

# COMMUNITY CARE & HEALTH (SCOTLAND) ACT 2002 DRAFT GUIDANCE ON SECTIONS 8-12: CARERS

***Click on the page number in the contents table to go directly to that page***

## CONTENTS

1. INTRODUCTION .....	4
2. POLICY CONTEXT.....	6
3. KEY PRINCIPLES .....	8
4. CHANGES UNDER THE 2002 ACT .....	11
5. INFORMING CARERS OF THEIR RIGHT TO ASSESSMENT .....	13
6. ASSESSMENT OF CARERS.....	15
7. AFTER THE ASSESSMENT.....	21
8. CARERS OF CHILDREN WITH DISABILITIES .....	25
9. YOUNG CARERS.....	28
10. NHS CARER INFORMATION STRATEGIES .....	33
11. MONITORING & EVALUTATION.....	34
ANNEX A.....	35
SECTIONS 12A, 12AA & 12AB OF SOCIAL WORK (SCOTLAND) ACT 1968.....	35
SECTIONS 23 & 24 OF CHILDREN (SCOTLAND) ACT 1995.....	39

**COMMUNITY CARE & HEALTH (SCOTLAND) ACT 2002  
DRAFT GUIDANCE ON SECTIONS 8-12: CARERS**

***DETAILED TABLE OF CONTENTS***

<b>1. INTRODUCTION</b> .....	<b>4</b>
1.1 What is the guidance for?.....	4
1.2 Who is the guidance for?.....	4
1.3 Links with other Guidance .....	4
1.4 Consultation on draft Guidance.....	5
<b>2. POLICY CONTEXT</b> .....	<b>6</b>
2.1 Strategy for Carers in Scotland .....	6
2.2 Links with Other Policies .....	6
2.3 Equality and Social Inclusion.....	6
2.4 Partnership with the Independent Sector.....	6
<b>3. KEY PRINCIPLES</b> .....	<b>8</b>
3.1 Carers as Key Partners .....	8
3.2 Resourcing Carers .....	8
3.3 “Ability to Care” .....	8
3.4 “Substantial and Regular” .....	9
<b>4. CHANGES UNDER THE 2002 ACT</b> .....	<b>11</b>
4.1 What the Act Does .....	11
4.2 Relationship To Existing Legislation.....	11
<b>5. INFORMING CARERS OF THEIR RIGHT TO ASSESSMENT</b> .....	<b>13</b>
5.1 What the 2002 Act does .....	13
5.2 Who to inform .....	13
5.3 What information to provide .....	13
5.4 How to inform .....	14
<b>6. ASSESSMENT OF CARERS</b> .....	<b>15</b>
6.1 Guidance for practitioners.....	15
6.2 What the Act does .....	15
6.3 Right of Carers to Assessment .....	15
6.4 Purpose of Assessment.....	16
6.5 Deciding whether to do an Assessment.....	16
6.6 Cared-for Person refuses an Assessment .....	16
6.7 Links with previous Carers Assessments .....	16
6.8 Links with other Assessments .....	17
6.9 Different Routes to Assessment .....	17
6.10 Carer-centred Assessment .....	17
6.11 Assessment Approach .....	17
6.12 Self-Assessment .....	18
6.13 Tensions Between Carer and Cared-for Person .....	18
6.14 Who should assess?.....	19
6.15 Confidentiality.....	19
6.16 Recording Information .....	20
<b>7. AFTER THE ASSESSMENT</b> .....	<b>21</b>
7.1 What the Act Does .....	21
7.2 Cared-for Person unwilling to accept Assessment or Services .....	21
7.3 Taking account of the Carer’s contribution.....	22
7.4 Taking account of the Cared-for Person and Carer’s views.....	22
7.5 “Reasonable and Practicable” .....	22
7.6 Services provided to Cared-for Person.....	23

**COMMUNITY CARE & HEALTH (SCOTLAND) ACT 2002  
DRAFT GUIDANCE ON SECTIONS 8-12: CARERS**

7.7	Respite Care or Short Breaks .....	23
<b>8.</b>	<b>CARERS OF CHILDREN WITH DISABILITIES .....</b>	<b>25</b>
8.1	What the Act does .....	25
8.2	Policy context.....	25
8.3	Parental responsibilities.....	25
8.4	Links with Other Assessments .....	26
8.5	Multiple Assessments.....	26
8.6	Impact of child with disabilities on siblings.....	26
8.7	Role of schools in the assessment process .....	27
8.8	Changing Needs as Child develops .....	27
8.9	Charging .....	27
8.10	Outcomes.....	27
<b>9.</b>	<b>YOUNG CARERS.....</b>	<b>28</b>
9.1	What the Act does .....	28
9.2	Assessment of ability to care.....	28
9.3	“Substantial and Regular” .....	28
9.4	Links with other Assessments .....	29
9.5	Purpose of Assessment.....	29
9.6	Parents of Young Carers .....	29
9.7	Family focused assessment .....	30
9.8	Deciding whether to assess .....	30
9.9	Young Carer not wanting to be assessed.....	30
9.10	Cared-for Person refuses an Assessment .....	30
9.11	Who should be at the Assessment? .....	30
9.12	Tension between the Young Carer and Parents or Guardian .....	31
9.13	Multi-Agency Assessment .....	31
9.14	Who can assess?.....	31
9.15	Confidentiality.....	32
9.16	Outcomes of Young Carers Assessments.....	32
9.17	Taking account of the carer’s contribution & views .....	32
<b>10.</b>	<b>NHS CARER INFORMATION STRATEGIES .....</b>	<b>33</b>
10.1	What the Act does .....	33
10.2	Purpose of Carer Information Strategies.....	33
10.3	Implementation of Carer Information Strategies .....	33
<b>11.</b>	<b>MONITORING &amp; EVALUTATION.....</b>	<b>34</b>
11.1	Measuring success.....	34
	<b>ANNEX A.....</b>	<b>35</b>
	<b>SECTIONS 12A, 12AA &amp; 12AB OF SOCIAL WORK (SCOTLAND) ACT 1968.....</b>	<b>35</b>
	<b>SECTIONS 23 &amp; 24 OF CHILDREN (SCOTLAND) ACT 1995.....</b>	<b>39</b>

# COMMUNITY CARE & HEALTH (SCOTLAND) ACT 2002 DRAFT GUIDANCE ON SECTIONS 8-12: CARERS

## COMMUNITY CARE & HEALTH (SCOTLAND) ACT 2002 DRAFT GUIDANCE ON SECTIONS 8-12: CARERS

### 1. INTRODUCTION

#### 1.1 What is the guidance for?

1.1.1 This document gives local authorities, NHS bodies and the voluntary sector draft guidance on effective implementation of the provisions affecting unpaid or informal carers contained in Part 1 (Sections 8 to 12) of the Community Care and Health (Scotland) Act 2002 ("the 2002 Act"). These sections of the 2002 Act came into force from 1 September 2002.

1.1.2 The full text of the 2002 Act can be found at [www.scotland-legislation.hms.gov.uk/legislation/scotland/acts2002/20020005.htm](http://www.scotland-legislation.hms.gov.uk/legislation/scotland/acts2002/20020005.htm)

1.1.3 This draft guidance has been produced following consultation with representatives from local authorities, NHS Boards and Trusts, and voluntary sector organisations.

#### 1.2 Who is the guidance for?

1.2.1 This draft guidance is designed as a tool for professionals and managers in local authorities, NHS and other statutory agencies involved in supporting carers, who may be:

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

Statutory agencies should distribute this guidance widely to all staff directly involved with carers and the people they care for. Further copies of the guidance are available from the Scottish Health on the Web website [www.show.scot.nhs.uk/sehd/ccd.asp](http://www.show.scot.nhs.uk/sehd/ccd.asp)

#### 1.3 Links with other Guidance

1.3.1 This guidance offers advice on the *policy* issues raised by the provisions in sections 8-12 of the 2002 Act. It is intended to replace the guidance (pages 3-9) issued in [Scottish Office Circular SWSG 11/96](#), implementing the Carers (Recognition and Services) Act 1995.

1.3.2 Complementary advice on *good practice* issues in supporting carers will be issued early in 2003. The later *good practice* guidance will replace the remainder of SWSG 11/96 once it is available, and will incorporate this guidance in due course.

# COMMUNITY CARE & HEALTH (SCOTLAND) ACT 2002

## DRAFT GUIDANCE ON SECTIONS 8-12: CARERS

### 1.4 Consultation on draft Guidance

1.4.1 This guidance is issued in draft form initially, to allow all those affected by it an opportunity to comment on it. Following this period of consultation, the guidance will be revised as appropriate and reissued in its final form.

**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).**

1.4.2 The provisions in sections 8-12 of the 2002 Act came into force from 1 September 2002, and local authorities and other agencies have an obligation to implement the provisions from that date. Statutory agencies should already be working to put the new laws into effect, while this guidance is being developed. This practical experience in implementing the legislation will provide useful input to the refinement of this draft guidance.

# COMMUNITY CARE & HEALTH (SCOTLAND) ACT 2002

## DRAFT GUIDANCE ON SECTIONS 8-12: CARERS

### 2. POLICY CONTEXT

#### 2.1 Strategy for Carers in Scotland

2.1.1 Supporting carers is a key priority for the Scottish Executive under its [Strategy for Carers in Scotland](#), published in November 1999. The introduction of new provisions to support carers in Sections 8 to 12 of the 2002 Act fulfils a commitment in the Strategy to introduce new legislation to allow carers' needs to be met more directly.

