

## CONSULTATION BY THE SCOTTISH EXECUTIVE ON PROPOSALS FOR NEW LAWS TO HELP CARERS.

### Introduction

The Scottish Executive is committed to supporting carers - people who regularly provide voluntary care on a regular basis for relatives or friends who are unable to look after themselves because they are frail, disabled, ill or vulnerable. The Strategy for Carers in Scotland, introduced in November 1999, set out a framework for ensuring that all carers are better supported than they have been in the past. Working closely with carers and their representatives the Scottish Executive has already taken action on a number of fronts to turn the Strategy into real benefits for carers.

An important commitment in the Strategy was to draw up proposals for new legislation to allow carers' needs to be assessed directly. An independent Carers Legislation Working Group was set up in January 2000 to consider the issues and make recommendations to the Scottish Executive. The Group included representatives of carers, people receiving support from a carer, carers' organisations, local government representatives and Scottish Executive officials. The Group has now reported its main recommendations to the Scottish Executive. A copy of the Group's Report is enclosed with this consultation paper.

Ministers are very grateful to the Group for its work and its thorough consideration of the issues affecting carers and the people they care for. Ministers are keen now to hear views from anyone with an interest in these issues before deciding what further action is needed to support carers better in Scotland.

This consultation paper seeks views on what the Executive believes are key questions arising from the Group's Report. While we are particularly interested in these areas, we would also welcome any views you may have on other issues covered in the Report. To make it easier for you to comment, at the end of this document is a summary of the questions and space for you to enter your comments against each one if you wish. The document can then be returned to the address given below. We will be happy to receive your comments in this form or any other way that is convenient for you.

### Next steps

Once Ministers have considered the responses to this consultation exercise, they will decide whether changes to existing legislation or guidance are needed. If Ministers decide legislative changes are required, they aim to include these in the forthcoming Bill on long term care and related issues which is due to be introduced into the Scottish Parliament later this year. Progress with the Bill can be followed on:

<http://www.scotland.gov.uk/health/lc/legislation.asp>

Ministers intend to pursue other issues raised by the Group which do not require legislative change through the development of new guidance to local authorities and other statutory agencies, which would come into force at the same time as any new legislation.

## How to comment

Responses should be emailed if possible to [carerslaw@scotland.gsi.gov.uk](mailto:carerslaw@scotland.gsi.gov.uk) by **6 July 2001** or sent to:

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Community Care Division  
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EH1 3BA

Tel: 0131 244 5488  
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This consultation document and the Carers Legislation Working Group Report can also be found on the Scottish Executive's web site at:

[www.scotland.gov.uk/health/carerslaw](http://www.scotland.gov.uk/health/carerslaw)

If you would like additional printed copies of this paper, please contact the address above. In order to help inform public debate on the matters covered in this consultation exercise and report, we intend to make copies of the responses received available to the public upon request. We will assume that responses can be made publicly available unless respondents indicate that they wish all or any of their comments treated in confidence. Copies of responses will be available from the Scottish Executive Library, K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD (Tel 0131 244 4552). A summary of the comments received will be made available and put on the above web site.

**THE SCOTTISH EXECUTIVE  
HEALTH DEPARTMENT  
12 APRIL 2001**

## Key Questions Arising From the Group's Report

### • **Carers as Partners in Providing Care**

The Group recommends that carers should be recognised as partners in providing care, and like other providers of care, carers may need resources to help them carry out this role. The Group believes that support which a carer receives directly in order to enable them to continue caring should be considered as a resource required by the carer, not a service used by the carer, and resources required by carers should continue to be provided at no charge to the carer. Resources required by the carer could include assessment, information, access to group support, training and counselling. The Group recognises that carers may also benefit from services provided to the cared-for person, which may include alternative care in place of the carer, but argues that these should continue to be viewed as direct services to the cared for person. The cared-for person would continue to be liable for any charges associated with alternative care services, taking account of their ability to contribute, as at present.

(Chapter 5 & Recommendations 1, 2, 3 of report.)

The Executive is keen to hear views on these recommendations. In particular, we are interested in views on the Group's proposals that carers should be resourced to care and that these resources should not be chargeable to the carer and how this approach fits with current arrangements under which people who are looked after by a carer may be charged for support or services.

#### ***Questions***

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| <ol style="list-style-type: none"><li>1. Do you agree that carers need resources, which should be separate from services provided to the cared-for person?</li><li>2. What kind of resources do you think carers need?</li><li>3. Should carers be charged for resources provided to them?</li></ol> |
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### • **Former Carers**

The Group had particular concerns about the needs of "former carers" when their caring role ends. When caring stops carers may have support needs which are related to their former role as carers. The Group believes that the law should formally recognise this and provide for former carers to continue to be regarded as carers for a defined period after their caring role ends. The Group suggests that the existing rules on eligibility for Carer Premium which extends for up to 8 weeks after the end of caring may be a suitable precedent as is the UK Government's intention to extend eligibility for Invalid Care Allowance for up to 8 weeks after caring ends.

