided by the adult carer to the cared-for person.

Do you agree with the circumstances listed in the draft regulation?

Yes / No

Comments

**2)** We recognise that there are many other “material” changes which can affect an individual’s caring role and needs for support. The above circumstances have been identified through informal consultation as circumstances where a “material” change will take place in the adult carer’s life or the circumstances of the cared-for person which can be expected to affect the caring role. It would be unfeasible and unhelpful to attempt to cover all such circumstances in regulations, which need to allow for local professional judgement. Forthcoming statutory guidance will assist responsible local authorities in deciding when to undertake a review.

Are there additional circumstances not listed in the draft regulations that should be specified as always triggering a review of an adult carer support plan?

Yes / No

Comments

**3)** In particular, we are interested in views about whether it would be helpful for the discharge of the cared-for person from hospital (as at section 28 of the Carers Act) to be added as another circumstance that requires the review of an adult carer support plan.

People’s care needs can change following a spell in hospital, but not always and some people may have a number of spells hospital over a short period of time. In such cases, a requirement to review an adult carer support plan after each hospital discharge would seem an unnecessary burden on both the responsible local authority and the carer. On that basis it would seem appropriate to address this in statutory guidance rather than regulations to allow scope for local judgement based on the circumstances of individual cases.

Is the suggested approach outlined above appropriate, with regard to review of an adult carer support plan following the discharge of the cared-for person from hospital?

Yes / No

Comments

**4)** Are there particular circumstances surrounding the discharge of the cared-for person from hospital (as at Section 28 of the Carers Act) that should always trigger a review of an adult carer support plan (e.g. based on the duration of the hospital stay, or changes in the care needs of the cared-for person post-discharge)? Please provide details of any suggested circumstances.

Yes / No

Comments

## **Review of young carer statements Section 16(a)**

### **Intention of this draft regulation**

To set out the specific circumstances in which a young carer statement must be reviewed.

A young carer statement is a combination of an assessment of a young carer's needs for support, the establishment of their personal outcomes and the preparation of a support plan. The young carer's local authority is normally responsible for offering a young carer statement and agreeing when and how the young carer statement conversation is to take place. In certain circumstances it may be another responsible authority which has charge of preparing the young carer statement. The requirements for a young carer statement are set out in the Carers Act (with guidance to be issued to support local areas). Each plan must contain, amongst other things, information about the nature and impact of the caring role, the extent to which the young carer is able and willing to provide care and whether he or she has arrangements in place for the future. Responsible authorities will be under a duty to offer a young carer statement to anyone identified as a young carer and also to prepare such a statement for any young carer who requests one.

It is the intention that information contained in the young carer statement will be kept up to date and relevant. This is to ensure that the young carer's needs for support are reviewed when a material change in circumstance occurs and results in a change in the caring role.

## Questions

5) The circumstances in which a young carer statement must be reviewed are specified in **regulation 3 of the draft Carers (Scotland) Act 2016 (Review of Adult Carer Support Plans and Young Carer Statements) Regulations 2017**. It will be for the responsible authority to decide whether to review a young carer statement in other circumstances not specified in the draft regulations.

The circumstances in which a young carer statement must be reviewed are:

- a) The cared-for person moves to live in a different local authority area;
- b) The young carer moves to live in a different health board or local authority area;
- c) A young carer at a state school outwith the local authority area where they live leaves that school and moves school to a third local authority area;
- d) The young carer, if a pupil at a grant-aided or independent school leaves the school;
- e) The cared-for person moves into various types of long-term residential accommodation;
- f) Any other change in the young carer or cared-for person's circumstances which, in the view of the responsible authority, has had a material impact on the care provided by the young carer to the cared-for person.

Do you agree with the circumstances listed in the draft regulation?

Yes / No

Comments

6) There are many other "material" changes which can affect an individual's caring role and needs for support. These have been identified through informal consultation as circumstances where a "material" change will take place in the young carer's life or the circumstances of the cared-for person which will likely affect the caring role. It would be unfeasible and unhelpful to attempt to cover all such circumstances in regulations, which need to allow for local professional judgement based on the regulations and associated statutory guidance. Forthcoming statutory guidance will assist responsible authorities in deciding when to trigger a review.

