

**CARERS (SCOTLAND) ACT 2016
 EQUALITY IMPACT ASSESSMENT
 (REVIEWED AND UPDATED FOR REGULATIONS ON TIMESCALES
 FOR CARERS OF TERMINALLY ILL PEOPLE – JANUARY 2021)**

Title of Policy	Carers (Scotland) Act 2016 (“the Act”)
Summary of aims and desired outcomes of Policy	<p>It is the intention of the Scottish Government that Scotland’s 700,000 to 800,000 unpaid carers¹ 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 is designed to 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>
Directors: Division: Team	Mental Health and Social Care Directorate: Social Care Policy and Delivery Division: Carers Policy Branch

¹ Scotland’s Carers (2015): <https://www.gov.scot/publications/scotlands-carers/> and Scotland's Carers Update Release (2019): <https://www2.gov.scot/Topics/Statistics/Browse/Health/Data/Carers/Update>. The actual number of unpaid carers in Scotland is not known but is estimated to be around 700,000 to 800,000 people. The latest estimate is 690,000, of whom 29,000 are young carers (under 18). Survey work in summer 2020 indicates that an additional 390,000 people in Scotland may have taken up caring roles during the pandemic, bringing the total number of carers in Scotland to around 1.1 million. Carers Week 2020 Research Report: The rise in the number of unpaid carers during the coronavirus outbreak: <https://www.carersweek.org/images/CW%202020%20Research%20Report%20WEB.pdf>

Executive summary

1. The public sector equality duty requires the Scottish Government to assess the impact of applying a proposed new or revised policy or practice. It is a legislative requirement. Policies should reflect that different people have different needs. Equality legislation covers the protected characteristics of: age, disability, gender reassignment, sex, gender including pregnancy and maternity, race, religion and belief, and sexual orientation.
2. This Equality Impact Assessment (EQIA) has considered the potential impacts of the Act on each of the protected characteristics. The provisions, Regulations, and how they impact on carers across the protected characteristics are set out below.
3. This impact assessment is one of a package to accompany the Carers (Scotland) Act 2016. The others are: Business and Regulatory Impact Assessment (BRIA); Children's Rights and Wellbeing Impact Assessment (CRWIA); and Privacy Impact Assessment (PIA). This EQIA, the BRIA and the CRWIA are all being updated in January 2021 to take account of new regulations setting timescales for supporting carers of terminally ill people.
4. Earlier versions of the EQIA identified opportunities to improve understanding of carers who belong to particular equality groups and their experiences of caring. This was used to help inform policy and tailor communication with particular equality and representative stakeholder groups during implementation of the Act.
5. An Implementation Steering Group has been helping inform successful implementation of the Act, working together on shared priorities set out in a Carers Act Implementation Plan (currently being updated). Several working groups also helped inform specific themes across the Act, including the development of regulations and guidance. Further information about membership of the Implementation Steering Group and working groups are described below at ***Who was involved in this EQIA?***

Background

Policy Aims

6. It is the intention of the Scottish Government that Scotland's unpaid 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.
7. The Scottish Government is supporting unpaid adult and young carers through a range of policies as set out in successive Programmes for Government.
8. The case for the Act was set out fully in the Policy Memorandum published alongside the Carers Bill on its introduction to the Scottish Parliament in March 2015.
9. The Act contributes to the following National Outcomes:
 - We are healthy and active;
 - We respect, protect and fulfil human rights and live free from discrimination;
 - We grow up loved, safe and respected so that we realise our full potential; and
 - We live in communities that are inclusive, empowered, resilient and safe.

Who was involved in this EQIA?

10. The implementation of the Act has involved colleagues from within the Scottish Government and a range of external stakeholders.
11. The Implementation Steering Group membership and other working groups have included carers, carer representatives, local authorities, health boards, COSLA, and other key interests including: Scottish Consortium for Learning Disabilities (SCLD); and Minority Ethnic Carers of Older People Project (MECOPP). Equality matters have been discussed across all working groups.
12. Stakeholders had the opportunity to express views about the Act provisions and draft regulations, identifying areas of particular challenge in relation to protected characteristic groups.
13. These discussions have helped to identify the potential impact of the Act on other Scottish Government policy areas and on those in protected groups. It has also assisted in identifying available existing evidence about carers and carers in protected groups.

Scope of the EQIA

14. The previous version of the EQIA describe all of the provisions which may have an impact on equality matters. For the purposes of this updated EQIA, the Regulations setting timescales for supporting carers of terminally ill people are added.

