Carers (Scotland) Bill 2015

COSLA

Introduction

1. COSLA believes that unpaid carers are equal partners in care, acting within the context of a partnership between the individual and the state, which forms the bedrock of our system of health and social care. Without the contributions made by unpaid carers, that system would be unsustainable now and in the future.

2. The past few years have seen advances in support to carers, with improved outcomes across many partnerships. Through the implementation of the Carers and Young Carers Strategies, the Scottish Government and COSLA have introduced a range of measures to help identify and support carers. Other measures, such as the Older People’s Change Fund, have also created opportunities to redesign support arrangements.

3. That said, it is clear that there is significant room for improvement and we should be investing more as a society in supporting carers. Councils and their partners recognise the importance of this community and the need to invest more heavily in prevention over time. To do this, councils and their partners need to be able to support carers flexibly, developing the principles established by the Christie Commission by focusing on coproduction, building community capacity and targeting support to ensure that carers are well supported in their role.

4. Against this backdrop, the new power to support carers introduced through the (Social Care) Self-Directed Support (Scotland) Act 2013, further enables councils to act flexibly in supporting carers to continue in their caring role and have a life alongside caring. Given this strategic context and policy direction, any move to introduce legislation which places further duties on councils (especially where doing so could restrict their ability to act flexibly) must be underpinned by clear evidence that those specific legislative proposals are required to achieve the desired outcomes.

Key messages

- COSLA remains unconvinced that a sufficient case for legislation has been made; however we will work constructively to influence the shape of the new Bill.

- COSLA believes that the Scottish Government has significantly underestimated the cost of introducing a new universal entitlement to assessment for Scotland’s 759,000 carers.

- COSLA believes that the requirement to assess all carers, irrespective of the level of care they provide, or whether they are
likely to be eligible for support, will consume resources that could otherwise have been invested in direct support services.

- COSLA believes the Bill is too detailed and prescriptive as regards operational matters such as assessment, support planning and review. We are concerned that including this level of detail in primary legislation will restrict councils’ ability to develop innovative approaches to support for carers in line with local arrangements for self-directed support.

- COSLA believes the Bill contains Ministerial powers which are unwarranted and could make it more difficult to support carers flexibly. In particular, the power to make regulations establishing national eligibility criteria should be dropped from the Bill as it erodes local democratic accountability for the use of resources and could lead to inequity of entitlement between carers and the cared-for.

**General comments**

5. COSLA does not believe that a sufficient case for moving to legislation has been made. Indeed, many of the arguments that were offered in support of legislation during the Scottish Government’s original consultation on legislative proposals are not persuasive.

6. For example, the dispersal of carers’ rights across different acts was presented as an argument for a single piece of legislation; however, the reality is that most areas of social care provision are covered by a range of statutory provisions. Hence, we do not think that a new bill which is primarily intended to assimilate pre-existing legislation is a good use of parliamentary time.

7. What is more, many of the proposals relate to areas where it is unclear that additional legislation is required to deliver the outcome. For example, information and advice is already available, and while we should always give thought to how this could be improved, legislation is unnecessary to achieve this. It is also argued that new duties on involvement are required for services that are beyond the scope of integration and children’s services (where involvement duties already exist). However, councils already have duties to involve individuals and communities (including communities of interest) in relation to these other services. This is enshrined within existing equalities legislation and is an explicit facet of councils’ duties in relation to best value and community planning. Against this backdrop, it is difficult to perceive a clear case for additional legislation which would overlap, and in some cases duplicate, that which already exists.

8. Finally, councils have been developing improved support to carers as part of their implementation of self-directed support following the enactment of the SDS act in April 2014. This activity, including use of the new power to
support carers contained within the Act, needs time to bed in before the question of whether further duties are required can be properly considered.

9. Despite COSLA’s concerns, we remain committed to working in partnership with the Scottish Government and other key stakeholders to improve outcomes for unpaid carers. To that end, we would wish to engage positively in the parliamentary processes surrounding the Bill and so offer comment below on specific proposals within the Bill which we feel may be impractical and risk making it more difficult to support carers flexibly into the future.

