



# SCOTTISH EXECUTIVE

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Health Department  
Directorate of Service Policy and Planning

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## Circular No CCD 10/2002

Local Authority Chief Executives  
Local Authority Directors of Social Work/Chief Social Workers  
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Your ref:  
Our ref: ATZ/5/7/6

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NHS Board Chief Executives  
NHS Trust Chief Executives  
Health and Social Work Professional Bodies  
Voluntary Sector Organisations

Dear Colleague

## COMMUNITY CARE AND HEALTH (SCOTLAND) ACT 2002 NEW STATUTORY RIGHTS FOR CARERS: [DRAFT GUIDANCE](#)

### Introduction

1. This circular provides [draft guidance](#) to local authorities, the NHS and other statutory service providers on implementing the provisions to support carers contained in the Community Care and Health (Scotland) Act 2002.

2. Sections 8 to 12 of the Community Care and Health (Scotland) Act 2002 ("the 2002 Act") came into force on 1 September 2002. They introduce significant new measures to support informal or unpaid carers who provide care for family members, friends or neighbours. Local authorities have the lead responsibility for implementing these measures, as the agency with statutory duties for assessing the needs of carers and the people they care for in the community. With the introduction of Single Shared Assessment (SSA) under the Joint Future agenda, however, health and other professionals are increasingly involved in assessments of service users and carers. This guidance is therefore intended as a tool for all professionals, managers and staff in local authorities, the NHS and other statutory agencies involved in supporting carers. Carers affected by these provisions may be:

- adults caring for adults;
- young carers caring for adults or another young person;
- carers of disabled children, whether the carer is a parent or not.

3. This draft guidance has been drafted in discussion with representatives of voluntary sector organisations, other representatives, CoSLA/ADSW and the NHS. It is now issued on a consultative basis, and comments are invited on any aspect of it. We plan to issue a final version of this guidance in March/April 2003.



**The Executive welcomes comments on this draft guidance by 14 February 2003.**  
**Please send comments by email if possible to [Carersguidance@scotland.gsi.gov.uk](mailto:Carersguidance@scotland.gsi.gov.uk),**  
**or by fax or post to Hayley Brown (address at head of this circular).**

## Policy Context

1. Carers play a unique role in the overall provision of care in the community. They are usually the main care-providers for the person they look after, and have extensive knowledge and expertise about the needs of the person they care for. Supporting carers is a key priority for the Scottish Executive under its [Strategy for Carers in Scotland](#). The Executive's policy is that carers should be recognised and valued as partners with other care-providers, and supported to enable them to continue caring as much and as long as they wish.
2. Supporting carers is directly linked to the Executive's commitment to social inclusion and equality. Carers play a vital role in our communities, yet as a result of their caring they are often at risk of becoming isolated, or unable to take up opportunities. Supporting and involving carers is also an integral feature of the Executive's wider policy approaches to change the way social care and NHS services are designed and delivered, through the Joint Future agenda, free personal and nursing care for older people, Patient and Public Involvement initiatives and the development of Community Planning.

## Principles of the new legislation

3. The introduction of new legislation to allow carers' needs to be met more directly was one of the commitments in the Strategy for Carers in Scotland. The fundamental principle underlying the new provisions is that carers should be recognised and treated as **key partners in providing care**. The recognition of carers as **partners** rather than service users should underpin all support given to carers and the people they care for.
4. A second principle underlying the new legislation is that carers, like all providers of care, need adequate **resources** to enable them to continue giving care. For carers, resources may take the form of other caring services to complement their own support for the cared-for person, or support or advice provided directly to the carer.

## Main changes made by 2002 Act

5. The key changes the 2002 Act makes for carers are summarised below:
  - substantial and regular adult carers are entitled to an assessment of their ability to care ("carer's assessment"), independent of any assessment of the person they care for;
  - for the first time, young carers under 16 now have the same right to an assessment;
  - local authorities have a duty to inform eligible carers of their right to an assessment;
  - local authorities have a duty to take account of the care provided by a carer, and the views of the person in need and their carer before deciding what services to provide;
  - Scottish Executive Ministers now have the power to require NHS Boards to draw up carer information strategies for informing carers of their rights under the new legislation.

