

# **Carers (Scotland) Act 2016**

## **Business and Regulatory Impact Assessment**

**March 2018**



**Scottish Government**  
Riaghaltas na h-Alba  
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**CARERS (SCOTLAND) ACT 2016**  
**BUSINESS AND REGULATORY IMPACT ASSESSMENT**  
**(REVIEWED AND UPDATED FOR COMMENCEMENT**  
**ON 1 APRIL 2018)**

<b>Title of Policy</b>	Carers (Scotland) Act 2016 (“the Act”)
<b>Summary of aims and desired outcomes of Policy</b>	<p>It is the intention of the Scottish Government that Scotland’s estimated 745,000 adult carers and 44,000 young carers<sup>1 2</sup> should be 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. In relation to young carers, the intention is similar to that for adult carers but that young carers should have a childhood similar to their non-carer peers.</p> <p>The Act will realise this ambition by ensuring better and more consistent support for carers and young carers so that they can continue to care, if they so wish, in better health and to have a life alongside caring.</p>
<b>Directors: Division: Team</b>	Directorate for Health and Social Care Integration: Care, Support and Rights Division: Carers Policy Branch.

<sup>1</sup> Scottish Health Survey (SHeS). The number of carers identified through the SHeS is much higher than the number identified through the Census 2011. That figure stands at 492,231 adult carers and young carers combined. We believe that the difference is due primarily to the SHeS being an interview survey where each adult answers the question separately, rather than one person answering for the whole household: this more readily helps people to identify themselves as carers. The question is: “Do you look after, or give any regular help or support to family members, friends, neighbours, or others because of either a long-term physical condition, mental ill-health or disability; or problems related to old age?”

<sup>2</sup> The Scottish Government published Scotland’s Carers, An Official Statistics Publication for Scotland on 24 March 2015 <http://www.gov.scot/Resource/0047/00473691.pdf>. This data is presented on the basis of under 16s and over 16s, as the weighting in the SHeS is designed for this age split. Since the Bill’s definition of young carer relates to under 18s (or a carer who has attained the age of 18 while a pupil at a school, and has since attaining that age remained a pupil at that or another school), the figures presented here make an estimate, based on the data, to include 16 and 17 year-olds.

## Executive summary

1. The BRIA process encourages policy makers to identify issues and use available evidence to find proposals that best achieve the policy objectives while minimising costs and burdens. The BRIA is:
  - a tool used by Government to assess and present the likely costs and benefits and associated risks of a proposal that might have an impact on the public, private, or third sector.
  - a continuous process to help Government understand the issues associated with a proposal and avoid unintended consequences, fully think through the reasons for intervention, to weigh up various options for achieving an objective, and to understand the consequences of a proposed intervention.
2. BRIAs apply to primary and secondary legislation being introduced to the Scottish Parliament, as well as codes of practice or guidance.
3. This Business and Regulatory Impact Assessment (BRIA) has considered the potential impacts of the Act on the public, private, and third-sectors in Scotland. More particularly, this update considers the impact of regulation-making powers that Scottish Ministers are using under the Carers (Scotland) Act 2016 (“the Act”). The original BRIA that was published for the introduction of the Carers (Scotland) Bill can be accessed at: <http://www.gov.scot/Topics/Health/Support-Social-Care/Unpaid-Carers/CarersBill/ImpactAssessments/BRIA>.
4. This impact assessment is one of a package to accompany the Act. The others are: Childrens Rights and Wellbeing Impact Assessment (CRWIA); Equality Impact Assessment (EQIA); and Privacy Impact Assessment (PIA).
5. The Scottish Government has decided to use some of the regulation-making powers in the Act. Where regulation-making powers are not being used the Government may consider these, where appropriate, in the future. Whilst the Act comes into force on 1<sup>st</sup> April 2018, certain provisions and regulations have been commenced earlier to enable local authorities to fulfil their duties under the Act. Commencement Orders have been laid in order to enable this to happen.
6. An Implementation Steering Group (ISG) has been established to help inform successful implementation of the Act and to provide views on regulations and guidance. Several other working groups have also been established to help inform specific sections of the Act. Further information about membership of the ISG and working groups are described below at ***Who was involved in this BRIA?***

## Background

### Policy Aims

7. It is the intention of the Scottish Government that Scotland's 745,000 adult carers and 44,000 young carers should be 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. In relation to young carers, the intention is similar to that for adult carers, but that young carers should have a childhood similar to their non-carer peers. The objective of the Act is to make real this ambition by furthering the rights of both adult and young carers.

