

Final Business and Regulatory Impact Assessment

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<p>Title of Proposal</p> <p>The Self-directed Support (Direct Payments) (Scotland) Regulations 2014</p>
<p>Purpose and intended effect</p> <p>Background</p> <p>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 2013 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 SDS Act: direct payments for social care.</p> <p>Self-directed support is a term that describes the ways in which individuals and families can have informed choice and control about the way that social care and support is provided to them. It includes a range of options for exercising those choices.</p> <p>The SDS Act imposes a duty on local authorities to offer four options to all of those who are assessed as requiring support under Section 12A of the Social Work (Scotland) Act 1968, Section 22 of the Children (Scotland) Act 1995 or Section 3 of the SDS Act. The options are:</p> <ul style="list-style-type: none">• A direct payment – payment of a relevant amount to the person to enable them to arrange their support• “Directing the available support” – The selection of support by the supported person and the making of arrangements on the person’s behalf by the council (commonly referred to as Individual Service Funds)• “Arranged provision” – The selection of support by the authority• “Mix of the above” a mix of options relating to different aspects of the person’s support. <p>Objective</p> <p>The broad policy aims for self-directed support, and the 2013 Act, are:</p> <ul style="list-style-type: none">• To ensure that social care users are able to exercise informed choice, having access to a range of methods to arrange their support (the option available under the SDS Act)• Via the options under the SDS Act’s option, 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.

The 2014 Regulations support these policy aims by making further provision about the practical operation of direct payments (one of the SDS options within the 2013 Act).

The policy supports a range of broader policy aims for Scottish Government including:

- the development of person-centred approaches which provide greater power, discretion and control to individuals, responding to rising expectations about how services need to fit with people's lives rather than people fitting in with service provision
- collaborative approaches between organisations/professionals and individuals
- asset-based approaches to the delivery of public services
- greater community connectedness
- preventative approaches
- the closer integration of health and social care support around the personal outcomes for the individual.
- Getting it Right for every child (GIRFEC)

The policy fits with wide trends in policy across the UK.

The Regulations and the SDS Act 2013 do not have any wider EU or international implications.

Rationale for Government intervention

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.

During the Self-directed Support Bill's passage through the Scottish Parliament, Scottish Ministers made a commitment to develop statutory guidance and Regulations to accompany the 2013 Social Care (Self-directed Support) (Scotland) Act.

Self-directed Support encompasses a number of different options for directing your own support.

The Scottish Government recognises all choices as equally valid, and it is seeking to encourage more people to actively direct their own support, by taking control through a direct payment or directing available resource.

There is strong evidence of the benefits of these types of self-directed support for individuals, in terms of achieving better outcomes. Research has shown the majority of people using self-directed support in an active way, feel more positive about the impact on the quality of their care and support.

Self-directed support ensures that citizens are empowered to be self-reliant, where possible and promotes choice and control for all.

The Regulations provide further detailed rules, powers and duties in relation to the detailed administration of one of the options within the SDS Act: direct payments for social care.

Consultation

Within Government

A variety of Scottish Government policy teams were consulted in developing the proposals. This included

- Homelessness policy
- Drug & Alcohol Addiction policy
- Older Peoples Residential Care policy
- Children's Rights and Wellbeing
- Children and Young People 2010/11
- Carers and Young Carers policy

Public Consultation

The Scottish Government first carried out a public consultation on proposals for the Regulations on Self-directed Support from 17 April 2013 to 10 July 2013, and 144 respondents provided responses to the consultation. Many of those responding welcomed the opportunity to do so and noted their broad agreement with the underlying principles and values of self-directed support (SDS).

The consultation included a copy of the wider BRIA for the SDS Act, which covered a range of topics included in the regulations. It also included an open question on the financial, business and regulatory impacts.

There were a variety of comments on the detail of the draft Regulations that were consulted upon.