Further details of these changes and advice on implementation is contained in the attached draft guidance.

### **“Substantial and Regular”**

6. The new provisions in the 2002 Act amend and extend existing provisions in the Social Work (Scotland) Act 1968 and section 24 of the Children (Scotland) Act 1995. In particular, they build on the existing concept that carers are entitled to an assessment if they provide or intend to provide “a substantial amount of care on a regular basis”. The terms “substantial” and “regular” are not defined in the legislation, giving local authorities the discretion to interpret them to help carers who most need support. The draft guidance offers advice on this. We understand that carers’ representatives also intend to discuss with local authority representatives how to ensure equitable and consistent interpretation of these terms.

### **Young Carers**

7. The legislation introduces a new right to assessment for carers under the age of 16. The Scottish Executive recognises that some children and young people have caring responsibilities, and it is essential that they are identified and properly supported. However, statutory and voluntary agencies should take great care that in supporting young carers, they do not allow them to become trapped in their caring role or “institutionalised” as carers.

8. Children and young people must be protected from inappropriate forms and levels of caring. Close joint working between local authority children’s services, community care services, education services and the NHS, and co-operation with schools and youth workers, are essential for a full understanding of the young person’s needs, and in order to provide appropriate support to the young carer and their family.

### **Implications for NHS**

9. The 2002 Act introduces for the first time a statutory role for the NHS in relation to carers. Section 12 of the 2002 Act enables Ministers to require NHS Boards to prepare and submit to the Scottish Executive “Carer Information Strategies” for informing carers of their right to assessment. Separate guidance on these Strategies will issue when Ministers decide to issue requirements to NHS Boards to implement this provision.

10. Some NHS Boards have already started work on initiatives of this kind to inform and support carers, in partnership with local carers’ groups and local authorities. The Executive welcomes this approach, and would be happy to comment on or offer advice on any work of this kind that NHS Boards and local partners are already taking forward.

### **Resources**

11. Support for local authority expenditure on supporting carers is provided through the general local government settlement. The settlement for the period 2001-02 to 2003-04 provided local authorities with significant additional resources to help develop support services for carers under the *Strategy for Carers in Scotland*, and to increase the availability of respite care. The new settlement for the period 2003-04 to 2005-06 includes provision to maintain these enhanced services and to continue to develop respite services. The Community Care and Health (Scotland) Act 2002 also allows local authorities and NHS Boards to develop joint management and budgeting for care

services. This should assist local authorities and their partners to develop further the level and co-ordination of support provided to carers, in line with the Joint Future and Carers Strategy agendas.

12. Agencies will wish to ensure that staff are properly trained on these new provisions and on carer-related issues. We expect this to be absorbed within general training budgets.

### **Monitoring**

13. The Executive plans to develop better monitoring of the effectiveness of support provided to carers, in discussion with local authorities and carers' representatives. As part of this process the Executive will keep under close review the impact of the new legislation.

### **Action**

14. Local authorities and NHS Boards are asked to distribute this draft guidance as soon as possible to all staff directly involved in supporting carers and the people they care for. NHS Boards are also asked to disseminate this guidance to LHCCs in their area.

15. Local authorities and Health Boards are also asked to provide any comment on this draft guidance to the address in paragraph 3 of this letter by 14 February 2003 . Final guidance will be issued in March/April 2003.

### **Enquiries**

16. Any comments or enquiries on the draft guidance should be addressed to Hayley Brown Scottish Executive Health Department, Community Care Division 2, 2<sup>nd</sup> Floor East Rear, St Andrew's House, Edinburgh, EH1 3DG (telephone: 0131 244 4040 or email [hayley.brown@scotland.gsi.gov.uk](mailto:hayley.brown@scotland.gsi.gov.uk)). This circular is also available from [www.show.scot.nhs.uk/sehd/ccd.asp](http://www.show.scot.nhs.uk/sehd/ccd.asp) .

Yours sincerely

**J A RENNIE**