

Carers (Scotland) Act 2016 - Statutory Guidance

Local eligibility criteria

Part 3, Chapter 1, Sections 21 and 22

Summary

Section 21 sets out the duty on each local authority to set local eligibility criteria which are to apply in its area.

Section 21(2) defines local eligibility criteria as follows:

“local eligibility criteria are the criteria by which the local authority must determine whether it is required to provide support to carers to meet carers’ identified needs.”

Section 22 sets out the duty on each local authority to publish its local eligibility criteria and duties regarding review of the local eligibility criteria.

Background

1. This guidance is to support local authorities in setting local eligibility criteria and proposes that all local authorities use the same suite of indicators but have local discretion in establishing the threshold for support.
2. This guidance also summarises the different ways of supporting carers if the carer’s needs do not meet the local eligibility criteria.

Local eligibility criteria – adult and young carers – delegation of functions

3. The function of setting local eligibility criteria is one which is exercisable in relation to both adult and young carers. Paragraphs 38 to 40 cover local eligibility criteria in relation to young carers.
4. Regulations made to support health and social care integration already require local authorities to include “carer support services” for adults within their schemes of delegation. The Public Bodies (Joint Working) (Prescribed Local Authority Functions etc.) (Scotland) Amendment Regulations 2017 require that the responsibility for setting local eligibility criteria for support to adult carers lies with the “integration authority” (that is, with Integrated Joint Boards, and in Highland with NHS Highland under their lead agency agreement). Where local authorities have chosen not to delegate carer support services for young carers, then the responsibility for deciding the local eligibility for support to such carers rests with the local authority.
5. However, in many areas local eligibility criteria for both adult carers and for young carers are likely to require joint agreement by the local authority and integration authority. For example, where children’s social work services are not delegated to an integration authority then the local authority will have an interest in eligibility thresholds for adult carers who are supporting disabled children and young people, and the integration authority will have an interest in eligibility thresholds for young carers supporting disabled adults. A joint agreement would provide a sensible and practical mechanism for establishing the local eligibility criteria for carers.

The assessment and support process – chronology

6. The framework of the 2016 Act, of which eligibility criteria are part, encompasses a rights-based approach - the right of every carer to have an adult carer support plan or young carer statement which aims to support their health and well-being by identifying their needs for support and personal outcomes; and the right to access an appropriate balance of information, advice and support to meet these needs and to achieve their personal outcomes.

7. Under the 2016 Act, there is a process to be worked through before concluding whether or not a local authority has a duty to provide support to a carer to meet their identified needs. The duty (as opposed to the power) to provide support to a carer depends on the extent to which a carer's need for support meets the local eligibility criteria. This process will be explained more fully in other parts of the guidance but in brief, it is as follows:

- (i) prepare adult carer support plan or young carer statement setting out carer's identified personal outcomes and identified needs (if any) **(section 6(1)(a) and (b) and section 12(1)(a) and (b))¹**
- (ii) consider which of the needs can be met through services or assistance to the cared-for person (other than 'replacement care' to provide a break from caring) or provided generally to persons in the area (i.e. by information and advice, universal services and community support) **(section 24(1)(a) and (b))**
- (iii) if needs are met wholly as per (ii), no further action (but keep under review) **(section 9(1)(l) and section 15(1)(m) re review)**
- (iv) if needs are met only in part by (ii), or not at all, then apply local eligibility criteria to what are the 'outstanding' needs **(section 24(2) and 3))**
- (v) decide whether the outstanding needs engage the legal duty to provide support, that is whether the local eligibility criteria are met. **(section 24(4)(a) and section 25(1))**
- (vi) if the outstanding needs do not meet the local eligibility criteria, decide whether the discretionary power to provide support should be used **(section 24(4)(b))**
- **NB:** consideration of whether the support to the carer should take the form of or include a break from caring (including replacement care where required) applies in relation to both the duty and power to support carers **(section 25(1));**
- (vii) In the case of (v) and (vi), give the carer the opportunity to choose one of the options for self-directed support (unless ineligible to receive direct payments) **(Social Care (Self-directed Support) (Scotland) Act 2013)**

¹ Guidance on the adult carer support plan and young carer statement will include guidance on personal outcomes and needs for support. Under section 4 of the Act, personal outcomes in relation to carers include outcomes which would, if achieved, enable carers to provide or continue to provide care for cared-for persons. The ACSP and YCS seek to support carers in relation to the substantive care that they provide to the cared-for person. They also seek to put in place measures that will help a carer to live their own life and to achieve their own goals and aspirations without compromising their responsibilities as a carer. These day-to-day goals and longer-term aspirations are to be documented within the ACSP and YCS as the carer's "personal outcomes".

8. Section 6(1)(c) and section 12(1)(c) are clear that the adult carer support plan and young carer statement should set out the support (if any) to be provided by the responsible (local) authority to an adult or young carer to meet the identified needs.

9. Decisions about whether identified needs meet local eligibility criteria depend on the information obtained from the adult carer support plan or young carer statement (notably information on the nature and extent of care; the impact of caring; and the extent to which the carer is willing and able to provide care). In other words, such decisions, and the completion of the adult carer support plan or young carer statement, are mutually dependent.

Non-eligible and eligible needs

10. Section 24 of the Act **requires** the responsible local authority to provide support to a carer to meet their “eligible needs”. A carer’s “eligible needs” are those identified needs for support that cannot be met through support to the cared for person or through accessing services that are available generally, **and** which meet the threshold for support set by the local eligibility criteria. The local authority also has a **power** to provide support to meet other identified needs which cannot be met through support to the cared-for person, or services available generally, but which do not meet the threshold for support set by the eligibility criteria (i.e. non “eligible needs”). Table 1 summarises the different ways in which eligible and non-eligible needs can be met, and provides examples of the types of support that can be provided to meet those needs.