8. The Scottish Government is supporting unpaid adult and young carers through a range of policies as set out in their manifesto and Programme for Government. From 2007/08 to 2016/17 the Scottish Government has invested nearly £136 million towards a range of programmes and initiatives to support these policies.

9. The case for the Act is set out fully in the Policy Memorandum published alongside the Carers Bill<sup>3</sup> on its introduction to the Scottish Parliament on 9<sup>th</sup> March 2015.

10. The Act provisions closely align with the Healthier, Wealthier and Fairer Strategic Objectives, but also cut across the Smarter objective.

11. The Act contributes to the following National Outcomes:

- We live longer, healthier lives;
- We have tackled the significant inequalities in Scottish society;
- We live in well-designed, sustainable places where we are able to access the amenities and services we need;
- Our children have the best start in life and are ready to succeed
- We have strong, resilient and supportive communities where people take responsibility for their own actions; and
- Our public services are high quality, continually improving, efficient and responsive to local people's needs.

### Who was involved in this BRIA?

12. The implementation of the Act has involved colleagues from within the Scottish Government and a range of external stakeholders.

13. The ISG membership includes carers, carer representatives, local authorities, health boards, COSLA, and other interests including: Care Inspectorate; Healthcare Improvement Scotland (HIS); and Royal College of General Practitioners Scotland.

14. Stakeholders have had the opportunity to express views about the Act provisions and draft regulations. This includes via:

- Implementation Steering Group;
- Working Groups on specific provisions;

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<sup>3</sup> [http://www.scottish.parliament.uk/S4\\_Bills/Carers%20\(Scotland\)%20Bill/b61s4-introd-pm.pdf](http://www.scottish.parliament.uk/S4_Bills/Carers%20(Scotland)%20Bill/b61s4-introd-pm.pdf)

- Monitoring and evaluation Group;
- Local Carer Leads Group;
- Stakeholder Development Day and other events;
- Formal public consultations; and
- Informal consultations.

15. The Scottish Government, in partnership with COSLA, have established pilots in nine integration authority areas to test some of the Act provisions before the Act comes into force on 1 April 2018. Pilots focussed on several provisions of the Act including adult carer support plans, young carer statements, local carer strategies and local eligibility criteria. These pilots operated from April to October 2017. An evaluation report was produced which was based on the evidence and data gathered, helping to inform the implementation of the Act, and to encourage sharing of good practice between Health and Social Care Partnerships (HSPCs).

16. The Scottish Government also invited health boards to submit proposals to test the provision on carer involvement in the hospital discharge of cared-for persons. These pilots have now concluded. Monitoring and evaluation forms to assist with evidence and data gathering have been issued, and an evaluation report will be produced with a view to informing the implementation of the Act.

17. All pilot areas were supported by the Scottish Government. The Scottish Social Services Council (SSSC) and NHS Education for Scotland (NES) also supported the relevant pilots.

18. Additionally, the Scottish Government has issued a readiness toolkit in June and November 2017. This is a voluntary framework for: integration authorities; local authorities where children's services aren't delegated; ADES; COSLA and Social Work Scotland to self-evaluate and self-assess local activity and progress which supports implementation of the Act. The aim of the toolkit is to:

- stimulate strategic discussions, internal challenge and a review of existing plans;
- map and measure progress leading to commencement;
- identify areas where more work needs to be done;
- identify opportunities for sharing learning with other integration authorities; and
- form the basis for further discussion with Chief Officers, Directors, health and social care leads, COSLA and Scottish Government.

19. The Scottish Government also published a response to the Carers Bill consultation<sup>4</sup>. This set out a summary of consultation views and shows how those views have informed policy development and the Act provisions. An independent analysis of the consultation responses<sup>5</sup> carried out by *Why? Research* was also published in March 2015.

