



# National Carer Organisations

## A briefing on the Carers (Scotland) Act 2016 draft regulations

August 2017

### Introduction

The Carers (Scotland) Act 2016 was passed by the Scottish Parliament in March 2016<sup>1</sup>. Regulations and guidance will accompany this Act to provide more detail on changes and processes to local authorities, health boards, and other organisations affected by the Act.

Draft regulations have been developed by the Scottish Government, with input from various stakeholders including carers and members of the National Carer Organisations.

The Scottish Government are accepting written submissions on the regulations until **24 September**. You can respond to the consultation directly, or feed into the National Carer Organisations' response. Further information is available here

<https://consult.scotland.gov.uk/health-and-social-care/draft-regulations-under-the-carers-act-2016/> and the National Carer Organisations have developed an online survey where you can respond to the questions here: <https://www.surveymonkey.co.uk/r/K3B8XSY>

There is a separate, related consultation on the draft Carers' Charter that is required by Section 36 of the Carers (Scotland) Act. You can see information about this consultation here:

<https://consult.scotland.gov.uk/health-and-social-care/draft-carers-charter-of-the-carers-act-2016/>. The National Carer Organisations will be responding to this consultation also.

### NCO contact details

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<sup>1</sup> <http://www.parliament.scot/parliamentarybusiness/Bills/86987.aspx>

## **1. An overview of the regulations**

### **Adult carer support plans**

The regulations set out the circumstances in which an Adult Carer Support Plan must be reviewed. Reviews can also take place outwith these specific circumstances at the decision of the local authority.

The circumstances are:

- The cared for person moves to a different local authority area
- The adult carer moves to a different local authority area
- The cared for person moves into long-term residential care (including long term hospital stays)
- Any other change in the carer or the cared-for person's circumstances which will have a material impact on the care provided.

The consultation asks if there are any other particular circumstances where a material change has taken place that will affect the care provided.

The consultation asks if hospital discharge should be a specific circumstance that triggers a review.

### **NCO position**

We agree with the circumstances outlined in describing situations that may affect provision of care and require a review to the support provided to the carer. It is important that the 'other particular circumstances' that affect are clearly and specifically outlined in guidance to ensure that there is consistency of support across different local authority areas. It is equally important that the ACSP continues to be person centred on individual carers' circumstances following the review: for example, when someone moves into long-term residential care, this does not necessarily lessen the caring role. There may be more travelling required to visit the person, or carers may have to take laundry or provide support with feeding.

Carers have expressed concern that a review of support may automatically reduce the support provided, and may be reluctant for reviews to take place. It must be made clear that a review is a positive process.

A change in circumstance which has not been specifically listed is a change in the social care package provided to the cared-for person. Carers may need a review of the level or nature of their own support in these circumstances.

Hospital discharge should be a specific circumstance that triggers a review. Specific circumstances such as length of hospital stay or change in care needs should be considered on an individual basis. We appreciate that a review may not be necessary for short term hospital stays, where there is no change in the cared-for person's needs or circumstances. However, if this circumstance is only covered in statutory guidance, it risks being disregarded.

A carer should be able to request a review of their Adult Carer Support Plan at any time.

### **Young Carer Statements**

The regulations set out the circumstances in which a Young Carer Statement must be reviewed. Reviews can also take place outwith these specific circumstances at the decision of the local authority.

The circumstances are:

- The cared for person moves to a different local authority area

- The young carer moves to a different health board or local authority area
- Certain circumstances where the young carer leaves school
- The cared for person moves into long-term residential care (including long term hospital stays)
- Any other change in the young carer or the cared-for person's circumstances which will have a material impact on the care provided.

The consultation asks if there are any other particular circumstances where a material change has taken place that will affect the care provided.

The consultation asks if hospital discharge should be a specific circumstance that triggers a review.

#### **NCO position**

The situations outlined are the key circumstances that may affect provision of care and require a review to the support provided to the young carer. It is important that the 'other particular circumstances' that affect are clearly and specifically outlined in guidance to ensure that there is consistency of support across different local authority areas. It is equally important that the Young Carer Statement continues to be person centred on individual young carers' circumstances following the review.

A change in circumstance which has not been specifically listed is a change in the social care package provided to the cared-for person. Young carers may need a review of the level or nature of their own support in these circumstances. Transitions from primary school to secondary school, or secondary school to further education, an apprenticeship or another formal learning pathway are also key changes in circumstances where a review of the young carer's support will always be necessary.

Hospital discharge should be a specific circumstance that triggers a review. Specific circumstances such as length of hospital stay or change in care needs should be considered on an individual basis. We appreciate that a review may not be necessary after multiple short term hospital stays, particularly where there is no change in the cared-for person's needs or circumstances. However, if this circumstance is only covered in statutory guidance, it risks being disregarded.