- There was a general view that the employment of close relatives should remain at the discretion of professionals involved in a case to ensure an appropriate balance between risk and choice and that there will be some instances where a family member will be the most appropriate person to provide support. There were also requests for more emphasis on the role of professional judgement and discretion throughout the process.
- The need to clarify at which stage of the process a financial allocation will be made was stressed by several respondents.
- There were a number of concerns over how to achieve consistency across all local authorities areas in terms of staff training, eligibility criteria, financial allocation and access to services.
- There was significant disagreement with the concept of excluding certain types of individual from receiving a direct payment. This was primarily because respondents felt that each potential exclusion from a direct payment should be based on assessment, support planning and professional judgement rather than general restrictions placed in Regulations.
- The need to balance risk and choice was stressed; there was a view that, where appropriate, Adult Support and Protection and Child Protection duties should take precedence where appropriate.

The Scottish Government took account of the comments and made amendments to the Regulations in light of those comments, developing a draft BRIA on the back of the consultation. The final version of the Regulations does not contain a number of the excluded categories which had been included in the consultation version. It also gives local authorities the discretion to decide whether to offer a direct payment where the making of a direct payment is likely to put the safety of the person to whom the support is to be provided at risk.

In addition, two public consultations were held for the Social Care (Self-directed Support) 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.

This included ineligible and eligible groups and circumstances and employing a family member - two topics which are covered in the Regulations which are now laid before Parliament. Both earlier consultations included consultations on draft BRIAs which have helped to inform this final BRIA.

Business

The SDS Act 2013 and the accompanying Regulations place duties on and provide powers to, local authorities. A variety of businesses – primary private sector care and support providers – will be affected in an indirect way by the impact of both the Act and the Regulations. For example, with greater choice and control for users via direct payments or individual service funds, care and support providers will require to reform the way that they provide service and they may require to update their “back office” functions and staff terms and conditions. This is a general impact arising from the policy as a whole, as opposed to a specific impact arising from the Act or the Regulations themselves.

GENERAL ANALYSIS OF THE COST IMPACTS ARISING FROM THE SDS ACT 2013 AND THE 2014 REGULATIONS

Long-term costs and benefits arising from increased access to direct payments and other SDS options

Overall, the increased use of self-directed support, including direct payments, is expected to be broadly cost neutral in its impact. This was borne out in the Scottish context by research commissioned by the Government from the University of Stirling, which found that self-directed support packages (including direct payment packages) are roughly similar to standard arrangements in terms of hours. The study found no significant difference between direct payment users and those receiving traditional community care services in terms of hours of care, and predicted no significant rise in demand or reduction in service as a result of self-directed support. The study acknowledged that the cost of providing social care services in Scotland will continue to rise but noted that this would not be as a result of the shift to self-directed support, but from increased need for services, which arise from changing demographics

Short-term administrative and transformational costs

Following a competitive grant funding process, Scottish Government are providing transformation investment to a select number of provider organisations to help them to transform the way that they deliver their role in line with the policy and national strategy, and to help them to share their learning with the wider provider community via organisations such as Scottish Care and the Coalition of Care and Support Providers in Scotland. Scottish Government are also providing funding to local authorities to assist with short-term administrative costs and wider costs of shifting their approach to social care delivery. This transitional funding (currently confirmed up to March 2015) can be used to assist with any short-term costs associated with reviews.

As part of the engagement process for this BRIA, the Scottish Government conducted face to face consultation with a small number of local authority representatives to consider the impact of both the Act and the Regulations. Local authorities were not in a position to provide specific costed estimates against the costs and benefits set out in this BRIA.

It is common for the introduction of new Regulations to require authorities to update their guidance and training materials to social work staff. However, authorities are updating their guidance, training and awareness materials as a result of the SDS Act 2013. Scottish Government would expect the overall programme of guidance and training development to include any costs associated with this set of Regulations.

In some instances, a change to a Regulation underpinning social care assessment can lead to a short-term increase in requests for reviews. It has proven difficult to estimate the potential increase in reviews as a direct result of this set of Regulations, in particular as they will be enacted in the wider context of the commencement of the SDS Act 2013 and a range of other changes underway across the social care system.

