



Social Care (Self-directed Support) (Scotland) Act 2013

2013 asp 1

Options for self-directed support

4 Options for self-directed support

(1) The options for self-directed support are—

| | |
|-----------------|--|
| <i>Option 1</i> | The making of a direct payment by the local authority to the supported person for the provision of support. |
| <i>Option 2</i> | The selection of support by the supported person, the making of arrangements for the provision of it by the local authority on behalf of the supported person and, where it is provided by someone other than the authority, the payment by the local authority of the relevant amount in respect of the cost of that provision. |
| <i>Option 3</i> | The selection of support for the supported person by the local authority, the making of arrangements for the provision of it by the authority and, where it is provided by someone other than the authority, the payment by the authority of the relevant amount in respect of the cost of that provision. |
| <i>Option 4</i> | The selection by the supported person of Option 1, 2 or 3 for each type of support and, where it is provided by someone other than the authority, the payment by the local authority of the relevant |

amount in respect of the cost of the support.

(2) In this section—

“direct payment” means a payment of the relevant amount by a local authority to a supported person for the purpose of enabling the person to arrange for the provision of support by any person (including the authority),

“relevant amount” means the amount that the local authority considers is a reasonable estimate of the cost of securing the provision of support for the supported person,

“supported person” and “support” are to be construed in accordance with section 5 or, as the case may be, section 7 or 8.

5 Choice of options: adults

- (1) This section applies where a local authority decides under section 12A(1)(b) of the 1968 Act that the needs of an adult (the “supported person”) call for the provision of community care services (“support”).
- (2) The authority must give the supported person the opportunity to choose one of the options for self-directed support unless the authority considers that the supported person is ineligible to receive direct payments.
- (3) If the authority considers that the supported person is ineligible to receive direct payments the authority must—
 - (a) notify the supported person of—
 - (i) the reason why the authority considers that to be the case, and
 - (ii) the circumstances in which the authority must under section 12 review the question of whether the supported person is ineligible to receive direct payments, and
 - (b) give the supported person the opportunity to choose one of the options for self-directed support other than—
 - (i) Option 1, and
 - (ii) so far as relating to that option, Option 4.
- (4) In carrying out the duties imposed by subsections (2) and (3)(b), the authority must inform the supported person of—
 - (a) the amount that is the relevant amount for each of the options for self-directed support from which the authority is giving the person the opportunity to choose, and
 - (b) the period to which the amount relates.
- (5) If the supported person does not make a choice in pursuance of subsection (2) or (3) (b) the supported person is deemed to have chosen Option 3.
- (6) The authority must give the notification required by subsection (3)(a) in writing and, if necessary, in such other form as is appropriate to the needs of the person to whom it is given.
- (7) For the purposes of this section, a person is ineligible to receive direct payments if the person is of a description specified in regulations under section 15(2)(a).

6 Choice of options under section 5: assistance

- (1) This section applies where—
 - (a) a local authority decides under section 12A(1)(b) of the 1968 Act that the needs of an adult (the “supported person”) call for the provision of community care services,
 - (b) it appears to the authority that the supported person falls within subsection (2), and
 - (c) the conditions in subsection (3) are satisfied.
- (2) A supported person falls within this subsection if—
 - (a) because of mental disorder, the supported person would benefit from receiving assistance from another person in relation to making decisions about relevant matters,
 - (b) because of difficulties in communicating due to physical disability, the supported person would benefit from receiving assistance from another person in relation to communicating decisions about relevant matters.
- (3) The conditions are—
 - (a) there is no guardian, continuing attorney or welfare attorney with powers in relation to the relevant matters, and
 - (b) an intervention order has not been granted in relation to the relevant matters.
- (4) The authority must take reasonable steps to enable the supported person to make a choice in pursuance of section 5(2) or (3)(b).
- (5) The authority must take reasonable steps—
 - (a) to identify persons who are able to assist the supported person, and
 - (b) if the supported person agrees, to involve them in assisting the supported person in making decisions about relevant matters or, as the case may be, communicating decisions about relevant matters.
- (6) In this section—

“the 2000 Act” means the Adults with Incapacity (Scotland) Act 2000 (asp 4),

“continuing attorney”—

 - (a) means a continuing attorney within the meaning of section 15 of the 2000 Act, and
 - (b) includes a person granted, under a contract, grant or appointment governed by the law of any country, powers (however expressed) relating to the granter’s property or financial affairs and having continuing effect despite the granter’s incapacity,

