Carers (Scotland Bill):
Equality and Human Rights Commission

1. Introduction and Background

The Equality and Human Rights Commission is the National Equality Body (NEB)\(^1\) for Scotland, England and Wales, and works to eliminate discrimination and promote equality across the nine protected grounds set out in the Equality Act 2010: age, disability, gender, race, religion and belief, pregnancy and maternity, marriage and civil partnership, sexual orientation and gender reassignment. We are an “A Status”\(^2\) National Human Rights Institution (NHRI)\(^3\), and share our mandate to promote and protect human rights in Scotland with the Scottish Human Rights Commission (SHRC).

The Commission welcomes the Carers (Scotland) Bill and the opportunity to comment on its general principles. There are currently 660,000 carers in Scotland, and demographic changes mean this figure is expected to rise to 1 million by 2035. Currently a quarter of a million people in Scotland juggle caring responsibilities with work responsibilities. 75% of carers report that their caring responsibilities have had a negative impact on their health, and the same figure experience financial hardship. The estimated annual value of unpaid carers’ contribution to the Scottish economy is more than £10 billion\(^4\).

At the same time, evidence points to caring responsibilities falling disproportionately on individuals and groups who share one or more protected characteristic. For example:

- For every age group under 75, women are more likely to be carers than men\(^5\).
- 22% of younger carers (aged under 25) have a long-term condition or disability. This is twice the rate for non-carers (11%)\(^6\).
- Black and Minority Ethnic (BME) carers are less likely to be receiving practical and financial support with caring and more likely to miss out on accessing support for longer – often as a result of a lack of appropriate advice and information and struggling to access culturally appropriate services\(^7\).

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1. [www.equineteurope.org/-Equality-bodies-](http://www.equineteurope.org/-Equality-bodies-)
2. [www.ohchr.org/Documents/Countries/NHRI/Chart_Status_NIs.pdf](http://www.ohchr.org/Documents/Countries/NHRI/Chart_Status_NIs.pdf)
6. ibid.
The Commission’s comments should be read with reference to the requirements on public authorities under the Public Sector Equality Duty to:

- Eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct;
- Advance equality of opportunity between people who share a relevant protected characteristic and those who do not;
- Foster good relations between people who share a protected characteristic and those who do not.

The duty aims to ensure that public authorities and those carrying out a public function consider how they can positively contribute to a more equal society through advancing equality and good relations in their day-to-day business, to:

- Take effective action on equality;
- Make the right decisions, first time around;
- Develop better policies and practices, based on evidence;
- Be more transparent, accessible and accountable;
- Deliver improved outcomes for all.\(^8\)

Key public authorities including Local Authorities and Health Boards, are subject to the specific devolved equality duties which set out the steps they must take to meet the requirements of the general duty\(^9\), which include the requirement to set equality outcomes (using evidence gathered from the involvement of groups who share one or more protected characteristic) and to assess the equality impact of any proposed new or revised policy.

Given the evidence of the disproportionate financial burden on carers, and the negative impact caring responsibilities can have on carers’ health, it is also important to remind the committee of relevant international human rights obligations. Particularly relevant is the International Covenant of Economic, Cultural and Social Rights (ICESCR)\(^10\): as a state party to ICESCR, the UK has undertaken – “to the maximum of its available resources” (Art 2) to progressively achieve the full realisation of the rights contained in the convention. These rights include:

- the right of everyone to an adequate standard of living, and to the continuous improvement of living conditions (Art 11)
- the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (Art 12)

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\(^9\) [www.scotland.gov.uk/Topics/People/Equality/PublicEqualityDuties](http://www.scotland.gov.uk/Topics/People/Equality/PublicEqualityDuties)

\(^10\) [www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx)
Comments on the Bill

Given the equality and human rights considerations outlined above, the Commission would have welcomed the timely publication of a comprehensive equality impact assessment to accompany the Bill upon publication\(^\text{11}\). At the time of writing (mid-April 2015) it is not available. We do however note the brief comments on equality and human rights implications in the accompanying policy memorandum.

