

**Statutory guidance to
accompany section 3 of the
Social Care (Self-directed
Support) (Scotland) Act 2013
and the Carers (Waiving
of Charges for Support)
(Scotland) Regulations 2014**

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This document contains statutory guidance on local authorities' functions in relation to carers under section 3 of the Social Care (Self-directed Support) (Scotland) Act 2013 and the Carers (Waiving of Charges for Support) (Scotland) Regulations 2014. It is issued to local authorities in order to update their relevant guidance to reflect the duties and powers accompanying the Social Care (Self-directed Support) (Scotland) Act 2013.

1. Background

1.1 This document contains statutory guidance relevant to the exercise of local authority functions in providing support to carers. Local authorities must perform those functions consistently with this guidance.

2. Introduction

2.1 Under section 3 of the Social Care (Self-directed Support) (Scotland) Act 2013 (“the 2013 Act”) local authorities have a power to provide support to adult carers following an assessment completed under section 12AA of the Social Work (Scotland) Act 1968 (“the 1968 Act”) (carer’s assessments relating to carers of those aged 18 or over) and under section 24 of the Children (Scotland) Act 1995 (“the 1995 Act”) (carer’s assessments relating to carers of those under the age of 18).

2.2 As stated, section 3 of the 2013 Act about support to adult carers gives local authorities a power, as opposed to a duty. This means that local authorities have discretion rather than an obligation about whether to support carers.

2.3 The steps for local authorities to take under section 3 of the 2013 Act are as follows:

- carry out the carer’s assessment;
- consider the assessment;
- decide whether the carer has needs in relation to the caring responsibilities;
- consider whether the needs can be met in whole or in part by the provision of support;
- if so, decide whether to provide or secure the provision of support to the carer which will help the carer to provide, or continue to provide, care for the cared-for person.

2.4 This means that there is a four-staged approach before, at the fifth stage, the carer either receives or does not receive support under section 3 of the 2013 Act.

2.5 Where the local authority decides to provide support, the carer will then be given the choice of four options for self-directed support as follows:

- Option 1: direct payment to the carer;
- Option 2: the carer directs the available support;
- Option 3: the local authority arranges support for the carer; or
- Option 4: “mix and match” meaning a combination of two or more of the options.

2.6 Further information on, and explanation of, the meaning of these options is set out in the statutory guidance on the 2013 Act on social care assessment and associated process.¹

¹ <http://www.scotland.gov.uk/Publications/2013/04/7003>

2.7 Local authorities provide services to safeguard and promote the welfare of children in need under section 22 of the 1995 Act. This includes children who are in need (within the meaning of the 1995 Act) because they are young carers. Where a local authority provides services to children under section 22 of the 1995 Act then under section 8 of the 2013 Act, the authority must provide the supported person with the opportunity to choose one of the four options for self-directed support. The „supported person“ is the child (young carer) him or herself if aged 16 or over, or the child’s parent or guardian in other cases.

2.8 Section 18 of the 2013 Act brings support to carers within the scope of the provisions in the 1968 Act which cover the circumstances where local authorities can charge for the services they provide. Since carers and young carers are not to be charged for the support they receive, Regulations made under section 87(5) of the 1968 Act require local authorities to waive charges for the support provided to carers under section 3 of the 2013 Act and for support provided to young carers under section 22 of the 1995 Act.

3. Reasons not to charge carers and young carers

3.1 Carers are providers of services to those they care for. They save the health and social care system in Scotland over an estimated £10 billion each year.² As providers of services, carers are carrying out responsibilities that might otherwise be taken forward by paid care workers. The same is true of young carers. Sometimes, carers need support to help them carry out the responsibilities and to sustain them in the caring role.

3.2 The Regulations will ensure that there is a consistent approach across the country, than might otherwise be the case, to the circumstances where charges are waived. Otherwise, some carers could be charged and some carers not charged depending on where they live.