Data and analysis from the Audit Commission concluded that there was a large variation in the average cost of assessment/review across local authorities. For example, the Commission found that “ in 2010/11, it cost on average almost one and a half times less to complete an assessment and review in the low-cost group (£830) compared with the high-cost group (£2,249). Low-cost councils spend only 9 per cent of their total adult social care budget on assessments and reviews, compared with 16 per cent in higher cost councils”

Due to the factors quoted above (high variation in potential costs of reviews, the difficulties in forecasting the potential increase in reviews arising from this set of Regulations) actual estimates are not included in the BRIA.

OPTIONS

PART 2 OF THE REGULATIONS:

CALCULATION, PAYMENT AND TERMINATION OF DIRECT PAYMENTS

(includes means testing for direct payments, direct payments by instalments, third party direct payments and circumstances where a direct payment may be terminated)

Background: Local authorities have held long-standing powers in relation to the calculation, payment and termination of direct payments (via the “current” direct payment regulations (ie the Community Care (Direct Payments)(Scotland) Regulations 2003, which deal with direct payments under section 12B of the Social Work (Scotland) Act – the system which predates and is replaced by the 2013 Act). The 2014 Regulations replicate many of these powers but they also provide suitable updates in line with evolving practice. The Regulations clarify that direct payments can be paid in instalments (for instance, in monthly instalments to the user). The Regulations also make it clear that direct payments can be paid to “third parties” under the direction of the individual. This is an important option as it allows the person to delegate many of the administrative matters, such as payroll or administrative financial tasks, to another person or organisation whilst protecting the person’s power to retain formal control over how their social care needs are met. This is particularly helpful for individuals who might find some of the burdens associated with direct payments difficult to handle on their own. Finally, this Part of the Regulations clarifies circumstances where a direct payment may be terminated. This is to ensure that authorities can end direct payments where funds are being used in ways that do not secure the agreed support, where a direct payment is used unlawfully or where the person has become ineligible to receive a direct payment. However, the accompanying Statutory Guidance will make it clear that authorities should be proportionate and careful in their use of this power.

Options considered:

Option A: Do not lay Regulations on these matters

Option B: Lay regulations providing the necessary powers to councils

Sectors and groups affected:

- Local authorities
- People who receive and use direct payments
- People employed by direct payment users
- Unpaid carers who are family relations of direct payment users
- Information, support and advocacy organisations (indirectly affected)

Option A: “Do nothing” - do not lay Regulation on the matters outlined in Part 2 of the Regulations

Benefits: Potential for greater flexibility at local authority level.

Costs:

- Confusion amongst local authorities and users as to the rules and arrangements around direct payments.
- Users potentially unable to have access to “third party direct payments”

- Councils unable to terminate direct payments which are being used in inappropriate ways.

Option B: Lay regulations providing the necessary powers to councils,

Benefits:

- Clarity amongst both local authorities and users as to the rules and arrangements around direct payments.
- Users able to access “third party direct payments”. This may provide a flexible option for those who cannot, or do not wish to, manage money directly. If the person uses their payment flexible to meet their outcomes they may be able to achieve better outcomes with the available funding via a third party direct payment.
- Councils able to terminate direct payments which are being used in inappropriate ways.

Costs:

- More resource needed by councils to administer extra payments

PART 3 OF THE REGULATIONS:
PROVISION OF SUPPORT BY FAMILY MEMBERS (VIA A DIRECT PAYMENT)

Background: During the Parliamentary phase for the SDS Act 2013 stakeholders and MSP’s debated the appropriate rules and arrangements in relation to the employment of close relatives and family members via a direct payment. Scottish Ministers decided to introduce a new Regulation on this issue which would update the previous arrangements under the 2003 Direct payment Regulations. Under the 2003 Regulations family members cannot be employed unless the authority is satisfied that the arrangement is necessary to meet the needs of the individual. Accompanying statutory guidance referred to this as exceptional circumstances. A number of respondents to the consultations on the SDS Act and the draft Regulations stated the “exceptional circumstances” approach was too restrictive, and was being interpreted in a very narrow way by some authorities, denying some reasonable arrangements which would provide an appropriate solution to meeting the person’s outcomes. Ministers stated that they would prefer to bring forward a new Regulation which would detail “appropriate” and “inappropriate” circumstances. While the local authority would retain the power to “sign off” on any employment situation, authorities, supported people and carers would be able to refer to a transparent and balanced set of Regulations and statutory guidance in order to arrive at the relevant decisions.