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<sup>4</sup> Scottish Government Response to 'Carers Legislation - Consultation on Proposals - January 2014' <http://www.gov.scot/Publications/2015/03/2211>

<sup>5</sup> Carers Legislation - Analysis of Consultation Responses <http://www.gov.scot/Publications/2015/03/7622>

## **Scope of this BRIA**

20. The scope of this Business and Regulatory Impact Assessment is focused on the possible impacts as a result of implementing the provisions in the Act. The previous version of the BRIA describes all of the provisions which may have an impact on privacy. For the purposes of this review and updated BRIA the Regulations (and associated provisions) which have already been laid, and the remaining Regulations laid in February 2018 are included.

## **Commencement regulations**

21. The Carers (Scotland) Act 2016 (Commencement No. 2 and savings provision) Regulations 2017 were laid before Parliament on 17 May 2017. This describes the provisions of the Act that will come into force on 31 May 2017, and on 1 October 2017.

### ***Early commencement of provisions***

22. The main provisions of the Act come into force on 1 April 2018. In order for any duties to operate, local eligibility criteria must be in place. To allow sufficient time to enable local eligibility criteria to be published, the order set out a date for commencement of 1 October 2017 for section 21 and other associated provisions. It also set out a commencement date of 31 May 2017 for a number of provisions under which Scottish Ministers are making regulations, including those associated with the setting of local eligibility criteria.

### ***Waiving of charges***

23. The Carers (Waiving of Charges for Support) (Scotland) Regulations 2014 require local authorities to waive charges where services are provided to adult carers under section 3(4) of the Social Care (Self-directed Support) (Scotland) Act 2013.

24. Scottish Ministers have amended these regulations to maintain this position so that support for carers which will be provided under the Carers Act cannot be charged from 1 April 2018.

25. To avoid leaving a period where there is no legal requirement for waiving of charges, the commencement order brought section 26 of the Act into force on the 31 May 2017 for the purpose of enabling regulations to be made, but retains the requirement for waiving of charges for services provided to adult carers under section 3(4) of the 2013 Act.

26. The purpose of the commencement order was to enable certain provisions to commence earlier than 1 April 2018, in order for local authorities and other delivery partners to prepare and manage their business, and carry out their duties as prescribed in the Act. The Scottish Government does not expect there to be any adverse impact as a result of these commencement order.

## Regulations and possible impacts on business

### The Carers (Scotland) Act 2016 (Agreements of a Specified Kind) Regulations 2017

#### **Regulations**

27. These Regulations provided for under section 1(3)(a) were made on 25 July 2017 and came into force on 1 October 2017.

28. This is because clear definitions under the Act, including for kinship carers, had to be in place in order for local authorities to undertake their duties under section 22(2) of the Act - 1 October 2017 being the start of the 6 month period during which local authorities must set their first local eligibility criteria.

#### **Provision**

29. Section 1 describes the key definitions of “carer”, “young carer” and “adult carer” for the purposes of the Act.

#### **Possible impact of regulations under section 1(3)(a)**

30. This ensures that one of the key policy intentions of the Act of widening access to support for carers will be achieved, with the inclusion of kinship carers.

31. In so far as key definitions under Part 1 of the Act, the inclusion of kinship carers as prescribed in these regulations was considered in the Financial Memorandum<sup>6</sup> that accompanies the Act. Consideration of the financial impact on businesses is described at page 8 of this BRIA.

32. The distinctions between who is: a carer of a looked after child; a carer of a non-looked after child; and an “informal” kinship carer, is important to understand in the totality of the Act and for wider policy considerations. However, the process of establishing whether the kinship carer has an “agreement” under section 12 of the Looked After Children (Scotland) Regulations 2009 takes place before a local or responsible authority considers preparing an adult carer support plan (ACSP) or young carer statement (YCS).

33. The inclusion of kinship carers as defined above for the purposes of the Act reinforces the policy intention that the new legislation extends the reach of support available to eligible carers.

34. The number of additional people who may request or be offered an ACSP or YCS, and receive support as an eligible carer, is not expected to be significant.