(Chapter 5 & Recommendation 5 of report.)

#### ***Questions***

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| <ol style="list-style-type: none"><li>4. Should former carers continue to be supported for a period after their caring ends? If so, what sort of support are they likely to need at this point?</li></ol> |
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- **Carers' Assessments**

The Group identified the process of assessment as a key stage in recognising carers' support needs and providing access to that support. The Group felt that a wider range of approaches to assessment should be encouraged. Carers already have a statutory right to an assessment under the Carers (Recognition and Services) Act 1995, if the person they care for also wishes to have their needs assessed. The Group argues that the law should be changed so that carers are entitled to an assessment in *all* circumstances ie regardless of whether the cared for person is being assessed. Guidance should address the difference between assessing a carers need for resources and a cared for person's need for services.

(Chapter 6 & Recommendations 12, 14 & 15 of report.)

The Group suggests that local authorities should become more pro-active in supporting carers, and that a statutory duty should be placed on local authorities to provide information to carers about their rights and support options, and to offer assessments to carers.

(Chapter 6 & Recommendations 7 & 13 of report.)

The Executive supports the Group's aim of improving support to carers at all stages, particularly through carers' assessments. We are interested in hearing views on the Group's proposals to impose new obligations on local authorities, how these might affect authorities' other responsibilities, and on whether statutory obligations or guidance would be the most effective way of improving support for carers.

***Questions***

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| 5. Should carers be entitled to an assessment in their own right in all circumstances?                                |
| 6. Would a legal <u>duty</u> on local authorities to provide information and offer assessments to carers be workable? |
| 7. What would be the most effective way of increasing carers' take-up of assessments and support?                     |

- **Involving the NHS**

The Group considered other ways of ensuring advice and support is available to carers. They concluded that the majority of carers were likely to be in contact with the NHS, often before they come into contact with local authorities. The Group welcomes local initiatives to develop links between the NHS and carers, but believes that a clearer framework is required to ensure that the NHS plays this important role consistently. The Group urges the Executive to consider whether the NHS should be under a statutory duty to identify carers that come to its attention, and to offer them information and advice.

The Executive is interested to receive responses on this proposal, including whether statutory obligations or other routes such as guidance, would be the most effective way of achieving this objective.

(Chapter 6 & Recommendation 10 of report.)

### *Questions*

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| <ol style="list-style-type: none"><li>8. How could the NHS help support carers more effectively?</li><li>9. Would a legal <u>duty</u> on the NHS to identify carers wherever possible, offer them information and refer them on to other agencies be workable?</li></ol> |
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#### • **Young Carers**

Under the law at present, carers under the age of 16 in Scotland are not entitled to ask for an assessment of their needs under carers legislation, although they may have their needs assessed in other circumstances under children's legislation. The Group stresses the importance of supporting young carers in ways that reinforce family relationships as far as is possible and appropriate, but it believes that young carers should be able to have their needs assessed and supported in all circumstances.

The Executive seeks views on whether the rights of young carers need to be enhanced, and the extent to which family relationships should be a consideration in young carers' rights. The Executive is also interested in views on how young carers should be supported in ways that do not perpetuate inappropriate types or levels of caring responsibility.

(Chapter 6 & Recommendations 18 & 19 of report.)

### *Questions*

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| <ol style="list-style-type: none"><li>10. Should young carers be entitled to an assessment in their own right in all circumstances? How could this be done in a way that supports family relationships?</li></ol> |
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#### • **Breaks From Caring**

The Group noted that the provision of short breaks to the people they care for is a vital form of support that helps carers to carry on caring. Breaks, traditionally known as "respite care", are provided to the cared-for person, but clearly benefit the carer as well as the person cared for. They can range from a few hours to a week or longer, and can take place in the home, elsewhere in the community, or in a residential setting. The Group considered the case for seeking a statutory minimum entitlement to short breaks for carers who met certain criteria. The Group recognised that a statutory entitlement to breaks might limit the flexibility of agencies to support carers in a broader range of ways, or could hinder the development of innovative alternative kinds of support for carers. Nonetheless, the Group concluded that the Scottish Executive should consider the issues raised by giving carers an entitlement to short breaks in defined circumstances.

(Chapter 6 & Recommendation 24 of report.)

The Executive is interested to hear views on this proposal, including the potential resource implications, how such a right would be defined, and implications for the cared-for person. See Chapter 6 "Resources For Carers".

### *Questions*

11. Should carers have a statutory right to breaks from caring? If so, under what circumstances and how could this work?
12. How might such a right affect local authorities' overall flexibility to provide a range of appropriate support for carers and others?

#### • **Parent Carers**

Current law affecting carers' does not give people with parental responsibility for a disabled child (under 18) a right to an assessment. However, parents who care for their own child already have a separate right to have their own needs assessed under section 24 of the Children (Scotland) Act 1995. The Group recognises that the position of parent carers and their children differs in significant ways from that of other carers, but believes that parent carers should have as far as possible equivalent rights to assessment as other carers. The Executive would be interested to hear views on whether parent carers have adequate rights under other legislation, or whether any new rights for other carers should be extended to them.

