

CARERS (SCOTLAND) ACT 2016
BUSINESS AND REGULATORY 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 Business and Regulatory Impact Assessment (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. 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 BRIA has considered the potential impacts of the Act on the public, private, and third-sectors in Scotland. The BRIA that was published for the commencement of the Carers (Scotland) Act 2016 on 1 April 2018 can be accessed at: [Carers \(Scotland\) Act 2016: business and regulatory impact assessment - gov.scot \(www.gov.scot\)](http://www.gov.scot/Carers-Scotland-Act-2016-business-and-regulatory-impact-assessment) This version is updated to include consideration of new regulations on timescales for supporting terminally ill people.
4. This impact assessment is one of a package to accompany the Carers (Scotland) Act 2016. The others are: Children's Rights and Wellbeing Impact Assessment (CRWIA); Equality Impact Assessment (EQIA); and Privacy Impact Assessment (PIA). This BRIA, the EQIA 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.
5. Earlier versions of the BRIA stated that the Scottish Government had decided to only use some of the regulation-making powers in the Act and identified that where regulation-making powers are not being used the Scottish Government may consider these, where appropriate, in the future. Ministers are required to make regulations on timescales for adult carer support plans and young carer statements – now considered in this updated BRIA.
6. An Implementation Steering Group (ISG) has been established to help inform implementation of the Act, working together on shared priorities set out in a Carers Act Implementation Plan (currently being updated). Several other working groups have also helped inform specific themes across the Act, including the development of regulations and guidance. Further information about membership of the ISG and working groups is below at ***Who was involved in this BRIA?***

Background

Policy Aims

7. 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.
8. The Scottish Government is supporting unpaid adult and young carers through a range of policies as set out in successive Programmes for Government.
9. The case for the Act was set out fully in the Policy Memorandum published alongside the Carers Bill² on its introduction to the Scottish Parliament in 2015.
10. 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 BRIA?

11. The implementation of the Act has involved colleagues from within the Scottish Government and a range of external stakeholders.
12. The Carers Act Implementation Steering Group membership and other working groups have included carers, carer representatives, local authorities, health boards, COSLA, and other key interests including: Care Inspectorate; Healthcare Improvement Scotland (HIS); Royal College of General Practitioners Scotland; and Social Work Scotland.
13. Stakeholders have had the opportunity to express views about the Act provisions and draft regulations. This includes via:
 - Carers Act Implementation Steering Group;
 - Working Groups on specific provisions (including Terminal Illness Regulations working group);
 - Monitoring and evaluation Group;
 - Local HSCP Carer Leads Group;
 - Formal public consultations; and
 - Informal consultations.

² [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)

14. The Scottish Government published a response to the Carers Bill consultation³. This set out a summary of consultation views and how they had informed policy development and the Act provisions. An independent analysis of the consultation responses⁴ carried out by *Why? Research* was also published in March 2015.
15. The Terminal Illness Regulations working group involving representatives from Palliative Care Scotland, Marie Curie, Macmillan Cancer Support, the Association of Palliative Care Social Workers, Children’s Hospices Across Scotland, Carers Trust Scotland, Social Work Scotland and COSLA. The group helped develop the Timescales for Terminal Illness consultation and informed consideration of its findings. The Scottish Government published an analysis of the consultation responses⁵ in August 2019.

Scope of this BRIA

16. The scope of this BRIA covers the possible impacts as a result of implementing the provisions in the Act and associated regulations. For the purposes of this updated version, the regulations setting timescales for supporting carers of terminally ill people are added.

Regulations and possible impacts on business

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

17. These regulations under section 1(3)(a) came into force on 1 October 2017.
18. This is to ensure clear definitions under the Act were in place in order for local authorities to set their first local eligibility criteria from 1 October 2017.

Provision

19. Section 1 describes the key definitions of “carer”, “young carer” and “adult carer” for the purposes of the Act. The regulations ensure that a kinship carer agreement with a local authority does not exclude someone from being seen as a carer under the Act (as long as they meet the other requirements of the definition).

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

20. 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.

³ Scottish Government Response to 'Carers Legislation - Consultation on Proposals - January 2014'
<http://www.gov.scot/Publications/2015/03/2211>

⁴ Carers Legislation - Analysis of Consultation Responses
<http://www.gov.scot/Publications/2015/03/7622>

⁵ Timescales for adult carer support plans and young carer statements: consultation analysis - gov.scot (www.gov.scot)

21. 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 Memorandum⁶ that accompanies the Act. Consideration of the financial impact on businesses is described later in this BRIA.
22. 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.
23. 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.
24. The Scottish Government does not expect there to be an adverse impact on the operational business of local authorities or other delivery partners.

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

Regulations

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

Provision

26. Section 21 provides that each local authority must set local eligibility criteria to apply in its area. These are the criteria by which the local authority determines whether it is required to provide support to meet the identified needs of carers.
27. Section 22 provides that each local authority must publish its local eligibility criteria.

Possible impact of regulations under section 22(2)

28. 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.
29. 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

30. These amending regulations came into force on 1 April 2018.

Provision

31. These regulations removed 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 was repealed by the Carers Act. It also required the functions conferred on a local

⁶ [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)

authority under sections 6, 24, 25, 31, 34 and 35 of the Carers Act to be delegated to Integration Authorities. This 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)

32. 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 how 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

33. These regulations under sections 8 and 14 came into force on 1 April 2018.

Provision

34. 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.

35. 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

36. 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.

37. 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 covers these matters.

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

Regulations

38. These regulations under sections 10 and 16 came into force on 1 April 2018.

Provision

39. The 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

40. 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 ongoing.