Table 1: How to meet a carer’s identified needs

| Type of support | Illustrative Examples |
|--|--|
| Services or assistance to the cared-for person (except ‘replacement care’). | <ul style="list-style-type: none"> • care at home • technology enabled care • equipment and adaptations • mental health services • medicine management • support to access activities for disabled children |
| General services – information and advice. | Information and/or advice on: <ul style="list-style-type: none"> • carers’ rights • education and training (e.g. on support at school, advice on Further and Higher Education) • income maximisation • carer advocacy • health and wellbeing • bereavement support • emergency care planning and future care planning |
| Other general services – available universally in the community or in particular neighbourhoods. | <ul style="list-style-type: none"> • leisure centres • libraries • art galleries • community transport • lunch clubs |

| Type of support | Illustrative Examples |
|--|--|
| | <ul style="list-style-type: none"> • youth clubs • education services • gardening clubs • walking clubs • local support groups |
| <p>A carer's identified needs - both eligible or non-eligible needs - might be met in whole or in part by any combination of services or assistance for the cared for person or general services above. Where they are not, the following applies.</p> | |
| <p>LA duty at section 24(4)(a) to provide support to meet a carer's eligible needs (explained at para 10 above). This can be any type of carer support that is not, or cannot be, provided through services for the cared for person or services that are available generally.</p> | <ul style="list-style-type: none"> • course on emotional wellbeing • counselling • training on moving and handling • short break (noting LA duty at section 25 to consider whether support to a carer should include a break from caring) • replacement care (care for a cared-for person to allow their carer to take a break) • support to access leisure pursuits |
| <p>LA power at section 24(4)(b) to provide support to meet a carer's non-eligible needs. Again, this can be any type of carer support not covered by services for the cared for person or general services above.</p> | |
| <p>Under both the duty and power to support carers (at section 24(4)(a) and (b)) the responsible local authority must give the carer the opportunity to choose one of the options for Self-directed support (unless the local authority considers that the carer is ineligible to receive direct payments). These options are explained in Table 3.</p> | |

Strengths, capabilities and assets

11. The general principles set out in sections 1 and 2 of the Social Care (Self-directed Support) (Scotland) Act 2013 are relevant in the context of supporting carers and deciding whether their needs are eligible needs. Key principles for the purposes of this guidance are:

- a carer must have as much involvement as the carer wishes in relation to the provision of support or services;
- a local authority must collaborate with a carer in relation to the provision of support or services for the carer; and
- a local authority must take reasonable steps to facilitate that the right to dignity of the carer is to be respected.

12. At the same time as preparing the adult carer support plan or young carer statement, the local authority will wish to consider what else other than the provision of support might assist the carer in meeting the personal outcomes they want to achieve. In considering what else might help, local authorities will wish to consider the carer's own strengths and capabilities, and what support might be available from their wider support network, from local public services, or within their local community to help. Strengths-based approaches might include the fostering of mutual support networks, capable of supporting carers.

13. Local authorities might also consider the ways a person's cultural and spiritual networks can support them in meeting needs and building strengths, and explore this with the carer. Any suggestion that support could be available from the carer's family

and friends should be considered in light of the appropriateness of this approach and willingness and ability to provide any additional support and the impact on them of doing so. It should also be based on the agreement of the carer in question, and if appropriate, the cared-for person too.

14. Research² highlights that strengths-based approaches value the capacity, skills, knowledge, connections and potential in individuals and communities - focussing on people's strengths to help them address challenges rather than ignoring them.

Reasons for duty to set local eligibility criteria

15. Eligibility criteria are to be set locally to enable local authorities to provide support to carers in different caring situations across a whole range of life circumstances. Local eligibility criteria will help local authorities to prioritise support and to target resources as effectively and efficiently as possible. This recognises that demand for support is increasing due to demographic changes, more complex needs and a greater intensity of caring. Demand can vary from council to council. Preventative support to carers also has a role in helping manage future demand where it prevents needs from escalating.

16. Section 21(4) of the Act provides a power for Scottish Ministers to make regulations specifying matters which local authorities must 'have regard to' in setting their local eligibility criteria. No such regulations have been made at this time. Instead, this statutory guidance promotes the use, on a Scotland-wide basis, of a suite of indicators in order to establish the impact of caring on carers.

Intention

17. The intention under **section 21** is that each local authority must set out all of the information which would enable it to decide whether it is required to provide support in a particular case.

18. The expectation is that local authorities would do this by deciding on a series of **indicators** or domains describing levels of impact or risk and a qualitative assessment of how severe the impact on any indicator would be before they would provide support (i.e. a **threshold**). There are therefore two stages to the decision-making process – describing levels of impact and risk, and then setting an eligibility threshold. After this process local authorities would then establish the services or support that they may provide or arrange under both their duties and powers.

19. The framework at **Annex A** sets out best practice for the first two aspects only. It does not attempt to define the type and amount of service or support a carer would be entitled to. That would be neither possible nor desirable since (i) the service or support must be individualised to the carer's own needs and personal outcomes and (ii) the range and type of services and support available will not necessarily be the same in each local area.

² IRISS (2012) Strengths-based approaches for working with individuals, Insights, no. 16
<http://ix.iriss.org.uk/content/strengths-based-approaches-working-individuals-iriss-insights-no16>

Talking Points – Personal Outcomes Approach, Practical Guide – Ailsa Cook and Emma Miller – June 2012

Relationship to adult social care eligibility criteria

20. In 2009, the Scottish Government and COSLA published a national eligibility criteria framework³ for adult social care, which is still widely in use. On the basis of this, some local authorities developed eligibility criteria for support to carers using definitions appropriate to carers. It is now proposed however that all local authorities use a different and more appropriate set of indicators in relation to carers in their caring role rather than those in the 2009 guidance.

21. This national set of indicators, attached at **Annex A(c)** as part of a broader framework, has a much clearer focus on the needs of carers. It is based on work undertaken by the National Carer Organisations (NCOs), involving carers in its design and testing, and is supported by the Scottish Government, COSLA, Social Work Scotland, the National Carer Organisations and other interests⁴. It has been designed to be capable of adoption across all areas of Scotland.

Outlining the framework

22. The two diagrams at **Annex A (a) and (b)** summarise the best practice eligibility framework for carers. This consists of a **model of eligibility thresholds - where eligibility sits in relation to carer support as a whole**. The diagram at **Annex A (a)** provides an illustrative example of where a local authority may decide to place the eligibility threshold in relation to the levels of impact or need. It also illustrates the role of preventative and universal services in supporting carers who do not meet the eligibility threshold. This includes examples of services to support carers which are not intended to be exhaustive or prescriptive (local circumstances will determine services).

23. Specific service types should not be categorised as 'eligible' or 'non-eligible' services, with 'eligible' services only being available for those who meet the threshold. For example, different forms of breaks from caring may be provided either side of the eligibility threshold. People whose caring role has a critical impact on one or more areas of their life are likely to require breaks from caring as part of a substantial package of services, and the person they care for is also likely to require replacement care to enable the carer to have a break from caring. People whose caring role has more moderate impacts may well still require a break.

24. National and local schemes funded from a variety of sources (e.g. micro grants, partnering with local hospitality businesses and respite vouchers⁵) can provide relatively low-cost meaningful breaks for carers by utilizing wider community resources. Where services like this are provided 'below' the threshold line they can often prevent or delay the need for more substantial support and therefore carers subsequently requiring more expensive support 'above' the line.