**Bill provisions**

**Definitions**

**Part 1 - Key definitions; Section 1— meaning of ‘carer’**

10. The Bill would replace the current definition of a carer as someone who provides, or intends to provide, ‘a substantial amount of care on a regular basis’, with the much broader definition of someone ‘who provides, or intends to provide, care for another individual’. We understand one of the main aims here is to extend the current duty on assessment to include situations where the cared-for person is not eligible for community care services – that is, where their needs are mainly in relation to health or other factors.

11. While we would support a broader interpretation of need that focuses on those caring for people with healthcare needs only, we would question whether a new duty on councils is appropriate on three main grounds. Firstly, as we understand it, there is currently no legal impediment to providing carers’ assessments in these circumstances and this issue may therefore be a matter of guidance rather than law. Secondly, this definition would include circumstances which are arguably broader than the scope of the policy intent – for example parents of children who are exhibiting behavioural difficulties which they feel are not solely attributable to their age. While we want to improve support to parents, this should be undertaken in a flexible and proportionate way; placing a duty upon councils in the manner proposed would simply compromise councils’ ability to support other carers with greater needs. Thirdly, this broader definition of a carer becomes even more problematic when coupled with the duty to provide a carers assessment (renamed an ‘adult carer support plan’ or ‘young carer statement’). Taken together, the new definition and duty effectively establish a universal entitlement to assessment for a much larger group of people than is currently the case.

12. It is COSLA’s view that the Scottish Government has significantly underestimated the increase in demand the removal of the regular and substantial definition will lead to, and that insufficient resource has been identified to meet that demand. Whereas actual direct service provision for carers will be supply-led (insofar as councils will use eligibility criteria to fairly distribute whatever resource is available), ACSPs will be demand-led (insofar as the Bill will establish a universal entitlement to assessment for
all carers). Councils will have no way of managing the demand for ACSPs which will come from among Scotland’s 759,000 unpaid carers.

13. Clearly not all of Scotland’s carers will come forward for assessment; however, as has been the case with other universal entitlements, promotion of a new entitlement to an adult carer support plan for all carers will inevitably induce demand that was not manifest before. Further details regarding COSLA’s views on the Scottish Government’s demand forecasts and cost estimates are provided in COSLA’s submission to the Finance Committee. Notwithstanding the issue of resources, there are a number of policy concerns regarding the extension of duties on assessment which are outlined below.

Assessment
Part 2. Adult Carer Support Plans (ACSP) and Young Carer Statements (YCS); Sections 6 and 11 - Duty to prepare ACSPs / YCSs.

14. The Bill proposals effectively extend the duties on assessment to cover all carers and move away from the ‘regular and substantial’ test. Councils recognise that there is a need to invest in prevention if we are to manage future demand, and that a key part of this is improving support to carers. However, the proposal to mandate that a formal assessment is undertaken for all carers, irrespective of the level of need, runs counter to the requirement to effectively target resources towards need. This carries the risk that councils are forced to invest scarce resources inappropriately and may result in carers having unrealistic expectations about the level and type of support that can be provided. It is recognised that this measure is in part being proposed as a way to address low uptake of carers’ assessments and that some carers report having to wait significant amounts of time for an assessment. However, difficulties in responding to requests quickly due to lack of resources is a separate issue from low uptake of carers’ assessments in the first place and requires a different response.

15. Currently local authorities have a duty to conduct carers’ assessments upon request from those carrying out regular and substantial care. In practice, the assessment process for the cared-for includes consideration of the carer’s input and needs, and presents an opportunity to agree whether a further stand-alone carer’s assessment is required. Many carers report that the assessment process and support provided to the cared-for is sufficient to also meet their needs as a carer, and either do not request, or actively decline, a separate carer’s assessment.

16. Councils recognise that they need to improve their recording of discussions that do not result a request for an assessment (or result in an offer being declined) and that there is a need to raise awareness among both staff and carers in terms of carers’ assessments. This is already being undertaken through the measures described above, and the imminent agreement of a Carer’s Rights Charter will deliver further improvements. Introducing further duties on assessment under these circumstances would do little to improve uptake and nothing to shorten the time taken to conduct assessments. In fact it could be argued that a
universal entitlement to assessment, irrespective of the level of care provided, could worsen the situation by adding a layer of bureaucracy around assessments which actually diverts resources away from the business of conducting the assessments themselves.

