



Briefing: Carers (Scotland) Bill, November 2015

Purpose: To provide MSPs with a summary of the Carers Bill, and provide information on carers' and carer organisations' views on the Bill in advance of the Stage 1 debate.

Key points: The Carers Bill was introduced to the Scottish Parliament in March 2015. Most of the Bill's provisions will improve things for carers; however there are some areas where improvements could be made and a few areas where significant changes need to be made to ensure the Bill delivers real rights and real change for carers. The Bill will:

- Improve identification of adult carers and young carers, and identify carers' needs for support more consistently by improving and renaming the carers' assessment process
- Place a duty on local authorities to support carers (subject to eligibility criteria) and to publish a statement on short breaks; there is also a power to support carers in preventative manner who do not meet eligibility criteria.
- Place a duty on local authorities to develop and publish local carers' strategies, and make provision for carer involvement in local services, local planning and in services provided to the cared for person
- Place a duty on local authorities to provide information and advice services to all carers

In its response to the Health and Sport Committee the Government indicated that it will bring forward the following amendments at Stage 2:

- Regulations to set timescales for the preparation of the Adult Carer Support Plan/Young Carers Statement where the cared-for person is terminally ill.
- Regulations to clarify that where sources of information and advice for carers are already available within the local authority area, there is no requirement to create an additional information and advice service. However, in such instances, the local authority will be required to ensure that these information and advice services are maintained.
- Regulations so that the Adult Carer Support Plan/Young Carer Statement must contain information about emergency planning, and that information and advice services must provide information about emergency planning and future planning.
- An amendment to clarify and strengthen the role of NHS boards in preparing local carer strategies.

We believe that other areas of the Bill still require strengthening and are proposing additional amendments in the following areas:

- **Personal outcomes.** The Bill defines personal outcomes for carers solely related to their caring role. Caring is a normal part of life but should not mean significant negative impacts on a person's finances, ability to work and take part in learning, health and wellbeing, social and leisure opportunities; there should be recognition that carers are entitled to a life outside of caring, rather than just a life alongside caring, and this should be reflected in outcomes.

- **Waiting times for an Adult Carer Support Plan for all carers.** Local authorities will set their own timescales for carrying out Adult Carer Support Plans and there will be no national maximum time limit. Currently many carers wait for months or years for a carers' assessment, and there can be enormous variation between local authority areas. In order to reduce inequity between local authorities, timescales that are locally-set must be reasonable so that all carers can receive a support plan as quickly as possible.
- **Eligibility criteria for carer support.** The introduction of local eligibility criteria (as currently provided for in the Bill) will lead to a postcode lottery of support for carers. We fully support the concept of best local practice and scope for local variation to meet varying needs and caring trends. However, there is no justification for a variation in the **levels of need** which trigger an entitlement to support. Nationally-set eligibility criteria will mean that carers are able to access the same level of support when they have a similar level of impact and intensity of caring role.
- **Short breaks for carers.** Local authorities, in determining which support to provide to an eligible carer, will be required to consider whether the support should be in the form of a break from caring. The prominence of short breaks within the Bill is welcomed but questions remain about the level of financial resource to be provided to ensure needs can be met (particularly where replacement care is required), and the extent to which the Bill will lead to improvements in the choice and availability of short break services. We therefore propose the inclusion of a Short Breaks Duty to place a requirement on local authorities 'to provide, so far as is reasonably practicable, a range of services or assistance which is sufficient to assist individuals who provide care to do so, or to do so more effectively, by giving them breaks from caring.' A new Short Breaks duty with accompanying regulations will help establish short break provision as a vital statutory service. That judgment on sufficiency will have to be properly informed by evidence and be open to scrutiny.
- **Replacement Care.** The potential additional costs of replacement care were not included in the Financial Memorandum, and this was highlighted by the Finance Committee and the Health and Sport Committee. The availability of high quality, flexible replacement care is often essential to enable carers to have a break from their caring responsibilities. This is therefore a significant omission. The Minister's letter of 26th October, in response to the Finance Committee's questions, provides a figure of £16m as the maximum estimate of the cost implications associated with the waiving charges for support under Section 22 of the Bill. However, the letter goes on to say that, 'taking all of this into account, I believe that the cost of any additional replacement care as a consequence of waiving charges can be accommodated within the overall cost envelope currently set out in the FM.' This would suggest the £16m has to be found from other areas of expected expenditure and does not take account of any new demand that might arise from the increased number of adult and young carers receiving an assessment (ACSP or YCS). Further clarification is needed.
- **The impact of the Bill on carers' services and the wider third sector.** Carers' services provide practical and emotional support to carers as well as information and advice, meeting carers' needs for preventative support as well as a gateway to specialist support. However, increased identification through this Bill will lead to an increase in demand for services from newly identified carers; many carers' services are already operating at capacity. Additional pressure may also be experienced by services that carers are signposted to such as housing, financial advice or welfare and benefits advice. The commitment to funding third sector information and advice services must take into account the holistic service provided by carer support organisations.

- **A duty on hospital discharge.** The Bill does not make strong enough provision for NHS boards to inform and involve carers in hospital admission and discharge procedures for those they care for. A person's caring role often begins or intensifies when someone is discharged from hospital, so their involvement in support planning is necessary for a successful discharge. The Health and Sport Committee Stage 1 report shares this concern and has asked the Scottish Government to consider the issue more closely. We believe that the current Bill provisions and proposed guidance will not resolve the hospital discharge problem satisfactorily and call for a duty to be placed on NHS boards to involve carers in the discharge process.
- **A statement on equality.** There is substantial evidence that carers from minority groups find it difficult to access services. The Scotland Act 1998 allows for Parliament to legislate to 'encourage' equality of opportunity – the Bill could utilise this mechanism, supported by robust monitoring and recording processes, to include an equalities clause on the face of the Bill. Statutory agencies should be required to develop a statement setting out how they will encourage equality of opportunity for those with protected characteristics to access and benefit from carer support services.
- **A method of redress and of appeal.** In order for carers' rights to be enforceable, action must be taken to improve the review of social work complaints and clarify the complaints mechanism for new integrated structures. Carers deserve a method of redress that is easily accessible and delivers real outcomes. There should also be consideration of an appeal mechanism should a person present to a responsible authority, ask for a support plan and find that the authority identifies no need for support in that person's situation. An appeals mechanism could be established on the face of the Bill.
- **A right to advocacy.** Carers and young carers deserve access to advocacy when identifying needs for support, as it can often be a very stressful and vulnerable time and they may not be able to adequately represent the realities of their caring situation. There should be a statutory right to the services of a trained independent advocate during assessment of need for support, and advocacy services should also be available to carers and young carers during an appeal process if the local authority has not identified any needs for support.

Extended briefings on specific points are available at www.carersnet.org

The National Carer Organisations

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