#### 2.2 Links with Other Policies

2.2.1 Supporting carers and involving them in the partnership of care is not a new or separate element of the Scottish Executive's social and health care agenda. Caring for carers is an integral part of wider policy approaches which are now shaping the way that social care and health services are being delivered. Other key policies which also support carers include:

- Increased joint-working between statutory agencies and others under the Joint Future agenda
- introduction of Single Shared Assessment
- introduction of National Care Standards
- NHS patient & public involvement initiatives and clinical standards
- new mental health legislation
- introduction of free personal and nursing care
- "The Same As You" review of services for people with learning disabilities
- improved access to independent advocacy
- integrated children's services
- development of new model hospital discharge protocols

#### 2.3 Equality and Social Inclusion

2.3.1 Supporting carers is linked directly to the Executive's wider commitment to social inclusion and equality. The Executive is committed to developing a fairer society in which equal opportunities are extended to everyone in our communities. Caring is often an isolated - and isolating - activity that can limit the carer's own opportunities and development. Carers often find themselves excluded from a wide range of activities and opportunities because of their time and personal commitment to their caring role.

2.3.2 Authorities and other statutory agencies should ensure that support for carers is designed to empower carers to make the most of their own potential and opportunities, rather than allowing them to be confined or isolated in their caring role. Authorities should also ensure that services that support carers and the people they care for are universally accessible and not affected by issues of race. These principles are at the heart of the Executive's policies on supporting carers and underpin this guidance.

#### 2.4 Partnership with the Independent Sector

2.4.1 The Executive recognises the expertise, enthusiasm and commitment of the voluntary and private sectors, and is committed to working closely with them to deliver the highest quality, most appropriate services. Statutory agencies should work in partnership with the

## **COMMUNITY CARE & HEALTH (SCOTLAND) ACT 2002 DRAFT GUIDANCE ON SECTIONS 8-12: CARERS**

voluntary and private sectors to harness their expertise and capacity, and to deliver services most effectively and efficiently. Authorities should ensure particularly that they share information with the independent sector as far as possible. This is especially relevant for voluntary sector organisations, who play a significant part in delivering community care services and supporting carers.

# COMMUNITY CARE & HEALTH (SCOTLAND) ACT 2002

## DRAFT GUIDANCE ON SECTIONS 8-12: CARERS

### 3. KEY PRINCIPLES

#### 3.1 Carers as Key Partners

3.1.1 The fundamental principle underlying the new legislative provisions is that local authorities and other support agencies should recognise and treat carers as *key partners in providing care*. Carers are “key” partners because they are different from other partners in the care-giving system in their status and their contribution. Carers are usually the main care-providers for the person they look after, yet in contrast to other care-providers, they are not paid to provide that care, and they have a personal relationship with and commitment to the person they care for. For all these reasons carers play a unique role in the overall provision of care to the person they care for, and in care in the community as a whole.

3.1.2 Local authorities, the NHS and other agencies should recognise and draw upon the extensive knowledge and expertise that carers have about the situation and needs of the person they care for, in order to ensure that the cared-for person receives services that are right for their needs. This recognition of carers as *partners* should underpin all help and advice given to carers.

#### 3.2 Resourcing Carers

3.2.1 The Executive’s policy is that carers should be supported to allow them continue to care as much and as long as they wish. The 2002 Act does not provide for *services* to carers. The principle underlying the new legislative provisions in the 2002 Act is that carers, like all other service providers, need resources to carry out their function. For carers, these resources may take the form of other care services to help support the cared-for person, or support or advice provided directly to the carer. Statutory agencies should view supporting carers as providing resources to enable the carer to continue their contribution to the care package, rather than treating carers as people with additional needs of their own (except where carers have needs that are not directly related to their caring role).

3.2.2 Much of this guidance concentrates on the process of carers’ assessments, as amended by the 2002 Act. However, the Executive’s policy on supporting carers is not solely focused on assessment. The Executive’s policy is to recognise and support carers, in order to achieve good outcomes for carers. Good outcomes for carers will occur when:

- the carer is able to cope better with their caring role;
- the carer gets a regular break from caring;
- the carer is better informed and more knowledgeable about their caring role and the needs of the person they care for;
- the carer feels valued, supported and listened to.

This guidance should be seen as one means towards achieving these goals.

#### 3.3 “Ability to Care”

3.3.1 The 2002 Act builds on the concept used in existing legislation of assessing carers to establish their “ability to provide or to continue to provide care” for another person. This term is established in section 12A of the Social Work (Scotland) Act 1968 (“the 1968 Act”)

# COMMUNITY CARE & HEALTH (SCOTLAND) ACT 2002

## DRAFT GUIDANCE ON SECTIONS 8-12: CARERS

and section 24 of the Children (Scotland) Act 1995 (“the 1995 Act”). The expression makes clear that an assessment of a carer is not about identifying the carer’s own needs, but about establishing whether the carer is able to sustain their caring role. The term “ability to care” in this context should not be interpreted to imply a negative view of the carer’s competence or skills. In considering a carer’s ability to care, statutory agencies should be looking at the carer’s **capacity** and **willingness** to provide care, without preconception about how much the carer should be able or willing to do.

### 3.4 “Substantial and Regular”

3.4.1 The new provisions build on the existing concept in the 1968 Act and the 1995 Act which establishes that carers who provide “a substantial amount of care on a regular basis” are entitled to an assessment. The new provisions introduced by the 2002 Act do not change these terms. As the terms “regular” and “substantial” are not defined in the legislation, it is for local authorities to interpret them in relation to individual cases. This approach allows local authorities, in partnership with other agencies, to reach sensitive individual judgements about whether a carer’s particular circumstances make them eligible for an assessment.

3.4.2 In many cases, local authorities may need to carry out at least elements of an assessment in order to establish the level of care the carer is currently providing. 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?

3.4.3 Authorities should take into account a range of factors in addressing these questions, including:

- the total time spent caring
- type of caring tasks
- intensity and pattern of caring
- nature of the cared-for person’s needs
- distances travelled to and from caring situation
- employment status of carer
- whether other children in the family are affected by the caring situation
- age of the carer
- carer’s physical and mental health
- level of informal support available to the carer

3.4.4 Authorities should always take a wide view of the extent and nature of the carer’s role as a whole. The interpretation of “regular” should not necessarily exclude situations where the caring role is sporadic and difficult to forecast. In some cases the carer’s role may fluctuate, particularly where the cared-for person has mental health difficulties that recur periodically. In other cases the needs of the cared-for person may be unpredictable, particularly where they have drug or alcohol problems. Carers may also need to combine caring responsibilities with other family responsibilities or activities, including parenting and employment, or in the case of young carers, attending school.

## **COMMUNITY CARE & HEALTH (SCOTLAND) ACT 2002**

### **DRAFT GUIDANCE ON SECTIONS 8-12: CARERS**

**3.4.5 Caring at a distance.** Local authorities should think carefully about the interpretation of “substantial and regular” in the context of carers who travel significant distances to carry out their caring role. This will be especially true where a carer looks after more than one person, and/or where they are caring for someone who uses or could use services in a different local authority area from the carers’ own area. A carer’s role may not appear substantial and regular if the assessment does not take into account the inconvenience of caring at a distance, or if a carer’s assessment relating to one cared-for person in one authority is carried out without regard for the carer’s other responsibilities.

**3.4.6** In these cases, local authorities should work in partnership with the other authorities affected, and should develop local agreements for handling such cases. In many cases it may make sense for the local authority where the cared-for person lives to take the lead in offering the carer information and assessment, though it is for authorities to decide on the best approach to individual cases. The aim should be to deliver joined-up services that meet the needs of the carer and the person they care for.

**3.4.7 Young carers.** Authorities need to consider carefully how to interpret “substantial and regular” in relation to young people in caring roles. A child or young person should not have a level of caring responsibility that may undermine their ability to participate in education and leisure and social activities. The person cared for should be receiving sufficient other support so that the young person is not undertaking an inappropriate caring role that might amount to “substantial and regular”.

**3.4.8** In interpreting “substantial and regular” for young carers, local authorities should not automatically adopt the same approach that they would use for an adult carer in a similar role. Local authorities should take account of the impact of the young person’s caring responsibilities on their current and future development, as well as their ability to access social, leisure and educational activities. The age of the young person and the nature of the caring responsibilities will also be a factor in deciding what amounts to “substantial and regular”.

**3.4.9 Older carers.** Authorities should also think about how “substantial and regular” should be interpreted where the carer is an older person. A particular level of caring role is likely to demand more of an older carer. Authorities should ensure they focus always on the impact of the caring role on the individual.

**3.4.10 Preventive approach.** When deciding whether a carer’s role is “substantial and regular”, local authorities, the NHS and other agencies should also recognise the value of early intervention and regular support for carers, in order to prevent deterioration in the carer's health and emotional well-being and the cared-for person’s welfare. In many instances, early access to advice and practical help will reduce the subsequent need for increased levels of support and avoid a future breakdown in the caring relationship. Authorities should take this into account in deciding whether a carer’s role is substantial.

**3.4.11** Authorities should make public the approach they will take in interpreting “substantial and regular”, in consultation with local carers’ representatives. More detailed guidance on factors that might influence judgements about what is “substantial and regular” was given in the previous guidance circular (SWSG 11/96) and will be reinforced in the forthcoming good practice guidance (see paragraph 1.3.2 above).

# COMMUNITY CARE & HEALTH (SCOTLAND) ACT 2002

## DRAFT GUIDANCE ON SECTIONS 8-12: CARERS

### 4. CHANGES UNDER THE 2002 ACT

#### 4.1 What the Act Does

4.1.1 Sections 8 to 11 of the Act place statutory obligations on local authorities to support carers. Section 12 of the Act provides powers for Ministers to engage the NHS more directly in informing carers of their entitlements under the Act.

4.1.2 This guidance uses the term “local authorities” in general for simplicity. However, as the Joint Future agenda continues to develop, a range of local authority functions will increasingly be discharged through joint arrangements between local authorities, the NHS and other agencies.

4.1.3 Much of what the 2002 Act provides for is already good practice among some local authorities and their partners. Giving best practice a statutory foundation is intended to help spread it to all local authorities so that carers across Scotland are supported in the most effective way, and to the highest standard.

4.1.4 The key changes for carers made by the 2002 Act 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 have the same rights to assessment;
- local authorities are to ensure carers are made aware of this right;
- local authorities are required to take account of the contribution of carers, and the views of the person in need and their carer, before deciding on services to provide to a cared-for person;
- Scottish Executive Ministers now have a power to require NHS Boards to draw up carer information strategies for informing carers of their rights under the new legislation.