On balance, COSLA is comfortable with the proposal to re-visit the current legal definition of a carer with a view to including those who care for people with healthcare needs only. However, the definition should continue to be limited to those who provide, or intend to provide ‘a substantial amount of care on a regular basis’.

17. The Bill also replaces the term ‘carer’s assessment’ with ‘adult carer support plan’ (ACSP) and ‘young carer statement’ (YCS); the policy memorandum presents this as responding to concerns about the stigmatising effect of the current language of ‘assessment’ which can be seen as referring to an assessment of a carer’s ability to care. Indeed, some carers say they feel this can be seen as threatening or judgemental. While we understand this issue, we think it is primarily a practice and culture issue rather than a semantic issue. The solution lies in empowering carers to become equal partners in care rather than simply altering the description of the process. As councils and their partners move forward with further implementing self-directed support (SDS), there is an increasing shift away from deficit models towards outcomes-focused dialogue about what the carer wants to achieve. This is described in different ways as councils develop and consult on local approaches to SDS, and it is questionable whether there is a need to legislate to establish one particular term over another.

18. Those points aside, there are risks associated with a legislative requirement to adopt the term ‘Adult Carer Support Plan’. There is an important conceptual distinction to be made between ‘assessment’ and ‘plan’. Whereas an ‘assessment’ gives consideration to need, a ‘plan’ assumes it. The initial process that is to be undertaken is the identification of eligible need; even if a new duty to support carers is introduced, it will still be within the context of an eligibility framework and therefore not all assessments will identify need that is eligible for the provision of services. The term ‘Adult Carer Support Plan’ will raise expectations in this respect and does not allow for sufficient separation between the concepts of assessment and care and support planning. While establishing a universal entitlement to an ‘Adult Carer Support Plan’ undoubtedly has political currency, it is questionable whether it is a justifiable use of scarce resources to assess all carers irrespective of the burden of care that they take on or the level of their own need.

19. The Bill places a duty on councils to prepare a ‘young carer statement’ (YCS) for all young carers, even if the young carer also has a child’s plan under Children and Young People (Scotland) Act (which requires that a child’s plan is prepared for children with an identified wellbeing need). The effect of the Carers Bill provision is that this group would then have two support plans running in parallel. COSLA is concerned this will engender a siloed approach that will make it harder to undertake co-ordinated planning
for children and young people, and ultimately fails to see children as a child first and a carer second. In line with Getting It Right for Every Child, children should have their needs as a child considered and appropriate support put in place to ensure they are safe, healthy, achieving, nurtured, active, respected, responsible and included.\(^1\) Indeed, draft guidance to support the Children and Young People Act states that one of the main purposes of the Act is to improve outcomes for children by ‘ensuring that a single statutory plan, the Child’s Plan, is prepared for every child who needs one’.\(^2\) The emphasis here is quite rightly on the child’s needs and outcomes being paramount, with what gives rise to them being a matter for bespoke support co-ordinated through a single child’s plan.

20. A counter argument to the concerns raised here is that not all young carers would have a child’s plan and so the issue of having two plans running in parallel would not arise in all cases. COSLA would challenge this on two counts: firstly, a child’s plan is required for children with an identified wellbeing need and in many (if not most) cases, being a child who is carrying caring responsibilities would be seen as giving rise to a wellbeing need; secondly even if this situation were only to arise in small number of cases, it would still be unacceptable for those children.

21. We note that the Bill provides for a young carer to be able to request a YCS, and that they are not currently able to make a similar request to have a child’s plan. However, the issue here is about at what level of need support planning is triggered, not whether it should take the form of a distinct plan for young carers. Therefore the focus here should be on ensuring GIRFEC arrangements are functioning to consider the needs of a child (including those arising from their caring responsibilities), rather than on introducing a parallel layer of planning.

**GIRFEC requires that we take a co-ordinated approach to meeting the needs of children and young people. The Bill’s provision of a separate YCS that would sit alongside a child’s plan, runs counter to this approach and fails to acknowledge that young carers should be considered primarily as a children and young people first. COSLA therefore believes that where a child’s plan is in place, needs arising from a child’s caring responsibilities should be part of that plan.**

**Support planning**

Part 2 – ACSPs and YCSs; Sections 7 – 9 and 12 - 14 – Identification of outcomes and needs, content and review of ACSPs and YCSs.