25. The diagram at **Annex A (b)** on **determining the impact of the caring role and associated risk** shows the different areas of a person's life where their caring role may have an impact. This includes their health and wellbeing, finances, life

³ www.gov.scot/Resource/Doc/924/0088325.doc and <http://www.gov.scot/Resource/0046/00469221.pdf>. See also: <http://www.gov.scot/Publications/2014/08/5212/6>.

⁴ A working group comprising the Scottish Government, COSLA, Social Work Scotland, two of the NCOs, Integration Authorities, Care Inspectorate and carers endorsed this approach and took forward this guidance.

⁵ Further information in guidance chapter on short breaks services statements.

balance, relationships, living environment, employment/training and future planning. It sets out the different categories of impact/risk. It is a matter for the local authority to determine where the eligibility threshold is placed on the spectrum of needs, impact and risks.

26. In circumstances where a carer cares for more than one person, it is necessary to consider the impact of all of the caring situations together as individually they may not meet the local eligibility threshold but the cumulative impact of caring might result in eligible needs.

Indicators – impact and risk

27. The eligibility framework set out in Annex A(c) is based on the concepts of impact and risk. This builds on the focus on carers' needs and outcomes in the 2016 Act and is consistent with previous guidance on support to carers⁶ which stated that:

*“local authorities should focus on the **impact** of the caring role on the individual carer and their family, and should address the following questions:*

- *is the caring role sustainable?*
- *how great is the **risk** of the caring role becoming unsustainable?”*

28. The concept of “identified needs” in the 2016 Act (section 5) is also important here, defined as “needs for support (if any) which are identified in order to meet the carer's identified personal outcomes”⁷.

29. The recommended eligibility framework for support to carers has five categories for impact/risk:

- caring has no impact – no risk
- caring has low impact – low risk
- caring has moderate impact – moderate risk
- caring has substantial impact – substantial risk
- caring has critical impact – critical risk

30. In the framework at Annex A(c), these categories are used to measure the impact of caring on seven key aspects of a carer's life:

- health and wellbeing
- relationships
- living environment
- employment and training
- finance
- life balance
- ❖ future planning

31. It would be appropriate for the indicator of “future planning” to be considered alongside other indicators rather than on its own. This is because future planning is almost always an aspect of a carer's life which interacts with the other indicators.

⁶ Scottish Executive Circular CCD 2/2003 - http://www.sehd.scot.nhs.uk/publications/cc2003_02full.pdf

⁷ ‘Personal outcomes’ include outcomes which, if achieved, would enable a carer to provide, or continue to provide, care for the cared for person. They should be outcomes that matter to an individual carer, which could include outcomes around having a life alongside caring, and looking after the carer's own health and wellbeing.

32. Support to the carer to help tackle future planning (for example, supporting a young carer to access independent study opportunities because they are anxious they will not achieve their future ambition to be offered a place in further education) could take the form of self-directed support - option 1 – direct payment, option 2 – choosing own support or option 3 – an arranged service.

33. Another example would be where a carer is anxious about the future because they are getting older, frailer and sicker, and they worry about who will care for their adult child with learning disabilities when the carer dies. In this case, the support provided - if not a place in supported accommodation for example - might be enabling the wider family and carer to come together to discuss and agree future care arrangements. This type of support, if provided in the form of carer advocacy or family mediation, is again either self-directed support option 2 or option 3.

Eligibility threshold

34. The indicators in the table at Annex A(c) recognise carers as providers of services to the person or people they care for. They take a broad approach when looking at the different areas of a carer's life where their caring role can have an impact.

35. There is **no national eligibility threshold for support** as this is for local decision-making. Each local authority will need to choose the levels of impact/risk and need which are appropriate to trigger the duty to provide support, acknowledging that there will be circumstances that merit the exercise of the power to provide support to people whose needs currently fall below the local eligibility threshold. (The threshold for support shown in **Annex A (a)** is for illustrative purposes only.)

36. With the exception of "future planning", eligibility should be applied to each of the areas individually and independently of each other so that if a carer has identified needs in one domain (e.g. health and wellbeing) above the threshold, this would mean that those needs meet the local eligibility criteria and the carer would be eligible for support to meet their needs pertaining to that domain and to help achieve their personal outcomes. Inevitably, there is also a degree of overlap between the indicators as, for example, concerns about financial issues may impact on a carer's health and wellbeing.

37. Whilst eligibility criteria enable decision-making regarding support, use of eligibility criteria in themselves are not an exact science. Gradations of impact and risk along a five-point scale from '*no impact/no risk*' to '*critical impact/critical risk*' are not straightforward to describe. It is therefore important that practitioners use their professional judgement in the use of the indicators to ensure carers receive the right level of support at the right time. In applying professional judgement, the views of the carer should, of course, be taken into account.

Eligibility – young carers

38. The Carers Act does not preclude the use of different eligibility criteria in relation to young carers. However, it is proposed that very similar local eligibility criteria to that for adult carers is used.

39. All of the indicators set out in the eligibility criteria at **Annex A (c)** apply to young carers although some of the descriptions would change from those provided.

The indicators have read-across to the eight wellbeing indicators of **Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible** and **Included** as shown in Table 2.

40. The use of the local eligibility criteria for young carers is in relation to the impact of the caring role on the young carer. As noted at paragraph 56 the young carer might have other needs unrelated to the impact of the caring role. In these circumstances, they could be eligible for other services subject to local arrangements.

Table 2: Local eligibility criteria indicators and comparison with wellbeing indicators

| Carer Indicator (Annex A) | Wellbeing indicator | Comment |
|--|--------------------------------|---|
| Health and wellbeing | Healthy | Applies to young carers as caring can impact on their physical and mental health. |
| Relationships | Healthy, Safe and Nurtured | The relationships young carers have with their family and friends can be affected by caring and impact on the young carer's health as a result. A young carer might not be safe in the home due to inappropriate caring responsibilities due to their age. A young carer might not be nurtured in the family setting due to caring for a very ill parent. |
| Living environment | Safe | Relevant to young carers where the living environment poses a risk to the young carer's safety e.g. because young carer is using a hoist for moving and handling. Or the living environment might include lots of medication and drugs lying around. However, in most circumstances the living environment is more an issue for the adult in the house or the whole family. |
| Employment and training (<i>and education</i>) | Achieving and Responsible | Mostly relevant to young carers aged 16-18 but adapt this to include education which is relevant to all young carers. The young carer's achievement might be supported through a skills development course, paid-for tutor support, purchase of laptop. However, mostly, the support should be provided by the school. |
| Finance | Included | Mostly relevant to young carers aged 16-18 if they are spending money on, for example, utilities. However, also relevant to the younger age group if they are 'out-of-pocket' due to caring. Therefore take age and circumstances of the young carer into account. Support to help deal with economic inequalities in particular. |
| Life balance | Active, Achieving and Included | Young carers require a good life balance in order to have time for activities, school and friendships. |
| Future planning | Achieving | Relevant to planning for college, university, training and work and also for the future care of the cared-for person if the young carer moves away from home. |

Prevention

41. The indicators at **Annex A (c)** encompass a preventative approach with universal, preventative support being the foundation for helping carers to manage their caring responsibilities.