Key findings and data sources

15. A summary of the available evidence and data collected to help inform this EQIA is provided at **Annex A**. A variety of information sources were used including, but is not exclusive of :

- Scotland's Carers²;
- Scottish Health Survey³;
- Health and Care Experience Survey⁴;
- Scotland's Census 2011⁵.

² Scotland's Carers (2015): <https://www.gov.scot/publications/scotlands-carers/> and Scotland's Carers Update Release (2019): <https://www2.gov.scot/Topics/Statistics/Browse/Health/Data/Carers/Update>.

³ <https://www.gov.scot/collections/scottish-health-survey/>

⁴ <https://www.gov.scot/publications/health-and-care-experience-survey/>

⁵ <https://www.scotlandscensus.gov.uk/>

Regulations and possible impacts on protected characteristics

Updated in January 2021 to add assessment of regulations on timescales for supporting carers of terminally ill people.

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

Regulations

16. These Regulations provided for under section 1(3)(a) came into force on 1 October 2017.

17. 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

18. 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)

19. The Regulations under section 1(3)(a) specify that a kinship care agreement under regulation 12 of the Looked After Children (Scotland) Regulations 2009 cannot be viewed as a “contract” for the purposes of the Act.

20. The health and wellbeing of children being cared for will be improved by virtue of support being provided to eligible kinship carers. No adverse impact on those who may have protected characteristics is expected as a result of these provisions.

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

Regulations

21. These Regulations provided for under section 22(2) came into force on 1 October 2017.

Provision

22. 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.

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

Possible impact of regulations under section 22(2)

24. 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. No adverse

impact on those who may have protected characteristics is expected as a result of these provisions.

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

Regulations

25. These Regulations provided for under sections 8 and 14 came into force on 1 April 2018.

Provision

26. 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.

27. 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

28. 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. The responsible local authority (under section 8(2)) and the responsible authority (under section 14(2)) must take into account requirements under section 149(7) of the Equality Act 2010 when identifying the adult carer's or young carer's personal outcomes and needs for support.

29. These provisions ensure that adult carers and young carers have the opportunity to have any protected characteristic they may have identified and considered as part of their adult carer support plan or young carer statement. The Scottish Government believes there will be a positive impact on those who may have protected characteristics a result of these provisions.

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

Regulations

30. These Regulations provided for under sections 10 and 16 came into force on 1 April 2018.

Provision

31. 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

32. The Scottish Government believes there will be a positive impact on those who may have protected characteristics as a result of these provisions.

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

Regulations

33. These Regulations provided for under section 35(4) came into force on 1 April 2018.

Provision

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

Possible impact of regulations under section 35(4)

35. One of the intentions of the short breaks services statement is to encourage each local authority to consider more innovative approaches and to establish a range of appropriate short breaks provision that meet the needs of carers in their local area.

36. In doing so, carers will be better informed when making decisions about short breaks that they may wish to access. It is expected that protected characteristics will be considered when local authorities plan for short breaks services, and subsequently in publishing information about these services.

37. The Scottish Government believes there will be a positive impact on those who may have protected characteristics as a result of these provisions.

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

Regulations

38. These Regulations provided for under section 43 came into force on 1 April 2018.

Provision

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

40. 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

41. Continuity of support to carers will ensure their health and wellbeing (and of those being cared-for) are sustained. The Scottish Government believes there is no adverse impact on those who may have protected characteristics as a result of these provisions.

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

Regulations

42. These Regulations provided for under section 87(5) came into force on 1 April 2018.

Provision

43. 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)

44. The Scottish Government believes there is no adverse impact on those who may have protected characteristics as a result of these provisions.

The Self-directed Support (Direct Payments) (Scotland) Amendment Regulations 2018

Regulations

45. These Regulations provided for under sections 15 and 22(1) of the Social Care (Self-directed Support) (Scotland) Act 2013 came into force on 1 April 2018.

Provision

46. These Regulations to maintain the requirement that local authorities cannot means test or require a contribution from a carer where carer support is being delivered by way of a direct payment.

Possible impact of regulations

47. The Scottish Government believes there is no adverse impact on children and young people as a result of these provisions.

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

Regulations

48. These amending Regulations came into force on 1 April 2018.

Provision

49. 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)

50. 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 those who may have protected characteristics as a result of these provisions.