22. The Bill proposes to establish a Ministerial power to make regulations about the identification of carers’ ‘personal outcomes’ and the need for support. The Bill currently defines personal outcomes (Part 1, sections 4 and 5) as those which enable carers to continue to care. It also establishes a Ministerial power to re-define personal outcomes in regulations. We understand the policy intent here is to give Ministers the power to establish outcomes frameworks for carers, similar to the establishment of health and

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\(^1\) [www.gov.scot/Topics/People/Young-People/gettingitright](http://www.gov.scot/Topics/People/Young-People/gettingitright)

wellbeing outcomes and ‘SHANARI’\(^3\) outcomes for children and young people through regulations supporting the Public Bodies Act and Children and Young People Act respectively.

23. While COSLA is committed to an outcomes approach, we do not agree that Ministerial powers to establish dedicated carers’ outcomes are required in this case for three main reasons. Firstly, because outcomes for carers are already set out within secondary legislation insofar as the national health and wellbeing outcomes apply to carers as citizens, and SHANARRI outcomes to young carers as children. Layering additional frameworks on top of these would act as a barrier to co-ordinated strategic planning and would arguably add little - inasmuch as it is not clear in what way outcomes for carers as individuals are expected to be substantively different from outcomes for citizens or children. Indeed, it could be argued that our focus should be on ensuring a carer’s right to expect these outcomes as a citizen or child is respected and upheld.

24. Secondly, both the national health and wellbeing and SHANARRI outcomes are high-level outcomes intended to guide strategic planning; they are not intended to replace bespoke consideration of personal outcomes within the context of personalised support planning. To define personal outcomes for carers within legislation runs counter to the ethos of empowerment and personalisation which has been the policy direction for social care for some time.

25. Thirdly, the establishment of national personal outcomes for carers raises the question of frameworks for other groups. If personal outcomes for carers are to be set out in law, then why not for older people or people with mental health problems, or other groups? In COSLA’s view, a policy direction where central government increasingly defines, in law, what personal outcomes are appropriate for different citizen groups should be viewed with caution. Such an approach equates to excessive centralisation and risks stifling collaborative approaches to support planning, including those currently developing through SDS.

**COSLA believes that carers and young carers have a right to expect existing high-level wellbeing outcomes to be delivered for them as citizens and children. Personal outcomes for carers should be a matter of agreement with the carer, and not a matter of law.**

26. Details of the form and content for the ACSP/YCS are also prescribed on the face of the Bill. Such prescription has previously been a matter of guidance, for example in relation to self-directed support. To include this level of prescriptive detail in primary legislation appears excessive and will restrict the ability of councils, the Scottish Government, and other stakeholders to evolve our approach to these processes in the future. Furthermore, it cuts across local activity in relation to self-directed support and Getting It Right for Every Child (GIRFEC), where assessment systems and processes are being developed as part of a move towards outcomes-

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\(^3\) Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible and Included.
based approaches. Carers should be able to access these local systems and processes according to their need, and within the context of a holistic approach to supporting families; by prescribing arrangements for carers the Bill risks creating a parallel system which has a negative impact on holistic support planning for carers and those they care for.

27. The Bill also establishes a Ministerial power to make regulations regarding the procedure for and frequency of reviews. Such prescription has previously been restricted to legislation conferring powers to detain individuals, for example mental health and criminal justice acts. To prescribe review timescales in these circumstances seems excessive and could drive behaviour that runs contrary to the policy intent, for example by forcing councils to adopt a ‘tick-box’ approach to reviews simply to meet the statutory timescale. This limits the ability of social services staff to prioritise workloads according to need and could result in delays to other tasks, such as assessment for the cared-for, as resources are diverted to meet regulatory targets for carers’ reviews.

28. To tie how identifying outcomes, undertaking support planning, and potentially review timescales, should be approached for one particular group to primary legislation is overly-prescriptive and risks a one-size-fits-all approach to carers. This will inevitably result in inflexibility and a poor fit between support planning for carers, and the range of approaches developed locally under SDS and GIRFEC. COSLA therefore believes that approaches to carers’ assessments, support planning and reviews should be a matter of guidance rather than primary legislation.