42. Maintaining and improving support to carers is central to local authority and partnership preventative strategies and is a key priority for health and social care partnerships. The eligibility criteria allow thresholds to be set for different levels of impact, but they also aim to ensure that preventative support is embraced and embedded in policy and practice.

43. This means that local authorities need to consider how carers access and benefit from universal services such as education, leisure and transport and the provision of carers' information and advice services, including welfare rights and financial advice. Local authorities also need to consider how community-based support can be further developed to support carers. This includes services provided by carers centres and the wider third sector.

44. It also means that adult carer support plans and young carer statements need to consider support needs in the round, and not only focus on the more intensive services that may be required by carers where the impact of their caring role and their support needs meet eligibility thresholds.

45. The preventative approach is reinforced in the 2016 Act itself. **Section 31(2)(g)** states that each local carer strategy must set out an assessment of the extent to which plans for supporting relevant carers may reduce any impact of caring on relevant carers' health and wellbeing. This requires the local authority and the relevant health board to consider and set out plans for supporting carers on a preventative basis and to demonstrate how these plans can prevent or delay or reduce carers' needs, or potential needs, for support.

Replacement care

46. A carer might have needs meeting the local eligibility criteria and the carer may be assessed as requiring a break from caring. If the carer cannot take that break without replacement care being provided by the statutory or voluntary sectors rather than by friends, family or neighbours, then the local authority has a duty under section 24(4)(a) of the Act to provide or arrange the replacement care, whether or not the cared-for person has eligible social care needs in their own right. In other words, replacement care is not restricted to cared-for people who meet local social care eligibility. The duties and powers of local authorities under section 24(4)(a) and (b) in respect of breaks from caring may as a consequence require replacement care to be provided or arranged for the cared-for person. There will be separate guidance on short breaks and replacement care as part of the guidance on "duty to provide support to carers".

Interaction between assessments

47. **Annex B** provides guidance on the interaction between the adult carer support plan/young carer statement and the community care assessment/disabled child's assessment.

Carers who are also service users (adults or children with support needs)

48. **Annex C** provides guidance on carers who are also service users (adults or children with support needs).

Fluctuating needs

49. Carers with fluctuating needs may have needs which are not apparent at the time of preparing the adult carer support plan or young carer statement. The needs may have arisen in the past and be likely to arise again in the future. In these cases, local authorities should consider the carer's needs over an appropriate period of time to ensure that all their needs have been accounted for when eligibility is being determined. A carer's needs can fluctuate for many different reasons including the availability on-and-off of wider family support to the carer and the fluctuating needs of the cared-for person themselves having an impact on the needs of the carer. This is especially the case with people experiencing mental ill health but is not restricted to those conditions.

Options for Self-directed support

50. Where the responsible (local) authority exercises either its duty to provide support to the carer to meet the carer's eligible needs or its power to meet the carer's other identified needs, the carer must be given the opportunity to choose one of the options for self-directed support (unless the local authority considers that the carer is ineligible to receive direct payments).⁸

51. Examples of how carers might address their identified needs under options 1-3 of Self-directed support are provided in the statutory guidance which accompanies the Social Care (Self-directed Support) (Scotland) Act 2013.⁹ These examples are reproduced (with slight adjustment) in the table below. They show that support to carers can take many forms.

Table 3: Examples of support to carers

| 2013 Act option | Example |
|------------------------------------|--|
| Option 1 Direct payment | <u>Example 1</u> An adult carer who lives in a remote rural area is feeling increasingly isolated and depressed. She has no friends or family living nearby and her nearest carers' centre is miles away. The carer uses a direct |

⁸ The four options for self-directed support are: **Option 1** – the making of a direct payment by the local authority for the provision of support; **Option 2** - the selection of support by the carer, the making of arrangements for the provision of it by the local authority on behalf of the carer and, where it is provided by someone other than the authority, the payment by the local authority of the relevant amount in respect of the cost of that provision (directing the available support); **Option 3** - the selection of support for the carer by the local authority, the making of arrangements for the provision of it by the authority and, where it is provided by someone other than the authority, the payment by the authority of the relevant amount in respect of the cost of that provision (the local authority arranges support); and **Option 4** - the selection by the carer of Option 1, 2 or 3 for each type of support and, where it is provided by someone other than the authority, the payment by the local authority of the relevant amount in respect of the cost of the support.

⁹ <http://www.gov.scot/Publications/2014/04/5438/8#table9>

| 2013 Act option | Example |
|---|--|
| | <p>payment to pay for the installation of broadband and for a tablet computer. This means she can keep in touch with her family and friends through video-calls and email, particularly her grandchildren who live overseas. She has also made friends with other carers on an online forum and now feels more connected and supported.</p> <p><u>Example 2</u></p> <p>A young carer who cares for his mother expresses that he has not been able to have the same opportunities as his peers. Whilst all his friends are learning to drive, he cannot because his mother cannot afford the cost and because of his caring role he cannot take on a part-time job in order to earn extra money. He thinks that having a driving licence would be useful as the family could get a Motability car, which would help with a lot of the tasks around his caring role such as shopping and taking his mum to places. He also thinks that being able to drive would open up more job opportunities. The young carer uses his direct payment to pay for several driving lessons and the cost of the driving tests.</p> |
| <p>Option 2 Directing the available support</p> | <p><u>Example 1</u></p> <p>A carer has never had a break from caring. He would like to have a break of an afternoon each week to have a rest where he doesn't have to worry about the safety of the person he cares for. The carer receives a carer's short break voucher and he uses this to purchase a short break.</p> <p><u>Example 2</u></p> <p>The authority arranges for an individual service fund to be set up to support the carer. This carer has always been very house-proud, but her husband has had a stroke and the level of care that she has to provide means that she is falling behind with housework and laundry, which is making her feel increasingly tired and depressed. The carer uses the individual service fund to purchase domestic help from an agency so that someone can come in and help with cleaning, ironing and other domestic tasks. The carer also uses the ISF to pay for a fortnightly visit from a care worker so that she can meet her daughter for lunch and have a break from caring.</p> |
| <p>Option 3 Arranged services</p> | <p><u>Example 1</u></p> <p>After the death of his father, a carer is finding caring for his mother, who has dementia, emotionally draining and he is becoming very depressed. He is on a waiting list for NHS counselling services but has been told it may take a long time and his local carers centre does not offer this service. The authority arranges for the carer to attend a private counsellor to help him manage issues of bereavement and caring.</p> |

| 2013 Act option | Example |
|-----------------|--|
| | <p><u>Example 2</u></p> <p>A carer talks about missing out on making new friends as she never has time because of her caring role. She expresses an interest in attending an art class in a local authority community centre. The authority arranges for the carer to attend the class and arranges replacement care for the person she cares for once a week.</p> <p>NB: The art class would be categorised under the Carers Act as general services and enabling the carer to attend this class would be providing general services, i.e. meeting non-eligible needs. The provision of replacement care would be either under the power or duty to support the carer (depending on whether her needs met the local eligibility criteria) and would be non-chargeable.</p> |

