

Consultation on Self Directed Support – draft Regulations

This response is submitted by the Scottish Disability Equality Forum. We gratefully acknowledge the input of our allies, in particular, Independent Living in Scotland and Self Directed Support Scotland.



The Scottish Disability Equality Forum (SDEF) works for social inclusion in Scotland through the removal of barriers and the promotion of equal access for people affected by disability

It is a membership organisation, representing individuals affected by disability, and organisations and groups who share our values. It aims to ensure the voices of people affected by disability are heard and heeded. SDEF promotes access in its widest sense, including access to the built and natural environment and access to the same opportunities as are enjoyed by other people in our communities.

Question 1: What are your views on Part 2 of the draft Regulations?

SDEF feels strongly that whilst we would like to see free care in an ideal world, the reality of finite/restricted resources could result in serious repercussions for the wider disabled community at this time.

A solution must be sought which ensures a fair and equitable system in the charging of care until such time as we may be able to offer free care without the risk of impacting wider care provision. Fair and equitable in this case means that people can stay in their own communities or move to another location according to their wishes and not as a result of a geographical disparity in care charge costs as is currently the case.

Regulation 4. We believe that payments should *automatically be made gross of any contribution, unless the payee elects to receive it net*. This is a reversal of the order as currently shown in the draft regulations. We believe this is a fairer way of paying as the user will may not be in a position to pay for care or support at the outset. Whilst we recognise that they can elect to change, we believe that issues will impact on this in reality; for example not every system will change readily or not every payee will recognise the need. As a result, they could end up in arrears to their service providers.

Regulation 5 as it stands is too weak. The regulations need to;

1.1.1 set parameters for when this could happen, and how, and

1.1.2 require the local authority to both inform and gain the permission of the DP user in the first instance.

1.2 We welcome the inclusion of third party direct payments. We have included a request for guidance on Part 6.A(b) of the regulations to be covered in the Statutory Guidance

Regulation 7 in setting out the instances a local authority can terminate a direct payment. We agree individuals should receive a written notice from a local authority stating the reasons for the termination of payment. SDSS believes this notice should also include other information on the options available to an individual. However, we also recognise that there will be extenuating circumstances e.g. at Part 7(1)(b) which could be use of the money for a necessary support, other than the one for which it was 'awarded'. We would ask that the Regulations support this.

In addition, the Regulations (and or the guidance) should ensure that even is direct payments are stopped and the supported person is still eligible for support, that the person is still supported.

Question 2: What are your views on Part 3 of the draft Regulations?

2.1 We welcome and agree with the stated list in Regulation 9. We believe the factors listed in the Part 3 will put beyond reasonable doubt the acceptable instances a family member can be involved in supporting an individual. SDSS note with caution Item (i). We believe that this is an appropriate catch all Item, which may allow flexibility in difficult circumstances, but should only be used as a last resort. However, the list of family members is restricting in that it does not, for example, take account of today's 'blended' families including step-parents and brothers/sisters. This would be a useful addition given that the list is prescriptive.

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?

3.1 We cannot understand the reference to Regulation 8(c) made at Regulation 11(1)(e). There does not appear to be a Regulation 8(c) in our copy of the regulations.

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?

4.1 We note with extreme caution the explicit circumstances local authorities may apply an exclusion or withdrawal of SDS options 1 or 4. We would argue that the Regulations should expect the Local Authority to take account of the supported person's views. We would strongly argue for the removal 12(2)(d) and (e). At the very least, parameters should be set for use of these options as a (defined) temporary solution, and that restrictions be set to limit the time spent in these circumstances.

Further, we are very doubtful that support available under 12(2)(a) to (c) is likely in all cases to provide the support and accessibility standards required for to meet the needs of very many people who require social care and support. We would ask that the Local Authorities are required to ensure that all needs and not just e.g. needs in relation to domestic abuse, are met.

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

5.1 It is imperative that all individuals in long-term residential care retain their right to make decisions for themselves and to have access to the information required in a format suited to their needs in order to make informed decisions

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?

6.1 We are conscious that issues around care and support for children and their social care needs are complicated. Flexibility will be key to enable local authorities support children and their families better. We believe that all children should be eligible for SDS and that guidance should be made available for local authorities, providers, families and indeed young people themselves to support them.

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

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

8.1 Social care is notoriously under-funded. This is bad enough in isolation but disabled people are increasingly facing financial hardship from welfare reform, job losses and rising costs, when their living costs are already higher than the norm. In addition, we are aware that support packages are, controversially, being reduced through the application of SDS and increasing numbers of people are now receiving only minimal care/support which met the local authorities 'duty of care' obligations¹. This is in opposition to the stated aims and ethos of the SDS Act.

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**

¹ <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/52878.aspx>

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

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>

9.1 We know that community support is one example of the practical assistance needed to for independent living. Without it, many disabled people cannot; participate in society on an equal basis to others; enjoy the right to a family life or to live free from inhumane or degrading treatment; live their life in the way they choose, at home, at work and in the community or live a productive life.

All of the rights protected by the Equality Act, European Convention on Human Rights (ECHR), in the Human Rights Act and in subsequent human rights conventions, belong to disabled people. These rights apply in Scotland and to all Scottish legislation.

9.2 The United Nations Convention on the Rights of Disabled People (UNCRPD) strengthens and contextualises these rights as well as recognising the role of community care/support in doing so: Article 19 of the UNCRPD states that; to ensure disabled people equally enjoy the rights laid out in the ECHR states must ensure; “disabled people have a right to live in the community, with the support they need and can make choices like other people do”. In addition, at Section 2, the SDS Scotland Act 2013 further recognises the role of community care in supporting such rights to participate in society.

**Susan Grasekamp
SDEF Manager**