**COSLA believes that councils should ensure approaches to carers’ assessments achieve a good fit with local arrangements for self-directed support (SDS), evolve with SDS over time, and take account of national advice on assessment which is set out in guidance rather than primary legislation.**

Part 2 – ACSPs and YCSs; Section 16 – Continuation of Young Carer Statement

29. The Bill requires that a YCS remains in place once a young carer reaches the age of 18 until the point that an ACSP is put in place. While we recognise the need to improve individuals’ and families’ experience of transitions from children’s to adult services, this could result in unplanned and unmanageable increases in demand on children’s services. It is not clear whether local authorities would be under a duty to continue to provide the support attached to the YCS (given that once a young person reaches 18 they may no longer be eligible for those services); however, irrespective of this point, the Bill provision will certainly result in an expectation of continued access to children’s services which local authorities will be unable to meet without freeing up resource by withdrawing support from other people or service areas.

30. More importantly, the Bill provision will make it difficult to take a holistic approach to meeting children and young people’s needs in that transition planning needs to be undertaken as part of a holistic assessment of need
which considers the individual as a child first, and not just a carer. Having a different arrangement for a sub-set of needs could mitigate against that holistic approach and transition planning within this context should be a matter for guidance rather than law.

**COSLA believes that councils should ensure approaches to transition from child to adult services consider the needs of the child in a holistic manner and achieve a good fit with local arrangements for self-directed support. Arrangements for young carers should be developed to ensure that the needs of the individual as child remain paramount and guidance on young carer assessments should reflect this.**

**Carer and cared-for residing in different local authority areas**
Part 2 - ACSPs and YCSs; Section 17 – Responsible authority

31. The Bill provides that the local authority where the carer resides will be responsible for arranging the ACSP (or YCS) and for meeting the cost of any support provided. However, the responsible local authority may enter into local arrangements with the authority where the cared-for person resides, whereby assessment and support can be provided by that authority, where deemed appropriate, and costs recovered from the responsible local authority.

32. In our response to the Scottish Government’s original consultation on the proposal to introduce legislation in 2014, COSLA expressed the view that the act of introducing legislation that stipulates which local authority should be responsible for a carer’s assessment and support constitutes adopting a ‘one-size-fits-all’ approach and risks preventing councils from being able to deliver a sufficiently flexible approach. While it would still be our preference that councils reach local agreement on the services to be provided (and which council should pay for them) we recognise that this may not be a viable option when operating under a duty to support carers, rather than a power. Indeed, being able to take a flexible approach to such cross-boundary issues was one of our reasons for expressing a preference for continuing with the power to support.

33. Should the Bill nonetheless result in a duty to support, and accepting this would bring a requirement to be clear about which local authority these duties fall on, it is our view that it makes most sense for the responsible local authority to be the one where the cared-for resides. Indeed the proposed duty to support carers is explicitly defined in the Bill as support to achieve ‘outcomes that enable carers to continue to provide care for the cared-for’ (section 4 (1)) – therefore the support required by a carer is to a large extent defined by the needs of the cared-for and how these are being met. In a very practical sense, it is difficult to see how a carer’s assessment could be effectively undertaken independently from the cared-for’s, especially given that the resources available to support he cared-for will have the most impact on the carer’s needs. This also leaves the carer in the position of having to deal with two local authorities, one of whom will have no direct relationship with the person they are caring for.
34. We accept that the Bill provision allows for local authorities to enter into different arrangements by agreement, indeed it is likely that this would be exercised frequently given the points outlined above. In this sense, the Bill will make what would normally be an exception (local agreements to delegate responsibilities differently) the most likely outcome. On balance it may therefore make more sense and lead to a better experience for carers, for the responsible local authority to be that where the cared-for resides (with the option to enter into different arrangements by agreement).