Complaints

52. If a carer disagrees with the determination made about whether any of their needs are eligible needs, and wants to make a complaint, each individual local authority will have its own complaints procedure. The carer can also make a complaint to the Scottish Public Services Ombudsman (SPSO) who is able to consider social work professional judgment as part of an independent review of complaints. Any complaint to the SPSO must take place after a complaint to the local authority.

Consultation on local eligibility criteria

53. **Section 21(3)** sets out the consultation requirements before setting local eligibility criteria. Each local authority must consult with persons and bodies representative of carers and take steps to involve carers.

54. With regard to consultation arrangements, consultation with carers on draft eligibility criteria will take time and will require explanation. It is good practice for local authorities to work together with local carer organisations to develop the consultation approach in an open and transparent manner. It is also necessary to reach out to those such as carers with protected characteristics under equalities legislation who may be more marginalised and not always included in consultation exercises.

55. For example, in relation to BME carers, evidence suggests that consultation with BME carers should be an integral part of service development.¹⁰

56. The same applies with regard to those carers who live in remote and rural areas, including on the islands. A Scottish Community Development Centre advice note¹¹ is specifically aimed at addressing challenges in applying the National

¹⁰ Improving support for black and minority ethnic (BME) carers – Insights, IRISS – 2010
<https://www.iriss.org.uk/sites/default/files/iriss-insight-7.pdf>

¹¹ http://www.scdc.org.uk/media/resources/what-we-do/national-standards/using_the_standards_in_rural_communities.pdf

Standards for Community Engagement in remote and rural areas. It covers, amongst other things:

- anonymity, confidentiality and stigma
- parochialism
- recognising and responding to very local experience
- hidden populations and dominant cultures
- communities in transition and conflict
- physical access and accessibility of community engagement
- recognition of local cultures and traditions
- need for creative and inclusive methods of engagement

57. With regard to consultation with young carers, this can often be done via young carers' services. In doing so, it is good practice to work with the services to determine whether the young carers want to use their time in this way. There will also be consultation opportunities with young carers in schools.

58. There are various policies, procedures and guidance documents setting out good practice in consulting with both adult and young carers as carers and as citizens. These are:

- *Equal and Expert: Three Best Practice Standards for Carer Engagement (Coalition of Carers in Scotland)*¹²
- *The Easy Consultation Toolkit (Shared Care Scotland)*¹³
- *So You Want To Consult With Children? A Toolkit of Good Practice (Save The Children)*¹⁴
- *The National Standards for Community Engagement (Scottish Community Development Centre)*¹⁵
- *Co-Production - How we Make a Difference Together (Mark McGeachie and Gerry Power)*¹⁶

Publication and Review of Criteria

59. **Section 22(1)** requires each local authority to publish its local eligibility criteria. The Act does not specify the method of publication but it is recommended that the local eligibility criteria (indicators and threshold) are published at least on-line and be readily available and easily accessible to managers and practitioners in the statutory and third sectors and to carers.

60. **Section 22(2)** of the 2016 Act, read together with regulation 2 of the Carers (Scotland) Act 2016 (Prescribed Days) Regulations 2017¹⁷, which come into force on 1 October 2017, provide that the first local eligibility criteria must be published by 31 March 2018.

61. Under **section 22(3)**, each local authority must carry out a first review of its local eligibility criteria before the end of the period, prescribed by the Scottish

¹² <http://www.carersnet.org/policy-legislation/best-practice-standards-for-carer-engagement/>

¹³ <http://www.sharedcarescotland.org.uk/resources/tools/consultation-toolkit/>

¹⁴ <http://www.savethechildren.org.uk/resources>

¹⁵ <http://www.scdc.org.uk/what/national-standards/>

¹⁶ <http://www.coproductionscotland.org.uk/resources/co-production-in-scotland-a-policy-overview/>

¹⁷ SSI 2017 No. 207 Social Care - The Carers (Scotland Act 2016 (Prescribed Days) Regulations 2017
<http://www.legislation.gov.uk/ssi/2017/207/contents/made>

Ministers by regulations, beginning with the day on which the criteria are published. Regulation 3 of the Carers (Scotland) Act 2016 (Prescribed Days) Regulations 2017 prescribes a period of three years within which a first review of local eligibility criteria is to take place. The intention of the timescale for this first review is to ensure that local eligibility criteria are reviewed within a reasonable timeframe. This will enable each local authority to take into account any changes it wants to make to the local eligibility criteria in light of operational practice and the success of the criteria in meeting the needs of carers. The review timescales also allow sufficient time to give local authorities flexibility to align the review with other local service planning.

62. Under **section 22(4)**, each local authority must thereafter review its local eligibility criteria before the expiry of 3 years but can carry out an earlier review.