3.3 Much of the support to carers should be preventative in nature. Providing preventative support helps to avoid more significant costs in the longer term, both in support to carers and in the cost of providing services to service users. There will, for example, be reduced hospital admissions and people will be living in their own homes and communities.³

² University of Leeds/Carers UK, Valuing Carers 2011, Calculating the Value of Unpaid Care <http://www.carersuk.org/professionals/resources/research-library/item/2123-valuing-carers-2011>

³ Supporting Carers: the Case for Change, PRTC/Crossroads Care, 2011 <http://static.carers.org/files/supporting-carers-the-case-for-change-5728.pdf>

4. The Carers (Waiving of Charges for Support) (Scotland) Regulations 2014

4.1 The Regulations state that a local authority must waive charges where services⁴ are provided to adult carers under section 3(4) of the 2013 and where services are provided to children who are in need under section 22 of the 1995 Act because they are young carers.

4.2 The Regulations also have the effect that local authorities cannot means test or require a contribution from a carer or young carer where the support is being delivered by way of a direct payment.

4.3 Charges will not be made for support provided to carers either directly by local authorities or commissioned by the local authority through other statutory, independent and third sector bodies. However, if a carer wishes to supplement and pay for support above the agreed level they will receive through self-directed support, then this is a matter entirely for the individual carer.

5. Approach to Support

5.1 Support to carers and young carers will be based on the assessed needs of the individual. As explained, carers and young carers will be able to choose from the four options for self-directed support to meet the agreed outcomes identified during their carers' assessment. Indeed, an outcomes-based approach to the undertaking of the carer's assessment is highly recommended in order to ensure that the carer's and young carer's needs are fully taken into account.

5.2 Support is defined in section 3 of the SDS Act as *“any form of services or assistance which will help the adult to provide, or continue to provide, care for the person cared for.”* The same principle applies to young carers. In furthering the aim of enabling the carer and young carer to continue caring for the cared-for person(s), local authorities, with the carer and young carer, should consider opportunities to have a life alongside caring. Having a life alongside caring enables carers and young carers to continue caring in better health. It promotes their own health and wellbeing.

6. Examples of support

6.1 Whilst the outcomes-based approach to assessment is appropriate, it is also necessary to consider and set out in this Guidance *examples* of support to carers

⁴ On terminology, the Scottish Government is clear that carers in their caring role are not service users but are providers of services who receive support to help them to sustain their caring role. The Regulations, however, refer to services for carers. This is because the support which may be provided under section 3 of the 2013 Act is defined as including „any form of services or assistance which will help the adult to provide, or continue to provide care for the person cared for“. The charging rules in the 1968 Act, under which these Regulations are made, relate to services only. By referring to „services“, these Regulations deal with all forms of support for which local authorities would otherwise be able to make a charge.

and young carers where charges will be waived. Examples are for illustrative purposes only. Not all local authorities will be in a position to provide the different types of support if they are not available to the local authority. Moreover, some of the examples of support listed are already being provided or commissioned free of charge by local authorities.

6.2 Examples of support to carers and young carers where charges will be waived cover both information and advice-type services and direct practical support. They include, but are not limited, to:

- the provision of information and advice, including signposting to other agencies;
- advocacy for carers and young carers;
- emotional support and counselling;
- training for carers and young carers;
- translation and interpretation services;
- support with housework or gardening or other similar activity;
- cost of taxi fares and driving lessons in special circumstances; and
- short breaks

6.3 Most of the types of support are self-explanatory. However, Guidance is required on some of the examples set out.

7. Taxi Fares/Driving Lessons

7.1 It might be decided following a carer's assessment that the local authority will provide the carer with financial support to help pay for taxi fares. This might be, for example, in the following circumstances:

- where the carer cannot rely on the public bus service to take him or her to, for example, an art class or other social or leisure opportunity; or
- where the carer cannot drive a car and there is limited public transport.

7.2 It might similarly be decided following a carer's assessment that it would be helpful for the carer to be able to drive a car and that the local authority will provide support in the form of driving lessons up to an agreed financial limit. This may have multiple benefits in supporting the carer in their caring role, for example, shopping, reducing isolation and enhancing employment prospects for a young carer.

7.3 Local authorities should consider both driving lessons and meeting the cost of taxi fares where they meet an agreed need identified during the carer's assessment and will help the carer to provide, or continue to provide, care for the cared-for person.

8. Short Breaks (Respite)

8.1 If a local authority decides to provide a short break for a carer or young carer, it must do so without making a charge. Again this will be where a carer's

assessment determines that a short break will produce the best outcomes for the carer or young carer.