#### 4.2 Relationship To Existing Legislation

4.2.1 Local authorities already have duties to help and support carers under the Social Work (Scotland) Act 1968 (as amended by the Carers (Recognition and Services) Act 1995). The new provisions in the 2002 Act build on and enhance these duties, by making further amendments to the 1968 Act. A revised version of sections 12A, 12AA & 12AB of the 1968 Act is attached at **Annex A** to this guidance.

4.2.2 The Children (Scotland) Act 1995 (“the 1995 Act”) gives local authorities duties to promote the welfare of children in need. Section 23 of that Act gives authorities a duty to assess the needs of any child affected by disability (either their own disability, or that of another person in their family). Section 24 of the Act already gives authorities a duty to assess “substantial and regular” carers of a child with disabilities in order to determine the carer’s ability to continue to provide that care. All of these provisions remain in force and the

## **COMMUNITY CARE & HEALTH (SCOTLAND) ACT 2002 DRAFT GUIDANCE ON SECTIONS 8-12: CARERS**

2002 Act builds on these duties. See Chapter 8 of this guidance for advice on carers of children with disabilities.

4.2.3 Section 8 of the Disabled Persons (Services, Consultation and Representation) Act 1986 requires local authorities to take into account the ability of a carer who provides “a substantial amount of care on a regular basis” to continue providing care, when assessing what services to provide to a person with disabilities living at home. This obligation on local authorities does not apply where the local authority is assessing a carer under the 1968 or 1995 Acts, as amended by the 2002 Act. However, in some circumstances local authorities continue to have obligations under section 8 of the 1986 Act. In particular, section 8 of the 1986 Act relates to assessment for services provided under any “welfare enactment”, which includes services under National Assistance and Mental Health legislation. This obligation therefore still applies when authorities assess disabled people for services other than community care or children’s services.

# COMMUNITY CARE & HEALTH (SCOTLAND) ACT 2002

## DRAFT GUIDANCE ON SECTIONS 8-12: CARERS

### 5. INFORMING CARERS OF THEIR RIGHT TO ASSESSMENT

#### 5.1 What the 2002 Act does

5.1.1 Section 9 of the Act inserts a new section 12AB in the 1968 Act. This new section requires local authorities to notify carers that they may be entitled to have an assessment of their ability to care. This duty applies to any carer who appears to the authority to be providing - or intending to provide - a substantial amount of care on a regular basis to an adult aged 18 or more who is eligible for community care services.

5.1.2 Section 11 of the Act creates a similar new section 24A in the 1995 Act, requiring local authorities to notify carers of children with disabilities that they may be entitled to an assessment. This duty applies to any carer who provides or intends to provide a substantial amount of care on a regular basis to a child with disabilities who is eligible for children's services under the 1995 Act.

#### 5.2 Who to inform

5.2.1 Local authorities should inform any carer who appears to be providing a substantial amount of care on a regular basis that they may be entitled to an assessment of their ability to care. This applies to any carer that local authority staff encounter, either as a result of direct contact with the carer, or through contact with the person they care for. It is most likely to be social work staff who have these contacts, but contacts made by other local authority staff should also be included wherever possible. The interpretation of what amounts to "substantial and regular" is discussed in section 3.4 above of this guidance.

5.2.2 From 1 September 2002 authorities are required to inform any carer they are aware of who appears to be "providing a substantial amount of care on a regular basis" that they may be entitled to an assessment. In practice, many of the carers that the authority is aware of may already have been assessed (either separately, or as part of the assessment of the person they care for) or offered an assessment. Authorities will need to make arrangements to ensure that all carers that they know about are aware of their potential entitlement to assessment provided by the 2002 Act. Individual authorities should decide the best ways of doing this and satisfy themselves that their approach meets the requirements of the Act.

5.2.3 Once an authority has decided that a carer does qualify as "substantial and regular", the carer is entitled to an assessment. All "substantial and regular" carers have a right to an assessment, not just the "main" or "primary" carer. Where there are children in the family, there are important additional issues that may need to be addressed in the initial assessment – see section 8.6 below.

#### 5.3 What information to provide

5.3.1 To fulfil the legal obligations in Section 12AB of the 1968 Act and Section 24 of the 1995 Act, local authorities should ensure that any carer they come into contact with who appears eligible to have a formal assessment of their ability to care is made aware of their potential right to such an assessment.

## **COMMUNITY CARE & HEALTH (SCOTLAND) ACT 2002**

### **DRAFT GUIDANCE ON SECTIONS 8-12: CARERS**

5.3.2 It will be good practice for local authorities also to offer carers they encounter information about other support and help available to them. This may include information about the local carers' centre or carers' support groups, and advice on eligibility for benefit support. Authorities may provide this information themselves, or direct the carer on to other sources of advice. The introduction of NHS "Carer Information Strategies" (see Chapter 10 of this guidance) will place similar requirements on staff and professionals in the NHS.

5.3.3 Local authorities should ensure that all carers have access to this kind of general information, not only carers who seem to be eligible for assessment because they are "substantial and regular". Authorities may use their existing power under section 12 of the 1968 Act to promote social welfare by making advice and guidance available. Authorities must ensure that information is available in accessible formats, and that there is ready access to translation and interpreting services where necessary.

#### **5.4 How to inform**

5.4.1 Local authorities may inform eligible carers of their right to assessment in a variety of ways, depending on the context – as part of a conversation or other direct communication with the carer, by providing the information through a leaflet, or in other ways. Authorities will need to have clear arrangements for ensuring that in all future contacts with carers, or people who are looked after by a carer, eligible carers are given the necessary information. Systems and protocols for assessing people in need must explicitly identify the requirement to notify eligible carers of their right to assessment.

# COMMUNITY CARE & HEALTH (SCOTLAND) ACT 2002

## DRAFT GUIDANCE ON SECTIONS 8-12: CARERS

### 6. ASSESSMENT OF CARERS

#### 6.1 Guidance for practitioners

6.1.1 This guidance covers the principles and policy underpinning carers' assessments. More detailed guidance on good practice in carrying out carers' assessments will be issued early in 2003 (see paragraph 1.3.2).

#### 6.2 What the Act does

6.2.1 Section 9 of the Act inserts a new section 12AA in the 1968 Act. This new section gives a "substantial and regular" carer, irrespective of their age, the right to request at any time an assessment of their ability to care and continue to care for another person aged eighteen or over, regardless of whether the cared-for person is being or has been assessed.

6.2.2 Section 11 of the Act makes a similar change for carers of children with disabilities by amending subsection (1) of section 24 of the 1995 Act (see Chapter 8 )

#### 6.3 Right of Carers to Assessment

6.3.1 A carer who meets the following conditions now has a right to an assessment at any time of their ability to care:

- they provide or intend to provide a *substantial amount of care on a regular basis* for another person,
- and;*
- the person they care for is over 18 and is *eligible for community care services* under the 1968 Act;
- or*
- the person they care for is under 18 and is *eligible for children's services* under the 1995 Act.

6.3.2 Before the 2002 Act, "substantial and regular" carers only had a right to an assessment if the person they cared for was also having their needs assessed. The 2002 Act removes the need for the cared-for person to be assessed at the same time, and gives carers a right to an independent, separate carers' assessment, even where the cared-for person refuses an assessment or the provision of services.

6.3.3 Because the 2002 Act removes the need for there to be a direct link between assessment of the carer and assessment of the cared-for person, it is important that local authorities develop clear and consistent approaches to ensure that the interests of both the cared-for person and their carer are considered in a logical and sensitive way.

# COMMUNITY CARE & HEALTH (SCOTLAND) ACT 2002

## DRAFT GUIDANCE ON SECTIONS 8-12: CARERS

### 6.4 Purpose of Assessment

6.4.1 Assessment is a means, not an end in itself. Assessment processes should identify the nature of a person's needs, and establish the need for support or other help to that person /or and their carer(s). Assessment acts as the gateway to the provision of services or other support.

6.4.2 A carers' assessment under the 2002 Act carried out at the request of the carer is intended to:

- establish what level of care the carer is willing and able to provide, and to determine whether their caring role is sustainable;
- determine what resources the carer needs to help them in the caring role and to maintain their own health and wellbeing, and to decide how these resources can best be provided;
- identify the care provided by a carer and the carer's views so that they can be taken into account before the local authorities decides what package of care to provide to the cared-for person (see Chapter 7 of this guidance for more detail).

### 6.5 Deciding whether to do an Assessment

6.5.1 Local authorities, with the involvement of other agencies as appropriate, need to reach a judgement on whether a carer meets the criteria in paragraph 6.3.1, ie, whether the cared-for person is eligible for community care or children's services, and whether the carer's role is "substantial and regular". In most situations, where a carer requests assessment and the local authority has no record of a recent community care or children's assessment of the cared-for person, the authority should also approach the cared-for person to see if they wish to be assessed. This approach allows the whole caring situation and the interests of carer and cared-for person to be considered in a holistic way.

### 6.6 Cared-for Person refuses an Assessment

6.6.1 If the cared-for person does not want to be assessed, local authorities should seek information from the carer to make a reasoned judgement about their eligibility for a carer's assessment. Carers may be in most need of support when a cared-for person declines assessment or other forms of support, and local authorities should ensure that the carer is not overlooked in these circumstances. Lack of evidence about the carer's role because the cared-for person is unwilling to be assessed does not reduce the local authority's duty to assess an eligible carer, and authorities may need to conduct an assessment of the carer to establish more clearly the nature and extent of their caring role.

### 6.7 Links with previous Carers Assessments

6.7.1 When conducting assessments after 1 September 2002, the local authority may take into account relevant information gathered under any previous assessment the carer may have had under the 1968 Act, or the 1995 Act, unless the carer does not agree to this.