_COSLA believes that in order to support holistic planning for carers and those they care for, the responsible local authority should be the one where the cared-for resides._

**Eligibility**

*Part 3 - Provision of support to carers; Sections 19 – 21- Eligibility criteria*

35. The Bill places a duty on councils to provide support to carers to meet their eligible needs, and COSLA acknowledges that the initial approach to eligibility criteria set out within the Bill provides for criteria to be set locally. Indeed, councils already publish eligibility criteria relating to those they currently have a duty to support, and involve representatives of service-users and carers in ongoing work in this area. Section 20 of the Bill specifies timescales relating to the publication of criteria and that Ministers will make regulations regarding the timescales for review. Irrespective of the reasonableness of the timescales specified, their prescription on the face of primary or secondary legislation will limit councils’ ability to take a strategic approach to the consideration of eligibility across social care as a whole, for example through alignment with other review processes. On balance, it may be more appropriate to give consideration to these issues within guidance, rather than regulations or the Bill itself.

36. Part 3, Section 21 (2) of the Bill establishes a power for Ministers to make regulations setting out national eligibility criteria, which are defined as ‘the criteria by which each local authority must assess whether it is required to provide support to carers to meet carers’ identified needs’. There are two issues with this provision - firstly, the policy of Ministers defining eligibility undermines councils’ democratic responsibility for the use of resources; and secondly, defining eligibility at a national level removes councils’ ability to manage demand that varies locally. Moreover, the proposed duty is ill-framed in that it is not clear whether it would in fact extend to a Ministerial power to define eligibility *thresholds*, although we understand this to be the policy intent and that this would be clarified in regulation.

37. Councils already operate eligibility frameworks, consisting of eligibility criteria and locally-set eligibility thresholds. The distinction between criteria and thresholds is an important one, insofar as criteria establish the measures used to assess and categorise need, and thresholds define at what *level* need will be considered eligible for the provision of support. Both are important for transparency, but the ability to set thresholds locally is vital to ensure councils are able to manage demand, which is increasing and varies from council to council, within the context of finite resources.
38. At present, section 12 the 1968 Social Work Act requires councils to assess need and decide whether that need calls for the provision of services. Eligibility frameworks (consisting of both criteria and thresholds) are simply the current mechanism by which councils fulfil this duty. Moving away from the approach within the 68 Act and introducing Ministerial powers to set eligibility ‘criteria’ on the face of the Bill, not only creates a confused legislative position, it potentially gives carers a level of national entitlement that would exceed that of the cared-for and therefore raises equality issues. Moreover, it would prevent councils from being able to adjust eligibility thresholds as a means to apportion finite resources according to prioritised needs in a transparent manner. A national eligibility threshold would therefore interfere with the management of shifting local need, and it would also cut across local authorities’ democratic accountability for local decisions about the use of resources.

_COSLA believes that a Ministerial power to make regulations setting out national eligibility criteria should be dropped from the Bill as it erodes local democratic accountability for the use of resources and could lead to inequity of entitlement between carers and the cared-for._

_Duty to support carers_

_**Part 3 - Provision of support to carers; Sections 22 – 23 – Duty to provide support**_

39. While COSLA supports local approaches to eligibility criteria (indeed many councils already apply such criteria when exercising their power to support carers), three key risks emerge when combining this with a new duty to support carers.

40. Firstly, irrespective of where councils chose to set the ‘bar’ for eligibility, the effect is likely to be that of polarising how resources are used by attracting investment to one particular area of the spectrum of need. We could either find resources gravitate towards those with the most acute support needs – and risk those services that are designed to prevent the escalation of need – or vice versa. Hence a duty to support, which necessarily requires an associated system for deciding eligibility, restricts councils’ ability to invest flexibly across the spectrum of need, including through developing assets-based approaches to building community capacity.

41. Secondly, there is a risk that a duty to support will raise expectations about an improved offer of support which councils will be unable to meet due to insufficient resource being made available. We have concerns about the method by which estimates contained within the financial memorandum have been calculated, both in terms of the number of carers likely to be eligible for support, and in terms of what that then means for the level of support that can be provided within the Scottish Government’s cost estimates. Moreover, although the ‘per head’ financial amounts presented in the financial memorandum are simply an illustration of how far a given budget is estimated to stretch, there is a very real risk carers will perceive this as an entitlement. Should carers come forward more quickly or in greater numbers than anticipated (as we believe they will), the total budget
would not support allocations at that level and councils would not be able
to meet these increased expectations.

