

Consultation Questionnaire

Draft Statutory Guidance on Care and Support

Consultation Questions

Section 2 : Values and Principles

**Question 1a: Was this section of the guidance clear and easy to understand?
(please tick)**

Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Question 1b: How useful did you find this section of the guidance?
(please tick)**

Very useful	Quite Useful	Not very useful	Not at all useful
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Question 1c: Do you have any further comments on this section of the guidance?

Some advice to help you to answer this question – Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?

Pathway

This section is useful perhaps

Table 1.

The Persons Pathway step 7 “Monitoring and Review” updating the assessment should include whether the outcomes have been achieved?

Table 2

Should the supported person be at the head of the table as the key to everything else?

Draft Statutory Guidance on Care and Support

Consultation Questions

Section 3: Values and Principles

**Question 2a: Was this section of the guidance clear and easy to understand?
(please tick)**

Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Question 2b: How useful did you find this section of the guidance?
(please tick)**

Very useful	Quite Useful	Not very useful	Not at all useful
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Question 2c: Do you have any further comments on this section of the guidance?

Some advice to help you to answer this question – Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?

Values and Principles

This is a useful reminder of the values and principles that underpin Self Directed Support.

Table 3

Involvement should the last sentence “communities should be.....” be moved to Participation?

Should it also read “Communities should be assisted to play an active role?”

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Consultation Questions

Section 4: Eligibility and Assessment

Question 3a: Was this section of the guidance clear and easy to understand? (please tick)

Yes	No
<input type="checkbox"/> Partially	<input type="checkbox"/>

Question 3b: How useful did you find this section of the guidance? (please tick)

Very useful	Quite Useful	Not very useful	Not at all useful
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Question 3c: Do you have any further comments on this section of the guidance?

Some advice to help you to answer this question – Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?

Eligibility and Assessment

This section is a bit disjointed, we would suggest the following changes and given that the section begins with assessment is the logical order should be the title of the section be switched around?

Should the section on eligibility criteria paras 21-25 be moved to come after the next section on assessment – after paragraph 40 to keep assessment together?

Paras 18 and 19 appear to overlap, could they be combined?

Para 21 will this reference change to take account of Self Directed Support?

To ensure the section on eligibility “runs” smoother we would suggested the following sequence:-

Para 25 – the authority should develop its policy

Para 23 – the professionals role

Para 22 – the eligibility framework

Para 24 – the local authorities role

Para 21 could then be removed

This section doesn’t mention children and families who are covered later on but if this section is specific to adults this should be explicit.

Should para 38 self assessment be moved to the beginning of assessment?

Should “from a provider” be removed from the first sentence as support can come from many sources.

Should “further assessment” be replaced by “statutory assessment”?

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Consultation Questions

Section 5 : Support Planning

This section of the guidance covered:

- general guidance on support planning
- risk
- resources
- the choices that must be made available to the supported person and
- information and support

**Question 4a: Was this section of the guidance clear and easy to understand?
(please tick)**

Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Question 4b: How useful did you find this section of the guidance?
(please tick)**

Very useful	Quite Useful	Not very useful	Not at all useful
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Question 4c: Do you have any further comments on this section of the guidance?

Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you’d like to make?

Support Planning

Paras 64 – 66

The professional discretion described here is related only to an individual's assessed need and the form of support chosen, this raises a number of issues in relation to option 1.

Local Authorities have wider duties in relation to safe guarding which would include community safety. Local Authorities often work closely with individuals developing support in circumstances that might present potential risk to other people but not subject to any of the compulsory orders under Reg 11 of Part 4 of the Act. The Local Authority concerns in these instances about the use of option 1 would not relate to the assessed need of the individual but the safety of others who may be recruited to deliver the support.

Also there are some adults with capacity to consent to a particular option but for whom capability may be a problem as the person may have difficulty understanding and carrying out their responsibilities as an employer. Although, the support may be adequate to meet their agreed outcomes if there are difficulties in relation to their role as employer, within employment law, if they have failed to comply with employment legislation there will be no legal protection.

This could leave vulnerable adults facing legal issues they cannot understand. It could also leave professionals open to criticism and challenge for agreeing to such arrangements in situations where it was clear the individual would be able to understand and carry out their responsibilities as an employer.

These same concerns would also apply in the case of parents with a lifestyle that may give cause for concern who opt to take Option 1 to secure support for a child.

We should strongly suggest that professional judgement has an extremely important role here and that any issues relating to compliance with Adult Support and Protection and Child Protection duties should take precedence.

This must be clearly set out within guidance and regulations.

Draft Statutory Guidance on Care and Support

Consultation Questions

Section 6 : Monitoring and Review

**Question 5a: Was this section of the guidance clear and easy to understand?
(please tick)**

Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Question 5b: How useful did you find this section of the guidance?
(please tick)**

Very useful	Quite Useful	Not very useful	Not at all useful
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Question 5c: Do you have any further comments on this section of the guidance?

Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?

Monitoring and Review

Para 77 – a change to a supported persons needs or a request for a further assessment should prompt a review. It is also possible that a financial review may be required for Option 2 if the budget is not being managed adequately on behalf of the supported person by a third party.

Draft Statutory Guidance on Care and Support

Consultation Questions

Section 7 : Facilitating genuine choice for individuals

**Question 6a: Was this section of the guidance clear and easy to understand?
(please tick)**

Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Question 6b: How useful did you find this section of the guidance?
(please tick)**

Very useful	Quite Useful	Not very useful	Not at all useful
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Question 6c: Do you have any further comments on this section of the guidance?

Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?

Facilitating Choice

Should there be more reference to the capacity of providers for both statutory and independent providers.

Links could be made to both in-house local authority support, independent support and possibly refer to SPAEN and SDS Scotland as other sources.

Should there be a reference to personal assistants in this part?

Draft Statutory Guidance on Care and Support

Consultation Questions

Section 8 : The role of the NHS professional

**Question 7a: Was this section of the guidance clear and easy to understand?
(please tick)**

Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Question 7b: How useful did you find this section of the guidance?
(please tick)**

Very useful	Quite Useful	Not very useful	Not at all useful
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Question 7c: Do you have any further comments on this section of the guidance?

Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?

that are more appropriate for statutory guidance rather than Regulations?

Para 87 Bullet point 2 – should read ‘They can arrange for the transfer of funding from the NHS to the local authority in order to pay for aspects of HEALTH CARE provision’.

Para 88 – We would be concerned that it is made clear that there will be an appropriate level of support, training and supervision in place for health professionals to discharge these responsibilities. This will be a significant practice and culture shift for many NHS professionals.

Para 91 – Clarity around professional and organisational roles and responsibilities in this process are required.

Draft Statutory Guidance on Care and Support

Consultation Questions

Section 9.1 : Children and Families

**Question 8a: Was this section of the guidance clear and easy to understand?
(please tick)**

Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Question 8b: How useful did you find this section of the guidance?
(please tick)**

Very useful	Quite Useful	Not very useful	Not at all useful
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Question 8c: Do you have any further comments on this section of the guidance?

Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?

Children and Families

Inverclyde CHCP welcomes the references to GIRFEC and the Shanarri Framework as positive, especially as we are adopting the Shanarri Framework. However, we feel this section as a whole requires much more information, detail and content in relation to legal framework and current changes in legislation.

Is there scope for the use of professional discretion to be used for example could children/young people who are in long term foster placements access Direct Payments? Could such an approach (professional discretion) be used at an early stage to assist young people who are preparing to leave care? Can young people who attend residential placements term time access Self Directed Support options during holiday time to ensure they are appropriately supported?

The guidance asks if there are specific circumstances where it would never be appropriate to offer option 1 or 2. We would argue that this would be a decision that would be based on professional judgement and use of discretion.

We cannot emphasise enough the need for more clarity within the guidance as to the tensions between Self Directed Support legislation and Child Protection legislation and would look for confirmation that Child Support legislation would always take precedence over Self Directed Support options. Professional assessment and a family's assessment of need could be in conflict and professional judgement should be applied in relation to safe guarding duties.

Self Directed Support should be used to encourage and empower both parent and child and not used to create dependency e.g. provision of taxis' because the parent is not getting the child ready for school on time. There is a recognition that often the support provided is to support the parent to parent the child appropriately rather than services directly to the child.

Professional discretion should be applied in cases where the capability of a parent to manage a Direct Payment on behalf of a child may be a problem e.g. if there are money management issues and also problems of addiction.

Links and interface with other bodies involved with Child Protection need to be clear e.g Children's Hearing system.

Training for family carers and personal assistants needs to be accessible and

sufficient to ensure children are not put at risk.

There are also concerns around the current PVG regulations as there is no legal requirement for parents to ensure that personal assistants are members of the PVG scheme.

There needs to be more guidance in relation to Self Directed Support and young carers. Where the parent or guardian is the supported person and the young carer wishes a Direct Payment to whom will this be paid and how will this be managed? Can a Direct Payment be paid in respect of a young carer regardless of age? In relation to the assessment the parents view of needs may be in conflict with those of the child. There needs to be further examination of how to ensure that young carers are listened to and included in relation to the four options while ensuring there is no conflict of interest.

There are issues during transition to adult services when a young person lacks capacity to consent but a Direct Payment to employ staff is in payment managed by the parent. A guardianship application would need to be made to continue the arrangement. This takes time and would need to be started well before the 18th birthday to ensure continuity.

If a young person has reduced capacity and guardianship was not deemed necessary there may be problems if it was felt that the young person could not take on the role of the employer. This could create legal issues for the family and the local authority in terms of who is the lawful employer.

There needs to be further consideration of the legal issues surrounding this.

Draft Statutory Guidance on Care and Support

Consultation Questions

Section 9.2 : Supported decision-making and circles of support

**Question 9a: Was this section of the guidance clear and easy to understand?
(please tick)**

Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Question 9b: How useful did you find this section of the guidance?
(please tick)**

Very useful	Quite Useful	Not very useful	Not at all useful
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Question 9c: Do you have any further comments on this section of the guidance?

Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?

Supported Decision Making

A clearer definition of “circles of support” would be helpful. Is it a formal structure or an informal group (family and friends)? If the circle of support is comprised solely of family members how can we ensure the decision is indeed what the supported person wants?

The use of the phrase “reasonable steps” is perhaps not helpful. Who determines what is “reasonable” and is it on an individual basis or at an organisational level? The guidance appears to assume that almost any level of support that is required could be considered “reasonable” within an individual’s need without considering how realistic or deliverable this may be.

There needs to be clear understanding that individuals will vary in their level of understanding and capacity to engage in the process of planning support. There will be people who can make decisions with support on how they would like that support provided but will not be able to understand the complexities and legal requirements involved in for example employing staff. This requires a level of understanding of employment law and health and safety legislation etc.

