

# **SOCIAL CARE (SELF-DIRECTED SUPPORT)(SCOTLAND) ACT 2013**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### ***Sections 17 to 20 – Local authority functions***

#### **Section 17 – Assessments under section 12A of the 1968 Act: assistance**

53. **Section 17** inserts section 12AZA after section 12A of the 1968 Act. It applies where the authority is assessing a person's needs under section 12A of the 1968 Act. It is similar to, although at an earlier stage than, the duty under section 6 requiring assistance to an adult making a choice of an option for self-directed support.
54. Section 12AZA places a duty on authorities to take reasonable steps to identify and involve people to assist the individual where either it appears that because of mental disorder the supported person would benefit from assistance in relation to the carrying out of the assessment, or where it appears that because of difficulties in communicating due to physical disability the supported person would benefit from receiving assistance to communicate in relation to the carrying out of the assessment.
55. Subsection (4) places a duty on the local authority to take reasonable steps to identify people who are able to assist the supported person and, if the supported person agrees to the relevant persons providing such assistance, to involve the relevant person or persons in assisting the supported person in relation to the carrying out of the assessment or communicating in relation to it. The person or persons providing assistance may be relatives and friends of the individual but it may include other persons who can assist via what is commonly known as a "circle of support". The requirement to have the agreement of the supported person makes it explicit on the face of the Act that section 12AZA applies only in relation to supported persons who have capacity, but due to mental disorder or difficulties in communicating, may require additional assistance in order to understand, arrive at or communicate their decisions about the options for self-directed support.
56. Subsection (3) sets out conditions which must be satisfied before subsection (4) can be applied. The duty should not be applied when there is a guardian, continuing attorney or welfare attorney with relevant powers present, or when an intervention order has been granted which relates to the provision of assistance with the assessment. Such an attorney or guardian (or individual empowered by an intervention order) would have the power to make self-directed support decisions on the adult's behalf (in accordance with the principles of the Adults with Incapacity (Scotland) Act 2000).
57. Subsection (5) provides definitions for the various terms used in subsections (1) to (4).

#### **Section 18 – Power to charge for services provided under section 3**

58. **Section 18** amends section 87 of the 1968 Act (authorities' power to charge for services or support). This introduces a power to local authority to charge carers for the support

provided to them under section 3 of the Act.. It has the effect that Scottish Ministers can regulate how this power is used by authorities. For example Scottish Ministers could use regulations to specify in what circumstances an authority is permitted to charge carers for the support they receive under section 3 of this Act.

### **Section 19 – Promotion of options for self-directed support**

59. **Section 19(1)** places a duty on a local authority to take steps to promote the options available to individuals.
60. Subsection (2) places a specific duty on the authority to promote both a variety of providers of support in the local area and a variety in the types of support provided by those providers and by the local authority itself. The purpose of this provision is to encourage a range of services from which supported persons can choose from.

### **Section 20 – Delegation**

61. **Section 20** amends section 15 of the Community Care and Health (Scotland) Act 2002. The effect is that Ministers can lay regulations which prohibit delegation of functions which would otherwise be permitted to be delegated by a local authority entering into an arrangement in accordance with section 15 of the 2002 Act. A prohibition under the new power in section 20 would state that certain functions may only be delegated where the arrangement entered into also delegates the appropriate self-directed support duties in the Act.