# COMMUNITY CARE & HEALTH (SCOTLAND) ACT 2002

## DRAFT GUIDANCE ON SECTIONS 8-12: CARERS

### 6.8 Links with other Assessments

6.8.1 A carer aged 18 or older who has support needs in their own right that are not related to their caring role can be assessed as a person in need under the 1968 Act. Similarly, a carer under the age of 18 who has support needs in their own right that are not related to their caring role can also be assessed as a child in need under the 1995 Act. Local authorities will need to judge whether a carer's needs are related to their caring role or not.

### 6.9 Different Routes to Assessment

6.9.1 Carers can be assessed through different legislative routes, as indicated in 6.8 above, and in a variety of ways. They may be assessed separately, or they may be assessed as part of the overall assessment of the needs of the person they care for. Authorities should decide on the most appropriate approach in the light of the individual circumstances and the wishes of the carer and the cared-for person. The particular approach used or the label attached to the assessment is not important. The crucial point is that the principles set out in this guidance should underpin all carers assessments, that the circumstances of the carer are assessed in a holistic way, and that the carer understands and is content with the assessment process.

6.9.2 Authorities should be clear about the assessment approach they are following. Where more than one assessment approach may be necessary (eg, where a carer has needs relating to their caring role, and other needs relating to their own disability), authorities should avoid multiple, separate assessments, and should streamline processes as far as possible, in line with Single Shared Assessment principles.

### 6.10 Carer-centred Assessment

6.10.1 A carer's assessment should be a carer-centred process, establishing the level and type of care that the carer is willing and able to provide, and identifying the resources or other support needed to enable the carer to maintain their own health, and to continue in their caring role for as long they wish.

6.10.2 It is important that local authorities do not assume during the assessment process that the carer is able or willing to continue to provide the level of care they are providing at the time of the assessment.

6.10.3 Local authorities should recognise the value of early and regular intervention and support for carers to prevent deterioration in the carer's health and emotional well-being and also the cared-for person's welfare. In many instances, early access to advice and practical help will reduce the subsequent need for increased levels of support and avoid a future breakdown in the caring relationship.

### 6.11 Assessment Approach

6.11.1 Local authorities should adopt the Single Shared Assessment approach to carer's assessments wherever possible (see [Scottish Executive Circular CCD 8/2001](http://www.show.scot.nhs.uk/sehd/publications/DC20011129CCD8single.pdf) <http://www.show.scot.nhs.uk/sehd/publications/DC20011129CCD8single.pdf>). Single Shared Assessment will apply to social work, housing and health services and should be

## **COMMUNITY CARE & HEALTH (SCOTLAND) ACT 2002**

### **DRAFT GUIDANCE ON SECTIONS 8-12: CARERS**

implemented for assessments of all community care groups and carers in 2003. Single Shared Assessment is intended to provide a more holistic, user-friendly and efficient approach to assessing needs, with better results for people who need services and their carers.

6.11.2 It may often be appropriate to assess the cared-for person and carer together. However, authorities should recognise that the wishes and interests of the cared-for person and carer may not always coincide, and involving them at the same time may not allow all the relevant factors to be appreciated. Carers may not always be willing to discuss the full extent of their own needs when the person they care for is present. Local authorities should ensure that both carers and cared-for persons have an opportunity to discuss their needs individually.

6.11.3 Caring situations are influenced by lifestyles, relationships, religions and cultural factors. Assessments should take account of the cultural context and relationship within which caring takes place. Authorities must ensure that they are sensitive to the language needs of individuals, and that they can access interpreting and advocacy support where needed. They must also be sensitive to the fact that in some circumstances the gender of the person(s) carrying out the assessment may be important. The forthcoming good practice guidance (see paragraph 1.3.2 above) will give further advice on these issues.

6.11.4 In any assessment people may find difficulties in articulating their needs or identifying the support they want owing to a lack of knowledge of what services might be available. Information on services / support may be discussed during the assessment, though staff carrying out assessments must ensure that the assessment identifies all needs and is not influenced by the available resources.

#### **6.12 Self-Assessment**

6.12.1 Self-assessment can be a useful tool in assessing carers. Local authorities should offer carers the opportunity to use self-assessment as a part of their assessment process, though carers should be made aware that a more formal discussion with professional staff may also be required. Carers and local carers groups should be involved in the development of any self-assessment tools. The forthcoming good practice guidance (see paragraph 1.3.2 above) will give more detailed guidance on self-assessment approaches.

#### **6.13 Tensions Between Carer and Cared-for Person**

6.13.1 Practitioners need to be sensitive to relationships between cared-for persons and carers. Carers often find their caring role stressful and difficult in a range of ways, and this may create tensions between the carer and the person they look after. Some situations will require skilful counselling and mediation to reconcile the differing interests of the carer and the cared-for person.

6.13.2 If the cared-for person does not want an assessment or re-assessment of their needs, or to accept services suggested by the carer's assessment, local authorities will need to work closely with the cared-for person, the carer and other members of the family to seek to resolve the situation and provide support.

6.13.3 Tension can arise when either the cared-for person's or the carer's ability to communicate is affected by a learning, physical or mental disability. This can also be the case

## **COMMUNITY CARE & HEALTH (SCOTLAND) ACT 2002**

### **DRAFT GUIDANCE ON SECTIONS 8-12: CARERS**

where either the cared-for person's or carer's first language is not English and one interprets for the other. Assessment staff need to communicate effectively with cared-for persons and carers so that both perspectives are known, and need ready access to translation and interpreting services to do this.

6.13.4 Mediation and advocacy services can play an important role in exploring and resolving tensions between carers and cared-for persons. Local authorities should ensure they can provide ready access to these services.

#### **6.14 Who should assess?**

6.14.1 There should be no preconceptions about which staff should take the lead in carrying out carers' assessments. Carers may be in contact with professional staff from a range of different organisations and agencies. Health, housing, or other staff may have an important contribution to make to the assessment of a carer. In many cases carers are in contact with voluntary sector organisations, and local authorities may decide that voluntary bodies can play an important role in the assessment process, or could provide expertise to support statutory sector staff. Single Shared Assessment extends the opportunities to involve a range of staff in assessment, and stresses the principle that the most appropriate professional should be responsible for carrying out an assessment, coordinating any other contributions, and identifying the support or resources needed.

6.14.2 Local authorities already have powers under Section 4 of the 1968 Act and Section 19 of the 1995 Act to involve other bodies or persons in helping them to carry out their functions, either voluntary bodies, or any other body, including another local authority. Under the principles of Single Shared Assessment local authorities should explore the potential for collaboration with other partners in assessing carers.

6.14.3 If a local authority decides to involve other parties or bodies in the assessment process, there must be a clear formal basis underpinning the arrangements. In particular, local authorities will need binding agreements with those other bodies to allow authorities to be certain that assessments meet standards set by the authority, and that staff involved in assessments have the levels of qualification, training and expertise that the authority decides are appropriate. Authorities themselves will remain statutorily responsible for the overall performance of the assessment.

#### **6.15 Confidentiality**

6.15.1 Whether the carer is being assessed as part of a holistic assessment of the whole caring situation including the needs of the cared-for person, or is being assessed separately, local authorities must ensure that they protect the confidentiality of information collected from the carer and cared-for person. Information gathered from a person during an assessment is likely to be covered by the Data Protection Act 1998, and can only be disclosed to other individuals or agencies in line with the principles of that Act. In general, this kind of information can only be disclosed with the consent of the person it relates to, and authorities should plan to seek consent as part of the assessment process, and formally record where consent is given. Informed consent to sharing information is a key principle underpinning Single Shared Assessment.

# COMMUNITY CARE & HEALTH (SCOTLAND) ACT 2002

## DRAFT GUIDANCE ON SECTIONS 8-12: CARERS

### 6.16 Recording Information

6.16.1 Local authorities must inform the carer of the outcome of any assessment that covers the carer's own needs, and must give the carer a written copy of the final assessment and offer to discuss or explain it if required.

The assessment process should identify need and should not be influenced by the available resources. The full range of needs identified through a carer's assessment should be recorded, either on the care plan of the cared-for person, or separately on the carer's assessment form.

Under Single Shared Assessment local authorities and the NHS are expected to record individual unmet need and the likely consequences of this, and to produce aggregated information to identify the total unmet needs, for use in planning processes (see [Scottish Executive Circular CCD 8/2001](#)). Information gathered from assessments of carers should be recorded and used in the same way.

# COMMUNITY CARE & HEALTH (SCOTLAND) ACT 2002

## DRAFT GUIDANCE ON SECTIONS 8-12: CARERS

### 7. AFTER THE ASSESSMENT

#### 7.1 What the Act Does

7.1.1 Section 8 of the 2002 Act amends section 12A of the 1968 Act by adding two steps into the process of assessing and deciding on services for adults in need of community care services:

- Once a local authority has assessed the needs of a person for community care services, the authority must take into account the care already being provided by any “substantial and regular” carer before deciding what services may need to be provided.
- The authority must also take into account the views of the cared-for person and their carer, as far as this is “reasonable and practicable”.

These new steps apply to every assessment of a person in need, regardless of whether the carer has been or wishes to be assessed.

7.1.2 Section 10 of the Act introduces a similar requirement into the 1995 Act for carers of children with disabilities by inserting a new subsection (4) in section 23 of the 1995 Act (See Chapter 8).

7.1.3 The new entitlement introduced by the 2002 Act for carers to have a separate assessment at any time (see section 6.3) means that authorities will need to review how carers’ assessments relate to assessments of cared-for persons. Assessment of a carer, either through a separate carers’ assessment, or as part of the assessment of the cared-for person, enables an authority to reach conclusions about the carer’s ability to care and continue caring. These conclusions must inform the authority’s decision on the services or other support to provide to the person in need, or what other resources the carer may need to help them in their caring role.

7.1.4 The authority, in partnership with the NHS and other key agencies, may consider a range of options to help the cared-for person or the carer:

- new or changed services provided to the **cared-for person**, which may include respite care or short breaks;
- new or changed direct payments to the **cared-for person**;
- direct support to the **carer** through information, advice or access to other resources.