Timescales are important as to achieve a successful outcome the process cannot be rushed.

This section of the guidance fails to provide guidance in relation to when capacity is in doubt. More guidance is needed on this point.

There is evidence from one of the test sites that there was an increase in applications for guardianships. There are also issues around the complexity of the process and the cost of guardianship.

Draft Statutory Guidance on Care and Support

Consultation Questions

Section 9.3: Carers

Question 10a: Was this section of the guidance clear and easy to understand? (please tick)

Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>

Question 10b: How useful did you find this section of the guidance? (please tick)

Very useful	Quite Useful	Not very useful	Not at all useful
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Question 10c: Do you have any further comments on this section of the guidance?

Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?

We are very supportive of the power to provide support to carers to assist in their caring role. This could give local authorities more flexibility to support carers in situations where the cared for person may decline support from others.

The guidance does not mention the intention to relax the rules on the employment of close relatives using a DP. This proposal raises a number of issues.

How does the paid support fit in relation to the provision of short breaks / respite?

As we understand the current regulations, if a carer is employed under a contract of employment then they are no longer eligible for a carer's assessment this requires clarification and should be explicit in the guidance.

How can we ensure a paid carer takes their legal holidays and doesn't continue to provide cover continuously?

These are a few of the issues that make the provision of support to family carers complex.

Young Carers Issues

In relation to receipt of a DP there are issues around capacity to receive and manage a DP, capacity to be an employer etc.

In relation to the age of the young carer who would manage the DP on their behalf?

What would be the position if the person they are supporting is also the person with parental responsibility? Would this person manage it? Would this be a conflict of interest?

More clarity is required around how SDS applies to young carers

Draft Statutory Guidance on Care and Support

Consultation Questions

Section 9.4: Direct payments

**Question 11a: Was this section of the guidance clear and easy to understand?
(please tick)**

Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Question 11b: How useful did you find this section of the guidance?
(please tick)**

Very useful	Quite Useful	Not very useful	Not at all useful
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Question 11c: Do you have any further comments on this section of the guidance?

Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?

Could there be more in the guidance with regard to who could be a third party?
There has to be evidence that both parties understand their roles and responsibilities perhaps the use of a signed mandate may prevent problems later on.

There also needs to be some allowance for professional discretion as there may be pressure being applied in relation to a family member or friend wanting to control the financial management but are known to have issues of addiction / gambling.

It should be explicit that a personal assistant employed to provide support should not be appointed to manage the finances.

Para. 127. Are the bullet points restrictive?

Should "assessed need" be replaced by "eligible need"?

Bullet point 4 replace "holiday" with "short break" as this could raise expectations about the use of a DP.

Para.130-131 In relation to employment the specialist advice that would be required for anyone who wants to employ carers would not solely be the responsibility of the care manager. The care manager would refer the person to an organisation or team that could provide the relevant advice or support.

Para 133 Could the word "Independent" be removed as some areas don't have access to independent support and are supported by specialist teams within the local authority.

In mixed packages where the main lead is health should health also be monitoring the social care element as well?

Where a DP is terminated by the LA e.g. due to misuse, the local authority discretion as to whether to reinstate should be covered in the guidance.

Draft Statutory Guidance on Care and Support

Section 9.5: Wider legal duties and strategic responsibilities

Question 12a: Was this section of the guidance clear and easy to understand? (please tick)

Yes	No
<input checked="" type="checkbox"/>	<input type="checkbox"/>

Question 12b: How useful did you find this section of the guidance? (please

Very useful	Quite Useful	Not very useful	Not at all useful
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Question 12c: Do you have any further comments on this section of the guidance?

Please provide your suggestions for improvements or additions to this section. Are there any further topics that you would like to see included, any changes that should be made or any other comments you'd like to make?

Adult Support and Protection.

There needs to be greater clarity in the guidance around the links between SDS, particularly Direct Payments, and Adult Support and Protection legislation as both of these confer statutory duties on local authorities which could be seen to be conflicting.

The application of SDS options, and in particular direct payments, is a legal duty with a small number of exclusions relating to compulsory orders. Discretion on the method of support appears to be restricted to the needs of the supported person. The proposed regulations appear to offer no scope to professionals to use discretion and restrict the option of employing staff if there is substantial evidence of potential harm to staff. As the supported person is the employer the local authority is limited in law as to the sharing of information with a personal assistant.

Professionals cannot ignore the existence of substantial risk and would be in breach of wider duties in relation to safeguarding. The same concerns would also apply to child protection issues but the draft Guidance and Regulations don't appear to address this.

This section needs to acknowledge the role of robust professional assessment and evidence based decision making and we would suggest that much clearer guidance in relation to prioritising safeguarding duties in relation to the duties under SDS and the legal implications of these are necessary.

Re-ablement.

The clarification that reablement is part of the assessment process is helpful.

Where a SDS option is already in place it is important that this can still be provided

alongside any reablement that is then provided to keep continuity of carers and avoiding any employment legislation issues.

Residential care

Perhaps greater clarity on the suggestion of the use of option 2 and what could be paid for.

Equipment and Adaptations

Current DP regulations and guidance includes information on ownership, repair and maintenance but this has been omitted from the current draft this needs to be addressed.

Previously DPs only related to temporary adaptations the new guidance has removed “temporary” and now states adaptations. If this now means that all housing adaptations are included there will need to be clarity about how this will interface with other legislation and funding sources governing the adaptations to properties.