35. The Scottish Government does not expect there to be an adverse impact on the operational business of local authorities or other delivery partners.

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<sup>6</sup> [http://www.parliament.scot/S4\\_Bills/Carers%20\(Scotland\)%20Bill/b61s4-introd-en.pdf](http://www.parliament.scot/S4_Bills/Carers%20(Scotland)%20Bill/b61s4-introd-en.pdf)

## **The Carers (Scotland) Act 2016 (Prescribed Days) Regulations 2017**

### ***Regulations***

36. These Regulations provided for under section 22(2) were laid on 16 June 2017, and came into force on 1 October 2017.

### ***Provision***

37. Section 21 provides that each local authority must set local eligibility criteria to apply in its area. The local eligibility criteria is the criteria by which the local authority determines whether it is required to provide support to meet the identified needs of carers.

38. Section 22 provides that each local authority must publish its local eligibility criteria.

### ***Possible impact of regulations under section 22(2)***

39. The intention of these regulations is to prescribe to local authorities (a) that local eligibility criteria should be published within 6 months from 1 October 2017 and (b) that the first review of these criteria should be within three years.

40. The Scottish Government believes that by enabling local authorities to plan to undertake their duties, any adverse impact on the operational business of local authorities or other delivery partners has been reduced. These regulations also provide a level of democratic accountability at a local service delivery level.

## **The Public Bodies (Joint Working) (Prescribed Local Authority Functions etc.) (Scotland) Amendment (No. 2) Regulations 2017**

### ***Regulations***

41. These amending Regulations were laid on 7 November 2017, and will come into force on 1 April 2018.

### ***Provision***

42. These Regulations remove section 3 from the entry for the Social Care (Self-directed support) (Scotland) Act 2013 from the list of enactments in the schedule of the Public Bodies (Joint Working) (Scotland) Act 2014, as this provision is repealed by the Carers Act. It also provides that the functions conferred on a local authority under sections 6, 24, 25, 31, 34 and 35 of the Carers Act are ones which must be delegated to Integration Authorities. This amendment ensures that provisions in the Carers Act are consistent with the way other social care functions have been delegated to Integration Authorities.

### ***Possible impact of regulations under section 87(5)***

43. These amending Regulations allow responsibility for a number of local authority related functions for carers to be passed to Integrated Authorities so that they can direct their the way they are carried out, updating existing legislation in order for the Carers Act to function as intended. The Scottish Government believes there is no adverse impact on the operational business of local authorities or other delivery partners.



## **The Carers (Scotland) Act 2016 (Adult Carers and Young Carers: Identification of Outcomes and Needs for Support) Regulations 2018**

### ***Regulations***

44. These Regulations provided for under sections 8 and 14 were laid on 15 February 2018, and will come into force on 1 April 2018.

### ***Provision***

45. These Regulations provide for further clarity about the identification of an adult carer's or young carer's personal outcomes and needs for support to be undertaken by the responsible (local) authority.

46. An adult carer's or young carer's personal outcomes and needs for support must be identified through conversation between the responsible (local) authority and the carer. An adult carer's or young carer's personal outcomes and needs for support must be reviewed when the adult carer support plan or young carer statement is reviewed.

### ***Possible impact of regulations under sections 8 and 14***

47. The identification of personal outcomes and needs for support are integral to the duty to prepare the adult carer support plan and young carer statement. These regulations provide for further clarity and strengthening to the duties of preparing an ACSP and YCS under the Act.

48. The Scottish Government believes there is unlikely to be any adverse impact on the operational business of local authorities or other delivery partners. The statutory guidance accompanying the Act also cover these matters.

## **The Carers (Scotland) Act 2016 (Review of Adult Carer Support Plans and Young Carer Statements) Regulations 2018**

### ***Regulations***

49. These Regulations provided for under sections 10 and 16 were laid on 2 February 2018, and will come into force on 1 April 2018.

### ***Provision***

50. These Regulations provide for the "trigger" circumstances in which an adult carer support plan or young carer statement must be reviewed outwith planned review times.