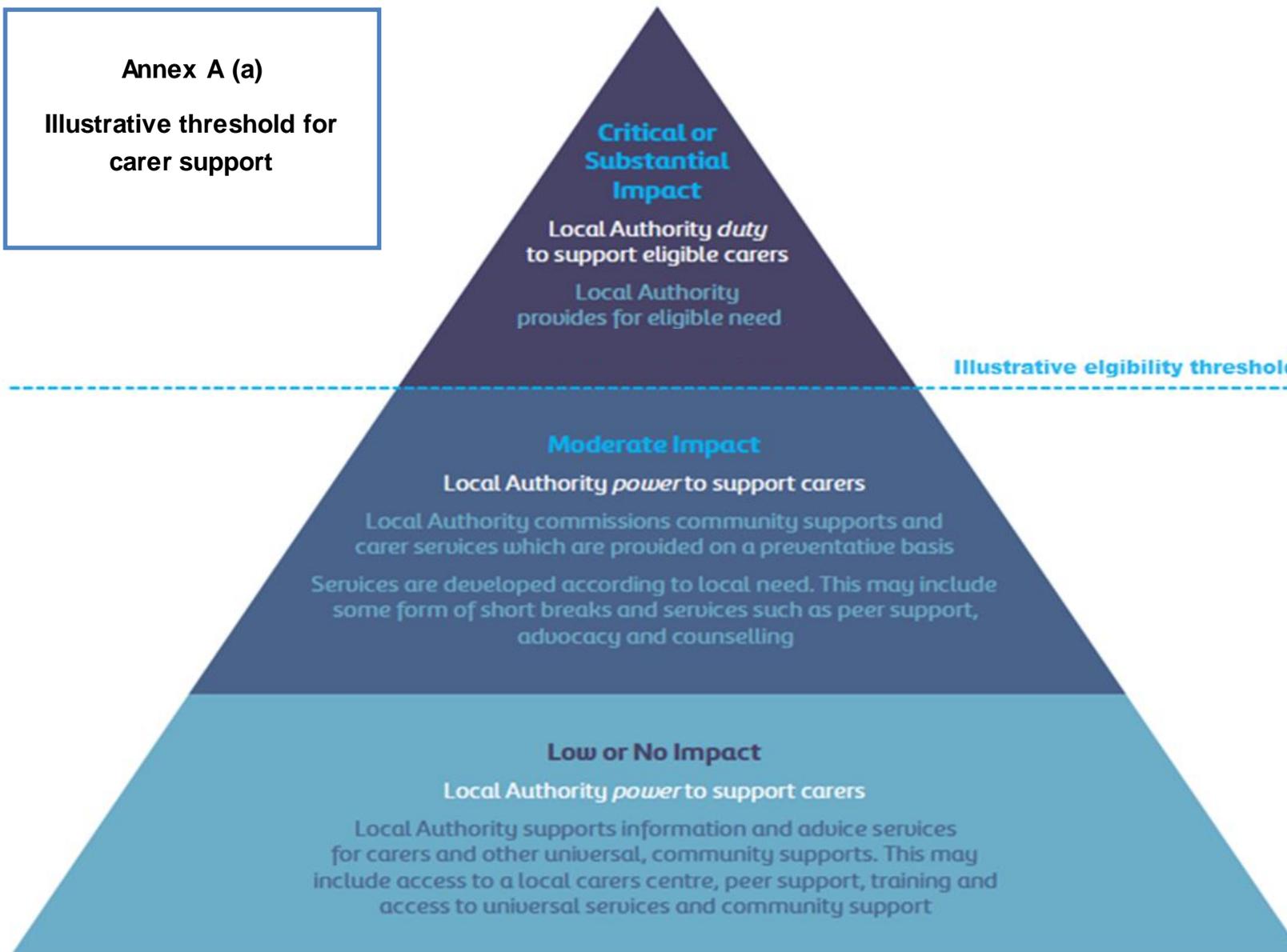
63. **Section 22(5)** defines the 'relevant period' which is the period of 3 years beginning with whichever is the later of the day on which the local authority last published (a) its local eligibility criteria or (b) a statement under subsection (6)(b).

64. Under **section 22(6)**, the local authority may set revised local eligibility criteria following a review or must publish a statement to the effect that it has not set revised criteria.

65. Under **section 22(7)**, any revised local eligibility criteria must be published.

66. Since it is recommended in this guidance that the first local eligibility criteria encompass the indicators in **Annex A**, it would be very helpful for the Scottish Government and COSLA to know about any proposed changes to the criteria, especially the indicators at the first and subsequent review stages. This will enable the Scottish Government and COSLA to consider the way forward in light of the intention to have Scotland-wide use of the same indicators. It would also be useful for local authorities to share learning and good practice on use of the local eligibility criteria.