Options considered

Option A: “Do nothing”: Do not lay Regulations on this issue

Option B: Retain Regulations in previous form, ie as per the 2003 Direct Payment Regulations (“exceptional circumstances” approach)

Option C: Provide new Regulations defining appropriate and inappropriate circumstances for the employment of family members, whilst retaining the ultimate decision-making power for local authorities

Option A: Do not lay Regulations on this issue

Benefits:

- Potential for greater flexibility and greater room for practitioners to exercise judgement.

Costs:

- Potential for greater inconsistency across local authorities and lack of certainty for disabled people and family members
- Basic costs to local authorities in updating internal guidance and procedures for front-line practitioners. Potential costs in relation to a rise in requests for reviews in order to request that a family member can be employed.

Option B: Retain Regulations in previous form, ie as per the 2003 Direct Payment Regulations (“exceptional circumstances” rule)

Benefits:

- Security for councils in retaining the previous arrangements – no change to procedures and guidance within councils.

Costs:

- Information from the consultation suggested that some councils interpret the previous rules in an inflexible way. As a result, there is the potential for councils to interpret the rules in a less flexible way, denying the opportunity to employ family members even where this is appropriate, where the option is the best way to meet outcomes and potentially the most cost effective means as well.

Option C: Provide new Regulations defining appropriate and inappropriate circumstances for the employment of family members

Benefits

- Individual service users and social work practitioners are presented with a balanced legal framework in order to arrive at appropriate decisions in relation to the employment of family members where it meets their outcomes and where the local authority agrees with the arrangement). Where this is appropriate to carer, supported person and local authority this may lead to better outcomes and more cost effective use of public funds.
- Potential to increase resource where there is currently a limited service. i.e. rural areas

Costs:

- Non recurring costs to local authorities to update their internal guidance and procedures for front-line practitioners, including the time it will take practitioners to read and understand the new regulations.
- Potential impact on local authorities’ social work workload if additional interventions are required i.e. due to a breakdown of family relationships and ending of the employment arrangement
- Potential for additional information and training requirements for family members to deal with complex needs
- Potential costs to local authorities in relation to a rise in requests for reviews in order to request that a family member can be employed. However, during the consultation period it became apparent that it was very difficult to estimate the likelihood of this. Employing a family member involves a major change to the relationship and significant responsibilities for the employer. It is not certain that significant numbers of family members and supported people will wish to request reviews in order to seek to employ their relative, and the Regulations will still require all 3 parties to agree to the arrangement. or to monitor the direct payment arrangement where complex needs are involved

- Potential for additional costs in relation to the increase in direct payments being made through a possible increase in family members accessing this option. This may be balanced out due to traditional services being more costly than employing a family member.

PART 4 OF THE REGULATIONS:
PERSONS INELIGIBLE TO RECEIVE DIRECT PAYMENTS
(ie the purchase of long-term residential and nursing care)

Background: Since the introduction of direct payments under Scottish legislation, people have been prevented from using their direct payment for residential accommodation. As part of the consultations on the draft SDS Bill and the more recent consultation on draft Regulations, people were asked for their views on the potential benefits and risks of allowing direct payments to be used in a residential care environment or to choose the residential establishment. Some respondents (primarily local authorities) were sceptical as to the benefits that would arise from allowing direct payments. Others (primarily providers and some user groups) were interested in the benefits that may arise for the individual. Ministers decided to retain the current bar on the use of direct payments on a temporary basis, but to explore the potential to undertake pilots in some areas following the commencement of the 2013 Act. In light of this, the 2013 Regulations contain a bar on the use of direct payments in relation to residential or nursing care.