**Part 1:** In line with other pieces of devolved legislation with major equality and human rights implications – for example, the Adults with Incapacity (Scotland) Act 2000, the Mental Health (Care & Treatment) (Scotland) Act 2004, and the Adult Support and Protection (Scotland) Act 2007 – the Commission would welcome the inclusion of a set of principles on the face of the Bill. These might include (among other areas):

- respect for the dignity and autonomy of the carer and cared-for person
- respect for the particular needs of carer and cared-for persons who share one or more protected characteristic, of the and the need for appropriate, tailored support and services to meet those needs
- taking account of the views of the carer and cared-for person
- the maximum involvement of the carer and cared-for person at every stage
- maximum benefit for the care and cared-for person

**Part 2:** As currently drafted the Bill does not place an absolute duty on local authorities to prepare support plans or young carers’ statements. The provisions in Part 2 only apply where the local authority has made an offer (and that offer is accepted) or where a plan is requested by the carer. These provisions should be strengthened to place responsibility on the local authority to make carers aware of support plans and how they can be requested. Without this, some carers, for example those with a learning disability, may be less able to take up the provision of a support plan. The same may be the case if the carer’s first language is not English. A responsibility to inform should also take account of carers from communities who have historically faced disadvantage and discrimination in accessing public services, for example Gypsy/Travellers.

As already mentioned, there is a wealth of evidence on the financial and health burdens borne by carers, and of the disproportionate caring burden faced by people who share one or more protected characteristic. Given this, it is important that identified outcomes and needs achieve more than simply enabling “carers to provide or continue to provide care for cared-for persons” (4 (1)). Rather, any regulations produced under the provisions at section 7

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\(^{11}\) Best practice would recommend a combined equality and human rights impact assessment.
should aim to ensure an outcome where carers “continue to provide care for cared-for persons” in a manner consistent with the kinds of equality and human rights principles outlined above: that is, where dignity, autonomy and choice are protected, and the emphasis is on thriving, not simply surviving.

**Part 3:** Early evidence suggests inconsistency in local eligibility criteria is one of the principle concerns with the implementation of the Social Care (Self-Directed Support) (Scotland) Act 2013\(^\text{12}\). The Commission would be anxious to avoid any repeat with the development of local eligibility criteria for Carer Support Plans and Young Carer Statements. We would expect local authorities to develop local eligibility criteria in light of their equality outcomes (and the evidence gathered in developing these). More broadly, eligibility criteria must be developed with reference to the requirements of the Public Sector Equality Duty, and the types of equality and human rights principles which we believe should be on the face of the Bill.

Where carers do not meet local eligibility criteria, there should be a requirement to inform or assist the carer to access other forms of support. Again, failure to do so may disadvantage some carers who share one or more protected characteristic, and who may have particular communication needs or to receive information in a culturally appropriate way. Section 22(4) (b) enables a local authority to offer discretionary assistance to meet ineligible needs but, again, they will have a responsibility to ensure that any such assistance is offered in a way which does not disadvantage any carer or cared-for person who shares one or more protected characteristic.

**Part 5:** the Commission welcomes the requirement for each local authority to prepare a carer strategy. However, we would like to see a requirement for strategies to have regard to the kinds of equality and human rights principles outlined above. As well as assessing unmet demand in their areas (28 (20 (d)) the strategy should require consideration into the demand for services and support appropriate to carers and cared-for persons who share one or more protected characteristic. Again, evidence gathered in the development of the local authority equality outcomes should be able to inform this process.

**Part 6:** provisions for information and advice for carers covering areas such as rights, advocacy, training, health and wellbeing are very welcome. It is important to emphasise though that this information and advice must be tailored to meet the particular communication, linguistic and cultural needs of carers and cared-for people who share one or more protected characteristic.

**Conclusion**

The Commission welcomes the opportunity to comment on the Bill, and supports its policy intentions. However, we would like to see a clearer emphasis on the equality and human rights dimension to the legal and policy priorities for carers and cared-for people in Scotland, with clear reference to the domestic law – and international obligations – against which the Bill

\[^{12}\text{See}\]

should be read. In particular, we would welcome more information on how the bill will meet the needs to carers and cared-for people who share one or more protected characteristic, and the importance of the devolved specific equality duties in framing public authorities’ approach.

Equality and Human Rights Commission