

**Draft Directions (The Carer's
Assessment (Scotland) Directions
2014) made by Scottish Ministers
under section 5(1A) of the
Social Work (Scotland) Act 1968**

Draft Directions (The Carer's Assessment (Scotland) Directions 2014) made by Scottish Ministers under section 5(1A) of the Social Work (Scotland) Act 1968

A public consultation on Social Care (Self-directed Support) (Scotland) Act 2013

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

The draft Directions 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 Directions may be amended.

Please submit your replies to the Consultation by 10th July 2013 to:

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Please note that unless you state otherwise, all responses to this consultation will be made publicly available on the Scottish Government's website (www.scotland.gov.uk).

Draft Directions (The Carer's Assessment (Scotland) Directions 2014) made by Scottish Ministers under section 5(1A) of the Social Work (Scotland) Act 1968

A public consultation on Social Care (Self-directed Support)
(Scotland) Act 2013

Draft Directions

Consultation Paper

1. During the Stage 3 debate on the then Social Care (Self-directed Support) (Scotland) Bill, the Minister for Public Health, Michael Matheson MSP, made clear that as part of a package of measures to support carers Scottish Ministers would “issue Directions to local authorities about the way they should approach the “substantial and regular” test on access to carer’s assessments”. (Official Record, 28 November 2012).
2. The other measures in the package are:
 - the Carers (Waiving of Charges for Support) (Scotland) Regulations 2014 on which we are consulting separately; and
 - statutory guidance on early preventative support to carers who are not providing a substantial amount of care on a regular basis and who do not therefore meet the threshold for a carer’s assessment (see paragraphs 112 and 113 of the draft statutory guidance on care and support).
3. The aim of the Directions is to reinforce that part of circular CCD2/2003 “Community Care and Health (Scotland) Act 2002 – New Statutory Rights for Carers: Guidance” dealing with the interpretation of providing a substantial amount of care on a regular basis. In doing so, Scottish Ministers would encourage all local authorities to adopt a broadly consistent approach to the carrying out of carer’s assessments. The objective, taking account of the Directions and other measures being taken forward to support the carrying out of carer’s assessments, is to enhance both the quantity and quality of assessment to improve outcomes for carers.
4. It is outwith the scope of the Directions to change or supplement paragraphs 3.5.2 to 3.5.6 of CCD2/2003 which are reproduced in the draft Directions.
5. As can be seen in the draft Directions, they also cover the interpretation of providing a substantial amount of care on a regular basis by young carers.
6. Scottish Ministers have also taken the opportunity to include in the Directions local authorities having regard to the guidance in paragraphs 3.5.2 to 3.5.6 when taking account of the views of carers who provide a substantial amount of care on a regular basis in relation to persons whose needs are being assessed (known as cared-for persons).

7. Scottish Ministers are not minded to include in the Directions the first part of paragraph 3.5.2 about local authorities making public their approach to the interpretation of providing a substantial amount of care on a regular basis as this in itself is not to do with the issue of interpretation.

8. The draft Directions are attached at **Annex A**:

Draft Directions Consultation Questions

Question 1a: Are the draft Directions clear and easy to understand?

Yes	No

Question 1b: Did you find the draft Directions:

Very useful	Useful	Not useful

Question 1c: Do you have any further comments on the draft Directions?

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The Carer's Assessment (Scotland) Directions 2014

The Scottish Ministers make the following Directions in exercise of the powers conferred by section 5(1A) of the Social Work (Scotland) Act 1968⁽¹⁾:

Citation and commencement

1. These Directions may be cited as the Carer's Assessment (Scotland) Directions 2014 and shall come into force on 1st April 2014.

Interpretation

2. In these Directions—

“the 1968 Act” means the Social Work (Scotland) Act 1968;

“the 1995 Act” means the Children (Scotland) Act 1995⁽²⁾.