Options considered

Option A: Retain the bar on use of direct payments for long-term residential care and nursing care

Option B: Remove the bar on the use of direct payments for long-term residential care and nursing care

Option A: Retain the bar on use of direct payments for long-term residential care and nursing care

Benefits

- Avoid the potential of unsettling the National Care Home Contract arrangements
- Avoid the potential of users being treated as self-funders by care home establishments and being encouraged to “top up” the costs of their residential care placement (though there were differing opinions during the consultation about whether this would in fact happen).

Costs:

- Less flexibility for users (and potentially for providers) to arrange their residential care placement and tailor their support within the residential environment

Option B: Remove the bar on the use of direct payments for long-term residential care and nursing care

Benefits:

- Provides greater flexibility to users (and potentially for providers) to arrange their residential care and nursing care, with the potential for individuals (particularly younger adults) to leave residential accommodation and arrange alternative (lower cost) forms of care and support

Costs:

- Potential to unsettle the National Care Home contract arrangements. Potential that

users may be treated as self-funders by care home establishments and encouraged to “top-up” the costs of their residential care placement (though there were differing opinions during the consultation about whether this would in fact happen).

PART 5 OF THE REGULATIONS:
CIRCUMSTANCES IN WHICH LOCAL AUTHORITIES ARE NOT REQUIRED TO GIVE THE OPPORTUNITY TO CHOOSE A DIRECT PAYMENT

Options considered

Option A: Do not lay Regulations on this issue

Option B: Retain Regulations in previous form (i.e. as per 2003 Direct Payment Regulations) – listing ineligible groups where the local authority is never permitted to offer direct payments

Option C: Provide new Regulations where authority is not obligated to offer direct payments in certain circumstances but may use their discretion to do so

Option A: Do not lay Regulations on this issue

Benefits:

- Potential for greater flexibility and greater room for practitioners to exercise judgement.

Costs:

- Potential for greater inconsistency across local authorities and lack of certainty for disabled people and family members.
- Potential for authorities to refuse access to direct payments across a wide range of circumstances, thus narrowing the scope to achieve the intentions of the SDS Act 2013.
- Potential for a rise in complaints/appeals

Option B: Retain Regulations in previous form (ie as per 2003 Direct Payment Regulations) – listing ineligible groups where the local authority is not permitted to offer direct payments

Benefits:

- Security for councils in retaining the previous arrangements – no change to procedures and guidance within councils.

Costs:

- The majority of consultees said that retaining absolute restrictions as per 2003 Regulations would retain a lack of discretion for practitioners and an inflexible approach. Broad restrictions by client group or circumstance may lead to inflexible use of public funds as individuals in those circumstances would have to receive services in the traditional manner. This may result in ineffective use of public funds where better solutions may be achieved via a direct payment.

Option C: Provide new Regulations where authority is not obligated to offer direct payments in certain circumstances but may use their discretion to do so

Benefits:

- Potential for greater flexibility and greater room for practitioners to exercise judgement within the context of detailed statutory guidance. In individual cases this may result in better care and support arrangements tailored around individual needs with the potential for a more cost effective use of public funds, albeit with the flexibility for councils not to offer such options where it would be inappropriate to do

so.

Costs:

- Recurring costs to local authorities to update their internal guidance and procedures for front-line practitioners, including the time it will take practitioners to read and understand the new regulations.
- Potential costs in relation to additional intense monitoring requirements where direct payments are provided to particular groups.

Scottish Firms Impact Test

Throughout the Bill development process and the consultation on the draft Regulations, Scottish Government officials consulted and met directly with a range of organisations, third and independent sector providers (the main businesses affected by the Regulations) and users affected by the proposals, so as to better assess the costs and/or benefits to them and their organisation.