Carers are care-providers, and support of any kind which a carer receives in order to enable them to continue caring should be regarded as a resource that enables the carer, not a service provided to the carer.

#### 7.2 Cared-for Person unwilling to accept Assessment or Services

7.2.1 If a carer is assessed separately but the cared-for person has not been and does not wish to be assessed, the authority will need to consider the options available to support the carer. In law, the results of a separate carers’ assessment are used to influence the authority’s

## **COMMUNITY CARE & HEALTH (SCOTLAND) ACT 2002**

### **DRAFT GUIDANCE ON SECTIONS 8-12: CARERS**

decision about services provided to the person in need. The assessment of the carer may establish that they need support or other resources to enable them to continue caring, but the cared-for person may not wish to receive services which would reduce the burden of caring on the carer. In these circumstances the authority may try persuading the cared-for person to accept either direct or indirect help, although cared-for persons cannot be forced to accept services they do not wish to receive.

7.2.2 If a cared-for person remains unwilling to accept any services or other help, the authority should try to support the carer in other ways. Authorities should consider using their general power under section 12 of the 1968 Act to provide advice, guidance and assistance. Local authorities should ensure they inform carers of services and other support available from the voluntary sector.

#### **7.3 Taking account of the Carer's contribution**

7.3.1 This new requirement ensures that before deciding what services or other support to provide to a person in need, a local authority must consider the care that the carer is currently providing for that person. It gives practical effect to the role of carers as full partners in care-giving.

7.3.2 This change should not be interpreted as requiring authorities only to provide care which is not currently being provided by the carer. The intention is to ensure that the authority recognises the contribution the carer is willing and able to make, and in discussion with the carer constructs a package of care in which other services complement the carer's contribution. Local authorities remain responsible for ensuring the needs of the cared-for person as a whole are met, and should not assume that the carer's contribution will continue at any set level.

#### **7.4 Taking account of the Cared-for Person and Carer's views**

7.4.1 This new requirement means that before deciding what support to provide to a person in need, a local authority must also seek and take account of the views of both the cared-for person and the carer, including the parent or other carer in the case of a carer for a child with disabilities (see Chapter 8). The intention is to complement the requirement to take account of the care provided by the carer (section 7.3 above), by ensuring that carers and the people they care for have a clear right to be consulted before authorities reach decisions about services.

7.4.2 Authorities should use this approach to ensure that the care package meets the wishes and needs of both the cared-for person, and their carer as far as possible. Authorities should particularly ensure that the carer can express views about the type and amount of caring contribution they are willing to make, and how other support could complement their caring.

#### **7.5 "Reasonable and Practicable"**

7.5.1 Authorities must take account of the cared-for person's and the carer's views "as far as it is reasonable and practicable". This should be normal practice for authorities, and there should only be a very small number of cases where it is not done. These may be situations

## **COMMUNITY CARE & HEALTH (SCOTLAND) ACT 2002**

### **DRAFT GUIDANCE ON SECTIONS 8-12: CARERS**

where an authority judges that it is not reasonable or practicable to take account of the carer's views at the time of deciding on services, for example:

- where the views of the carer or cared-for person are difficult to obtain, because of their physical location or their medical condition;
- where consulting the carer could delay the provision of urgently needed services;
- where the authority judges that the views expressed are not in the best interests of the cared-for person or carer.

7.5.2 Authorities must ensure that the requirement to take account of the cared-for person's and carer's views is properly considered in every case, and that the reason for any decision not to do so is fully recorded. Where the cared-for person or carer have not been consulted in advance because of urgency or distance, authorities should ensure that they do nonetheless consult them as early as is possible afterwards, and make any adjustments to care arrangements that may be necessary as a result.

#### **7.6 Services provided to Cared-for Person**

7.6.1 Carers are not entitled to community care services, unless they have their own needs for community care support which are not related to their caring role. There is no statutory provision for authorities to provide other kinds of services direct to carers (in contrast to the position in England and Wales under the Carers and Disabled Children Act 2002). Authorities in Scotland cannot therefore levy any charges on carers for any support or resources they make available to them in support of their caring role. Information, training, advocacy and other support should continue to be provided to carers free of charge, without the need for a formal assessment.

7.6.2 Although support to the cared-for person through social care or health services, or a direct payment, may also benefit their carer directly or indirectly (short breaks are the most obvious example), these services are provided to the cared-for person. It will be for the authority to apply its own charging policies as it thinks appropriate. Authorities have discretion in their charging arrangements, but must ensure that any charge is reasonable and is not more than a person can afford. [Scottish Office Circular SWSG 1/97 \(http://www.scotland.gov.uk/library/swsg/contents.htm\)](http://www.scotland.gov.uk/library/swsg/contents.htm) "Charging for adult non-residential sector care" emphasises that charging policies that discourage the take-up of services may not be in the best interests of users and carers.

7.6.3 Authorities should think through the potential implications for the carer of any charges levied on the cared-for person. Where the carer and cared-for person are related in a way that means their household income is considered to be joint, any charges levied on the cared-for person would also directly affect the carer, which would be contrary to the Executive's policy that carers should not be adversely affected as a result of their caring role.

#### **7.7 Respite Care or Short Breaks**

7.7.1 The provision of respite care or a short break to the cared-for person is one of the possible outcomes that may follow after assessment of a carer. Respite care is one of the most effective ways of supporting carers, and it is a high priority for local authorities to develop and expand respite provision, in partnership with the NHS and other key agencies,

## **COMMUNITY CARE & HEALTH (SCOTLAND) ACT 2002 DRAFT GUIDANCE ON SECTIONS 8-12: CARERS**

using the substantial extra resources that have been provided to authorities for this purpose. Respite care is a service to the cared-for person, although the carer will usually benefit directly as well, and the prime objective must be to provide a stimulating and appropriate break for the cared-for person.

7.7.2 The existing guidance to local authorities on respite care ([Scottish Office Circular SWSG 10/96](#) at <http://www.scotland.gov.uk/library/swsg/index-f/c161.htm>) remains in force, though the forthcoming good practice guidance may update it in due course.

# COMMUNITY CARE & HEALTH (SCOTLAND) ACT 2002

## DRAFT GUIDANCE ON SECTIONS 8-12: CARERS

### 8. CARERS OF CHILDREN WITH DISABILITIES

#### 8.1 What the Act does

8.1.1 Section 11 of the Act amends section 24 of the 1995 Act. This section now gives a “substantial and regular” carer of a child with disabilities, irrespective of the carer’s age, the right to request at any time an assessment of their ability to care, regardless of whether the child is being assessed.

8.1.2 Section 10 of the Act amends section 23 of the 1995 Act by adding two steps into the process of assessing and deciding on services for a child affected by disability (either their own or that of another person in their family). Once a local authority has assessed the needs of such a child for children's services, and before deciding what services should be provided, the authority must take into account the care already being provided by any “substantial and regular” carer. The authority must also take into account the views of the child and their parent or guardian, as far as this is “reasonable and practicable”. These new steps apply to every assessment of a child affected by disability, regardless of whether the carer has been or wishes to be assessed.

8.1.3 Section 11 of the Act creates a new section 24A in the 1995 Act, requiring local authorities to notify carers of children with disabilities that they may be entitled to an assessment. This duty applies to any carer who provides or intends to provide a substantial amount of care on a regular basis to a child with disabilities who is eligible for children’s services under the 1995 Act.

#### 8.2 Policy context

8.2.1 The 2002 Act introduces similar changes to the 1995 Act for carers of children with disabilities to those it makes in the 1968 Act for carers of disabled adults. In implementing the new duties and rights for carers of children with disabilities, local authorities should follow the general approach recommended in this guidance for carers of disabled adults (chapter 6 above) and, if appropriate, the guidance on supporting young carers (chapter 9 below). There are, however, particular issues for parent carers or guardians of a child with disabilities which need to be taken into account.

#### 8.3 Parental responsibilities

8.3.1 Most carers of a child with disabilities (though not all) are the child’s parent or guardian. Parents and guardians of children have specific legal obligations and responsibilities towards children in their care

8.3.2 Part 1 of the 1995 Act places various legal obligations on a parent, including the requirement to safeguard and promote the child's health, development and welfare. Where a carer is also the parent or guardian, local authorities need to take account of these legal obligations when assessing the carer’s ability or capacity to continue to provide care. Parents or guardians do not have the option of ending or reducing their caring role and allowing support services to take over from them completely, so it is particularly important during

# **COMMUNITY CARE & HEALTH (SCOTLAND) ACT 2002**

## **DRAFT GUIDANCE ON SECTIONS 8-12: CARERS**

assessment that local authorities consider how parent carers are coping, and what support or other resources they may need to ensure they can sustain their role

8.3.3 When assessing the ability or capacity of parent carers it is important that a holistic view is taken of the whole family situation, including their responsibility to meet the needs of other children in the family.

### **8.4 Links with Other Assessments**

8.4.1 Section 8 of the Disabled Persons (Services, Consultation and Representation) Act 1986 places a duty on local authorities when assessing what services to provide to a person (adult or child) with disabilities living at home, to take into account the ability of a carer providing “a substantial amount of care on a regular basis” to continue providing that care. This obligation on local authorities does not apply where the local authority is assessing a carer under the 1968 Act or the 1995 Act, as amended by the new provisions in the 2002 Act. However, as mentioned in paragraph 4.2.3 above, the obligation under the 1986 Act continues to apply to assessment for services other than community care and children’s services, including services provided under National Assistance and Mental Health legislation. Local authorities should therefore still have regard to their obligations under section 8 of the 1986 Act.

### **8.5 Multiple Assessments**

8.5.1 Carers of children with disabilities, and the children themselves, need support which involves a range of different agencies: particularly health, education, social services, housing, benefits agencies and voluntary sector organisations. Because of this wide range of support sources, there is a risk that carers of children with disabilities may be offered multiple assessments by different agencies, often covering similar issues. It is important that any assessment of a carer of a child with disabilities follows the principle of Single Shared Assessment, and involves as wide a range of professionals as is required to give a holistic view of the support needs of both the child, the carer and other family members.

