

POLICY NOTE

THE COMMUNITY CARE (JOINT WORKING etc.) (SCOTLAND) AMENDMENT REGULATIONS 2014

SSI 2014/66

1. The above instrument was made in exercise of the powers conferred by sections 13(1) and 15(2) of the Community Care and Health (Scotland) Act 2002 (“the 2002 Act”) and is subject to the negative procedure.

Policy Objectives

2. Sections 12B and 12C of the Social Work (Scotland) Act 1968 (“the 1968 Act”) impose various duties on local authorities in relation to the provision of direct payments for community care services (direct payments being one form of what is now known as self-directed support). The Social Care (Self-directed Support) (Scotland) Act 2013 (“the 2013 Act”), which will come into force on 1st April 2014, will repeal Sections 12B and 12C of the 1968 Act, update and consolidate the duty to provide direct payments and provide a comprehensive set of self-directed support options. For more information on the objectives of self-directed support please see the policy memorandum for the 2013 Act:

[http://www.scottish.parliament.uk/S4_Bills/Social%20Care%20\(Self%20directed%20Support\)%20\(Scotland\)%20Bill/Policy_Memo.pdf](http://www.scottish.parliament.uk/S4_Bills/Social%20Care%20(Self%20directed%20Support)%20(Scotland)%20Bill/Policy_Memo.pdf)

3. Part 2 of the 2002 Act sets out various ways in which local authorities and NHS bodies may work together. Section 13 allows an NHS body to make payments towards certain forms local authority expenditure on prescribed conditions. Section 15 enables local authorities and NHS bodies to enter into arrangements whereby certain functions may be delegated by one party to the other in accordance with regulations made by the Scottish Ministers. The Community Care (Joint Working etc.) (Scotland) Regulations 2002 (“the 2002 Regulations”) set out further rules relating to payments under section 13 and delegation arrangements under section 15 (among other things). For the purpose of this instrument the relevant Schedules in the 2002 Regulations are:
 - a) Schedule 1, which sets out the local authority functions in respect of which NHS bodies may make payments to local authorities as per the circumstances set out in section 13 of the 2002 Act, and;
 - b) Schedule 5 which sets out the local authority functions which are prescribed for the purpose of joint working under section 15 of the 2002 Act (i.e. where local authorities and NHS bodies can choose to enter into joint working arrangements).
4. The 2002 Regulations as currently drafted mean a) that NHS bodies can make payments to local authorities in respect of direct payments under sections 12B and 12C of the 1968 Act and b) that local authorities and NHS bodies can choose to enter into joint working arrangements in relation to such direct payments.
5. It is anticipated that the Public Bodies (Joint Working) (Scotland) Bill (“the Public Bodies Bill”), which is currently before the Scottish Parliament, will make new provision

in relation to the integration of health and social care functions and will replace the framework set out in the 2002 Act. However, prior to the passage and implementation of the Public Bodies Bill, Scottish Ministers want to ensure that the same flexible joint working arrangements are in place under the 2002 Act for the new self-directed support duties under the 2013 Act as were previously in place for the direct payment duties under sections 12B and 12C of the 1968 Act. This set of amendment regulations will ensure that:

- a) NHS bodies retain the ability to make financial payments to local authorities with respect to direct payments under the 2013 Act;
- b) the ability for NHS bodies to make payments to authorities is updated to cover the self-directed support options provided under the 2013 Act which relate to the local authority functions in respect of which NHS bodies were already permitted to make payments;
- c) NHS bodies and local authorities can continue to enter into joint working arrangements in relation to direct payments, and;
- d) the ability to enter into joint working arrangements is updated to cover the SDS options provided under the 2013 Act.

Consultation

6. The Scottish Government conducted formal consultation on:
 - outline proposals for a Self-directed Support Bill (March – June 2010);
 - a draft Self-directed Support Bill (December 2010 – March 2011); and
 - draft Regulations on direct payments under the 2013 Act and statutory guidance (April – June 2013).
7. The consultations asked for views on the appropriate arrangements for wider joint working between Boards and authorities in relation to self-directed support. While there was no clear consensus on extending self-directed support *duties* to NHS Boards, respondents generally accepted the merit in retaining a permissive joint working arrangement along the lines of the previous direct payment arrangements. Ministers concluded that it would be appropriate to update the previous direct payment functions with the relevant self-directed support functions. This will ensure that the SDS functions can join the full range of social work/social care functions contained within Schedules 1 and 5 of the 2002 Regulations.
8. The following documents provide a record of the relevant self-directed support consultations and Scottish Government responses.

Initial two phases of public consultation on outline legislative proposals and a draft Self-directed Support Bill:

<http://www.scotland.gov.uk/Topics/Health/Support-Social-Care/Support/Self-Directed-Support/Bill/consultation>

Consultation documents on draft statutory guidance and draft direct payment Regulations:

<http://www.scotland.gov.uk/Publications/2013/04/6823/0>

<http://www.scotland.gov.uk/Publications/2013/04/7003/0>

Draft statutory guidance and direct payment Regulations: Consultation Analysis Report
<http://www.scotland.gov.uk/Publications/2013/11/3923/0>

Draft statutory guidance and direct payment Regulations: Scottish Government Response to the consultation
<http://www.scotland.gov.uk/Publications/2013/12/4240/1>

Impact Assessments

9. This instrument has no effect on any equality issues. An Equality Impact Assessment was carried out for the Social Care (Self-directed Support) (Scotland) Act 2013 and is available on the Scottish Government's website at:
<http://www.scotland.gov.uk/Publications/2012/03/9876/1>

Financial Effects

10. A BRIA was carried out for the 2013 Act and is available on the Scottish Government's website at:
<http://www.scotland.gov.uk/Publications/2012/03/5525/0>
11. This instrument enables rather than compels NHS bodies and local authorities to enter into joint working arrangements. In light of this, the Minister or Public Health confirms that no BRIA is necessary for this instrument as the instrument itself has no financial effects on the Scottish Government, local government, NHS bodies or on business.

Scottish Government
Directorate for Chief Nursing Officer, Patients, Public and Health Professions