The 2013 Act and the Direct Payment Regulations are only relevant to Scotland and therefore impacts will be on those involved with social care and support within Scotland. The Act and Regulations place duties onto local authorities in the first instance, and the initial impact is on local authorities with some secondary impacts for users and providers.

Following the submission of the final BRIA to the Parliament alongside the final Regulation, the Scottish Government will continue to engage with local authorities and third and independent sector providers in order to monitor the business, regulatory and financial effects of both the Regulations and the wider SDS Act 2013, updating and improving the BRIA over time.

Competition Assessment

Direct payments provide informed choice and control to individuals, enabling them to make decisions about the care and support they want. This includes decisions about who provides that care and support. This presents an opportunity for new suppliers to emerge to meet developing demand for these services, alongside existing suppliers whose services will continue to be required by many people, potentially widening the market. The Regulations and the Act which they support, should not limit the number of suppliers or their ability or incentives to compete, either directly or indirectly. The Act and the supporting Regulations on direct payments (particularly the section on Third Party direct payments) may help to increase the number of purchasers in the market for social care, with individuals commissioning their own support. This conclusion was reached after consulting guidance from the Office of Fair Trading and following earlier BRIA consultations in relation to the Self-directed Support Bill .

The Act and the Regulations should not limit the ability of suppliers to compete. Self-directed Support and direct payments encourages innovation and creativity in social care and support, and encourages individuals to exercise choice and control, driving competition amongst suppliers.

Test run of business forms

There are no new business forms planned as a result of the Regulations. However, local authorities will wish to amend their internal guidance, procedures and forms for users such as "User Agreements" which are commonly set up when direct payments are arranged.

Legal Aid Impact Test

The Scottish Government assesses that the Regulations should not result in possible expenditure from the legal aid fund. The Scottish Government Access to Justice Team have confirmed the proposals should not have any implications for individuals' right to access to justice through legal aid. They should not have implications for civil and criminal legal aid as long as there is a clear and distinct audit trail for services and as long as payment out is not less than income in. The Regulations will not introduce any new court procedure nor any new right of appeal.

Enforcement, sanctions and monitoring

The Scottish Government will monitor compliance with the 2013 Act and the Regulations through a number of existing or soon to be established measures.

Short-term monitoring – “Year 1” of the SDS Act 2013 and Regulations

The Scottish Government will co-ordinate a regular cross-stakeholder “issues panel”. This panel will provide a route for authorities, user and carer groups and providers to raise and resolve issues of interpretation, strategic policy and front-line practice.

Scottish Government statistical returns on self-directed support will provide a route for basic monitoring of take-up of the various SDS Options

Medium/Long term monitoring and evaluation

The Scottish Government will develop a monitoring and evaluation framework which will take into account the appropriate and proportionate monitoring of compliance with legal powers and duties related to self-directed options including direct payments. The framework, based on a series of outcomes measures, will gather information via a number of routes including the outcomes framework for Health and Social Care Integration, the work of the Care Inspectorate and specific research evaluations where appropriate. The Government has undertaken a review of the statistics collected on direct payments, and will collect amended categories of information covering the full range of self-directed support options.

Sanctions

There will be no sanctions as such, service users will be able to go through the local authority complaints process to raise any challenges. Users can then escalate complaints to the Scottish Public Services Ombudsman or take their case to judicial review if necessary.

Implementation and delivery plan

The 2013 Act and the Regulations are due to come into force on 1 April 2014. Local authorities are responsible for implementing their powers and duties under the Act and the Regulations. Local authorities are preparing for delivery using local strategies and plans which are defined and driven at local authority level.

Local authorities will have their own local arrangements for detailed monitoring of the implementation of their powers and duties under the Regulations. The national SDS Programme Board will retain a general role in monitoring implementation through its members which include COSLA and the Association of Directors of Social Work. The Care Inspectorate will contribute to robust and effective monitoring via their inspection reports on council social work. All of these sources of information will help to inform the overall monitoring and evaluation framework.