8.5.2 The aim should always be to combine and streamline assessment processes, to minimise duplication between them, and to share relevant information between different processes as far as possible, with the consent of the child and / or their parents or guardians.

### **8.6 Impact of child with disabilities on siblings**

8.6.1 Brothers and sisters of children with disabilities are regarded as “children affected by disability” and as such can be “children in need” under Section 22 of the 1995 Act. Very often siblings of children with disabilities are not able to enjoy the same social opportunities as other children. They often provide care for their sibling over and above that normally expected in sibling relationships. Where this care is judged to be “substantial and regular” they may be eligible for an assessment as “young carers”.

8.6.2 Parents have responsibilities towards all of their children, whether or not they have a disability. When assessing the ability and capacity of parent carers to provide care for their child with disabilities it is important that the needs of other children in the family should also be considered.

# COMMUNITY CARE & HEALTH (SCOTLAND) ACT 2002

## DRAFT GUIDANCE ON SECTIONS 8-12: CARERS

### 8.7 Role of schools in the assessment process

8.7.1 An assessment of a carer's ability to provide care for their child with disabilities should take into account the school's arrangements and expectations. It should not be assumed that a child's attendance at school will automatically provide respite for their carer. Carers of children with disabilities are often expected to be "on call" in case difficulties arise when their child is in school. For a child with significant health care needs or behavioural difficulties this can result in frequent visits to the school and can often require the parent to remove the child from school for a time. This can result in stress and disruption to family life, particularly where there are other children in the family. Even where a carer is able to manage their caring role during term time they may experience considerable difficulties in doing so during the school holidays, and these issues should be taken into account in the assessment.

### 8.8 Changing Needs as Child develops

8.8.1 As children with disabilities develop, their care needs can change regularly, as can the support needs of their carer(s). As a child with disabilities grows older, the need for aids and adaptations to the home should be anticipated, to enable the caring role to be met without adverse affects on the health of the carer. Regular re-assessments might be needed, and local authorities should have systems to check with families on a regular basis when reviews of a child's needs are to take place.

### 8.9 Charging

8.9.1 Local Authorities should consider their approach to charging for support services for children with disabilities. Where the carer is the child's parent or guardian, any charges will fall directly on them, which is at odds with the policy of not requiring carers to pay for resources they need to support them in their caring role. Parents have a legal responsibility to look after the welfare of their children, and this implies financial responsibility for their children too. However, if supporting the disability of a child imposes significant additional costs on the parents, authorities should consider carefully whether to levy charges for support services.

### 8.10 Outcomes

8.10.1 Authorities have a range of options for assisting a carer of a child with disabilities:

- new or changed services to the child or their siblings, as children affected by disability, which may include respite care or short breaks;
- direct support to the **carer** through information, advice or access to other resources.

# COMMUNITY CARE & HEALTH (SCOTLAND) ACT 2002

## DRAFT GUIDANCE ON SECTIONS 8-12: CARERS

### 9. YOUNG CARERS

#### 9.1 What the Act does

9.1.1 Section 9 of the Act creates a new section 12AA in the 1968 Act. This new section gives a “substantial and regular” carer of an adult eligible for community care services the right to request an assessment of their ability to care at any point, *whether or not the carer is a child*.

9.1.2 Section 11 of the Act amends section 24 of the 1995 Act in a similar way. This section now gives a “substantial and regular” carer of a child with disabilities the right to request an assessment of their ability to care at any point, *whether or not the carer is a child*.

#### 9.2 Assessment of ability to care

9.2.1 In addition to the general guidelines on assessment and outcomes set out in Chapters 6 and 7 of this guidance, the following specific principles should be adopted in assessments relating to young carers aged under 18.

9.2.2 Young carers under the age of 16 with caring responsibilities now have an explicit and independent right to have their ability to care assessed if they are providing or intend to provide “substantial and regular” care. Young carers under 16 may be assessed as a carer either:

- under the 1968 Act, if caring for an adult who is eligible for community care services; or
- under Section 24 of the 1995 Act, if caring for a child with disabilities.

9.2.3 Other avenues of assessment are dealt with in section 9.4 below. Local authorities must be clear about the statutory route they decide to use for the assessment. The choice of which route to use may be influenced by the desired outcomes.

#### 9.3 “Substantial and Regular”

9.3.1 In interpreting “substantial and regular” in relation to young people in caring roles, local authorities should not automatically adopt the same approach that they would use for an adult carer in a similar role. Local authorities should take account of the impact of the young person’s caring responsibilities on their current and future development, as well as their ability to access social, leisure and educational activities. The age of the young person and the nature of the caring responsibilities will also be a factor in deciding what amounts to “substantial and regular”.

9.3.2 A child or young person should not have a level of caring responsibility that may undermine their ability to participate in education, leisure and social activities. The person cared for should be receiving sufficient other support so that the young person is not undertaking an inappropriate caring role that might amount to “substantial and regular”.

## **COMMUNITY CARE & HEALTH (SCOTLAND) ACT 2002**

### **DRAFT GUIDANCE ON SECTIONS 8-12: CARERS**

9.3.3 There may be circumstances where a young person wishes to maintain a substantial caring role for a period, for example in the care of a terminally ill parent. Where the local authority and other agencies are satisfied that the young person's welfare can be safeguarded, it may decide to support the child in that caring role for a limited period. Authorities must take great care to ensure that they do not unintentionally endorse or perpetuate unreasonable caring roles for children. All cases of this kind must be kept under close and regular review, to ensure that adverse impact on the child's welfare is kept to a minimum.

#### **9.4 Links with other Assessments**

9.4.1 There may be some young carers who do not provide "substantial and regular" care but whose development is potentially at risk as a result of their caring responsibilities. Young carers who are not "substantial and regular" but who have support needs or are at risk of inappropriate caring should be regarded as "children in need" under the 1995 Act, and assessed and supported as such.

9.4.2 A child is regarded as "in need" if they are unlikely to achieve or maintain, or have the opportunity to achieve and maintain, a reasonable standard of health or development without support from the statutory or voluntary agencies; if their development is likely to be significantly impaired or further impaired without the provision of such services; or if they are disabled, have special needs, or mental health difficulties.

9.4.3 Young carers may also be assessed as a child affected by disability under Section 23 of the 1995 Act if caring for another child/young person. This would be done as part of an assessment of the child with disabilities, or child affected by disability. Such an assessment needs to be requested by a parent or guardian.

#### **9.5 Purpose of Assessment**

9.5.1 In addition to the general guidelines on assessment set out in chapter 6 of this guidance, the following specific principles should be adopted in assessments relating to young carers aged under 18.

9.5.2 The primary objective of a young carer's assessment must be to safeguard the interests and promote the welfare of the young carer, and to ensure that they are not taking on inappropriate levels or types of caring by ensuring the family has access to alternative forms of support. For those young carers who wish to maintain some caring responsibilities, the assessment should establish what level of care that should be without impacting adversely on the child's current or future development or life chances.

9.5.3 In considering what may be appropriate levels or types of care, local authorities, and other key agencies, should recognise that frequently young carers may be providing more emotional support than physical support. The impact of this must be considered fully by health and social work professionals.

#### **9.6 Parents of Young Carers**

9.6.1 Assessments of young carers should focus on enabling an ill or disabled parent (or other adult family member) to live independently, so that their capacity to act as a parent is

## **COMMUNITY CARE & HEALTH (SCOTLAND) ACT 2002**

### **DRAFT GUIDANCE ON SECTIONS 8-12: CARERS**

supported, rather than undermined. Authorities should also ensure that the child's own developmental needs are being adequately met. Support should be aimed primarily at helping any disabled or other adult with parental responsibility to carry out their parental role as fully as possible, and to remove inappropriate responsibilities from the child.

#### **9.7 Family focused assessment**

9.7.1 The interests of the young person or child must be at the heart of any assessment of a young carer, but the assessment process must be designed to consider the whole family situation. This requires direct work with family members and clear explanation of the process and the expected outcomes.

9.7.2 Families often have serious fears about the involvement of social work or other professional staff. Parents may perceive that involvement as a sign of failure on their part. There is also a very real fear that one or more children may be taken into care. There will be situations therefore when families or parents are openly hostile to the involvement of the statutory agencies. It is important to try to find ways of working with the family, though where this proves impossible, the interests of the child must remain paramount.

#### **9.8 Deciding whether to assess**

9.8.1 Before deciding to assess a young person as a carer, local authorities, in partnership with other agencies if necessary, need to reach a judgement on whether they meet the criteria in paragraph 6.3.1, ie, if the cared-for person is eligible for community care or children's services, and whether the carer's role is "substantial and regular".

#### **9.9 Young Carer not wanting to be assessed**

9.9.1 If a young carer does not want to be assessed but appears to have a substantial caring role, the authority should consider the whole family situation, in order to get a clearer picture of the young carer's role, and to consider what alternative support might be offered to the family.

#### **9.10 Cared-for Person refuses an Assessment**

9.10.1 If it appears to the authority that a child or young person is providing "substantial and regular" care, but the young carer or their parent or guardian do not request an assessment, the authority may still consider whether there is a need to assist the child by providing community care services for the cared-for person, or providing children's services to the child. This will need to be done sensitively but at all times the protection of the child should be paramount. In situations like this, authorities should aim to ensure that the young carer is enabled to express their views fully about their caring role and their own needs.

#### **9.11 Who should be at the Assessment?**

9.11.1 Assessors should offer young carers the option of having a friend or other supporter present at the assessment. Young carers may wish to be supported by relatives, teachers or support workers with whom they have built up a relationship of trust. Local authorities should ensure ready access to child advocacy support in such assessments.

# **COMMUNITY CARE & HEALTH (SCOTLAND) ACT 2002**

## **DRAFT GUIDANCE ON SECTIONS 8-12: CARERS**

### **9.12 Tension between the Young Carer and Parents or Guardian**

9.12.1 There may be differences of views between young carers, their siblings and their parents which have not been expressed. Assessment staff will need to be alert to the possibility that children's perceptions may be strongly influenced by their parents or other family members, and they may feel their own views have no weight. Young people may also be afraid that admitting difficulties may lead to a break-up of the family.