The Carers (Scotland) Act 2016 (Adult Carers and Young Carers of Terminally Ill Persons: Timescales for Adult Carer Support Plans and Young Carer Statements etc.) Regulations 2021

Regulations

51. These Regulations provided for under sections 7, 8, 13 and 14 are due to come into force on 31 July 2021.

Provision

52. These Regulations set time limits for preparing adult carer support plans and young carer statements for carers of terminally ill people.

Possible impact of regulations under sections 7, 8, 13 and 14

53. The regulations are designed to ensure carers of a terminally ill person can receive support quickly. The Scottish Government believes there is no adverse impact on those who may have protected characteristics as a result of these provisions. The Scottish Government also believes that there will be a positive impact for people with protected characteristics who are affected by these provisions – either as a carer or a person with a terminal illness – by ensuring that these carers receive support quickly.

Further considerations

54. The evidence provided in the table at **Annex A** illustrates the diversity of carers and their caring responsibilities. The Act provisions are designed to have a positive impact on all of Scotland's carers, including those who fall into one or more protected groups.

55. No negative impacts on any of the protected groups have been identified. However, it is clear that data and evidence needs to be identified and gathered to help inform how carers from some of the protected groups are better supported. In particular, LGBTI and Gypsy/Traveller communities.

56. It is also recognised that there may be other factors affecting those in protected groups which although not a consequence of the Act provisions may, in comparison to those in non-protected groups, impact on the extent to which they can access and benefit from the provisions when implemented. For example, although adult carers in the LGBTI group are entitled to an adult carer support plan in the same way as a carer in a non-protected group, the particular issues facing that group (such as the fear of homophobia or discrimination) may imply additional barriers to accessing a support.

57. The widening of access to support resulting from the implementation of the Act including, for example: the introduction of the adult carer support plan and young carer statement; the requirement for information and advice services; and carer involvement, are all designed to positively impact on adult and young carers, including those who have one or more protected characteristics.

58. Under section 36 of the Act Scottish Ministers have prepare and published a Carers' charter, setting out the rights of carers as provided for in or under the Act. The charter cannot give rise to any new rights or alter existing rights under law. It is an important source of information for carers, practitioners, and anyone with an interest in the provision of support and services for carers. In addition to a public consultation, in preparing the charter the Scottish Government consulted with the National Carer Organisations and COSLA.

Conclusion

59. This EQIA has confirmed that the provisions of the Act and the draft regulations will not directly or indirectly discriminate on the basis of age, disability, gender, gender re-assignment, sexual orientation or race and belief. The Act applies equally to those affected by its provisions.

60. Moreover, section 149(7) of the Equality Act 2010 is included in provisions of the Act for the delivery of the adult carer support plan, young carer statement, and information and advice service. Local authorities, health boards, and other providers of services have existing equality processes.

Authorisation

I confirm that the impact of the Carers (Scotland) Act 2016 has been sufficiently assessed against the needs of the equality duty:

Name and job title of Deputy Director or equivalent: Gillian Barclay Deputy Director Social Care Policy and Delivery Division	Date this version authorised: 25/01/2021
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KEY FINDINGS

Protected characteristic	Available evidence gathered
AGE	<ul style="list-style-type: none"> • The age group where someone is most likely to be a carer is 50-64 years old⁶. • Those aged 65 and over are most likely to provide more intensive care (35+ hours per week) with over half of these carers doing so⁷. • Poor carer health and wellbeing is concerning for both the carer and the cared-for person. It can result in greater use of health and care services, particularly older people, for example: through admission and delayed discharge at hospital; referral to a day hospital or other unit; and admission to institutional care.⁸ • It is estimated there are 29,000 young carers.⁹
DISABILITY	<ul style="list-style-type: none"> • 41% of carers have a long-term health condition.¹⁰ • 16% were deaf or had partial hearing loss; 16% had a physical disability; 11% had a mental health condition; and 44% had another condition not listed.¹¹ • Nearly 6% of carers report having a long-term mental health condition compared with 4% of non-carers¹². • The percentage of carers with one or more long-term health condition increases with the number of hours caring – from 36% of those caring for 1-19 hours to 50% of those caring for 35+ hours.¹³
SEX	<ul style="list-style-type: none"> • For carers aged 16 and over, 59% are women and 41% are men. • Women are more likely to be carers than men until retirement age when equally 19% of both women and men are providing care. In the oldest age group (75+) more men than women (12% and 9% respectively) provide care. • 62% of male carers providing care of 35+ hours a week are aged 25-64. This compares with 69% of women carers.