If it is to remain as currently in place then the guidance should specifically state “temporary adaptations”.

There is a need for further clarity as to how this will apply to owner occupiers and landlords.

Other forms of Social Welfare

Regulation 12 of the draft DP regulations lists a number of services for which a DP may not be considered. We would suggest that there may be instances where professional judgement should be used to determine whether people who are fleeing domestic abuse or who are homeless would benefit from having access to direct payments. These situations are sometimes dealt with in a planned way rather than always being an immediate crisis. Having access to a direct payment in such situations would allow the professional to consider all of the SDS options, assess each case on its individual circumstances and to reach a professional judgement on the best plan for that particular person.

It would be useful to confer a power on local authorities to offer a direct payment rather than a duty.

Draft Statutory Guidance on Care and Support

Consultation Questions – General Questions

The Guidance document as a whole

Question 13: Do you have any further general comments on the guidance?

For example, are there any gaps in terms of the topics covered by the guidance? Are there any major changes that you would recommend? Do you have any comments on the style and layout of the guidance, or the language used in the guidance?

The employment of family carers is not addressed in the guidance despite the shift in position within the draft regulations.

This shift away from local authority discretion has vast implications with regard to family dynamics and relationships. If more family members take on the role of paid carers it raises issues around conflicting views during assessment.

While in some families this can work well, by changing the regulations it will be more difficult for the professional to exercise discretion in order to protect the interests of carer and cared for.

There is no mention of how this will interact with the PVG scheme as a family member could be employed with no background checks having been carried out.

In relation to the full implementation of SDS there will be a cultural shift required across all groups. This will take time to achieve as evidenced by the test sites. We would hope that as the final guidance will not be published until fairly late in the year the timescales for local authorities will be considered.

The costs and benefits arising from this guidance

Question 14: Do you have any comments on the financial costs or benefits of the requirements set out in the guidance?

Can you identify any financial costs or benefits to individuals, local authorities, health boards, providers or any other person or organisation affected by the guidance. In considering the costs and benefits you may wish to consult the Business Regulatory Impact Assessment published for the Social Care (Self-directed Support) (Scotland) Act available at the following hyperlink:

<http://www.scotland.gov.uk/Publications/2012/03/5525>

We plan to update the BRIA in light of the comments and information from this consultation.

Initial Development

There will be costs associated with implementation, impact on the financial assessment process and system costs for RAS development.

There will be a number of initial costs such as training, materials, publicity and the impact on staff resources will be significant for Local Authorities and providers. For Local Authorities this will be compounded by the requirement to identify indicative budgets/relevant amounts for all four options.

Monitoring & Review

There will be significant changes to the monitoring and review process for individuals which will be resource intensive.

Commissioning

There will be an impact on existing contracts and framework agreements. Local Authorities currently benefit from negotiated rates – will individuals end up paying a premium?

There will be a potential cost impact on providers who may need a period of change/development funding to redesign their service provision, to fully meet user expectations.

Joint Working

As an integrated CHCP there should be little impact from SDS. However, the future impact of integration of Health & Social Care, in particular acute services, will need to be considered.

Future Work

There is the question of whether publicity will bring new cases that otherwise may not engage with services, the impact is an immediate cost pressure.

Carer's assessments and support has the potential to become a significant cost pressure.

The equality and human rights impacts of the guidance

Question 15 (a): Do you have any views on the impact of the guidance 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**

Some advice to help you to answer this question - By "equality impacts" we mean whether or not the guidance will affect certain 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 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 the comments and information from this consultation.

We believe the guidance fulfils obligation in relation to equality.

Question 15 (b): Do you have any views on the impact of the guidance 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>

We believe the issues raised in respect of the safeguarding could possibly have wider implications with regard to the Human Rights of individuals who could potentially be placed at risk.

Consultation Questionnaire

Draft Regulations

Consultation Questions

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

Comments

Question 2: What are your views on Part 3 of the draft Regulations (appropriate/inappropriate circumstances for the employment of close relatives)?

Comments

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?

Comments

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?

Comments

Question 5: What are your views on restricting access to direct payments in relation to the provision of long-term residential care?

This question was raised during the initial consultations on a draft SDS Bill. The Scottish Government would like to invite detailed views before making a final decision prior to the laying of the Regulations before the Scottish Parliament. Should the restriction be removed from the final regulations, thereby allowing direct payments for residential care? Or should it be retained? Please provide reasons as to your support or opposition to requiring authorities to provide direct payments for residential care.

Comments

Question 6: The draft Regulations do not specify circumstances where the direct payment option should be unavailable for care and support to children/families. *Should* there be specific restrictions on choice of support in relation to children/families support (i.e. support provided under Section 22 of the Children (Scotland) Act 1995) and should these restrictions apply to the direct payment only, or to other options as well?

Comments

Question 7: Do you have any further comments on the draft Regulations?

For example, are there any gaps in terms of the topics covered by the Regulations? Are there any major changes that you would recommend? Are there any topics that are more appropriate for statutory guidance rather than Regulations?

Comments

Draft Regulations

Consultation Questions – General Questions

The costs and benefits arising from these regulations

Question 8 : Do you have any comments on the financial costs or benefits of the Regulations?

Can you identify any financial costs or benefits to individuals, local authorities, health boards, providers or any other person or organisation affected by the Regulations. In considering the costs and benefits you may wish to consult the Business Regulatory Impact Assessment published for the Social Care (Self-directed Support) (Scotland) Act available at the following hyperlink:

<http://www.scotland.gov.uk/Publications/2012/03/5525>

We plan to update the BRIA in light of the comments and information from this consultation.