### ***Possible impact of regulations under sections 10 and 16***

51. It is difficult to say with any certainty how many unplanned reviews will take place as a result of these "trigger" circumstances. Monitoring and evaluation is expected to continue following commencement of the Act.

## **The Carers (Scotland) Act 2016 (Short Breaks Services Statements) Regulations 2018**

### ***Regulations***

52. These Regulations provided for under section 35(4) were laid on 2 February 2018, and will come into force on 1 April 2018.

### ***Provision***

53. These Regulations make provision about the preparation, publication and review of short breaks services statements.

### ***Possible impact of regulations under section 35(4)***

54. The short breaks services statement is one element of the duty on local authorities to establish and maintain information and advice services for carers.

55. As well as empowering carers with improved information, the short breaks services statement enables local authorities to better understand and plan for services to support carers. The Scottish Government believes there is no adverse impact on the operational business of local authorities or other delivery partners.

## **The Carers (Scotland) Act 2016 (Transitional Provisions) Regulations 2018**

### ***Regulations***

56. These Regulations provided for under section 43 were laid on 2 February 2018, and will come into force on 1 April 2018.

### ***Provision***

57. These Regulations provide for the transition from the provision of support to carers under existing legislation to support provided under the Carers Act.

58. These Regulations provide that existing support to the adult carer or young carer must continue until “trigger” circumstances require an adult carer support plan (ACSP) or young carer statement (YCS) to be prepared, as well as the periods within which an ACSP or YCS must be offered to the carer.

### ***Possible impact of regulations under section 43***

59. These regulations provide for clarity about how support delivered to carers under current legislation can transition to support by duties under the Act from 1 April 2018. The Scottish Government believes there is no adverse impact on the operational business of local authorities or other delivery partners.

## **The Carers (Waiving of Charges for Support) (Scotland) (Amendment) Regulations 2018**

### ***Regulations***

60. These Regulations provided for under section 87(5) were laid on 2 February 2018, and will come into force on 1 April 2018.

### ***Provision***

61. These Regulations ensure that costs incurred by a local authority in the provision of support to a carer are not charged to that carer.

### ***Possible impact of regulations under section 87(5)***

62. The Scottish Government believes there is no adverse impact on the operational business of local authorities or other delivery partners.

## Further consideration of the Carers (Scotland) Act 2016 and possible impact on public, private, and third sector organisations

### Delivery partners and other organisations

63. The Act places duties on local authorities and health boards (and by delegation to Integration Authorities) as primary delivery partners. No private sector businesses responded to consultations, or have since made representation for implementation of the Act.

64. We anticipate that some local authorities will commission third sector partners to deliver some of the duties under the Act including, for example, the Adult Carer Support Plan and Young Carer Statement. However, the Scottish Government recognises that a variety of businesses that provide services within the care sector, as well as those that support the provision of such services, may also be commissioned by local authorities to deliver certain services, e.g., short breaks provision.

65. The main sectors or groups affected by these legislative proposals are described below, together with possible impact as a result of the Act and, more particularly, the regulations set out above:

66. **Local authorities** who, for the purposes of the Act, may deliver support to, or commission services to support:

- Carers and carer representatives;
- Health boards;
- Integration authorities;
- Care Inspectorate;
- Education Scotland;
- Mental Health Commission for Scotland;
- NHS 24;
- NHS Education for Scotland;
- Scottish Social Services Council;
- Scottish Public Services Ombudsman; and
- Skills Development Scotland.

67. The majority of duties in the Act fall on local authorities as the main provider of services and support to carers and those that they care for. Available evidence, including direct consultation with local authorities and COSLA, suggests that existing business processes are robust enough to manage any change as a result of the duties under the Act, and in regard to the regulations set out in this BRIA.

### **Health boards**

68. The following duties in the Act fall on health boards: section 27(2) in relation to involve carers in carer services; and section 28(1) in relation to carer involvement in hospital discharge of cared-for persons.