“guardian”—

 - (a) means a guardian appointed under the 2000 Act, and
 - (b) includes a guardian (however called) appointed under the law of any country to, or entitled under the law of any country to act for, an adult during the adult’s incapacity, if the guardianship is recognised under the law of Scotland,

“intervention order” is to be construed in accordance with section 53 of the 2000 Act,

“mental disorder” has the meaning given by section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13),

“relevant matters” means—

- (a) the choice in pursuance of section 5(2) or (3)(b) of one of the options for self-directed support,
- (b) anything relating to the planning of the care or support of the supported person,
- (c) anything relating to support provided (or to be provided) to the supported person in pursuance of an option for self-directed support,

“welfare attorney”—

- (a) means a welfare attorney within the meaning of section 16 of the 2000 Act, and
- (b) includes a person granted, under a contract, grant or appointment governed by the law of any country, powers (however expressed) relating to the granter’s personal welfare and having effect during the granter’s incapacity.

7 **Choice of options: adult carers**

- (1) This section applies where a local authority is to provide, or secure the provision of, support for an adult (the “supported person”) under section 3(4).
- (2) The authority must give the supported person the opportunity to choose one of the options for self-directed support unless the authority considers that the supported person is ineligible to receive direct payments.
- (3) If the authority considers that the supported person is ineligible to receive direct payments the authority must—
 - (a) notify the supported person of—
 - (i) the reason why the authority considers that to be the case, and
 - (ii) the circumstances in which the authority must under section 12 review the question of whether the supported person is ineligible to receive direct payments, and
 - (b) give the supported person the opportunity to choose one of the options for self-directed support other than—
 - (i) Option 1, and
 - (ii) so far as relating to that option, Option 4.
- (4) In carrying out the duties imposed by subsections (2) and (3)(b), the authority must inform the supported person of—
 - (a) the amount that is the relevant amount for each of the options for self-directed support from which the authority is giving the person the opportunity to choose, and
 - (b) the period to which the amount relates.
- (5) If the supported person does not make a choice in pursuance of subsection (2) or (3)
 - (b) the supported person is deemed to have chosen Option 3.
- (6) The authority must give the notification required by subsection (3)(a) in writing and, if necessary, in such other form as is appropriate to the needs of the person to whom it is given.

8 Choice of options: children and family members

- (1) This section applies where a local authority is to provide services under section 22 of the 1995 Act (“support”) to a child or a member of a child’s family.
- (2) The authority must give the supported person the opportunity to choose one of the options for self-directed support unless the authority considers that the supported person is ineligible to receive direct payments.
- (3) If the authority considers that the supported person is ineligible to receive direct payments the authority must—
 - (a) notify the supported person of—
 - (i) the reason why the authority considers that to be the case, and
 - (ii) the circumstances in which the authority must under section 12 review the question of whether the supported person is ineligible to receive direct payments, and
 - (b) give the supported person the opportunity to choose one of the options for self-directed support other than—
 - (i) Option 1, and
 - (ii) so far as relating to that option, Option 4.
- (4) In carrying out the duties imposed by subsections (2) and (3)(b), the authority must inform the supported person of—
 - (a) the amount that is the relevant amount for each of the options for self-directed support from which the authority is giving the person the opportunity to choose, and
 - (b) the period to which the amount relates.
- (5) Subsection (6) applies where the supported person is an appropriate person in relation to the child.
- (6) Before making a choice in pursuance of subsection (2) or (3)(b), the supported person must, so far as practicable and taking account of the maturity of the child—
 - (a) give the child an opportunity to indicate whether the child wishes to express the child’s views,
 - (b) if the child wishes to do so, give the child an opportunity to express them, and
 - (c) have regard to any views expressed by the child.
- (7) If the supported person does not make a choice in pursuance of subsection (2) or (3) (b) the supported person is deemed to have chosen Option 3.
- (8) The authority must give the notification required by subsection (3)(a) in writing and, if necessary, in such other form as is appropriate to the needs of the person to whom it is given.
- (9) In this section—

“the 1989 Act” means the Children Act 1989 (c.41),

“the 1995 Order” means the Children (Northern Ireland) Order 1995 (S.I. 1995/755),

“appropriate person”, in relation to a child, means—

 - (a) a parent or guardian having parental responsibilities or parental rights in relation to the child under Part 1 of the 1995 Act,