Comments

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.

Comments

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>

Comments

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.

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

Consultation Paper

Introduction

1. In January 2013 the Social Care (Self-directed Support) (Scotland) Act (“the 2013 Act”) received Royal Assent. The Act makes provision about the way in which certain social care services are provided. In particular, it provides a variety of choices as to how a person wishes to arrange their care and support.

2. During the SDS Bill’s passage through the Scottish Parliament, Scottish Ministers made a commitment to develop statutory guidance and Regulations to accompany the Act, and to consult on the content of the guidance and Regulations. Attached to this consultation paper are a set of draft Regulations to accompany the Act which deal specifically with direct payments. The Scottish Government invites views on the content, purpose and effect of the Regulations. Alongside this, the Scottish Government is inviting views on a detailed statutory guidance document to accompany the Act and the Regulations. This consultation paper provides an explanation of the Regulations and outlines some key consultation questions on which we would like to hear your views.

Calculation, payment and termination of direct payments

3. Part 2 of the Regulations (regulations 3 to 7) sets out a variety of requirements in relation to the charging arrangements for direct payments, the way in which charges are recovered, the basis on which direct payments can be made and the circumstances where a direct payment may be terminated. In particular

- **Regulation 3** sets out the administrative arrangements for any means testing in relation to the direct payment – i.e. the arrangements for the assessment of a person’s ability to pay a charge with respect to their direct payment;
- **Regulation 4** sets out the way in which any charges should be recovered – requiring the authority to make any payment “net” (i.e. with the person’s charge recovered “at source” before the payment is made) except where the service user requests that they payment be paid gross (i.e. where the person is provided with their payment in full and invoiced for their charge at the end of the relevant period);

- **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)?

Giving the option to receive a payment gross of any contribution they have been assessed as requiring to make to the care package would add additional administration costs to councils.

Currently the majority of Direct Payment (DP) recipients have no problem receiving a Direct Payment into the designated bank account and setting up regular payments into this account from their own funds. This cuts down administration, costs and is simple for Direct Payment users to understand and manage.

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

employment in circumstances other than those specifically listed where he or she considers it appropriate. It is important to note that a family member can only be employed in these circumstances if both the family member and direct payment user agree and the family member is capable (on an objective basis) of meeting the direct payment user's needs. By articulating appropriate circumstances, the regulation seeks to encourage professionals to consider the outcomes and potential benefits of such arrangements. However, even if the circumstances fall within regulation 9, a direct payment user cannot employ a family member in the circumstances set out in regulation 10. By providing "exceptions to the family members rule" it seeks to articulate the circumstances where it would be inappropriate for the authority to allow such arrangements.

Question 2: What are your views on Part 3 of the draft Regulations (appropriate/inappropriate circumstances for the employment of close relatives)?

The current list of close relatives was expanded in 2007 to reflect modern family set ups. The draft regulations seek to narrow this definition with the removal of "step" relatives and "in-laws", allowing this group to be employed as paid carers without any control.

The regulation also list nine occasions when family members within the definition could now be employed. A Local Authority will no longer require to be satisfied that it is necessary for a family member to provide care for a Direct Payment to be used to pay the family member. By defining these in the regulations we believe there will be an assumption by family members that they can automatically assume the role as a paid carer and families will therefore not seek essential care therefore, failing to take advantage of respite opportunities. A family member who becomes a paid carer will not be eligible for a carer's assessment under Section 12AA of the 1968 Act or Section 24 of the 1995 Act as the care would then be provided under a contract of employment.

There are instances where family carers often provide more support on an unpaid basis rather than accepting replacement care and may not be taking their full entitlement to annual leave, thus placing the employer in breach of employment regulations. There are also instances where family carers fail to provide the support they are being paid for.

This is difficult to monitor and when substantial paid/unpaid support is provided by the same person boundaries can become blurred and there are associated risks to the individual and the carer.

It is extremely difficult to assess and monitor whether there is any undue pressure on either the carer or the supported person to agree to the employment arrangement.

The family dynamic is completely changed when family carers are paid to provide support and there are instances where support from other family members has reduced because of the paid role making it difficult to plan for contingencies like annual leave and sickness.

These are some of the issues that can make the support provision to family carers complex and cause blurring of boundaries. It is difficult for professionals to assess the level of influence placed on individuals to seek or accept these arrangements. We would therefore suggest that employment of family members remains as it is now at the discretion of the local authority.

Circumstances where direct payments are not available

6. Part 4 within the Regulation lists people who are not eligible for direct payments. In addition it lists a range of services that are not appropriate for direct payments. The effect of Part 4 (read with the 2013 Act) is that it removes the obligation on the relevant professionals to offer the direct payment option in relation to certain individuals and in relation to certain circumstances.

Regulation 11: People who are not eligible for direct payments

7. Regulation 11 provides a list of people who, because they are subject to a particular criminal justice order, are deemed to be ineligible for a direct payment. The list does not include people subject to Compulsion Orders or Compulsory Treatment Orders (as defined in current Direct Payment regulations) – in other words, under the new regulations people who are subject to COs or CTOs will be eligible for direct payments and will have a right to request and receive a direct payment. The list does however include a range of other individuals subject to a range of other orders.

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?