69. Additionally, under section 17 of the Act there is a duty on responsible authorities to prepare the young carer statement (YCS), and to provide information about information contained in a YCS to the young carer, and any other person the

young carer requests. For the purposes of the Act, under section 19(1)(a), where the young carer is a pre-school child, the health board in which they reside is the responsible authority. The available evidence<sup>7</sup> suggests that only 0.3% of 5 year olds are identified as providing care and therefore the numbers for pre-school children providing care are likely to be too small to report on.

70. The Scottish Government does not expect there to be an adverse impact on the operational business of health boards as a result of implementing these provisions.

### ***Integration authorities***

71. Duties in the Act fall on local authorities and health boards. There are certain provisions that lead to consequential amendments to existing regulations.

72. The Public Bodies (Joint Working) (Scotland) Act 2014 (“the 2014 Act”) requires that health boards and local authorities agree arrangements for joint working in relation to certain statutory functions. Certain statutory functions may be delegated to the bodies responsible for delivering the joint working arrangements, and certain functions can be prescribed as mandatory for delegation.

73. There are consequential amendments required to the Public Bodies (Joint Working) (Prescribed Local Authority Functions etc.) (Scotland) Regulations 2014<sup>8</sup>.

74. In regard to the amended regulations conferred by section 1(7) of the 2014 Act, no further action is required.

### ***Directing authorities of independent and grant-aided schools***

75. The directing authority of independent and grant-aided schools will be affected by the duty to prepare and review a YCS for young carers where they are determined to be the responsible authority. It is not known exactly how many young carers are in these sectors nor the proportion of young carers who would want a YCS. The Scottish Government estimates there will be a small percentage (around 2%) of young carers in these circumstances. Other schools may also be asked by local authorities to assist in the completion of young carer statements.

76. For the purposes of this BRIA the Scottish Government does not envisage any adverse impact to directing authorities of independent and grant-aided schools.

### **Third sector**

77. Many third sector organisations provide services that support carers in localities across Scotland. This includes:

- Local carers centres;
- Young carers projects; and
- Condition specific support groups.

78. Some local authorities already commission the delivery of services to local carers centres, recognising their expertise and awareness of the needs of local

<sup>7</sup> <http://www.gov.scot/Resource/0047/00473691.pdf>

<sup>8</sup> <http://www.legislation.gov.uk/ssi/2014/345/contents/made>

carers. This may continue under the Act with, for example, the completion of the ACSP and YCS.

79. A broader range of services than now may be required from the third sector and the third sector may be required to deliver support to a greater number of carers. There is therefore a need to work with local authorities and with the third sector to ensure there is capability and capacity in the market to fulfil any increased demand.

### **Private sector**

80. There are no provisions that specifically outline the role of private sector organisations. However, one of the policy intentions of the Act (and wider Scottish Government policy) is to encourage a more innovative and creative approach to the delivery of services that support carers. For example, in helping to build carer friendly communities, local authorities and other delivery partners are encouraged to establish and maintain relationships with private sector organisations to provide a wider range and choice of short breaks provision.

81. For the purposes of the Act, this approach will be set out in guidance. Under section 35(4) of the Act there are draft regulations to specify the preparation, publication, and review of short breaks services statements.

82. Some support to carers is already being provided by the private sector. For example, the Scottish Government funded Respite initiative is enabling local carers centres to collaborate with hospitality and leisure businesses to offer free short breaks to carers. Shared Care Scotland, one of the National Carer Organisations, administers Respite and aims to extend the reach to more carers, and in more locations.

### **Funding and costs of implementing the Carers (Scotland) Act 2016**

83. A financial memorandum<sup>9</sup> was published alongside the introduction of the Carers (Scotland) Bill, which sets out a full consideration of costs to local authorities, health boards, other directing authorities, and third sector.

84. A finance advisory group has been established to consider the impact of commencing the Act provisions on public sector and third sector organisations, as well as funding challenges for Scottish Government.

85. The estimated financial costs to support implementation of the Act are set out in the financial memorandum. There is significant planned investment to support implementation of the Act, rising to £88.5 million by year 5.

86. There is £2 million in 2017-18 to help Integration Authorities, with partners, prepare for commencement of the Carers Act on 1 April 2018. It is a matter for each Integration Authority to decide how they direct this funding.