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

Regulations

41. These regulations under section 35(4) came into force on 1 April 2018.

Provision

42. They make provision about the preparation, publication and review of short breaks services statements.

Possible impact of regulations under section 35(4)

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

44. 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

45. These regulations under section 43 came into force on 1 April 2018.

Provision

46. They provide for the transition from support to carers under previous legislation to support under the Carers Act.

47. The 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

48. These regulations provide clarity about how support delivered to carers under previous legislation can transition to support by duties under the Act from 1 April 2018. They are designed to avoid bottlenecks in requirements for adult carer support plans and young carer statements. 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

49. These regulations came into force on 1 April 2018.

Provision

50. They maintain the requirement for local authorities to waive charges in relation to support provided to carers.

Possible impact

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

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

Regulations

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

Provision

53. They 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

54. 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 of Terminally Ill Persons: Timescales for Adult Carer Support Plans and Young Carer Statements etc.) Regulations 2021

Regulations

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

Provision

56. They 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

57. 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 the operational business of local authorities or other delivery partners as a result of these provisions, as they already undertake ACSP/YCSs and no additional work will need to be undertaken. In addition organisations have confirmed they already prioritise carers of terminally ill people.

58. Following dialogue with stakeholders, the Scottish Government has scheduled these requirements to take effect from 31 July 2021, by which time Covid-19 pressures on local authority social care support should be reduced following rollout of vaccinations to staff and supported people.

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

Delivery partners and other organisations

59. The Act places duties on local authorities and health boards (and by delegation to Integration Authorities) as primary delivery partners.
60. Many local authorities commission third sector partners to deliver some of the duties under the Act including, for example, adult carer support plans and young carer statements. 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.
61. 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.

Local authorities

62. For the purposes of the Act, local authorities may deliver support to or commission services to support carers.
63. 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

64. 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.
65. 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 evidence⁷ 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.
66. The Scottish Government does not expect there to be an adverse impact on the operational business of health boards as a result of these provisions.

Integration Authorities

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

67. Duties in the Act fall on local authorities and health boards. There are certain provisions that lead to consequential amendments to existing regulations.
68. 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.
69. The Public Bodies (Joint Working) (Prescribed Local Authority Functions etc.) (Scotland) Regulations 2014⁸ have been updated to ensure that local authority functions under the Act must be delegated, in respect of adult social care. This is in line with requirements for delegation of existing functions related to carers.

Directing authorities of independent and grant-aided schools

70. 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.
71. 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

72. Many third sector organisations provide services that support carers in localities across Scotland. This includes:
- Local carer centres;
 - Young carer projects; and
 - Condition specific support groups.
73. Some local authorities already commission the delivery of services to local carers centres, recognising their expertise and awareness of the needs of local carers. This has continued under the Act, for example, with preparing ACSPs and YCSs.
74. A broader range of services 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

75. 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

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

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.

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

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

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

78. A financial memorandum⁹ was published alongside the introduction of the Carers (Scotland) Bill, which sets out estimates of costs to local authorities, health boards, other directing authorities, and third sector.

79. A finance advisory group was 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.

80. The estimated financial costs of implementation of the Act are set out in in the financial memorandum, rising to £88.5 million by year 5.

81. The Scottish Government allocated is £2 million in 2017-18 to help Integration Authorities and partners prepare for commencement of the Act in April 2018.

82. There was £17.4 million in the local government settlement for Carers Act implementation in the 2018-19 budget; plus a further £10.5 million in 2019-20; and an additional £11.6 million in the 2020-21 budget. This brings the Scottish Government's total additional investment in local services since April 2018 to £39.5 million per year.

Additional assessments

Scottish Firms Impact Test

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

84. These organisations included carer and user support groups, such as local carer centres and young carer projects. Moreover, the national carer organisations (Carers Scotland; Carers Trust Scotland ; Coalition of Carers in Scotland; Crossroads Caring Scotland; Minority Ethnic Carers of Older People Project (MECOPP); Scottish Young Carers Services Alliance; and Shared Care Scotland) played a key role in helping to inform implementation of the Act.

⁹ [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)

85. 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

86. 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.

87. 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.

88. 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.

89. 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.

90. 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.

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

Legal Aid Impact Test

92. 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 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.
93. 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 considered this document in 2018 and agreed with this view.
94. The Scottish Legal Aid Board provided their views for the previous BRIA in December 2017. The statement from the previous version 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

95. 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.
96. Individuals might also be able to challenge compliance with more strategic provisions of the Act (e.g. setting local eligibility criteria or preparing a local carer strategy) if they could demonstrate that they were directly and individually affected by what an authority had done or failed to do. However this is no different from the current situation.
97. 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

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

Monitoring

99. 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.

100. The provisions within the Act for the publication of the local carer strategies enables 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.

101. The Carers Census collects information from Health and Social Care Partnerships, local authorities and local carer support providers about the number of adult carer support plans and young carer statements prepared and the support which carers receive under the Carers Act.

102. Carers Census results for 2018 to 2019 were published in December 2020¹⁰. This was the first year for which data on unpaid carers has been collected and analysed through the Carers Census. The data collection systems and quality assurance processes in place were still being developed. The statistics presented in the Carers Census are, therefore, “data under development” and should not be considered as National or Official Statistics.

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: Mairi Gougeon

Date: 25/01/2021

Mairi Gougeon MSP, Minister for Public Health, Sport and Wellbeing

¹⁰ Carers Census: results 2018 to 2019, Scottish Government, 2020:
<https://www.gov.scot/publications/carers-census-scotland-2018-19/>