42. Thirdly, these issues also need to be considered alongside the new
universal entitlement to an ACSP and questions about the balance in
investment we want to achieve across assessment and support. While
direct support will be supply-driven (insofar as councils will use eligibility
criteria to fairly distribute any additional resource), provision of ACSPs will
be demand-led (insofar as the Bill will establish a universal entitlement to
assessment for all carers). Demand-led provision has the potential to
require unanticipated levels of resource, as has been the case with
guardianship applications, and demand for ACSPs is likely to be significant
due to expectations of an improved offer of support. However, the ACSP
process will not always lead to actual provision of support where carers do
not meet local eligibility criteria. Within the context of a finite amount of
resource being available to support implementation of the Carers Bill,
careful consideration of the appropriate balance between investment in
assessment processes, versus investment in actual support, is required.
Resource invested in assessment processes is resource that could have
been invested in direct support.

43. A counter-argument to the assertion that ACSPs do not always result in
support, is that even where a carer does not meet eligibility criteria the new
ACSP will always result in a support plan that includes information and
advice and signposting to general services at minimum. However,
 Improved information and advice and signposting to general services can
be achieved by other more cost-effective means, such as awareness-
raising campaigns, freeing up resources for investment in actual direct
service provision and support.

44. These issues are further compounded by the current regulations requiring
the waiving of charges to carers. Being unable to seek a means-tested
contribution to the cost of support from the most well-off reduces the
overall quantum of resource available, meaning less can be invested in
meeting lower-level needs (as resource is inevitably consumed by the
requirement to meet those with the most critical needs).

**COSLA believes that a duty to support carers risks polarising resources
and restricting councils’ ability to invest flexibly in support for carers,
across the spectrum of need, as part of an approach to community
capacity building.**

**Breaks from caring**

Part 3 - Provision of support to carers; Sections 23 – 23 – Breaks from caring

45. The Bill places a duty on local authorities to consider whether support
provided to a carer (in response to eligible need) should include a break
from caring. While this is reasonable in policy terms, it is not clear why
legislation is required. Firstly, because provision of particular types of
support is driven by service-user preference, availability and eligibility - not
‘consideration’. Secondly, because local authorities already have an
obligation under SDS (which also applies to carers) to consider whatever support a person wishes in order to achieve their outcomes.

46. This Bill also establishes a Ministerial power to make regulations which define what constitutes a break from caring, and to decide whether such support should be considered as support to the carer or the cared-for person. In policy terms we would question whether it is appropriate for such matters to be the subject of regulation. In reality support is often provided to benefit both the carer and the cared-for, with the benefits to each being the subject of discussion and agreement with the carer and cared-for, and therefore rightly a matter of practice rather than law. However, we understand that this measure is required in order to allow further refinement of the waiving of charges to carers regulations, and we are continuing to work with the Scottish Government, carers organisations and other stakeholders in this area.

**Carer involvement**

Part 4 – Carer Involvement; sections 25 and 27 – Duty to involve carer in carer services and care assessments

47. The Bill establishes a duty to involve carers in carers’ services, including involvement in considering what needs might call for the provision of services, what and how services might be provided to meet those needs, and how they might be evaluated. The duty applies to services provided to carers in relation to the care they provide, and to cared-for persons in relation to the care they receive. There are two exemptions to the duty – services provided under a children’s services plan and services provided under functions delegated via the Public Bodies Act – in virtue of the fact that there are already duties on involvement with regard to these areas.

48. Given that the majority of services provided to carers and young carers will be covered by these two exclusions, it is questionable whether there are a significant enough amount of other services to warrant the introduction of this measure. Setting this question aside for the moment, councils already have duties to involve individuals and communities (including communities of interest) in relation to these other services. This is enshrined within existing equalities legislation and is an explicit facet of councils’ duties in relation to best value and community planning.