9.12.2 This kind of potential conflict of views and interests may be difficult to recognise and manage. Assessment processes for young carers should be designed to ensure that staff with the necessary background understanding of the issues and professional skills are available in order to try to resolve such tensions. Mediation or advocacy may help in such circumstances.

### **9.13 Multi-Agency Assessment**

9.13.1 Close joint working between local authority children's services, community care services, education services and the NHS, as well as co-operation from schools and health or youth workers, is essential to enable a full understanding of the young person's or child's situation within the assessment process.

### **9.14 Who can assess?**

9.14.1 It is particularly important to ensure that staff involved in assessing a child or young person have expertise in dealing with children, and are best placed to secure the trust of the young carer. This may mean involving staff from the local authority children's services, the education service, the school, or staff from a voluntary sector local carers' centre or young carers' project. Given the importance of addressing the needs of the family as a whole, staff from the authority's adult services will also have a role to play.

9.14.2 Local authorities have the power under Section 21 of the 1995 Act to request help in exercising their functions under the Act from specified bodies or people. These other bodies or people are specified in Section 21(2) of the 1995 Act, and include other local authorities, NHS Boards or Trusts. Authorities may use this power formally to involve specified bodies in assessments carried out under the 1995 Act.

9.14.3 Assessments of young people should follow the general principles of Single Shared Assessment, so that the burden on the young person and the family is minimised, and information is shared as fully as possible between the different staff, in accordance with existing information-sharing protocols affecting children's services.

9.14.4 If a local authority decides to involve other parties or bodies in aspects of the assessment process, there must be a clear formal basis underpinning the arrangements. In particular, local authorities will need to have binding agreements with those other bodies to allow authorities to be certain that assessments will meet standards set by the authority, and that staff involved in assessments have the appropriate levels of qualification, training and expertise. Authorities themselves will remain statutorily responsible for the overall performance of the assessment.

# **COMMUNITY CARE & HEALTH (SCOTLAND) ACT 2002**

## **DRAFT GUIDANCE ON SECTIONS 8-12: CARERS**

### **9.15 Confidentiality**

9.15.1 In principle, information provided by young carers during the assessment process should be treated as confidential. Personal data is protected by the Data Protection Act 1998, and can only be disclosed to others in line with the principles of that Act. In general, this kind of information can only be disclosed with the consent of the person it relates to. In some circumstances, however, information provided by a young carer might require to be disclosed to others (eg, for child protection or to enable joint assessment). Authorities should seek consent from the young carer as part of the assessment process, or from the young carer's parent or guardian if the child is not judged to have the legal capacity to give informed consent, and where the parent's consent would be appropriate.

### **9.16 Outcomes of Young Carers Assessments**

9.16.1 The assessment process aims to identify the nature of a young carers' caring role, and the ways this can be minimised by alternative support to the family and/or the young carer. Possible outcomes will include:

- New or changed services for the cared-for person, which may include respite care or short breaks;
- direct support to the young carer through children's services under the 1995 Act;
- direct support to the young carer through information, advice, or referral of the young carer to support services provided by statutory or voluntary agencies.

### **9.17 Taking account of the carer's contribution & views**

9.17.1 The 2002 Act requires local authorities to take account of the care provided by a carer, and the views of the carer and cared-for person, before deciding on services to provide to the cared-for person. Sections 7.3 to 7.5 above explain these provisions in relation to adult carers. While these new requirements also apply to young carers, local authorities should take a different approach in applying them to carers under 18.

9.17.2 The requirements in the 2002 Act are intended to give practical effect to the role of adult carers as full partners in care-giving, to ensure that local authorities provide care packages that complement the care an adult carer is able and willing to provide. However, this is not an appropriate approach with young carers, where authorities should be aiming to minimise the impact of their caring role on the young carer's life, and to provide alternative support to the family that minimises the need for the young person to act as a carer.

9.17.3 Local authorities should still ensure that they take account of the care provided by a young carer, and their views before deciding on services to provide to the person they care for. However, authorities should use that information to construct a care package which reduces to a minimum the need for the young person to have an inappropriate caring role, and which supports the family as a whole. Authorities should take care that children do not become "institutionalised" as carers, which can be a risk of providing support services to the young carer. Children should be enabled to be children first and foremost.

# **COMMUNITY CARE & HEALTH (SCOTLAND) ACT 2002**

## **DRAFT GUIDANCE ON SECTIONS 8-12: CARERS**

### **10. NHS CARER INFORMATION STRATEGIES**

#### **10.1 What the Act does**

10.1.1 Section 12 of the Act gives Scottish Ministers a new power to require NHS Boards to prepare and submit to them a “carer information strategy”, setting out how the Board will inform carers who appear to them to be “substantial and regular” of their potential right to assessment under section 12AA of the 1968 Act. Scottish Ministers may specify the date for submitting the strategy, the form and extent of the strategy, and the consultation that the Board must undertake in preparing it. NHS Boards must provide a copy of their carer information strategy to any person who requests it.

#### **10.2 Purpose of Carer Information Strategies**

10.2.1 Staff and professionals working in the NHS have an important role to play in identifying carers of any age, offering them information, and referring them on to appropriate sources of advice and support. Many carers present themselves in a health care setting before they make contact with local authority social work departments, particularly carers who are about to or have just begun to take on caring responsibilities. In accordance with the Joint Future agenda, we expect it will make best sense for NHS Boards and local authorities to develop joint strategies for providing general information for carers. This approach is likely to be the most resource effective way and ensure targeted and consistent information.

10.2.2 All carers need to know that advice, training, information and practical support are available, and how to access that support. The purpose of NHS “Carer Information Strategies” will be to ensure that those carers that NHS staff come across, including young carers, and who appear to them to be “substantial and regular” are made aware of their potential right to an independent assessment of their ability to care, and offered information and support directly where appropriate.

#### **10.3 Implementation of Carer Information Strategies**

10.3.1 It will be important to ensure that NHS Boards develop strategies in close co-operation with local authorities and other agencies, to minimise duplication of resources by identifying and informing carers who are already in contact with other support agencies. NHS Boards will also need to work closely with local carers and carers’ organisations in drawing up their strategies.

10.3.2 Separate guidance will be issued when Ministers use this power to require NHS Boards to prepare Carer Information Strategies.

# COMMUNITY CARE & HEALTH (SCOTLAND) ACT 2002

## DRAFT GUIDANCE ON SECTIONS 8-12: CARERS

### 11. MONITORING & EVALUTATION

#### 11.1 Measuring success

11.1.1 It is essential that the Executive, local authorities and other statutory agencies, and voluntary sector bodies are able to establish that the new provisions are being implemented effectively and are producing successful outcomes for carers. A range of possible indicators or measures of successful implementation have been suggested, including the following:

- number of **carers requesting** assessment (split by age)
- number of **carers receiving** assessment (whether separate or combined with assessment of the cared-for person) (split by age)
- **time** between request and assessment (average, or % outwith norm)
- aggregated record of **identified need** from carers' assessments
- aggregated record of **nature and level of service provision** following carers' assessments
- aggregated record of **unmet need** following carers' assessments
- method of evaluating **quality** of carers' assessments

11.1.2 The Executive is committed to developing meaningful and robust arrangements for monitoring support for carers that have general support and are not unduly onerous. As far as possible these arrangements should be linked with other existing or developing monitoring arrangements, including the introduction of Single Shared Assessment, to ensure consistency and minimise the burden they impose.

**Comments are invited on the appropriateness and feasibility of the measures listed above, and / or suggestions for alternative approaches to monitoring.**

11.1.3 Final decisions about the most appropriate means of monitoring effective delivery of the new legislation and success in supporting and involving carers will be made in the light of responses to this consultation.

*NOTE: the amended versions of sections of the 1968 & 1995 Act contained in this Annex are offered simply as an illustration of the effect of the 2002 Act. They cannot be relied on as a definitive statement of the law.*

**SECTIONS 12A, 12AA & 12AB OF SOCIAL WORK (SCOTLAND) ACT 1968  
(as amended by Community Care and Health (Scotland) Act 2002)**

**Duty of local authority to assess needs.**

12A- (1) Subject to the provisions of this section, where it appears to a local authority that any person for whom they are under a duty or have a power to provide, or to secure the provision of, community care services may be in need of any such services, the authority-

(a) shall make an assessment of the needs of that person for those services; and

~~(b) having regard to the results of that assessment, shall then decide whether the needs of that person call for the provision of any such services.~~

(b) shall then decide, having regard to the results of that assessment, and taking account—

(i) where it appears to them that a person (“the carer”) provides a substantial amount of care on a regular basis for that person, of such care as is being so provided; and

(ii) in so far as it is reasonable and practicable to do so, both of the views of the person whose needs are being assessed and of the views of the carer (provided that, in either case, there is a wish, or as the case may be a capacity, to express a view),

whether the needs of the person being assessed call for the provision of any such services.[Section [8.B]]

(2) Before deciding, under subsection (1)(b) of this section, that the needs of any person call for the provision of nursing care, a local authority shall consult a medical practitioner.

(3) If, while they are carrying out their duty under subsection (1) of this section, it appears to a local authority that there may be a need for the provision to any person to whom that subsection applies-

(a) of any services under the National Health Service (Scotland) Act 1978 by the Health Board-

(i) in whose area he is ordinarily resident; or

(ii) in whose area the services to be supplied by the local authority are, or are likely, to be provided; or

(b) of any services which fall within the functions of a housing authority (within the meaning of section 130 (housing) of the Local Government (Scotland) Act 1973) which is not the local authority carrying out the assessment,

the local authority shall so notify that Health Board or housing authority, and shall request information from them as to what services are likely to be made available to that person by

that Health Board or housing authority; and, thereafter, in carrying out their said duty, the local authority shall take into account any information received by them in response to that request.