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<sup>9</sup> [http://www.parliament.scot/S4\\_Bills/Carers%20\(Scotland\)%20Bill/b61s4-introd-en.pdf](http://www.parliament.scot/S4_Bills/Carers%20(Scotland)%20Bill/b61s4-introd-en.pdf)

87. The budget for 2018-19 includes an additional £66 million to support additional expenditure by local government on social care. This recognises pressures they and Integration Authorities are facing, in particular implementation of the Carers (Scotland) Act, maintaining our joint commitment to the Living Wage (including for sleepovers) and an increase in free personal and nursing care payments.

88. The Funding for Carer Information Strategies (CIS) (currently £4.75m) is rolled into the single package of funding. CIS are superseded by new duties for carer information and support services under the Act.

## **Additional assessments**

### **Scottish Firms Impact Test**

89. Scottish Government officials have consulted with a range of third sector organisations affected by the new legislation, including on any concerns or benefits to their organisations.

90. These organisations have included carer and user support groups, such as local carer centres and young carer projects. Moreover, the Scottish Government funded National Carer Organisations (NCOs) have played a key role in helping to inform implementation of the Act. These are: Carers Scotland; Carers Trust Scotland ; Coalition of Carers in Scotland (COCIS); Crossroads Caring Scotland; Minority Ethnic Carers of Older People Project (MECOPP); Scottish Young Carers Services Alliance (SYCSA); and Shared Care Scotland.

91. Most duties in the Act fall on local authorities. Two duties are for health boards and one for a directing authority. There are no direct duties on the third sector. As previously noted, the Act enables local authorities and health boards to commission third sector providers to: help prepare the adult carer support plan (ACSP) and young carer statement (YCS); provide information and advice; and support carers as appropriate to meet the needs of local carers.

### **Competition Assessment**

92. Having applied the Competition and Markets Authority competition filter, the Act does not have any appreciable negative impact on competition within the health and social care market. The Act does not directly or indirectly limit the number or range of suppliers, nor does it limit the ability of suppliers to compete or reduce suppliers' incentives to compete vigorously.

93. The Act provisions may result in an increase of the number of carers seeking access to the health and social care market. This implies a need for more support, which will increase the demand for supply and therefore potentially promote greater competition in the market place. The legislation may also foster competition in other industries among large, small and micro enterprises in relation to the delivery of services such as, for example, short breaks and respite.

94. There are duties on local authorities (and Integration Authorities where delegated) to prepare ACSPs and YCSs. There are also provisions setting out what must be contained in ACSPs and YCSs. The Act does not set out any other requirements for specific changed business forms.

95. The pilots areas (as described at 15. to 17.) have proven to be beneficial for local authorities in identifying aims and stakeholders, developing a shared understanding, and co-designing and testing out draft ACSP and YCS forms.

96. Local authorities (and Integration Authorities where delegated) may need to prepare and introduce the following:

- resources required to develop new forms;
- resources to implement with workforce, as new local policy and procedures will be required;
- training to workforce on new ACSP/YCS forms and outcomes focused approaches; and
- resources required to adjust IT systems to accommodate new forms.

97. This may result in the following:

- a potential increase in resources for additional staff to deal with increased demand for ACSP/YCS and requests; and
- a potential increase in “reviews” and associated additional resources required to meet demand
- potential waiting lists to have ACSP/YCS undertaken and associated waiting lists for support to be provided
- a potential increase in demand for support following ACSP/YCS both above and below the threshold of local eligibility criteria which puts pressure on budgets at a local level.

98. The Scottish Government does not expect there to be any significant impact on the operational business of local authorities as a result of introducing these provisions.

99. This is, in part, due to steps already taken to support delivery partners to prepare and to forward plan for undertaking their duties under the Act. Feedback from the readiness toolkit (as described at 18.) is that this has been a worthwhile and beneficial exercise for local authorities and health boards, allaying tensions that may have existed when planning for implementation of the Act.