Regulation 11 focuses on individuals who are subject to certain criminal justice measures or who are subject to compulsory treatment for alcohol or drug dependency to be excluded from receiving Direct Payments. This therefore implies that all other groups are eligible to receive a Direct Payment.

This approach does not allow for Local Authority discretion which could mean that Local Authorities would have to make payments to individuals that carry an unacceptable risk.

Adult Support and Protection and Child Protection duties should for example take precedence over the duty to offer a Direct Payment otherwise professional assessment could be significantly compromised in relation to duties associated with all of these acts.

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?

As before it may be useful to have the option of Self Directed Support (SDS) for wider forms of support. However, professional discretion as to when and how this would be appropriate would be important.

The Regulations and guidance must recognize the overriding duty of care Local Authorities have. They must also balance a presumption to entitlement with the protection of Local Authorities discretion and professional judgements across a range of groups and circumstances.

We would suggest that the offer of the option of a Direct Payment should be discretionary where there are concerns around safe guarding both of the individual and of the person providing support.

Question 5: What are your views on restricting access to direct payments in relation to the provision of long-term residential care?

This question was raised during the initial consultations on a draft SDS Bill. The Scottish Government would like to invite detailed views before making a final decision prior to the laying of the Regulations before the Scottish Parliament. Should the restriction be removed from the final regulations, thereby allowing direct payments for residential care? Or should it be retained? Please provide reasons as to your support or opposition to requiring authorities to provide direct payments for residential care.

Currently a Direct Payment cannot be used to purchase long term residential care. There are concerns that if this position were to change anyone accessing a direct payment for residential care could be subject to "top up" fees unless a level of agreement is agreed with providers. There has been little or no demand for direct payment for residential care and with current models of provision it is difficult to see any real advantage.

There needs to be clarification of whether residential care is to be excluded from all four Self Directed Support options.

Additional consultation questions

Direct payments, individual services funds and support to children in need under Section 22 of the Children (Scotland) Act 1995 – the duty to impose the 4 options of self-directed support applies to any support provided under Section 22 of the Children (Scotland) Act 1995. Section 22 covers a wide range of support - the Scottish Government invites your views on whether there should be any exceptions to the rule to offer the full range of choices. Any restrictions on choice should be fully justified.

Question 6: The draft Regulations do not specify circumstances where the direct payment option should be unavailable for care and support to children/families. *Should* there be specific restrictions on choice of support in relation to children/families support (i.e. support provided under Section 22 of the Children (Scotland) Act 1995) and should these restrictions apply to the direct payment only, or to other options as well?

As previously stated it would make sense to enable professional discretion in relation to when Direct Payments are appropriate. This would allow maximum flexibility to professionals to engage with families to secure the support that best meets their outcomes at appropriate stages in the support.

Question 7: Do you have any further comments on the draft Regulations?

For example, are there any gaps in terms of the topics covered by the Regulations? Are there any major changes that you would recommend? Are there any topics that are more appropriate for statutory guidance rather than Regulations?

There are concerns around the eligibility for Direct Payment in relation to adults with incapacity. As the legislation stands it is explicit that Local Authorities cannot make a Direct Payment to an adult who is incapable of managing a Direct Payment. However a Direct Payment can be made to an attorney or guardian if the Local Authority are satisfied with their ability to manage the Direct Payment. It gives attorneys/guardians express authority to manage any Direct Payment made to them.

This express provision as laid down in Section 12B of the Social Work (Scotland) Act 1968 will be repeated by the new act and there are no equivalent provisions.

This means there is nothing explicit in the 2013 Act/draft regulations that tells Local Authorities they cannot make a Direct Payment to an adult who is incapable of managing a Direct Payment or whether and when a Direct Payment can be made to an attorney/guardian.

Local Authorities would be left to decide whether to take it as implied that incapable adults are not entitled to choose a Direct Payment but their attorney or guardian is.

It would provide clarity to Local Authorities and those seeking to advise adults with incapacity if there was explicit statutory provision.

The costs and benefits arising from the Regulations

Question 8 : Do you have any comments on the financial costs or benefits of the Regulations?

Can you identify any financial costs or benefits to individuals, local authorities, health boards, providers or any other person or organisation affected by the Regulations. In considering the costs and benefits you may wish to consult the Business Regulatory Impact Assessment published for the Social Care (Self-directed Support) (Scotland) Act available at the following hyperlink:

<http://www.scotland.gov.uk/Publications/2012/03/5525>

We plan to update the BRIA in light of the comments and information from this consultation.

Means testing

Any changes to processes will require training and redesign and therefore potential costs.

Payment made net or gross

If user can elect then this will lead to different arrangements with the same provider

- If user elects for gross but defaults on contribution to a provider does the Local Authority become liable?
- If user purchases services from the Local Authority can cost be deducted at source?

There will be issues on debt write offs / bad debt provisions

Vulnerability issues – how will it work for guardianship cases?

DP by instalments

Frequency of payments – would there be an increased cost and admin time for more? is there a conflict with user expectations?

Other Issues

3rd party DPs will impact on payment levels/frequencies, reconciliations and control. Will there be a similar impact on contract monitoring? Quality?

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.

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>

We believe the issues raised in relation to safeguarding could possibly have wider implications with regard to the Human Rights of individuals who could potentially be placed at risk.

2013 No.

SOCIAL CARE

**The Self-directed Support (Direct Payments) (Scotland)
Regulations 2013**

Made - - - - - ***
Laid before the Scottish Parliament ***
Coming into force - - - - - ***

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 15 and 22(1) of the Social Care (Self-directed Support) (Scotland) Act 2013(a) and all other powers enabling them to do so.