49. Against this backdrop, it is difficult to perceive a clear case for additional legislation which would overlap, and in some cases duplicate, that which already exists. That is not to say that councils and their partners should not focus on improving community engagement across all communities. The principles established by the Christie Commission call for genuine co-production, which requires genuine subsidiarity – ensuring that decisions are taken as locally as possible, by the communities they will affect. COSLA’s vision for local government includes working with carers co-productively, building community capacity and devolving decision-making. Layering further legislation on top of these pre-existing duties and new policy developments would add little and risks a tick-box approach which is overly-focused on consultation to the detriment of co-production and subsidiarity.
50. The Bill also amends the 68 Act to place a wider duty on councils to take account of the views of the carer on the extent of needs of the cared-for person, whether those needs call for the provision of services, and how such services should be provided. This simply reflects current best practice - it is widely acknowledged that unpaid carers play a vital role, without which our health and care system would simply collapse, and community care assessments therefore necessarily have to take account of these issues in order to result in a viable support plan. Furthermore, although resolution through discussion and agreement is always the preferred approach, there are systems in place for carers to raise issues if they feel their views have not been taken into account. Against this backdrop, and insofar as the purpose of legislation should be to address something that cannot be resolved by other means, it is not clear that this provision is required.

COSLA believes in subsidiarity - that decisions should be taken as locally as possible, by the communities they will affect. Further duties on consultation will duplicate existing duties in relation to engagement, and ultimately risk focusing activity on consultation to the detriment of co-production, engagement and the development of subsidiarity.

Local carer strategies
Part 5 – Local carer strategies; sections 28 – 30
51. The Bill places a duty on local authorities to prepare a local carer strategy, sets out the information strategies must contain, and prescribes consultation arrangements and publication and review timescales. Again, it is unusual to prescribe the form, content and review arrangements for a strategy in primary legislation. This is normally a matter of guidance, or, in cases relating to structural change such as health and social care integration, regulation. Fixing these matters in primary legislation will restrict both councils’ and the Scottish Government’s ability to evolve our approach to these processes in the future.

52. Furthermore, the Bill specifies that strategies must include the intended timescales for preparing ACSPs (and YCSs). This is an operational matter and the value of its inclusion in carers’ strategies is questionable. There is a risk that these estimates will be difficult to arrive at and actual times will be impacted by fluctuations in demand and/or workforce availability, making it likely that estimates would constantly have to be revisited in order to have any degree of accuracy. Including estimates within carers strategies will simply raise expectations amongst carers that are unlikely to be met, whilst shifting the focus away from ongoing monitoring of timescales and benchmarking of performance which should be undertaken at the operational level on a cyclical basis.

53. More importantly, the inclusion of intended timescales within strategies risks driving behaviour which is counter to the policy intent by focusing on an arbitrary target. The resulting pressure to meet this timescale risks engendering a ‘tick-box’ approach to assessment, simply to meet the target. This impacts on the ability of social services staff to prioritise
workloads according to need and could result in delays to other tasks, such as assessment for the cared-for.

**COSLA believes that the form and content of carers strategies should be a matter of guidance, rather than law, in order that councils are able to ensure co-ordination with other local strategies and evolve our approach to strategic planning over time.**

**Information and advice**

*Part 6 - Information and advice for carers; section 31 and 32*

54. The Bill extends the current duty on councils to provide information and advice to those providing regular and substantial care, to include all carers. It further specifies what this information and advice should cover, and that it must include a short breaks statement. While COSLA recognises it is vital that carers are able to access information and advice which can support them in their caring role, we do not agree that a legislative route is required to deliver this outcome. The SDS act already places a duty on local authorities to ensure the provision of independent information and advice in relation to self-directed support. More general information and advice is also already available, including that commissioned specifically for carers and, while we should always give thought to how this could be improved, further legislation is arguably unnecessary to achieve this.

**COSLA believes the Bill provisions duplicate councils’ existing duties to secure information and advice that meets the needs of people accessing self-directed support, including carers, and that our focus should be on improving the quality of this provision.**

**Conclusion**

55. COSLA is clear that we should be investing more as a society in supporting carers. Councils and their partners recognise the importance of this community and the need to invest more heavily in prevention over time. However, against a policy backdrop which focuses on innovation, capacity-building and co-production, COSLA is concerned that many of the Scottish Government’s legislative proposals are impractical and will make it difficult to support carers flexibly into the future. COSLA is therefore not convinced that a sufficient case for moving to legislation has been made.

56. Despite these concerns, COSLA wishes to work constructively with the Scottish Government and Scottish Parliament to influence the shape of the new Bill. To that end, we have outlined key areas where we feel the Bill requires amendment in order to secure the best outcomes for carers and those they care for. We hope this will be helpful to the Committee’s consideration of the Bill and would welcome the opportunity to provide further input as required.