Carers (Scotland) Bill

Scottish Human Rights Commission

The Scottish Human Rights Commission is a statutory body created by the Scottish Commission for Human Rights Act 2006. The Commission is a national human rights institution (NHRI) and is accredited with ‘A’ status by the International Co-ordinating Committee of NHRI at the United Nations. The Commission is the Chair of the European Network of NHRI. The Commission has general functions, including promoting human rights in Scotland, in particular to encourage best practice; monitoring of law, policies and practice; conducting inquiries into the policies and practices of Scottish public authorities; intervening in civil proceedings and providing guidance, information and education.

The Commission welcomes the opportunity to comment on the Carers (Scotland) Bill. The need for action to improve carers’ rights is an issue which has come out clearly through our work on Scotland’s National Action Plan for Human Rights (SNAP), in particular during our three year research project, Getting it Right?. This led to a commitment within the Plan to a new Carers Rights Charter, which will consolidate existing rights, establish a clear set of principles for the support of carers and emphasise the importance and understanding both of the needs of carers and the ways in which central and local government, Health Boards and others can work to ensure that carers are appropriately supported. The current Bill is a positive step in enhancing carers’ rights to access support, as well as ensuring that carers are aware of their rights to do so.

Do you support the Bill?

Yes. The Bill provides for a range of measures which should enhance realisation of the human rights of carers as well as supporting the realisation of the human rights of those they support.

The legal framework

- Human Rights Act 1998 and European Convention on Human Rights (ECHR): Applicable rights include the right to respect for private and family life (Article 8, ECHR) as unpaid caring responsibilities have an impact on the autonomy, physical and mental integrity, quality of life, and well-being of carers.

- The Scotland Act 1998 which requires that all legislation of the Scottish Parliament must be compatible with ECHR rights. It also requires that Scottish Ministers must observe and implement the UK’s other international obligations, which includes obligations under international human rights treaties the UK has ratified.

---

1 ss29(2)(d) and s.57 Scotland Act 1988 and s.6 Human Rights Act 1998.
2 ss.29(2), s.35(1) and s.58 Scotland Act 1998.
o **Rights of carers**: Applicable rights include their rights to an adequate standard of living (Article 11, International Covenant on Economic, Social and Cultural Rights, ICESCR), right to health (Article 12 ICESCR) and the right to work (Article 6, ICESCR).

o **Rights of cared-for person**: Perhaps of most relevance is the UN Convention on the Rights of Persons with Disabilities (CRPD) which contains a broad range of rights aimed at removing barriers to the participation of disabled people in society on an equal basis with others. Carers support the realisation of many of these rights but of particular importance is the right to live independently and be included in the community (Article 19) which is fundamentally facilitated for many by the support provided by carers.

**What do you feel would be the benefits of the provisions set out in the Bill?**

The process of researching and developing SNAP identified a range of issues facing carers. Broadly, these related to:

- **Awareness of rights**: There is a lack of understanding of the rights of carers and those receiving care. There are a significant number of unpaid carers who provide invaluable public benefits, often at great impact to their own rights to adequate standard of living, health and to work.

- **Accessing rights (to support)**: There is evidence that certain groups of carers (Gypsy/Travellers, minority ethnic carers and carers in rural areas) face particular difficulties in accessing support. There are a number of areas in which further steps are needed to realise the right to independent living for all. There is, for example, a lack of portability of care packages between local authorities which impacts on freedom of movement and rights to education and work. There are concerns related to the limitation of social care support to what is needed to survive (so-called “life and limb” support) rather than what is needed to realise rights (to work, to an education, to take part in life in the community).

The Bill presents an opportunity to address these issues by taking a human rights based approach to supporting carers, aiming to enhance the empowerment of carers to know and claim their human rights, alongside the ability and accountability of individuals, organisations and the relevant professionals who are responsible for respecting, protecting and fulfilling human rights. We therefore welcome the establishment of information and advice services, to address carers’ awareness of rights. We also welcome the

---

3 Such as freedom from exploitation, violence and abuse (Article 16), respect for home and the family (Article 23), habilitation and rehabilitation (Article 26), participation in cultural life, recreation, leisure and sport (Article 30)
widening of access to assessments (now Adult Carer Support Plans or Young Carer Statements) by amending the definition of a carer.