PART 1

Introductory

Citation and commencement

1. These Regulations may be cited as the Self-directed Support (Direct Payments) (Scotland) Regulations 2013 and come into force on [1st April 2014].

Interpretation

2.—(1) In these Regulations—

—the Act¹ means the Social Care (Self-directed Support)(Scotland) Act 2013;

—direct payment user¹ means a person who has chosen Option 1 or, so far as relating to that option, Option 4 under section 5, 7 or 8 of the Act.

(2) Any reference to a numbered —option¹ is to one of the options for self-directed support detailed in section 4 (options for self-directed support) of the Act.

PART 2

Calculation, payment and termination of direct payments

Means testing for direct payments

3.—(1) A local authority may assess a direct payment user's ability to contribute to the cost of securing the support to which a direct payment relates (—a means test¹).

(a) 2013 asp 1.

(2) If the authority carries out such a means test, the authority must carry it out either—

- (a) before the direct payment is made; or
- (b) as soon as possible after the payment has been made.

(3) Having considered the means test, the authority may require the direct payment user to contribute to the direct payment.

(4) If the means test happens after the payment has been made and the authority decides that the direct payment user should contribute to the payment, the authority may require the direct payment user to repay either—

- (a) part of the payment to reflect that contribution; or
- (b) some lesser amount.

(5) This regulation does not apply in relation to a direct payment user for whom the charge in respect of any service is waived by virtue of the [Carers (Waiving of Charges for Support)(Scotland) Regulations 2014(a).]

Payment net or gross of a direct payment user's contribution

4.—(1) A local authority shall make the direct payment net of any contribution required under regulation 3(3) unless the direct payment user elects to receive the payment gross of any such contribution.

(2) If the direct payment user makes an election under paragraph (1), the local authority shall pay to the direct payment user the relevant amount and the direct payment user shall pay to the local authority any contribution required under regulation 3(3).

Direct payments by instalments

5.A local authority may pay a direct payment to a direct payment user in instalments.

Third party direct payments

6.A local authority may pay all or part of a direct payment to a person other than the direct payment user (a –third party^l) if all of the following conditions are met:—

- (a) the direct payment user asks the local authority to make the payment to a third party; and
- (b) the local authority is satisfied that the direct payment user retains total control over how the money is spent.

Circumstances where a direct payment may be terminated

7.—(1) A local authority may terminate a direct payment if—

- (a) a direct payment user becomes ineligible to receive direct payments;
- (b) the direct payment has been used (wholly or partly) for some purpose other than to secure the provision of the support to which it relates;
- (c) the direct payment user has breached the civil or criminal law in relation to the support to which the direct payment relates;
- (d) the direct payment has been used (wholly or partly) to secure the provision of support by a family member in circumstances where the family member is not permitted to provide support under regulations 9 and 10.

(2) Before terminating a direct payment, the local authority must notify the direct payment user of—

- (a) the reason why it has decided to terminate the direct payment;

- (b) the date with effect from which the direct payment will be terminated.
- (3) In determining the date with effect from which the direct payment will be terminated, the local authority must take into account —
 - (a) any contractual obligations entered into by the direct payment user; and
 - (b) the time that will be required to put in place alternative arrangements to meet the person's assessed needs.
- (4) The local authority must give the notification required by paragraph (2) in writing and, if necessary, in such other form as is appropriate to the needs of the person to whom it is given.

PART 3

Provision of support by family members

Support to which this Part applies

- 8.**—(1) This Part applies to support provided under a direct payment chosen under—
- (a) section 5 of the Act; and
 - (b) subject to paragraph (2), section 8 of the Act.
- (2) But this Part does not apply to support provided under a direct payment chosen under section 8 of the Act where that support is provided to meet needs in relation to the care which a child provides, or intends to provide, to another person.

Circumstances where family member may provide support

- 9.**—(1) A family member may only provide support under a direct payment where paragraph (2) applies.
- (2) This paragraph applies where—
- (a) the family member and direct payment user agree to the family member providing the support;
 - (b) the family member is capable of meeting the direct payment user's assessed need; and
 - (c) any of the factors in paragraph (3) apply.
- (3) Those factors are—
- (a) there is a limited choice of service providers who could meet the assessed needs of the direct payment user;
 - (b) the direct payment user has difficulty interacting with strangers;
 - (c) the direct payment user has specific communication needs which mean it will be difficult for another provider to meet the assessed needs;
 - (d) the family member will be available to provide support at times where other providers would not reasonably be available;
 - (e) the intimate nature of the support required by the direct payment user makes it preferable to the direct payment user that support is provided by a family member;
 - (f) the direct payment user has religious or cultural beliefs which make the provision of support by a family member preferable to the direct payment user;
 - (g) the direct payment user requires palliative care;
 - (h) the direct payment user has an emergency or short-term necessity for care;
 - (i) there are any other circumstances in place which make it appropriate, in the opinion of the local authority, for that family member to provide the services.
- (4) In this regulation—

—assessed needs¹¹ means the needs which a local authority has identified following an assessment under section 12A of the 1968 Act^(a);

—family member¹² means—

- (a) the spouse or civil partner of the direct payment user;
- (b) a person who lives with the direct payment user as if their spouse or civil partner;
- (c) the direct payment user's—
 - (i) parent;
 - (ii) child;
 - (iii) brother or sister;
 - (iv) aunt or uncle;
 - (v) nephew or niece;
 - (vi) cousin;
 - (vii) grandparent;
 - (viii) grandchild;
- (d) the spouse or civil partner of any person listed in sub-paragraph (c);
- (e) a person who lives with any person listed in sub-paragraph (c) as if their spouse or civil partner.