Annex A (a)
Illustrative threshold for
carer support



Determining the impact of the caring role and associated risk

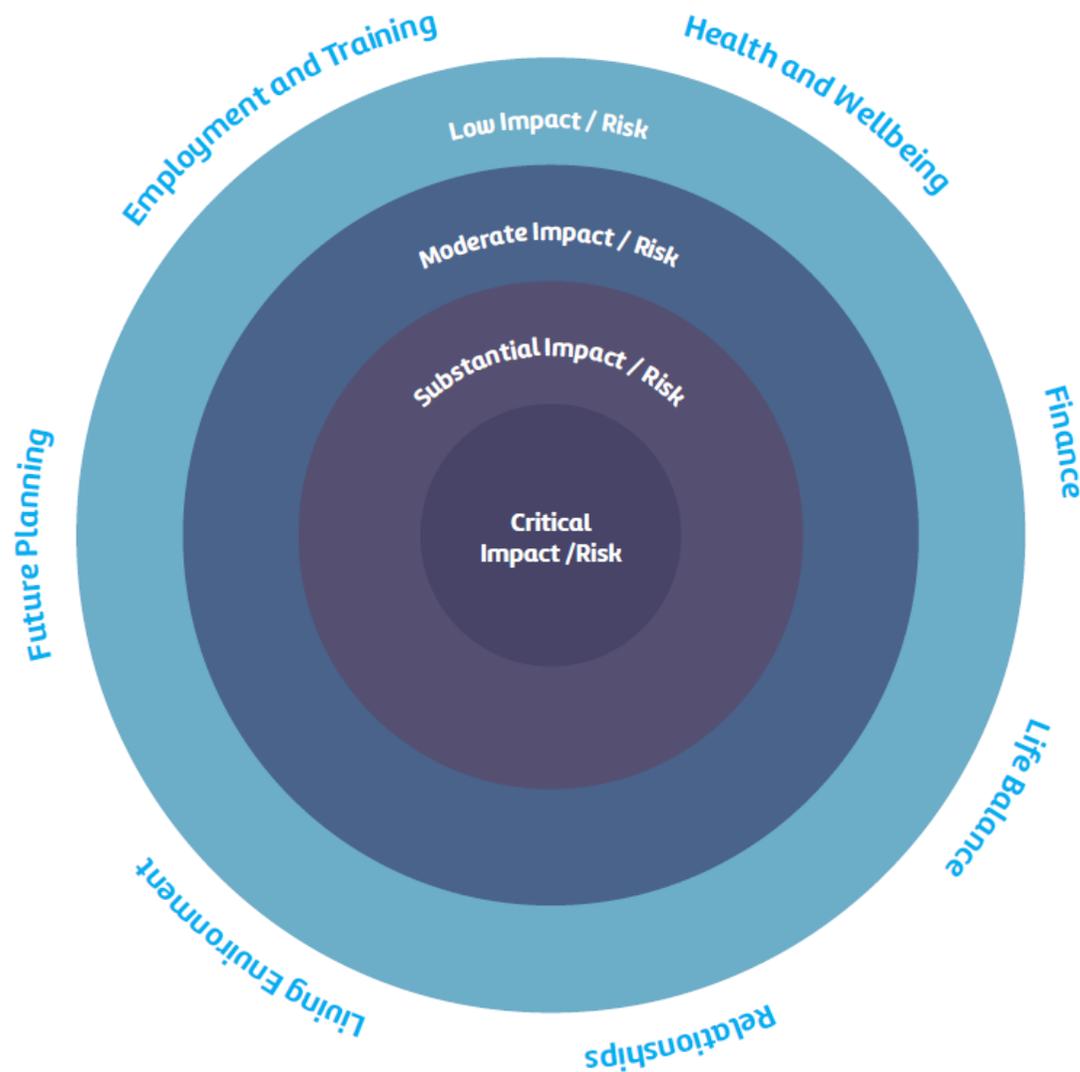


Table of Indicators

| | Caring has no impact NO RISK | Caring has low impact LOW RISK | Caring has moderate impact MODERATE RISK | Caring has substantial impact SUBSTANTIAL RISK | Caring has critical impact CRITICAL RISK |
|-------------------------------|--|--|--|--|--|
| Health & Wellbeing | Carer in good health. Carer has good emotional wellbeing. | Carer's health beginning to be affected. Caring role beginning to have an impact on emotional wellbeing. | Carer's health at risk without intervention. Some impact on carer's emotional wellbeing. | Carer has health need that requires attention. Significant impact on carer's emotional wellbeing. | Carer's health is breaking/has broken down. Carer's emotional wellbeing is breaking/has broken down. |
| Relationships | Carer has a good relationship with the person they care for and is able to maintain relationships with other key people in their life. | Carer has some concerns about their relationship with the person they care for and/or their ability to maintain relationships with other key people in their life. | Carer has identified issues with their relationship with the person they care for that need to be addressed and/or they find it difficult to maintain relationships with other key people in their life. | The carer's relationship with the person they care for is in danger of breaking down and/or they no longer are able to maintain relationships with other key people in their life. | The carer's relationship with the person they care for has broken down and their caring role is no longer sustainable and/or they have lost touch with other key people in their life. |
| Living Environment | Carer's living environment is suitable posing no risk to the physical health and safety of the carer and cared for person. | Carer's living environment is mostly suitable but could pose a risk to the health and safety of the carer and cared for person in the longer term. | Carer's living environment is unsuitable but poses no immediate risk. | Carer's living environment is unsuitable and poses an immediate risk to the health and safety of the carer and/or cared for person. | Carer's living environment is unsuitable and there are immediate and critical risks to the health and safety of the carer and/or cared for person. |

| | Caring has no impact NO RISK | Caring has low impact LOW RISK | Caring has moderate impact MODERATE RISK | Caring has substantial impact SUBSTANTIAL RISK | Caring has critical impact CRITICAL RISK |
|----------------------------------|---|---|--|---|--|
| Employment & Training | Carer has no difficulty in managing caring and employment and/or education. Carer does not want to be in paid work or education. | Carer has some difficulty managing caring and employment and there is a risk to sustaining employment and/or education in the long term. Carer is not in paid work or education but would like to be in the long term. | Carer has difficulty managing caring and employment and there is a risk to sustaining employment and/or education in the medium term. Carer is not in paid work or education but would like to be in the medium term. | Carer has significantly difficulty managing caring and employment and there is a risk to sustaining employment and/or education in the short term. Carer is not in paid work or education but would like to be soon. | Carer has significant difficulty managing caring and employment and/or education and there is an imminent risk of giving up work or education. Carer is not in paid work or education but would like to be now. |
| Finance | Caring is not causing financial hardship e.g. carer can afford housing cost and utilities. | Caring is causing a risk of financial hardship e.g. some difficulty meeting housing costs and utilities. | Caring is causing some detrimental impact on finances e.g. difficulty meeting either housing costs OR utilities. | Caring is having a significant impact on finances e.g. difficulty meeting housing costs AND utilities. | Caring is causing severe financial hardship e.g. carer cannot afford household essential sand utilities, not meeting housing payments. |
| Life balance | Carer has regular opportunities to achieve the balance they want in their life. | Carer has some opportunities to achieve the balance they want in their life. | Due to their caring role, the carer has limited opportunities to achieve the balance they want in their life. | Due to their caring role, the carer has few and irregular opportunities to achieve the balance they want in their life. | Due to their caring role, the carer has no opportunities to achieve the balance they want in their life. |

| | Caring has no impact NO RISK | Caring has low impact LOW RISK | Caring has moderate impact MODERATE RISK | Caring has substantial impact SUBSTANTIAL RISK | Caring has critical impact CRITICAL RISK |
|---------------------------------|--|--|--|---|--|
| Life balance (continued) | They have a broad choice of breaks and activities which promote physical, mental, emotional wellbeing. | They have access to a choice of breaks and activities which promote physical, mental, emotional wellbeing. | They have access to a few breaks and activities which promote physical, mental, emotional wellbeing. | They have little access to breaks and activities which promote physical, mental, emotional wellbeing. | They have no access to breaks and activities which promote physical, mental, emotional wellbeing. |
| Future Planning | Carer is confident about planning for the future and has no concerns about managing caring. | Carer is largely confident about planning for the future but has minor concerns about managing caring. | Carer is not confident about planning for the future and has some concerns about managing caring. | Carer is anxious about planning for the future and has significant concerns about managing caring. | Carer is very anxious about planning for the future and has severe concerns about managing caring. |

NB: In determining a carer's eligibility for funded services, it is important to recognise that indicators will not always exist in isolation from one another. It is appropriate and desirable that indicators should be explored in relation to one another, as there may be a 'multiplier' effect when two or more indicators overlap or interact. For example, it would be appropriate to discuss the impact of insufficient household income in relation to the effect financial hardship can have on the emotional health and wellbeing of a carer. Similarly, some indicators may be overarching, such as the ability to have a life alongside caring, which may be affected by the cumulative impact of the caring role in several areas of a carer's life.

Support to carer or cared-for person

1. There are various reasons why it is important to be clear about whether a decision to provide a particular service is being taken in relation to the cared-for person or the carer:

- if support is provided as a result of a section 12A community care assessment¹⁸ to the cared-for person, then it is clear from sections 5, 6 and 11(2) of the SDS Act that it is for that person to decide whether the support should be provided and how it should be delivered;
- the cared-for person might not wish to receive particular services and so they may not be delivered in practice even though the local authority has decided they have an eligible need through the community care assessment;
- as set out above, different eligibility criteria might apply in assessing whether the needs of the cared-for person call for the provision of community care services or the carer for support;
- the rules in relation to whether a charge can be made in respect of the support or services will be different if it is provided for the carer or the cared-for person.

2. Section 12A of the 1968 Act and section 8 of the Disabled Persons (Services, Consultation and Representation) Act 1986 make provision for community care assessments to take into account the care provided by a carer and the carer's ability to continue to provide that care. These provisions are intended to ensure that the local authority is fully informed about the level of care that a carer is willing and able to provide.

