

EQUALITY IMPACT ASSESSMENT - RESULTS

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| Title of Policy | Self-directed Support (Direct Payments) (Scotland) Regulations 2014 (the Regulations) |
| Summary of aims and desired outcomes of Policy | In January 2013 the Social Care (Self-directed Support) (Scotland) Act 2013 (the 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. During the Social Care (Self-directed Support) Bill's (the Bill) passage through the Scottish Parliament, Scottish Ministers made a commitment to develop statutory guidance and Regulations to accompany the Act. |
| Directorate: Division: team | Chief Nursing Officer, Patients, Public and Health Professionals, Adult Care and Support Division Self-directed Support Team |

Executive summary

This assessment is in addition to the EQIA that was completed in March 2012 for the Bill. This reflects the fact that the regulations themselves will accompany and complement the legislation and policy framework for self-directed support. The full EQIA for the Act should be read alongside this additional EQIA for the regulations. The EQIA for the Act is available at:

<http://www.scotland.gov.uk/Publications/2012/03/9876/1>

1. The proposals in the Regulations will primarily affect those who require community care support and are considering a direct payment in dialogue with their families and carers and care providers.
2. Equality issues were considered during the policy development process. The 3 month consultation on the draft regulations and statutory guidance invited comments on the equality impacts of the draft regulations from user groups, carer groups, providers and local authorities as well as the wider public. The comments from the consultation helped to inform this final draft of the EQIA. The provisions of the Regulations will be of particular relevance to people with a disability and people of different ages as those groups tend to be provided with more community care services and other social work support than the general population. However, none of the proposals were considered to give rise to the possibility of those affected being treated less favourably due to any of the protected characteristics.
3. As the regulations are intended to apply equally to all affected and appeared to have no significant differential effect on the basis of the protected characteristics, it was considered that a relatively limited Equality Impact Assessment (EQIA) would be appropriate. The focus of the data gathering and consideration was on determining whether there may be any inadvertent effects on different groups, by examining the populations likely to be affected by the Regulations.
4. The EQIA confirmed that the proposals in the Regulations are unlikely to have any significant differential effect on the basis of the protected characteristics. While some minor effects may be present, these are considered to be proportionate, namely the impact of having a regulation which permits a family member to provide support to an individual where the individual has religious or cultural beliefs which make the provision of support by a family member preferable. Local authorities will of course have to have regard to the public sector duty to promote equality under section 149 of the Equality Act 2010 when exercising their functions under the 2013 Act and the Regulations.
5. No significant changes to the policy were considered necessary following this EQIA. However, the Scottish Government will continue to work with key stakeholders to ensure full account is taken of equality issues.

Background

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6. The Social Care (Self-directed Support) (Scotland) Act 2013 provides the legal basis for the provision of choice over care and support. Section 15 of the Act provides the power to lay Regulations in relation to Direct Payments. The purpose of the Regulations is to provide further detailed rules, powers and duties in relation to the detailed administration of one of the options within the Act: direct payments for social care.

7. The Act will replace Sections 12B and 12C of the Social Work (Scotland) Act 1968. The regulations will replace the Community Care (Direct Payments) (Scotland) Regulations 2003. The regulations will:

- set out the administrative arrangements for any means testing relating to direct payments
- establish that direct payments can be paid in instalments or as one single payment
- establish that direct payments can be paid to third parties and, in so doing, protect the rights of individuals to have control over their third party direct payments
- set out an exhaustive list of the circumstances under which an authority can terminate a direct payment and regulate the way in which any such termination may take place
- allow provision of support by family members to supported individuals and set out the appropriate and inappropriate circumstances to do this
- specify that certain persons are ineligible to receive direct payments
- provide circumstances in which local authorities are not placed under an obligation to offer the direct payment option

8. A detailed equality impact assessment was produced to accompany the Bill in March 2012 and this information is still current. These regulations are part of an overall framework of legislation and guidance which includes the Act, the regulations and detailed statutory guidance to local authorities.

9. The broad policy aims for SDS and the Act and Regulations, are:

- To ensure that social care users are able to exercise informed choice, having access to a range of methods to arrange their support including a direct payment

- Via the options under the Act, along with its general principles (collaboration, informed choice, involvement), to ensure that people can exercise greater choice, flexibility and creativity in relation to their support in line with the values and principles associated with independent living.
- To ensure that public funding is used effectively via more outcome-focused support, greater flexibility and control for individuals and proportionate monitoring powers for local authorities.

10. The policy fits with wide trends in policy across the UK. As set out in the full EQIA accompanying the Act, the policy aims of self-directed support and the legislation are to facilitate greater choice and control for individuals, support more flexible person-centred support that is focused on the personal outcomes for disabled people.