Post implementation review

Comment: A monitoring and evaluation framework will be co-produced and delivered with stakeholders' involvement.

Summary and recommendation In order to meet the policy aims for self-directed support, and the 2013 Act and 2014 Regulations we recommend:

PART 2- Calculation, payment and termination of direct payments-

Recommendation: Option B: Lay regulations providing the necessary powers to councils

PART 3 – Provision of Support by Family Members (via a Direct Payment)-

Recommendation: Option C: Provide new Regulations defining appropriate and inappropriate circumstances for the employment of family members, whilst retaining the ultimate decision-making power for local authorities

PART 4 – Persons ineligible to receive direct payments- (i.e. the purchase of long-term residential and nursing care)-

Recommendation: Option A: Retain the bar on use of direct payments for long-term residential care and nursing care. NB: Potential to test a Residential Care Pilot in specific geographical local authority areas before the end of 2014.

PART 5 – Circumstances in which local authorities are not required to give the opportunity to choose a direct payment

Recommendation: Option C: Provide new Regulations where authority is not obligated to offer direct payments in certain circumstances but may use their discretion to do so

A summary costs and benefits table is attached alongside the document.

Declaration and publication

I have read the impact assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:**Date:****Minister's name, title etc*****Scottish Government Contact point:**

Annex A: Costs and benefits of each option

Calculation, payment and termination of direct payments (Part 2 of the Regulations)

(includes Means testing for direct payments, Direct payments by instalments, Third party direct payments and Circumstances where a direct payment may be terminated)

	Benefits	Costs
Option A: Do not lay Regulations on these matters	<ul style="list-style-type: none"> Potential for greater flexibility at local authority level. 	<ul style="list-style-type: none"> Confusion amongst local authorities and users as to the rules and arrangements around direct payments. Users potentially unable to have access to “third party direct payments” Councils unable to terminate direct payments which are being used in inappropriate ways.
Option B: Lay regulations providing the necessary powers to councils	<ul style="list-style-type: none"> Clarity amongst both local authorities and users as to the rules and arrangements around direct payments. Users able to access to “third party direct payments”. This may provide a flexible option for those who cannot or do not wish to, manage money directly. If the person uses their payment flexible to meet their outcomes they may be able to achieve better outcomes with the available funding via a third party direct payment. Councils able to terminate direct payments which are being used in inappropriate ways. 	<ul style="list-style-type: none"> More resource needed by councils to administer extra payments

Provision of support by family members

	Benefits	Costs
Option A: “Do nothing”: Do not lay Regulations on this issue	<ul style="list-style-type: none"> Potential for greater flexibility and greater room for practitioners to exercise judgement. 	<ul style="list-style-type: none"> Potential for greater inconsistency across local authorities and lack of certainty for disabled people and family members Basic costs to local authorities in updating internal guidance and procedures for front-line practitioners. Potential costs in relation to a rise in requests for reviews

<p>Option B: Retain Regulations in previous form, i.e. as per the 2003 Direct Payment Regulations (“exceptional circumstances” approach)</p> <p>Option C: Provide new Regulations defining appropriate and inappropriate circumstances for the employment of family members</p>	<ul style="list-style-type: none"> • Security for councils in retaining the previous arrangements – no change to procedures and guidance within councils. • Individual service users have greater opportunity to employ family members where this is their desire (and where it meets their outcomes and the local authority agrees with the arrangement). Where this is appropriate to carer, supported person and local authority this may lead to better outcomes and more cost effective use of public funds. • Potential to increase resource where there is currently a limited service i.e. rural areas 	<p>in order to request that a family member can be employed.</p> <ul style="list-style-type: none"> • Information from the consultation suggested that some councils interpret the previous rules in an inflexible way. As a result, there is the potential for councils to interpret the rules in a less flexible way, denying the opportunity to employ family members even where this option is the best way to meet outcomes and potentially the most cost effective means as well. • Non-recurring costs to local authorities to update their internal guidance and procedures for front-line practitioners, including the time it will take practitioners to read and understand the new regulations. • Potential impact on local authorities social work workload if additional interventions are required i.e. due to a breakdown of family relationships and ending of the employment arrangement • Potential for additional information and training requirements for family members to deal with complex needs • Potential costs to local authorities in relation to a rise in requests for reviews in order to request that a family member can be employed. However, during the consultation period it became
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		<p>apparent that it was very difficult to estimate the likelihood of this.</p> <p>Employing a family member involves a major change to the relationship and significant responsibilities for the employer. It is not certain that significant numbers of family members and supported people will wish to request reviews in order to seek to employ their relative, and the Regulations will still require all 3 parties to agree to the arrangement. or to monitor the direct payment arrangement where complex needs are involved</p> <ul style="list-style-type: none"> • Potential for additional costs in relation to the increase in direct payments being made through a possible increase in family members accessing this option. This may be balanced out due to traditional services being more costly than employing a family member.
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Persons ineligible to receive direct payments– the purchase of “long-term” residential and nursing care