### **Legal Aid Impact Test**

100. It is not envisaged that there will be any greater demands placed on the legal aid system as a result of implementing the Act. There is continued potential (as is the case now) for individuals to challenge a local authority decision relating to service provision, e.g. where the local eligibility criteria are not met and the local authority chooses not to exercise its discretionary power to support the carer. As it is expected there may be greater numbers of carers applying for support, there may be pro-rata higher volumes of legal challenges. However that is not a function of the Act provisions per se, but rather as a result of the expected increased numbers of carers seeking access to support.



101. It is considered that the Act does not carry any implications to the legal aid fund, nor adversely affect the legal aid scheme. The Scottish Government's Access to Justice Team have considered this document and are in agreement with this view.

102. The Scottish Legal Aid Board provided their views for this BRIA on 20 December 2017. The statement from the previous publication of the BRIA remains: *"The Scottish Legal Aid Board agrees that this should have little impact. It is not possible to predict local authority compliance with the proposed new duties and how many associated challenges may arise, therefore no meaningful projection re costs to the Fund can be made. Notwithstanding, there are no new forums/ proceedings for dispute resolution under the Bill; the appropriate remedy will be judicial review for which advice and assistance and civil legal aid may be available, subject to the usual eligibility criteria. Accordingly, no changes to Acts and Regulations will be necessary to enable public funded legal assistance to be available for dispute resolution."*

## **Enforcement, sanctions and monitoring**

### ***Enforcement***

103. To the extent that the Act confers rights on individual carers (e.g.: the right to an adult carer support plan or young carer statement; or the right to support, tailored to a carer's eligible needs), then individual carers would be able to enforce those rights. This would ultimately be through bringing proceedings for judicial review, but carers must resort to and exhaust all other available remedies first. For example, the carer may access the local authority's social work complaints procedure if that was applicable to a particular case. If unsatisfied with the outcome of the local authority's complaints procedure, the carer may also approach the Scottish Public Services Ombudsman to consider any complaint.

104. Individuals might also be able to challenge compliance with more strategic provisions of the Act (e.g.: setting local eligibility criteria; or the duty to prepare a local carer strategy) if they could demonstrate that they were directly and individually affected by what the authority had done or failed to do. However this is no different from the current situation.

105. No further enforcement provisions have been made in relation to the discharge of functions by local authorities and by health boards. There are already general powers of control and enforcement which are conferred on Scottish Ministers in respect of local authorities. For example, the Social Work (Scotland) Act 1968 sets out different controls which may be exercised by Scottish Ministers in respect of local authority functions. These include guidance, direction making powers and an inquiry function.

### ***Sanctions for non-compliance***

106. Current Ministerial sanctions for failure to deliver under legislative requirements, in broad terms, will apply to the provisions of the Act.

### ***Monitoring***

107. It is important that Scottish Ministers know the extent to which the Act is making a difference to the lives of unpaid carers across Scotland, and that the intended outcomes of the Act are being achieved.

108. The provisions within the Act for the publication of the local carer strategies will enable the Scottish Government to obtain a view of the issues contained in all local carer strategies. Additionally, other publications and reporting mechanisms in use by local authorities, health boards, and providers will contribute to gathering of information and data about current and planned delivery of services.

109. A key piece of work for the successful implementation of the Act is the development of a monitoring and evaluation framework and strategy to be delivered from 2018-19 onwards. This will help us understand the monitoring, outcomes and indicators required to track progress for effective implementation. It will consider how data and evidence requirements can be met through existing sources and the need for any potential new research.

110. A new Carers Census has been developed with local partnerships, carer organisations, carers and other national organisations. This will monitor carers known to local partnerships and carers centres, covering a number of health and social care questions. The new data specification was published on 22 September 2017. This can be found on the Scottish Government website<sup>10</sup>.

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<sup>10</sup> <http://www.gov.scot/Topics/Statistics/Browse/Health/DataSupplier/CarersData/CCDataSpec>

## **Declaration and publication**

**I have read the impact assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impacts of the policy, and (b) that the benefits justify the costs I am satisfied that business impact has been assessed with the support of businesses in Scotland.**

**Signed:**

A handwritten signature in black ink that reads "Aileen Campbell". The signature is written in a cursive style with a large initial 'A'.

**Date:** 26 February 2018

**Aileen Campbell MSP, Minister for Public Health and Sport**



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