⁶ Scotland's Carers (2015): <https://www.gov.scot/publications/scotlands-carers/> and Scotland's Carers Update Release (2019):

<https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2015/03/scotlands-carers/documents/scotlands-carers---update-release/scotlands-carers---update-release/govscot:document/00548776.pdf>

⁷ Scotland's Carers - as previous reference

⁸ Pearson, B., Skelly, R., Wileman, D. and Masud, T. (2002) Unplanned readmission to hospital: A comparison of the views of general practitioners and hospital staff. Age & Ageing <http://ageing.oxfordjournals.org/content/31/2/141.full.pdf+html>

⁹ Scotland's Carers - as previous reference

¹⁰ Census 2011. A long-term condition was defined as one which lasted 12 months or more.

Respondents were asked to self-select from a list of options comprising: deafness or partial hearing loss, blindness or partial sight loss, learning disability, learning difficulty, developmental disorder, physical disability, mental health condition, long term illness, disease or condition, other condition (respondent to specify), and no condition.

¹¹ Scotland's Carers - as previous reference

¹² Scotland's Carers - as previous reference

¹³ Scotland's Carers - as previous reference

<p>SEXUAL ORIENTATION</p>	<ul style="list-style-type: none"> • Research published in 2007 by the Lesbian, Gay, Bisexual Transgender and Intersex (LGBTI) Centre for Health and Wellbeing¹⁴ reported that 0.8% of respondents from Edinburgh, the Lothians and the Borders provided full-time caring.. • Some LGBTI parents/carers felt that reporting incidents affecting them would ‘out’ their children in the neighbourhood and make their children a target for bullying or harassment. • The LGBT Youth Scotland written response to the Carers (Scotland) Bill consultation¹⁵ provided further evidence of issues affecting LGBT carers: <ul style="list-style-type: none"> ○ Many LGBT carers or the LGBT people they are caring for may have reduced social networks due to a lack of acceptance of their sexual orientation or gender identity. This can result in accessing less support than other carers. ○ Many LGBT people fear potentially experiencing homophobia, biphobia and transphobia from services or have previous experience of discrimination from a service. ○ There is often a lack of visibility of LGBT identities within services which are necessary to counter LGBT people’s expectations of discrimination, or a lack of confidence that service services are able to meet their needs.
<p>RACE</p>	<ul style="list-style-type: none"> • The Pakistani community who make up 0.9% of Scotland’s population is the largest BME group. This is followed by the Chinese community with 0.6% and then by the Indian community with 0.6%. The Gypsy/Traveller population account for 0.1% of the total population.¹⁶ • 96% of carers are of a “White Scottish / British / Irish” ethnicity, while 4% are of “Other” ethnic backgrounds.¹⁷ • 8.7% of the Pakistani population in Scotland provide some form of unpaid caring. This compares with 4.3% of the Chinese and 5.5% of the Indian communities. • People from older ethnic groups such as “White: Scottish” and “White: Other British” were the most likely to provide unpaid care. People from ethnic groups with younger age profiles, such as the “Arab” and “White: Polish” groups, were least likely to provide unpaid care.¹⁸ • There is evidence that Gypsy/Travellers experience significant health inequalities, high infant mortality rates, premature deaths and higher than average rates of major long-term conditions such as diabetes and cardiovascular disease.¹⁹

¹⁴ Arskey H Hirst, M (2005) Unpaid Carers Access to and Use of Primary Care Services, Primary Health Care Research and Development <https://www.york.ac.uk/inst/spru/pubs/pdf/carersusePCS.pdf>

¹⁵ <http://www.gov.scot/Resource/0045/00450457.pdf>

¹⁶ ibid

¹⁷ ibid

¹⁸ Analysis of Equality Results from the 2011 Census <http://www.gov.scot/Publications/2014/10/8378>

¹⁹ Hidden Carers – Unheard Voices – Informal caring within the Gypsy/Traveller Community in Scotland http://www.scottish.parliament.uk/S4_EqualOpportunitiesCommittee/Inquiries/MECOPP.pdf

GENDER RE-ASSIGNMENT	No data is available about adult carers or young carers under this protected characteristic grouping.
RELIGION OR BELIEF	No data is available about adult carers or young carers under this protected characteristic grouping.
MARRIAGE AND CIVIL PARTNERSHIP	No data is available about adult carers or young carers under this protected characteristic grouping.
PREGNANCY AND MATERNITY	No data is available about adult carers or young carers under this protected characteristic grouping.