	Benefits	Costs
<p>Option A: Retain the bar on use of direct payments for long-term residential care and nursing care</p> <p>Option B: Remove the bar on the use of direct payments for long-term</p>	<ul style="list-style-type: none"> • Avoid the potential of unsettling the National Care Home Contract arrangements • Avoid the potential of users being treated as self-funders by care home establishments and being encouraged to “top up” the costs of their residential care placement. (though there were differing opinions during the consultation about whether this would in fact happen). • Provides greater flexibility to users (and potentially for providers) to arrange their residential care and nursing care, with the potential for 	<ul style="list-style-type: none"> • Less flexibility for users (and potentially for providers) to arrange their residential care placement and tailor their support within the residential environment • Potential to unsettle the National Care Home contract Potential that users may be treated as self-funders by care

residential care and nursing care	individuals (particularly younger adults) to leave residential accommodation and arrange alternative (lower cost) forms of care and support	home establishments and encouraged to “top-up” the costs of their residential care placement. (though there were differing opinions during the consultation about whether this would in fact happen).
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Circumstances in which local authorities are not required to give the opportunity to choose a direct payment

	Benefits	Costs
Option A: Do not lay Regulations on this issue	<ul style="list-style-type: none"> Potential for greater flexibility and greater room for practitioners to exercise judgement. 	<ul style="list-style-type: none"> Potential for greater inconsistency across local authorities and lack of certainty for disabled people and family members. Potential for authorities to refuse access to direct payments across a wide range of circumstances, thus narrowing the scope to achieve the intentions of the SDS Act 2013.
Option B: Retain Regulations in previous form (i.e. as per 2003 Direct Payment Regulations) – listing ineligible groups where the local authority is never permitted to offer direct payments	<ul style="list-style-type: none"> Security for councils in retaining the previous arrangements – no change to procedures and guidance within councils. 	<ul style="list-style-type: none"> The majority of consultees said that retaining absolute restrictions as per 2003 Regulations would retain a lack of discretion for practitioners and an inflexible approach. Broad restrictions by client group or circumstance may lead to inflexible use of public funds as individuals in those circumstances would have to receive services in the traditional manner. This may result in ineffective use of public funds where better solutions may be achieved via a direct payment
Option C: Provide new	<ul style="list-style-type: none"> Potential for greater flexibility and 	<ul style="list-style-type: none"> Recurring costs to local

<p>Regulations where authority is not obligated to offer direct payments in certain circumstances but may use their discretion to do so</p>	<p>greater room for practitioners to exercise judgement within the context of detailed statutory guidance. In individual cases this may result in better care and support arrangements tailored around individual needs with the potential for a more cost effective use of public funds, albeit with the flexibility for councils not to offer such options where it would be inappropriate to do so.</p>	<p>authorities to update their internal guidance and procedures for front-line practitioners, including the time it will take practitioners to read and understand the new regulations.</p> <ul style="list-style-type: none">• Potential costs in relation to additional intense monitoring requirements where direct payments are provided to particular groups.
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