Are there any circumstances not listed in the draft regulations that should always trigger a review of the young carer statement (apart from transition of the young carer from children's services to adult services)?

Yes / No

Comments

**7)** In particular, we are interested in views about whether it would be helpful for the discharge of the cared-for person from hospital (as at section 28 of the Carers Act) to be added as another circumstance that requires the review of a young carer statement.

People's care needs can change following a spell in hospital, but not always and some people can may have a number of spells hospital over a short period of time. In such cases, a requirement to review a young carer statement after each hospital discharge would seem an unnecessary burden on both the authority and young carer. On that basis it would seem appropriate to address this in statutory guidance rather than regulations to allow scope for local judgement based on the circumstances of individual cases.

Is the suggested approach outlined above appropriate with regard to review of a young carer statement following the discharge of the cared-for person from hospital?

Yes / No

Comments

**8)** Are there particular circumstances surrounding the discharge of the cared-for person from hospital that should always trigger a review of a young carer statement (e.g. based on the duration of the hospital stay, or changes in the care needs of the cared-for person post-discharge)? Please provide details of any suggested circumstances.

Yes / No

Comments

**2017 No.**

**SOCIAL CARE**

**The Carers (Scotland) Act 2016 (Short Breaks Services Statements) Regulations 2017**

*Made* - - - - - \*\*\*  
*Laid before the Scottish Parliament* \*\*\*  
*Coming into force* - - - - - *1st April 2018*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 35(4) of the Carers (Scotland) Act 2016(a) and all other powers enabling them to do so.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Carers (Scotland) Act 2016 (Short Breaks Services Statements) Regulations 2017 and come into force on 1st April 2018.

(2) In these Regulations, “the Act” means the Carers (Scotland) Act 2016.

(3) “Relevant carers” has the meaning set out in section 31(5) of the Act.

**Preparation and review of Short Breaks Services Statement**

2.—(1) A short breaks services statement must contain

- (a) A statement of the purpose of a short breaks services statement; and
- (b) Contact details of the department or organisation responsible for the short breaks services statement.

(2) In preparing and reviewing a short breaks services statement, the local authority must have regard to the views of relevant carers and such bodies representative of carers as the local authority considers appropriate.

**Publication of Short Breaks Services Statement**

3. The first short breaks services statement must be published by 31 December 2018.

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(a) 2016 asp.9

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations are made under the Cares (Scotland) Act 2016 (“the Act”) and come into force on 1st April 2018.

Section 35 of the Act requires each local authority to prepare and publish a short breaks services statement. This is a statement of the short breaks services that are available in Scotland for carers and cared-for persons. Whilst section 35(3) requires that the information contained in the short breaks services statement is both accessible and proportionate to the needs of persons to whom it is provided, Scottish Ministers can, by regulations under section 35(4) of the Act, make further provision about the preparation, publication and review of short breaks services statements.

Accordingly, regulation 2 provides that in preparing and reviewing a short breaks services statement certain information must be included, namely information about the purpose of a short breaks services statement and contact details of the department or organisation with responsibility for the short breaks services statement, and that in preparing and reviewing a short breaks services statement, the local authority must have regard to the views of relevant carers and such bodies representative of carers as the local authority considers appropriate.

Regulation 3 provides that the first short breaks services statement requires to be published by 31 December 2018.

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# THE CARERS (SCOTLAND) ACT 2016 (SHORT BREAKS SERVICES STATEMENTS) REGULATIONS 2017

## Short breaks services statements Section 35(4)

### Intention of this draft regulation

To clarify what type of information is to be included in short breaks services statements, and to set out when and how these are to be published and reviewed.

Section 35 of the Carers Act sets out the duty for local authorities to prepare and publish a short breaks services statement. A short break services statement is a statement of information about the short break services available to carers and cared-for persons across Scotland. Such statements must be accessible (e.g., languages other than English, large-print, etc.), and be proportionate to the needs of carers and cared-for persons.

The draft regulations specify that short breaks services statements must include:

- A statement about their purpose – which we would propose to explain in guidance is to help carers and cared for persons understand their options when deciding about short breaks; and
- Contact details for those responsible for the statement.