A young carer should be able to request a review of their Young Carer Statement at any time.

#### **Short breaks services statements**

Section 35 of the Carers (Scotland) Act 2016 requires local authorities to prepare and publish a short breaks statement. The Act states that a short breaks services statement means a statement of information about the short breaks services available in Scotland for carers and cared-for persons.

These draft regulations specify only that a short breaks statement must include:

- A statement about the purpose of a break (which will be further defined in guidance)
- Contact details for those responsible for the statement

Statutory guidance will include case studies and examples. The views of carers and carer representatives must also be taken into account when preparing or reviewing the short breaks statement. The regulations specify that each local authority must publish its short break services statement by 31 December 2018.

#### **NCO position**

The lack of more detailed, comprehensive minimum information requirements will lead to considerable variation in the content and quality of statements across Scotland. We believe the local statement must

provide more than just information about the short break services available in Scotland (many of which may be unavailable to carers in the local authority area).

To be of practical use to carers, the main focus of the statement must be on providing information about what short break services and support is available locally, how this is accessed by carers, the inclusion of information on funding for each short break service, and what eligibility criteria apply<sup>2</sup>. We would like to see this minimum information requirement set out in the regulations. If the information provided is vague and speaks in generalities, then this will only add to carers' frustration and stress.

As well as explaining the purpose of the statement, we believe the local authority should also set out its vision for the ongoing development of short breaks in the local area. The statement should outline any plans for improving provision and how these plans will be reviewed and reported on, and also how they will be co-produced with carers.

The draft regulations require local authorities to '*have regard to the views of relevant carers... as the local authority considers appropriate*'. This is open to interpretation and is not, in our opinion, consistent with the level of engagement set out in Section 27 of the Act which covers carer involvement in service planning and design. Section 27 (6) is particularly clear in specifying the level of involvement expected and to what ends. It should therefore be made clear in the regulations that Section 27 also covers the preparation of statements.

Section 35 (2) of the Act states that the information must be accessible to, and proportionate to the needs of, the persons to whom it is provided. There is no explanation of 'proportionate' in the regulations and again this is open to interpretation.

In summary, we are concerned these draft regulations set the bar extremely low on the desired level of information expected. We believe this will lead to wide variation in quality and content with no recourse to enforceable and effective standards to help exert pressure for improvement.

### **Regulations not proceeding at this time**

The Carers Act includes areas where the government has a requirement to develop regulations, as well as areas where they have the ability to develop regulations if they choose to do so.

In some areas, the government has chosen to delay regulations until a future date, or to gather more evidence on how things are working before they make a decision on whether or not to develop regulations.

Section 25 of the Carers Act requires local authorities to consider whether the support a carer requires, should include, or take the form of a short break. The government had intended to use regulations to make it clear that a 'break from caring' may include certain types of support to enable carers to benefit from leisure pursuits (for example, purchasing equipment, such as a camera or musical instrument, or funding gym membership or a trip to the cinema). However, they have decided instead to include this information

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<sup>2</sup> Shared Care Scotland have outlined a specification for a short breaks statement here:

<https://www.sharedcarescotland.org.uk/resources/carers-scotland-bill/the-short-break-services-statement/>

in the statutory guidance on Support for Carers, because it relates more to support in general, than a break from caring.

### **NCO position**

We believe there needs to be clarification on the type of support that carers can access, either as a 'break from caring' or as an alternative form of support. Following the implementation of the Social Care (Self-directed Support) (Scotland) Act 2013, local authorities appear to have interpreted the guidance in different ways, resulting in an inconsistent approach to service provision for carers and the range of support they can access.

It is essential that local authorities take a broad view and recognise that there are many types of support that may benefit carers. Accessing a leisure pursuit can enable a carer to have time away from their caring role, as well as a life alongside caring.

The best approach is for local authorities to enable carers to come up with their own solutions for the support that suits them best. This may be a more traditional short break option, or a form of a support more tailored to their specific circumstances, such as the purchase of equipment or help to enable them to pursue a leisure activity.

We welcome this position being clarified in guidance, but believe that implementation must be monitored and regulations should be brought forward in the future if further clarification is needed. In addition, the Scottish Government should work with local authorities to explore ways in which any current challenges in relation to adopting this approach can be addressed.

## **2. Next steps**

The National Carer Organisations will be responding to this consultation on the Carers (Scotland) Act regulations and the consultation on the Carers Charter (<https://consult.scotland.gov.uk/health-and-social-care/draft-carers-charter-of-the-carers-act-2016/>)

There is an online survey where you can respond to the questions here:

<https://www.surveymonkey.co.uk/r/K3B8XSY>

We will use these answers in our own submission to the consultation.

**The National Carer Organisations**

**August 2017**