~~(3A) Subject to subsection (3B) below, in any case where~~

~~(a) a local authority make an assessment of the needs of any person ("the relevant person") under subsection (1)(a) above, and~~

~~(b) a person ("the carer") provides or intends to provide a substantial amount of care on a regular basis for the relevant person,~~

~~the carer may request the local authority, before they make their decision under subsection (1)(b) above, to make an assessment of his ability to provide and to continue to provide care for the relevant person; and if he makes such a request, the local authority shall make such an assessment and shall have regard to the results of that assessment in making that decision.~~

~~(3B) No request may be made under subsection (3A) above by a person who provides or will provide the care in question-~~

~~(a) by virtue of a contract of employment or other contract; or~~

~~(b) as a volunteer for a voluntary organisation.~~

~~(3C) Section 8 of the Disabled Persons (Services, Consultation and Representation) Act 1986 (duty of local authority to take into account ability of carers) shall not apply in any case where an assessment is made under subsection (3A) above in respect of a person who provides the care in question for a disabled person. [Section 8(1)]~~

(4) Where a local authority are making an assessment under this section and it appears to them that the person concerned is a disabled person, they shall-

(a) proceed to make such a decision as to the services he requires as is mentioned in section 4 of the Disabled Persons (Services Consultation and Representation) Act 1986 without his requesting them to do so under that section; and

(b) inform him that they will be doing so and of his rights under that Act.

(5) Nothing in this section shall prevent a local authority from providing or arranging for the provision of community care services for any person without carrying out a prior assessment of his needs in accordance with the preceding provisions of this section if, in the opinion of the authority, the condition of that person is such that he requires those services as a matter of urgency.

(6) If, by virtue of subsection (5) of this section, community care services have been provided for any person as a matter of urgency, then, as soon as practicable thereafter, an assessment of his needs shall be made in accordance with the preceding provisions of this section.

(7) This section is without prejudice to section 3 of the said Act of 1986.

(8) In this section-

"community care services" has the same meaning as in section 5A of this Act;

"disabled person" has the same meaning as in the said Act of 1986; and

"medical practitioner" means a fully registered person within the meaning of section 55 (interpretation) of the Medical Act 1983.

"person" means a natural person.

### **Assessment of ability to provide care**

12AA. -(1) A person ("the carer") who provides, or intends to provide, a substantial amount of care on a regular basis for another person aged eighteen or over ("the person cared for") may, whether or not the carer is a child,[8.I.6.39] request a local authority to make an assessment ("the carer's assessment") of the carer's ability to provide or to continue to provide such care for that person.

(2) The local authority to whom the request is made shall—

(a) comply with the request, where it appears to them that the person cared for is a person for whom they must or may provide, or secure the provision of, community care services; and

(b) if they then or subsequently make an assessment under subsection (1)(a) of section 12A of this Act of the needs of the person cared for, have regard to the results of the carer's assessment—

(i) in the assessment of the person cared for; and

(ii) in making their decision under subsection (1)(b) of that section as respects that person.

(3) Subsection (1) above does not apply as respects a carer who provides, or will provide, the care in question—

(a) by virtue of a contract of employment or other contract; or

(b) as a volunteer for a voluntary organisation.

(4) Section 8 of the Disabled Persons (Services, Consultation and Representation) Act 1986 (c.33) (duty of local authority to take into account abilities of carer in deciding whether to provide certain services to disabled person) shall not apply in a case where a local authority make an assessment, by virtue of subsection (2)(a) above, in respect of a carer of a disabled person.

(5) Subsections (4) to (7) of section 12A of this Act apply to a local authority making an assessment by virtue of subsection (2)(a) of this section as they apply to a local authority making an assessment under subsection (1)(a) of that section.

(6) In this section, "community care services", "disabled person" and "person" have the same meanings as in section 12A of this Act. [section 8(2)]

### **Duty of local authorities to provide information to carer**

**12AB** (1) Where it appears to a local authority both that—

(a) a person aged eighteen or over ("the person cared for") is a person for whom the authority are under a duty or have a power to provide community care services; and

(b) another person ("the carer") provides, or intends to provide, a substantial amount of care on a regular basis for the person cared for,

the local authority shall notify the carer that he may be entitled under section 12AA of this Act to request an assessment of his ability to provide, or continue to provide, care for the person cared for.

(2) In this section, “community care services” and “person” have the same meanings as in section 12A of this Act. [Section [8.I.7.24]]

**SECTIONS 23 & 24 OF CHILDREN (SCOTLAND) ACT 1995**  
**(as amended by Community Care and Health (Scotland) Act 2002)**

**Promotion of welfare of children in need.**

**22.**—(1) A local authority shall—

- (a) safeguard and promote the welfare of children in their area who are in need; and
- (b) so far as is consistent with that duty, promote the upbringing of such children by their families, by providing a range and level of services appropriate to the children's needs.

(2) In providing services under subsection (1) above, a local authority shall have regard so far as practicable to each child's religious persuasion, racial origin and cultural and linguistic background.

(3) Without prejudice to the generality of subsection (1) above—

(a) a service may be provided under that subsection—

- (i) for a particular child;
- (ii) if provided with a view to safeguarding or promoting his welfare, for his family; or
- (iii) if provided with such a view, for any other member of his family; and

(b) the services mentioned in that subsection may include giving assistance in kind or, in exceptional circumstances, in cash.

(4) Assistance such as is mentioned in subsection (3)(b) above may be given unconditionally or subject to conditions as to the repayment, in whole or in part, of it or of its value; but before giving it, or imposing such conditions, the local authority shall have regard to the means of the child concerned and of his parents and no condition shall require repayment by a person at any time when in receipt of—

(a) income support or working families' tax credit [Words substituted (5.10.1999) by 1999 c. 10, ss. 1(2), 20, Sch. 1 paras. 1, 6(j)] payable under the [1992 c. 4.] Social Security Contributions and Benefits Act 1992; or

(b) an income-based jobseeker's allowance payable under the [1995 c. 18.] Jobseekers Act 1995.

**Children affected by disability.**

**23.**—(1) Without prejudice to the generality of subsection (1) of section 22 of this Act, services provided by a local authority under that subsection shall be designed—

(a) to minimise the effect on any—

- (i) disabled child who is within the authority's area, of his disability; and
- (ii) child who is within that area and is affected adversely by the disability of any other person in his family, of that other person's disability; and

(b) to give those children the opportunity to lead lives which are as normal as possible.

(2) For the purposes of this Chapter of this Part a person is disabled if he is chronically sick or disabled or suffers from mental disorder (within the meaning of the [1984 c. 36.] Mental Health (Scotland) Act 1984).

(3) Where requested to do so by a child's parent or guardian a local authority shall, for the purpose of facilitating the discharge of such duties as the authority may have under section 22(1) of this Act (whether or not by virtue of subsection (1) above) as respects the child,

carry out an assessment of the child, or of any other person in the child's family, to determine the needs of the child in so far as attributable to his disability or to that of the other person.

(4) In determining the needs of a child under subsection (3) above, the local authority shall take account—

(a) where it appears to them that a person (“the carer”) provides a substantial amount of care on a regular basis for the child, or for another person in the child’s family who is being assessed under that subsection, of such care as is being so provided; and

(b) in so far as it is reasonable and practicable to do so, of—

(i) the views of the parent or guardian of the child, and the child; and

(ii) the views of the carer,

provided that, in either case, there is a wish, or as the case may be, a capacity, to express a view.”.

### **Assessment of ability of carers to provide care for disabled children.**

~~24 (1) Subject to subsection (2) below, in any case where~~

~~(a) a local authority carry out under section 23(3) of this Act an assessment to determine the needs of a disabled child, and~~

~~(b) a person (in this section referred to as the "carer" ) provides or intends to provide a substantial amount of care on a regular basis for that child,~~

~~the carer may request the local authority, before they make a decision as to the discharge of any duty they may have under section 2(1) of the [1970 c. 44.] Chronically Sick and Disabled Persons Act 1970 or under section 22(1) of this Act as respects the child, to carry out an assessment of the carer's ability to continue to provide, or as the case may be to provide, care for that child; and if the carer makes such a request, the local authority shall carry out such an assessment and shall have regard to the results of it in making any such decision.~~

(1) Subject to subsection (2) below, a person (“the carer”) who provides, or intends to provide, a substantial amount of care on a regular basis for a disabled child may, whether or not the carer is a child,[9.I.7.33] request a local authority to make an assessment (“the carer’s assessment”) of the carer’s ability to provide or to continue to provide such care for the child.

(1A) The local authority to whom the request is made shall—

(a) comply with the request, where it appears to them that the child, or another person in the child’s family, is a person for whom they must or may provide services under section 22(1) of this Act; and

(b) if they then or subsequently make an assessment under section 23(3) of this Act to determine the needs of the child, have regard to the results of the carer’s assessment—

(i) in the assessment of the child; and

(ii) in making a decision as to the discharge by them of any duty they may have as respects the child under section 2(1) of the Chronically Sick and Disabled Persons Act 1970 (c.44) or under section 22(1) of this Act.

(2) No request may be made under subsection (1) above by a person who provides or will provide the care in question—

- (a) under or by virtue of a contract of employment or other contract; or
- (b) as a volunteer for a voluntary organisation.

(3) Where an assessment of a carer's ability to continue to provide, or as the case may be to provide, care for a child is carried out under subsection (1) above, there shall, as respects the child, be no requirement under section 8 of the [1986 c. 33.] Disabled Persons (Services, Consultation and Representation) Act 1986 (carer's ability to continue to provide care to be considered in any decision as respects provision of certain services for disabled persons) to have regard to that ability.

(4) In this section "person" means a natural person.

### **Duty of local authorities to provide information to carer of disabled child**

**24A** Where it appears to a local authority both that—

- (a) a child is a disabled child for whom they must or may provide services under section 22(1) of this Act; and
- (b) a person (“the carer”) provides, or intends to provide, a substantial amount of care on a regular basis for the child,

the local authority shall notify the carer that he may be entitled under section 24(1) of this Act to request an assessment of his ability to provide, or to continue to provide, care for the child.[7]