Factors to be considered in carrying out functions in relation to carers

3. These Directions apply to a local authority when exercising its functions under the following provisions—

- (a) section 12A of the 1968 Act (duty of local authority to assess needs);
- (b) section 12AA of the 1968 Act (assessment of ability to provide care);
- (c) section 12AB of the 1968 Act (duty of local authority to provide information to carer);
- (d) section 8 of the Disabled Persons (Services, Consultation and Representation) Act 1986⁽³⁾ (duty of local authority to take into account abilities of carer);
- (e) section 23 of the 1995 Act (children affected by disability);
- (f) section 24 of the 1995 Act (assessment of ability of carers to provide care for disabled children); and
- (g) section 24A of the 1995 Act (duty of local authority to provide information to carer of disabled child).

4. In considering whether an individual provides a substantial amount of care on a regular basis for another person, the local authority shall have regard to sections 3.5.2 to 3.5.6 of circular CCD2/2003 “Community Care and Health (Scotland) Act 2002 – New Statutory Rights for Carers: Guidance”⁽⁴⁾ (which are reproduced for convenience in the schedule to these Directions).

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
[Date]

(1) 1968 c.49.

(2) 1995 c.36.

(3) 1986 c.33. The requirement under section 8 to have regard to a carer's ability to continue to provide care is disapplied where an assessment of a carer's ability to provide, or continue to provide, care is carried out under section 12AA of the 1968 Act (see section 12AA(4) of that Act) or section 24(1) of the 1995 Act (see section 24(3) of that Act).

(4) http://www.sehd.scot.nhs.uk/publications/cc2003_02full.pdf

SCHEDULE

Part of Section 3 – Key Principles

3.5 “Substantial and Regular”

3.5.2 In interpreting “substantial and regular” local authorities should -

- focus on the impact of the caring role on the individual carer and their family
- address the following questions:
 - is the caring role sustainable without additional support?
 - how great is the risk of the caring role becoming unsustainable without additional support?
- take into account a range of factors, including:
 - the total time spent caring
 - type of caring tasks
 - intensity and pattern of caring
 - cultural background of caring situation
 - distances travelled to and from caring situation
 - number of people being cared for
 - nature of the cared-for person’s needs and their likely duration
 - employment status of carer
 - whether other family members including children are affected by the caring situation
 - age of the carer
 - carer’s physical and mental health
 - the history of the caring relationship
 - the carer’s views
- always take a wide view of the extent and nature of the carer's role as a whole.
- take account of situations where the caring role is sporadic and difficult to forecast.
- recognise that the carer's role may fluctuate, particularly where the cared-for person has mental health difficulties that recur periodically.
- recognise that carers from minority ethnic groups may have different caring patterns, and may be caring in more than one location.
- recognise that the needs of the cared-for person may be unpredictable, particularly where they have drug or alcohol problems.
- recognise that carers may also need to combine caring responsibilities with other family responsibilities or activities, including parenting, employment, or education.
- always ensure carers are aware of how the decision on "substantial and regular" has been reached.

3.5.3 Caring at a distance

- **In interpreting "substantial and regular" 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, especially where a carer looks after more than one person,
 - are caring for someone who uses or could use services in a different local authority area from the carers' own area.
- work in partnership with the other authorities affected.
- develop local agreements for handling such cases (usually the authority where the cared-for person lives should take the lead in assessing the carer).

3.5.4 Young carers

- **In interpreting "substantial and regular" local authorities should -**
- not adopt the same approach in interpreting "substantial and regular" for young carers that they would use for an adult carer in a similar role.
- 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.
- take account of the age of the young person and the nature of the caring responsibilities.
- ensure that a child or young person does not have a level of caring responsibility that may undermine their ability to participate in education, leisure and social activities.
- ensure that the cared-for person is receiving sufficient other support so that the young person is not undertaking an inappropriate caring role that might amount to "substantial and regular".

3.5.5 Older carers

- **In interpreting "substantial and regular" local authorities should -**
- recognise that caring is likely to demand more of an older carer.
- ensure they focus on the impact of the caring role on the individual.

3.5.6 Preventive approach.

In many instances, ensuring a carer has early access to advice and practical help will reduce the subsequent need for increased levels of support, and may prevent a future breakdown in the caring relationship.

- **In interpreting "substantial and regular" local authorities should -**
- recognise the value of early intervention to sustain carers.



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