(Chapter 6 & Recommendation 17 of report)

### *Questions*

13. Do parent carers have sufficient rights under the Children (Scotland) Act 1995, or should a new enhanced right to carers' assessments extend to them?

#### • **Direct Payments/Vouchers**

Direct payments are cash payments made by local authorities to people instead of arranging services for them, which enable individuals to make decisions for themselves about what services to purchase, and when. In Scotland carers cannot currently receive direct payments in their own right, although they may receive payments on behalf of the person they care for in certain circumstances. The Carers and Disabled Children Act 2000 in England and Wales will enable carers to receive direct payments to purchase services provided to them under the Act (which do not involve providing "intimate" services to the person they care for). The Group argued that since carers provide care and should not be considered as users of services, there should be no need for carers in Scotland to receive direct payments.

(Chapter 6 of report.)

The Act also provides for parent carers of disabled children, and 16/17 year old disabled children themselves to receive direct payments. The Executive is already proposing to extend the right to direct payments to 16 and 17 year old disabled children in the Regulation of Care Bill currently being considered by the Parliament. The Executive is consulting separately on whether to extend direct payments to the parents of disabled children under 18.

(Chapter 6 & Recommendation 30 of report)

The Carers and Disabled Children Act 2000 which applies in England and Wales will enable local authorities there to issue vouchers to a cared-for person, or to their carer, in order to give them flexibility about the arrangement of short breaks. A voucher would be a document issued usually by the local authority, to the carer or cared for person, which would allow for community care services to be purchased. The Executive would also be interested to receive views on the merits and implications of voucher schemes, including how they would fit in with the Group's overall approach.

(Chapter 6 & Recommendation 31 of report.)

*Question*

14. Is there a case for voucher schemes to allow cared-for people and their carers to schedule breaks to suit them better?

- **Costs and other resource implications**

The Group considered the potential implications of its recommendations for local authorities, the NHS and other bodies. The Group concluded that it was not possible to predict accurately the effect, although there would be clear potential cost implications if more carers were to be assessed, and as a result more support provided to cared-for people and carers. The Group argued that changes of this type should be gradual and might be accompanied by other changes – either increases or reductions – in overall health and social care expenditure. The Executive is keen to hear views on how implementing the Group’s recommendations might affect expenditure by public agencies and other bodies, and estimates or other information on how great any resulting changes might be.

(Chapter 6 of report.)

*Question*

15. What do you estimate are the resource implications of the Group’s recommendations for local authorities, other agencies and bodies, or for cared-for people?

- **Other Recommendations**

The Group has made a range of recommendations, all of which are listed in Chapter 3 of the Group’s Report. The Executive would be happy to receive views on any other issues in the Group’s report which you feel are not covered by the questions in this consultation paper.

The Executive is keen to identify the key areas covered by the Group’s Report which would be likely to make the greatest impact on the lives of carers in Scotland. It would be very helpful to have your views on which of the Group’s recommendations you think should be given the highest priority.

## SUMMARY OF QUESTIONS

You may find it helpful to write your responses directly in the boxes below, continuing on separate sheets if necessary.

1. Do you agree that carers need resources, which should be separate from services provided to the cared-for person?

2. What kind of resources do you think carers need?

3. Should carers be charged for resources provided to them?

4. Should former carers continue to be supported for a period after their caring ends? If so, what sort of support are they likely to need at this point?

5. Should carers be entitled to an assessment in their own right in all circumstances?

6. Would a legal duty on local authorities to provide information and offer assessments to carers be workable?

7. What would be the most effective way of increasing carers' take-up of assessments and support?

8. How could the NHS help support carers more effectively?

9. Would a legal duty on the NHS to identify carers wherever possible, offer them information and refer them on to other agencies be workable?

10. Should young carers be entitled to an assessment in their own right in all circumstances? How could this be done in a way that supports family relationships?

11. Should carers have a statutory right to breaks from caring? If so, under what circumstances and how could this work?

12. How might such a right affect local authorities' overall flexibility to provide a range of appropriate support for carers and others?

13. Do parent carers have sufficient rights already under the Children (Scotland) Act 1995, or should a new enhanced right to carers' assessments extend to them?

14. Is there a case for voucher schemes to allow cared-for people and their carers to schedule breaks to suit them better?

15. What do you estimate are the resource implications of the Group's recommendations for local authorities, other agencies and bodies, or for cared-for people?

You may also wish to indicate your views on other recommendations made by the Group which you do not feel are covered separately in the questions above.

List here the Group's recommendations you agree with:

List here the Group's recommendations you do not agree with and why:

Which of the recommendations made by the Group do you regard as the highest priorities, in terms of the effect they could have on the lives of carers? Please list them in order of priority (ie, highest priority first)