

POLICY NOTE

THE SOCIAL CARE (SELF-DIRECTED SUPPORT) (SCOTLAND) ACT 2013 (CONSEQUENTIAL AND SAVING PROVISIONS) ORDER 2014

SSI 2014/90

The above instrument was made in exercise of the powers conferred by sections 26(1) and 27(1) of the Social Care (Self-directed Support) (Scotland) Act 2013. The instrument is subject to affirmative procedure.

Policy Objectives

1. This Order makes amendments to legislation which are necessary as a result of the Social Care (Self-directed Support) (Scotland) Act 2013 (“the 2013 Act”).
2. The 2013 Act repeals and reframes provisions relating to direct payments contained within sections 12B and 12C of the Social Work (Scotland) Act 1968 (“the 1968 Act”). It replaces the option of a direct payment (as provided under Sections 12B and 12C) with four options to all individuals who are assessed as requiring the relevant support under section 12A of the 1968 Act, section 3 of the 2013 Act (support for adult carers) or section 22 of the Children (Scotland) Act 1995 (“the 1995 Act”).
3. The options provided by the 2013 Act include the previous direct payment option as “Option 1” (thus retaining the direct payment as an option for all social care clients) but also include “Option 2” (“directing the available resource”) where the person selects their support and the authority makes arrangements on the person’s behalf, “Option 3” (“arranged services”) where the authority selects the support and arranges support for the person, and “Option 4”, where the supported person selects Option 1, 2 or 3 for particular aspects of their support needs.
4. The 2013 Act also provides general principles to guide and inform decisions made under the Act’s framework of duties and powers, requires authorities to provide information and assistance to individuals in order that they can make an informed choice about the options available, and provides a discretionary power to authorities in order that they can provide support to carers following a carer’s assessment under section 12AA of the 1968 Act or section 24 of the 1995 Act (section 3).
5. The wider policy aims are to expand the range of options beyond the direct payment. The intention is to ensure that social care services become more flexible and responsive to people’s needs and to drive a cultural shift around the delivery of support that views people as equal citizens with rights and responsibilities rather than people who receive services. The policy objectives relating to the 2013 Act are fully described in the Policy Memorandum which accompanied the Bill. The link below shows the passage of the Bill through Parliament and includes the Policy Memorandum.

[http://www.scottish.parliament.uk/S4_Bills/Social%20Care%20\(Self%20directed%20Support\)%20\(Scotland\)%20Bill/BBV_181_Final.pdf](http://www.scottish.parliament.uk/S4_Bills/Social%20Care%20(Self%20directed%20Support)%20(Scotland)%20Bill/BBV_181_Final.pdf)

6. This Order makes the following amendments to primary and secondary legislation with effect in Scotland, which are consequential on the repeal by section 25 of the 2013 Act of sections 12B and 12C of the 1968 Act.
7. Article 2 makes the following repeals, revocations and modifications, which are set out in the Schedule. Part 1 of the Schedule repeals:
 - Section 4 of the Community Care (Direct Payments) Act 1996;
 - Section 70 of the Regulation of Care (Scotland) Act 2001;
 - Section 7 and accompanying paragraphs 1(2) and (3) of Schedule 2 in the Community Care and Health (Scotland) Act 2002, and;
 - Section 63 of the Adult Support and Protection (Scotland) Act 2007
8. Part 2 of the Schedule revokes the three sets of Regulations which had previously been made under the regulation-making powers in section 12B of the 1968 Act. The three sets of Regulations (from 2003, 2005 and 2007) are no longer extant, given the repeal of the enabling powers in section 12B of the 1968 Act. However, they will continue to have effect in relation to direct payments which are made under section 12B of the 1968 Act after 1st April 2014 by virtue of the saving provision in article 3 of the Order. New detailed provision regulating direct payments under the 2013 Act is made in the Self-directed Support (Direct Payments) (Scotland) Regulations 2014 (SSI 2014/25).
9. Part 3 of the Schedule deals with all relevant legislation which currently refers to direct payments made under section 12B of the 1968 Act. It updates references to direct payments made under section 12B of the 1968 Act with references to direct payments within the meaning of section 4(2) of the 2013 Act.
10. Article 3 of the Order contains a saving provision. Although section 12B of the 1968 Act is repealed by section 25 of the 2013 Act, it continues to have effect in relation to any direct payments made under that section where the offer to make the direct payment was made before 1st April 2014. It continues to have effect by virtue of article 5 of the Social Care (Self-directed Support) (Scotland) Act 2013 (Commencement, Transitional and Saving Provisions) Order 2014 (SSI 2014/32 (C.2)). Article 3 provides that the modifications made by this Order have no effect in relation to such payments. That means that the legislation being repealed, revoked or modified by this Order continues to apply in relation to any payments which continue to be regulated under section 12B of the 1968 Act.

Consultation

No public consultation has been carried out for this Order. 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 and statutory guidance (April – June 2013).

The following documents provide a record of the relevant consultations and Scottish Government responses.

Initial two phases of public consultation on i) outline legislative proposals and ii) the 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 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 Regulations: Consultation Analysis Report

<http://www.scotland.gov.uk/Publications/2013/11/3923/0>

Draft statutory guidance and Regulations: Scottish Government Response to the consultation

<http://www.scotland.gov.uk/Publications/2013/12/4240/1>

Impact Assessments

This Order 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

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>

The Minister for 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 or on business.

Scottish Government

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

18 February 2014