

Draft Self-directed Support (Direct Payments) (Scotland) Regulations 2013

A public consultation on draft Regulations to accompany the Social Care (Self-directed Support) (Scotland) Act 2013

This document contains draft Regulations to accompany the Social Care (Self-directed Support) (Scotland) Act 2013.

The draft Regulations are published for consultation. The Scottish Government would like to hear from those who receive care and support, carers, social work and health professionals, local authorities, Health Boards and the general public.

Following the consultation the Regulations may be amended. They will then be introduced to the Scottish Parliament.

Alongside the draft Regulations, the Scottish Government invites views on draft Statutory Guidance which will eventually accompany the Regulations and the Self-directed Support Act. Consultees are encouraged to provide their views on both the draft Regulations and the draft Guidance, which are being considered as part of one consultation.

- **Regulation 5** establishes that a direct payment can be paid in instalments (i.e. in a series of separate payments as opposed to one single payment – though this can also be done)
- **Regulation 6** establishes that a direct payment can be paid to a third party to manage the day to day practicalities under the direction of the supported person.
- **Regulation 7** sets out an exhaustive list of the circumstances under which an authority can terminate a direct payment. These are where the person has become ineligible, where the payment has been used for purposes out-with the person's support plan, where it has been used to secure the provision of support by a family member in circumstances where the family member is not permitted to provide such support or where the money has been used unlawfully. In addition, Regulation 7 imposes certain requirements on the authority when they decide to terminate the direct payment, such as the requirement to inform the person as to the reason why the payment is terminated and the date on which it is to be terminated.

Question 1: What are your views on Part 2 of the draft Regulations (calculation, payment and termination of direct payments)?

Disagree. Regulation 3 should give automatic exemption to those in receipt of means-tested state benefits. Agree with regulations 4, 5, and 6. In regulation 7 there should be a formal appeals procedure. Failure to do so will lead to large sums of money being spent in legal fees on Judicial Review cases.

Provision of support by family members (Part 3 of the Regulations)

4. Part 3 of the Regulations sets out appropriate and inappropriate circumstances where the supported person, carer and professional are considering the option of employing a close relative as a personal assistant. This Part of the Regulations applies to the use of direct payments by disabled or cared-for adults and children. The rules do not apply to the use of direct payments made to adult or young carers.

5. The Regulations seek to provide a balanced framework for decision-making in relation to this complex and important question. Regulation 9 provides a list of circumstances in which family members may be employed – regulation 9(3)(i) is intended to give professionals the discretion to allow

Question 3: What are your views on Regulation 11 which deems individuals who are placed under a variety of criminal justice orders to be ineligible to receive direct payments?

For example, is it appropriate to impose the exclusions listed in Regulation 11? Are there any persons not listed in regulation 11 to whom it would be inappropriate to offer the option of a direct payment?

In regulation 11, the only people for whom direct payments should not be available are those convicted of drugs offences and undischarged bankrupts. All others should be eligible.

Regulation 12: Services for which direct payments are not available

8. Regulation 12 deals with particular forms of support. Again, it removes the obligation on the relevant professional to offer a direct payment to the supported person under the specific circumstances provided in the Regulations. The forms of support that would lie out-with the scope of direct payments are:

- support for individuals who are homeless as defined in Part II of the Housing (Scotland) Act 1987;
- support for individuals who are fleeing domestic abuse;
- support for individuals in relation to drug or alcohol dependency;
- the provision of residential accommodation, with or without nursing, for a period in excess of four consecutive weeks in any period of twelve months.

Question 4: What are your views on restricting access to direct payments for those who are homeless, those who are fleeing domestic abuse or those who require support in relation to drug or alcohol addiction?

Only those suffering from drug addiction should be excluded.

The equality and human rights impacts of the Regulations

Question 9 (a): Do you have any views on the impact of the Regulations on any or all of the following equality categories:

- i) age;
- ii) disability
- iii) gender;
- iv) lesbian, gay, bisexual and transgender;
- v) race, and;
- vi) religion and belief

By "equality impacts" we mean whether or not, and in what ways, the Regulations will affect certain groups, and whether they will impact on those groups in a positive or a negative way. In considering the impacts you may wish to consult the Equality Impact Assessment published for the Social Care (Self-directed Support) (Scotland) Act 2013, available at the following hyperlink: <http://www.scotland.gov.uk/Publications/2012/03/9876>

We plan to update the Equality Impact Assessment in light of this consultation.

The term "personal care" needs to be expanded to include "personal spiritual care" and also "living in a safe environment," by including help with religious matters and help with cleaning and other housework.*

Question 9 (b): Do you have any views on the impact of the Regulations on human rights?

For more information about human rights please see the Scottish Human Rights Commission's website at:

<http://www.scottishhumanrights.com/abouthumanrights/whatarehumanrights>

The lack of any suitable procedure for appealing against decisions amounts to violation of Article 6 of Schedule 1 of Human Rights Act 1998. Under the present plans Social Workers have the same powers as authoritarian dictators.

* Where someone cannot do cleaning, this can lead unhygienic conditions and so this should be part of personal care. Where someone cannot ^{change} a light bulb this should also be included (but not the cost of the light bulb). Lack of adequate lighting can lead to dangerous conditions in the home.