11. The Regulations and the Act do not have any wider EU or international implications

12. The Regulations contribute to the National Outcomes:

- We live longer, healthier lives
- We have tackled the significant inequalities in Scottish society
- We have improved the life chances for children, young people and families at risk
- Our public services are high quality, continually improving, efficient and responsive to local people's needs.

The Scope of the EQIA

13. The Scottish Government carried out a public consultation on proposals for the Regulations, and accompanying statutory guidance, on SDS from 17 April 2013 to 10 July 2013. 144 respondents provided responses to the consultation. The respondents were varied; individuals, NHS Boards, local authorities, support and information organisations, but the biggest response came from voluntary organisations (of which we received 57). Many of those responding welcomed the opportunity to do so and noted their broad agreement with the underlying principles and values of SDS.

14. The consultation included the following question:

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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

15. There were a variety of comments on the detail of the Regulations from 43 respondents.

16. In addition, two public consultations were held for the Bill, prior to the development of the supporting Regulations. Both earlier consultations considered the issues of local authority powers and duties in relation to direct payments. Both consultations invited comments on the equality impacts of the legislation, including ineligible/ eligible groups of direct payment users and appropriate/inappropriate circumstances, and employing a family member as a personal assistant - topics which are now included within the Regulations which will be laid before Parliament.

17. During the Bill process, a National Strategy Implementation Group was formed and they were aware that they must consider possible equality impacts in their considerations of the policy. The Implementation Group has been involved in the development of the Regulations including consideration of equality impacts.

Key Findings

1) The single largest comment from the consultation responses (from around half of the respondents) was that the Regulations will have no adverse equality impacts or that it fulfils obligations in relation to equality.

2) A few respondents commented that there is a need to consider all the protected characteristics as outlined in the Equality Act 2010 or that there is a need to ensure that service providers and local authority staff can recognise and address the ways in which protected groups can have additional risks and vulnerabilities generally.

3) A small number of respondents commented that they were supportive of the move towards giving service users more choice and control over the

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support they receive or that they believe in equal rights for all. However, there were also a small number of comments emphasising the need to ensure consistent application, close monitoring and review to ensure the guidance is applied equally to all groups, with one Professional / Regulatory organisation suggesting a need for consultation with all equality groups. During the process of developing the Regulations, Scottish Government worked closely with a variety of stakeholders to develop the Regulations as detailed in the section on the scope of the EQIA.

4) There were a few general suggestions made as to further actions for localities and these included:

- A panel to oversee SDS assessments and support plans.
- The guidance should ensure that any "duty of care" waiver (ie flexibility to councils to refuse direct payments in certain circumstances) should not prevent natural risk taking behaviour on the part of young people or adults.
- The need for reference to carers throughout the guidance documentation.
- The need to ensure comprehensive references to disability throughout the guidance documentation.
- Clarity over the flexibility of employing services from third sector, provider or private organisations in the same way as with local authorities.

5) A small number of respondents commented that the current format of the guidance is not suitable for individuals with communications or learning difficulties or that alternative guidance should be available for these groups. The Scottish Government responded to this request by commissioning additional guides to direct payment users, carers and social work professionals. The guide for direct payment users will be plain English and will compliment the easy read version of the Act.

6) A voluntary organisation wanted to see "a specific action on ensuring that assessments are culturally competent to ensure that the needs of equality groups are accurately captured and reflected in the final assessment and outcomes for the individual" .

7) A small number of concerns, relating to processes in localities rather than the Regulations, were noted by respondents and these included:

- The potential for local diversity to be affected by geographical location or social poverty.

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- The potential for inconsistent application across Scotland.
- A need to ensure that service providers are suitably trained to deal with people with protected characteristics.
- The potential of a negative impact on those in older age groups until further clarity is provided on exemptions from SDS and charging policy. The Regulations do not exclude any age group and the accompanying statutory guidance will provide more information on this.

8) None of the concerns related to the specific impact of specific regulations but instead reflects a general concern in relation to any framework of guidance and regulations which relate to local authorities, where it is inevitable that a degree of local discretion and interpretation will apply.

Recommendations and Conclusion

1. No significant issues were raised as a result of the EQIA and the process did not identify any group that would be adversely affected by the Regulations.
2. The Scottish Government took account of the comments from the public consultation and made minor amendments to the Regulations and accompanying guidance in light of those comments, and also developed a Business Regulatory Impact Assessment on the back of the consultation.
3. The Scottish Government will continue to work with key stakeholders to ensure full account is taken of equality issues.