

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Sections 21 to 29 – General

Section 21 – Guidance and directions

62. [Section 21\(a\)](#) amends section 5(1) of the 1968 Act in order to require authorities to perform their functions under this Act under the general guidance of Scottish Ministers. Paragraph (b) amends section 1B of the 1968 Act to enable Scottish Ministers to issue directions to authorities, either individually or collectively, as to how they are to exercise their functions under this Act.

Section 22 – Regulations: general

63. [Section 22](#) provides for general ancillary powers to the other regulation making powers under the Act. In particular it allows the regulations to make different provision for different cases and to make such ancillary provision (i.e. supplementary, incidental, consequential, transitory and transitional provision and savings) as the Scottish Ministers consider appropriate. Subsections (2) and (3) set out the Parliamentary procedure to which regulations will be subject. Subsection (4) places a duty on Scottish Ministers to consult before laying regulations made under section 14 or 23.

Section 23 – Power to modify application of Act

64. [Section 23 \(1\)](#) provides a power to Scottish Ministers to make regulations which specify circumstances when the duties on the local authority to give the supported person a choice of the four options will not apply. Subsection (2) provides that in the event that the power to disapply the option is used by Scottish Ministers they must include a provision deeming a person to have chosen Option 3. This places an important restriction on the regulation-making powers of Ministers, preventing them from removing all 4 of the options of self-directed support by means of regulations. Subsection (3) provides that such regulations may include provision for or in connection disapplying or modifying any other section in consequence of this.

Section 24 – Interpretation

65. This section defines terms that are used frequently in the Act. In particular “community care services” has the meaning given by section 5A of the 1968 Act except that it does not include a reference to services under any of the provisions mention in section 1(5) of the Act: sections 27 to 27B, 28 and 29 of the 1968 Act.

Section 25 – Consequential repeals

66. This section repeals sections 12B and 12C of the 1968 Act which are replaced in substance by the power to make regulations under section 15, and the provisions of section 16, of this Act.

Sections 26 and 27 – Ancillary provision and Transitional provision etc.

67. These sections give the Scottish Ministers the power to make consequential, supplemental, incidental, transitional, transitory or saving provisions by order for the purpose of giving full effect to the Act. Under section 26 any order which makes textual amendments to primary legislation will be subject to the affirmative procedure, otherwise an order will be subject to the negative procedure. Orders under section 27 will be subject to the negative procedure.

Section 28 – Commencement

68. [Section 28\(1\)](#) provides for certain provisions of the Act to come into force on the day after Royal Assent. Subsection (2) gives power to Ministers to appoint a day for the coming into force of the other provisions of the Act. Subsection (3) provides that a commencement order may include transitory, transitional or saving provision.

Section 29 – Short title

69. [Section 29](#) gives the short title of the Act.