The draft regulations also specify that the first short breaks services statements should be published by 31 December 2018, to allow time for them to be prepared, consulted on etc.

And they require that the views of carers and carer representatives must be taken into account when preparing or reviewing the short breaks services statement.

We would also propose to use statutory guidance to encourage local authorities to consider case studies and examples of existing short breaks services, as an effective way to help carers and cared-for persons to better understand the different types of short breaks and their benefits.

### Questions

**9)** Do the draft regulations (alongside the Carers Act) provide an adequate requirement for the preparation, publication and review of short breaks services statements?

Yes / No

Comments

**10)** Do you agree with the information that the Carers Act and the draft regulations require to be included in a short breaks services statement? Please use the comments box to explain why if you are suggesting that additional information should be included.

Yes / No

Comments
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## **REGULATION-MAKING POWERS NOT PROCEEDING AT THIS TIME**

### **Breaks from caring Section 25(2)(a)**

Section 24 of the Carers Act establishes a duty for local authorities to provide support to carers whose need for support meets the local eligibility criteria. It also provides local authorities with a power to support carers to meet other needs which are not assessed as eligible needs. Section 25 requires local authorities to consider whether any support that is to be provided should include or take the form of a break from caring.

We had intended to use the regulatory power at section 25 to make it clear that a 'break from caring' may include certain types of support to enable carers to benefit from leisure pursuits, either at home (e.g. financial assistance to purchase gardening equipment, a camera, or musical instrument); or away from the home (e.g. help to visit the cinema, fund gym membership or photography lessons).

However, things like equipment or leisure club memberships, which can be legitimate to include in a package of support for a carer to meet their assessed personal outcomes, are forms of support that can already be offered to a carer in exercise of the general duty, or power, to support carers at section 24(4) of the Act. They are not forms of support that constitute or facilitate the break itself from caring which is what the scope of the power in section 25(2)(a) provides for. We therefore do not propose that regulations will be made to specify the form of support that may be provided as a break (itself) from caring.

We instead propose to use statutory guidance on the duty and power to provide support to carers under section 24 to provide advice on the value of enabling carers to benefit from leisure pursuits as part of a package of support to meet their assessed personal outcomes.

**Questions**

**11)** Do you agree with the approach summarised above to cover support for breaks from caring and short breaks services under statutory guidance? Please explain the reasons for your answer.

Yes / No

Comments

## RESPONDING TO THIS CONSULTATION PAPER

Please respond to this consultation using the Scottish Government's consultation platform, Citizen Space. You view and respond to this consultation online at: <https://consult.scotland.gov.uk/health-and-social-care/draft-regulations-under-the-carers-act-2016>

You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 24 September.

Alternatively you can e-mail your response and the completed Respondent Information Form, which is also available separately on the Scottish Government website (see "Handling your Response" below) to: [carerspolicy@gov.scot](mailto:carerspolicy@gov.scot).

If you are unable to respond online, please complete the Respondent Information Form (see "Handling your Response" below) and send it to:

Carers (Scotland) Act 2016: Consultation on Draft Regulations  
Carers Policy Branch  
Scottish Government  
GE.15  
St Andrews House  
Regent Road  
Edinburgh  
EH1 3DG

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at: <http://www.scotland.gov.uk/consultations>.

### Handling your response

If you respond using Citizen Space (<http://consult.scotland.gov.uk/>), you will be directed to the Respondent Information Form. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to be published.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form attached included in this document. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

### **Next steps in the process**

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.scotland.gov.uk>. If you use Citizen Space to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so.

### **Comments and complaints**

If you have any comments about how this consultation exercise has been conducted, please send them to:

Michael Mawdsley  
Carers Policy Branch  
Scottish Government  
GE.15  
St Andrews House  
Regent Road  
Edinburgh  
EH1 3DG

### **Scottish Government consultation process**

Consultation is an essential part of the policy-making process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work. You can find all our consultations online: <http://consult.scotland.gov.uk>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Consultations may involve seeking views in a number of different ways, such as public meetings, focus groups, or other online methods such as Dialogue (<https://www.ideas.gov.scot>.)

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.



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