- (b) a person in whom parental responsibilities or parental rights are vested by virtue of section 11(2)(b) of the 1995 Act,
 - (c) a person having parental responsibilities or parental rights by virtue of section 11(12) of the 1995 Act,
 - (d) a parent having parental responsibility for the child under Part 1 of the 1989 Act,
 - (e) a person having parental responsibility for the child by virtue of—
 - (i) section 12(2) of the 1989 Act,
 - (ii) section 14C of the 1989 Act, or
 - (iii) section 25(3) of the Adoption and Children Act 2002 (c.38),
 - (f) a parent having parental responsibility for the child under Part 2 of the 1995 Order,
 - (g) a person having parental responsibility for the child under Article 12(2) of the 1995 Order,
 - (h) a person in whom parental responsibilities or parental rights are vested by virtue of a permanence order (as defined in section 80(2) of the Adoption and Children (Scotland) Act 2007 (asp 4)),
- “supported person” means—
- (a) where support is to be provided (wholly or partly) to the child or a member of the child’s family who is also a child—
 - (i) if the child to whom support is to be provided is under 16 years of age, an appropriate person,
 - (ii) if the child to whom support is to be provided is 16 years of age or over, the child,
 - (b) where support is to be provided (wholly or partly) to a member of the child’s family who is not a child, that person.

9 Provision of information about self-directed support

- (1) This section applies where under section 5, 7 or 8 a local authority gives a person an opportunity to choose one of the options for self-directed support.
- (2) The authority must give the person—
 - (a) an explanation of the nature and effect of each of the options for self-directed support,
 - (b) information about how to manage support,
 - (c) information about persons (including persons who are not employed by the authority) who can provide—
 - (i) assistance or information to the person to assist the person in making decisions about the options,
 - (ii) information about how to manage support, and
 - (d) in any case where the authority considers it appropriate to do so, information about persons who provide independent advocacy services (within the meaning of section 259(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)).
- (3) The authority must give the explanation and information required by subsection (2) in writing and, if necessary, in such other form as is appropriate to the needs of the person to whom they are given.

10 Provision of information: children under 16

- (1) This section applies where under section 8 a local authority gives an appropriate person an opportunity to choose one of the options for self-directed support.
- (2) The authority must, in so far as practicable and taking account of the maturity of the child, give the child to whom the support is to be provided an explanation of, and information relating to, the nature and effect of each of the options for self-directed support.
- (3) The authority must give the explanation and information in such manner and form as is appropriate to the needs of the child to whom they are given.
- (4) In this section, “appropriate person” has the same meaning as in section 8(9).

11 Local authority functions

- (1) This section applies where under section 5, 7 or 8 a local authority gives a person an opportunity to choose one of the options for self-directed support.
- (2) The local authority must give effect to the option for self-directed support chosen by the person.
- (3) Compliance with the requirement imposed by subsection (2) fulfils any duty imposed on the authority by Part 2 of the 1968 Act or, as the case may be, section 22 of the 1995 Act to provide to the person the support to which the option relates.
- (4) Compliance with the requirement imposed by subsection (2) does not affect—
 - (a) any other function of the local authority in relation to the provision to the person of the support to which the option relates,
 - (b) the exercise by the local authority of the power in section 12(1) of the 1968 Act to make available assistance in cash to or in respect of the person in relation to the support to which the option relates.

12 Eligibility for direct payment: review

- (1) Subsection (2) applies where—
 - (a) a person receives notice under section 5(3)(a), 7(3)(a) or 8(3)(a), and
 - (b) because of a material change in the person’s circumstances, the reason stated in the notice no longer applies.
- (2) On the request of the person, the local authority must review the question of whether the person is ineligible to receive direct payments.
- (3) If the local authority considers that the person is no longer ineligible to receive direct payments, the authority must give the person the opportunity to choose one of the options for self-directed support under section 5(2) or, as the case may be, section 7(2) or 8(2).

13 Further choice of options on material change of circumstances

- (1) Subsection (2) applies where—
 - (a) under section 5, 7 or 8 a local authority gives a person an opportunity to choose one of the options for self-directed support,

- (b) the person chooses an option, and
 - (c) after the choice is made the authority becomes aware of a material change in the person's circumstances.
- (2) The authority must offer the person another opportunity to choose one of the options for self-directed support under the section concerned.
- (3) The authority and the person may agree that subsection (2) also applies in other circumstances.

14 Power to modify section 4

The Scottish Ministers may by regulations—

- (a) modify section 4,
- (b) so far as necessary in consequence of any modification made under paragraph (a), modify sections 5, 7, 8, 15(2)(b) and 23(2).