The Commission also welcomes placing on a statutory footing the need to involve carers in the planning, shaping, delivery and review of services, as well as in the development of local carer strategies. This accords strongly with a human rights based approach to supporting carers, which means giving people greater opportunities to participate in shaping the decisions that impact on their human rights.

How do you feel the Bill could be amended or strengthened?

Definition of personal outcomes (Section 4)

The Commission welcomes the personal outcomes approach to be taken in Adult Carer Support Plans and Young Carer Statements, however, the definition of personal outcomes only reflects one narrow aspect of the situation of carers, namely their caring role. It does not reflect the broader life of the carer as an individual in their own right. Article 8 ECHR protects a number of aspects of private and family life for all individuals, including the right to maintain family and social relationships, in addition to health and well-being. Amending the definition of personal outcomes to reflect the entirety of the carer’s life would support the policy objective of helping carers to have a life alongside caring.

Eligibility criteria (Part 3, Chapter 1)

The Commission is concerned that the introduction of local eligibility criteria could lead to increased geographical variations in access to support. To fulfil its human rights obligations Scotland should be identifying and addressing disparities on any ground – not only those grounds of discrimination included in national equality laws, but also differentials between those living in rural and urban areas. The grounds on which discrimination is prohibited are not limited in human rights law, with Article 14 ECHR and in non-discrimination provisions in other international human rights instruments extending to any other status. Human rights bodies have increasingly considered this to include place of residence.4 Variations in eligibility criteria have also been highlighted as a factor which inhibits portability of care.5 Barriers to portability of care impact upon the right to independent living of the cared-for person.6 If carers are not able to receive

---

4 As the UN Committee on Economic, Social and Cultural Rights has stated in an authoritative interpretation: The exercise of Covenant rights should not be conditional on, or determined by, a person’s current or former place of residence; e.g. whether an individual lives or is registered in an urban or a rural area, in a formal or an informal settlement, is internally displaced or leads a nomadic lifestyle. Disparities between localities and regions should be eliminated in practice by ensuring, for example, that there is even distribution in the availability and quality of primary, secondary and palliative health-care facilities. (UN CESCR, General Comment no. 20, non-discrimination in economic, social and cultural rights, UN Doc. E/C.12/GC/20, 2 July 2009, para 28).
6 Article 19 UNCRPD
support in one locality, where they would be able to receive it in another, there is knock-on effect on the right to independent living of the cared-for person.

While it is important to tailor carer strategies to local needs, the threshold at which a carer’s right to support is met should not be subject to local variation. The possibility that Regulations will set out key drivers for support on a national basis will not be sufficient to address geographical disparities in the thresholds applied to the right to access support. The Commission would therefore recommend that a model based around national eligibility criteria is adopted. Such an approach would still allow for best practice to be supported in local areas.

**Is there anything that you would add to the Bill?**

**Kinship carers**

In terms of the definition of a carer within the Bill, we note that kinship carers are not, for the time being, included within its scope, although they may be included by way of Regulations. Most children in kinship care arrangements are not considered “looked after children”, and therefore do not have access to the same forms of State support. Unpaid caring responsibilities have an impact on the autonomy, physical and mental integrity, quality of life, and well-being of carers, whatever the nature of the caring relationship and accordingly all types of carers should be offered equivalent support. In addition, the impact of kinship care arrangements impacts disproportionately on women, in light of which all appropriate measures should be taken to eliminate discrimination against women in this area of economic and social life. The Commission believes that the Bill should take the opportunity to place kinship carers on an equal footing with other carers at this time.

**Is there anything that you would remove from the Bill?**

No

*End.*

**Scottish Human Rights Commission**

---

7 Section 1
8 63% of relative carers are grandmothers, sisters or other female family members according to Nandy, S. Selwyn, J. Farmer, E. Vasley, P. (2011) *Spotlight on kinship care. An analysis of the 2001 census data*. Bristol University: Bristol. Available at: [http://www.bristol.ac.uk/sps/research/centres/hadley/research/](http://www.bristol.ac.uk/sps/research/centres/hadley/research/)
9 Article 13, Convention on the Elimination of All Forms of Discrimination against Women requires “States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular: (a) The right to family benefits; (b) The right to bank loans, mortgages and other forms of financial credit; (c) The right to participate in recreational activities, sports and all aspects of cultural life.”