3. Section 12A(1)(b)(ii) also expressly requires the local authority to take into account any views which the carer wishes and is able to express, so far as it is reasonable and practicable to do so.

4. As such, the two assessments should dovetail. For example, if a cared-for person requires 24/7 care and the carer is willing and able to provide that care for 8 hours a day, the community care assessment should cover the cared-for person's needs for the remaining 16 hours a day.

5. If there is already a community care assessment in place at the point where an ACSP or YCS is being prepared, and if services are being delivered in accordance with that assessment, then the services provided by the local authority to the cared-for person should be reflected in the part of the ACSP or YCS which sets out the nature and extent of the caring role.

6. The local authority would be required to consider the extent to which the carer's needs are not already being met by the provision of services to the cared-for person, and apply its eligibility criteria to those remaining needs.

¹⁸ Whilst the term "community care assessment" still has currency, "social care assessment" is the term that is increasingly being used in practice.

7. Additional services that might be suitable or needed for the cared-for person could be identified in the context of the ACSP or YCS and not the community care assessment. This might happen where the carer does not agree with the services provided to the cared-for person, either because the situation has changed since the last community care assessment; because the cared-for person wants more support from the carer than the carer wishes; or because the carer feels that the decisions already made are not good decisions and make too many assumptions about the carer's willingness to care. This sort of concern may well be raised during the ACSP or YCS process and the Scottish Government would expect them to be taken seriously. If it was agreed that the concerns were valid, there might be agreement to revisit the community care assessment to see what could be done to resolve matters.

8. Guidance on the Community Care and Health (Scotland) Act 2002¹⁹ makes clear that carers and cared-for persons should have the opportunity to discuss their needs individually without the other person being present.

9. As and when the community care assessment is reviewed, that might result in additional services being put in place for the cared-for person which would in turn change the needs which are identified under the ACSP or YCS. However, until any change to the community care assessment had been made, the local authority would still be under a duty to meet those needs identified in the ACSP which meet the eligibility criteria. This could not be through a change in services to the cared-for person without their community care assessment having been reviewed and so the local authority would have to consider other options available which would provide support to the carer.

10. As a matter of good practice, a revision to the community care assessment done quickly would enable a final decision on how to meet the carer's needs could be met once changes to the cared-for person's support had taken effect. However, there may well be cases where it takes time for any new services to be available and put in place, so completion of the ACSP or YCS should not be conditional on the community care assessment having been reviewed.

11. Therefore, each of the community care assessment and ACSP or YCS processes include a requirement on the person conducting the process to have regard to what is decided from time to time under the other process. If the duty to provide tailored support to the carer then operates by reference to the needs which are still existing when both general services and indirect services provided to the cared-for person are taken into account, this will give the correct result.

12. A similar analysis applies in relation to the interaction between ACSP/YCS and an assessment under section 23(3) of the Children (Scotland) Act 1995 where the carer cares for a disabled child. The assessments may be easier to bring together in practice where the carer is a parent of a disabled child, since the carer will often be responsible for agreeing to the services to be provided to the child in their capacity as parent. This means that there is a smaller risk of conflict about what is required to be provided to the child than in the case of a cared-for adult. However, the general principles about the interaction between the two processes should apply equally to considering how far support provided to a disabled child in accordance with a section 23(3) assessment impacts on the needs of their carer.

¹⁹ Scottish Executive Circular CCD 2/2003 - http://www.sehd.scot.nhs.uk/publications/cc2003_02full.pdf

13. In situations where the cared-for person does not have a community care assessment, the carer may still have identified needs which meet the local eligibility criteria. In such circumstances, the carer may have identified needs which might be met by services or assistance provided to the cared-for person but which are not provided via a community care assessment, for example, the provision of additional health services to the cared-for person. This should be recorded in the ACSP/YCS.

Carers who are also service users (adults or children with support needs)

1. Carers might also have support needs themselves due to their own illness or disability. Section 24(5)(a) and (b) of the Carers Act (application of duty to support carer to meet the carer's eligible needs) applies where a carer's eligible needs might also be met through community care services *provided to the carer* and assessed under section 12A of the Social Work (Scotland) Act 1968 or services for children and their families provided to the carer under section 22 of the Children (Scotland) Act 1995. If the carer's needs meet the eligibility criteria for carer support, then the duty to provide support to the carer in subsection (4)(a) applies even if those eligible needs for support also in themselves call for the provision of community care services under the 1968 or 1995 Acts.

2. This means a carer can have needs themselves as a disabled or ill person and have those needs met by community care services delivered to them. If they have eligible needs as a carer in their caring role, then the duty to provide support applies.

3. Where carers have support needs themselves, for example, each member of an elderly couple in a mutually dependent relationship, the responsible local authority will have to make decisions about whether the need arises because of the caring (eg depression due to challenges of caring) or because of other factors (e.g. depression due to isolation or which pre-existed the beginning of caring). This may result in artificial distinctions having to be drawn but the responsible local authority will need to exercise their judgment in determining whether the needs relate to the person's caring role. The distinction should however be clear enough.

4. If it is impossible for a local authority to isolate a person's needs as a carer from that same person's needs as a user of services, the local authority may be in a position where there are potentially two sets of eligibility criteria which are relevant. (There is no statutory obligation to have eligibility criteria in respect of the decision about whether needs identified in community care assessments 'call for' the provision of services in terms of section 12A of the Social Work (Scotland) Act 1968, but the Scottish Ministers issued guidance in 2009 suggesting that local authorities should do so for older people (with relevance to adults with support needs too). In such a case, the duty to provide the support to the person as a carer takes precedence when the local eligibility criteria are met, regardless of whether the local authority also decides (or would have decided) that the needs call for the provision of services under section 12A of the 1968 Act.

5. In summary, and to offer pragmatic examples, a carer could have:

- support needs as a carer, some or all of which might be eligible needs - *and could receive, for example, emotional support at the carers' centre (because the caring situation is causing the carer stress and anxiety) and a short break;*
- and also concurrently, support needs with regard to their own social care needs, some or all of which might be eligible needs - *and could receive, for example, telehealth, (a health monitoring kit) because they*

have diabetes and this kit helps them to monitor and self-manage their condition at home.

6. In other instances, as noted above, the distinction between a carer having eligible needs as a carer and as an adult with needs for community care services could be less clear. For example, it may be difficult to distinguish if the mental ill health of the carer is due to their caring role or not, but it is apparent that a certain type of support will help the carer's mental health. In this circumstance, the local authority must decide for itself which eligibility criteria framework to use and do so quickly so that timely support is provided.