8.2 Short breaks help carers to take a break from the daily routines and demands of caring. The outcomes should ideally benefit both the carer and cared-for person(s) and support the relationship between them, although this might not always be possible. Carers should be given choices so that they can have a break that meets their needs and circumstances. The definition of a short break should be interpreted widely. Whilst it can mean a holiday, it should encompass other types of break/time out from caring. It can last at least one hour.⁵ It may be arranged on a regular, planned basis or as a one-off break. Where the short break is for an emergency situation, in order for the charges to be waived, a carer's assessment needs to be carried out. In the circumstances of an emergency, this would clearly have to be undertaken quickly.

8.3 Short breaks can include:

- opportunities to experience new things;
- opportunities to maintain friendships;
- time to rest and recharge batteries;
- time for personal interests, leisure or cultural activities

8.4 Local authorities should build on and share good practice in implementing and delivering breaks in their area. Recent examples include the *Time to Live Fund* (co-ordinated by Shared Care Scotland), *Better Breaks* (delivered by the Family Fund), short breaks vouchers and local short breaks bureaux. Strategies to support the delivery of such breaks in each area should be co-produced with carers.

8.5 The charge to be waived will cover the cost of all of the elements of the break that the local authority has decided to provide. In deciding what to provide, local authorities will wish to consider the component parts of the break and take into account such items as accommodation, meals, travelling expenses, the cost of equipment for classes and so on. Local authorities should adopt a pragmatic and realistic approach with the carer's needs uppermost and central to the carer's assessment. Local authorities should recognise, for example, that where it is agreed through the carer's assessment that the carer will benefit from weekly meeting with friends, then the expectation would be that the cost of any transport will be met by the local authority. In this circumstance, there might be no other costs to meet. In other circumstances, more costs will have to be met.

8.6 Where the carer and cared-for person have a break together with extra support for the cared-for person, the cost of the break for the carer will be waived. The cost of the break for the cared-for person and the cost of the additional support will not be waived. In these circumstances we would expect that these costs of the additional support could be met by the cared-for person's assessed needs and subsequent support package.

⁵ Short Breaks (Respite) Guidance 2012-13
<http://www.scotland.gov.uk/Topics/Statistics/Browse/Health/RespiteCarenew>

8.7 Breaks for cared-for persons can sometimes be identified within their own care needs assessment and care services can be provided to mainly meet their assessed needs (for example, to support social opportunities and independent living). Consequently, time-off for the carer can be achieved as a welcome by-product of the service. The costs to the carer of any activities taken during this break from caring at this time would only be waived if the steps for the carer's assessment in section 3 of the 2013 Act had been carried out.

8.8 Local authorities might decide to arrange replacement care for a cared-for person as part of the support which they provide to a carer under section 3 of the 2013 Act in order to give a break from caring. Where replacement care is provided as support under section 3 in order to meet the carer's needs, the local authority must waive charges for the cost of the replacement care.

9. Household tasks

9.1 Cared-for persons can be assessed as needing help with household tasks and might be charged for this. However, many carers have multiple responsibilities over and above their caring role and may need assistance with practical aspects of their lives to support their health and wellbeing. Where the carer is carrying out a considerable amount of housework and other tasks and duties to the detriment of their own health and wellbeing, and assistance with those tasks would help the carer to provide care to the cared-for person and/or to have time to himself or herself, then it would be reasonable for a local authority to provide or commission help with housework and gardening to help reduce the physical and emotional stress on the carer. When this support is provided to carers under section 3 in this way, it will be free of charge.

10. Additional information

10.1 The local authority will reach a decision on the support which it will provide to a carer following a carer's assessment. Any further support might also be agreed through revisiting the carer's assessment. It is good practice for carers to be provided with information on how they can ask for a review of their carer's assessment and of plans to schedule reviews.

10.2 Individuals who are carers may also receive support or services from local authorities for reasons unrelated to their caring responsibilities (for example, if they are social work service users because of their own physical or mental disabilities). Such services are not provided under section 3 of the 2013 Act and the local authority's normal financial assessment and charging policies apply.

10.3 If the carer is not eligible for a carer's assessment at the first stage in the process, because he or she does not carry out a substantial amount of care on a regular basis, then local authorities should consider nonetheless the appropriateness of support to the carer without an assessment having been carried out.



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