Exception to family members rule

10.—(1) Even if regulation 9(2) applies, a family member may not provide support to which a direct payment relates if—

- (a) the local authority determines that either the family member or the direct payment user is under undue pressure to agree to the family member providing support; or
- (b) the family member is a guardian, continuing attorney or welfare attorney with power to make decisions as regards the support to be provided through the direct payment.

(2) In this regulation—

—guardian¹³—

- (a) means a guardian appointed under the Adults with Incapacity (Scotland) Act 2000^(b) (—the 2000 Act¹⁴); and
- (b) includes a guardian (however called) appointed under the law of any country to, or entitled under the law of any country to act for, an adult during the adult's incapacity, if the guardianship is recognised under the law of Scotland;

—continuing attorney¹⁵—

- (c) means a continuing attorney within the meaning of section 15 (creation of continuing power of attorney) of the 2000 Act; and
- (d) includes a person granted, under a contract, grant or appointment governed by the law of any country, powers (however expressed) relating to the granter's property or financial affairs and having continuing effect despite the granter's incapacity;

—welfare attorney¹⁶—

- (a) means a welfare attorney within the meaning of section 16 (creation and exercise of welfare power of attorney) of the 2000 Act^(c); and

^(a) —The 1968 Act¹¹ is defined in section 24 of the Act as the Social Work (Scotland) Act 1968 (c.49). Section 12A of the 1968 Act was inserted by the National Health Service and Community Care Act 1990 (c. 19), section 55 and was amended by the Carers (Recognition and Services) Act 1995 (c.12), section 2(3) and the Community Care and Health (Scotland) Act 2002 (asp 5), sections 8 and 9.

^(b) 2000 asp 4.

^(c) Section 16 was amended by the Human Tissue (Scotland) Act 2006 (asp 4), section 57(2)(b) and the Adult Support and Protection (Scotland) Act 2007 (asp 10), section 57(2).

- (b) includes a person granted, under contract, grant or appointment governed by the law of any country, powers (however expressed) relating to the direct payment user's personal welfare and having effect during the direct payment user's incapacity.

PART 4

Circumstances where direct payments are not available

Descriptions of persons who are ineligible to receive a direct payment -

11.—(1) The descriptions of persons specified for the purposes of section 15(2)(a) of the Act (persons who are ineligible to receive direct payments) are—

- (a) a person who is subject to a drug treatment and testing order imposed under section 234B of the Criminal Procedure (Scotland) Act 1995(a);
- (b) a person who is released on licence under—
 - (i) section 22 of the Prisons (Scotland) Act 1989(b);
 - (ii) section 1 or 1AA of the Prisoners and Criminal Proceedings (Scotland) Act 1993(c);
or
 - (iii) section 37(1) of the Criminal Justice Act 1991(d),
who is subject to a condition to submit to treatment for a mental condition or a drug or alcohol dependency;
- (c) a person who is required to submit to treatment for a mental condition or a drug or alcohol dependency by virtue of—
 - (i) a community rehabilitation order within the meaning of section 41 of the Powers of Criminal Courts (Sentencing) Act 2000(e); or
 - (ii) a community punishment and rehabilitation order within the meaning of section 51 of that Act;
- (d) a person subject to a drug treatment and testing order imposed under section 52 of the Powers of Criminal Courts (Sentencing) Act 2000;
- (e) a person whose direct payment has been terminated by a local authority in accordance with regulation 8(b) or (c).

(2) A person who is ineligible to receive direct payments by virtue paragraph (1)(e) ceases to be ineligible if the local authority so determines.

Services for which direct payments are not available

12.—(1) A local authority is not required to give a person the opportunity to choose Option 1 (direct payment) and, so far as relating to that option, Option 4 in the circumstances specified in paragraph (2) and (3).

(2) The circumstances are that the support which the local authority has decided could satisfy the person's needs is—

- (a) support for individuals who are homeless as defined in Part II of the Housing (Scotland) Act 1987(f);
- (b) support for individuals who are fleeing domestic abuse;

(a) 1995 (c. 46). Section 234B was added by the Crime and Disorder Act 1998 (c. 37), section 89.
(b) 1989 (c. 45). Section 22 was amended by the Criminal Justice (Scotland) Act 2003 asp 7, section 3(2).
(c) 1993 (c. 9).
(d) 1991 (c. 53).
(e) 2000 (c. 6).
(f) 1987 c.26.

- (c) support for individuals in relation to drug or alcohol dependency;
- (d) the provision of residential accommodation for a period in excess of four consecutive weeks in any period of twelve months; or
- (e) the provision of residential accommodation with nursing (under section 13A (residential accommodation with nursing) of the 1968 Act^(a)) for a period in excess of four consecutive weeks in any period of twelve months.

Name

Authorised to sign on behalf of the Scottish Ministers

St Andrew's House,
Edinburgh
Date

^(a) Section 13A was inserted by the National Health Service and Community Care Act 1990 (c.19), section 56 and amended by the Immigration and Asylum Act 1999 (c.33), section 120(2) and the Regulation of Care (Scotland) Act 2001 (asp 8), section 72 and schedule 3, paragraph 4.