

EXPLANATORY MEMORANDUM TO
THE SOCIAL CARE (SELF-DIRECTED SUPPORT) (SCOTLAND) ACT 2013
(CONSEQUENTIAL MODIFICATIONS AND SAVINGS) ORDER 2014

2014 No. 513

1. 1.1 This Explanatory Memorandum has been prepared by the Scotland Office and is laid before Parliament by Command of Her Majesty.

1.2 This Memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This Order updates existing UK and Welsh legislation in consequence of the Social Care (Self-directed Support) (Scotland) Act 2013 (“the 2013 Act”), which made new provisions for direct payments in respect of community care services in Scotland, and comes into force on 1 April 2014. This is necessary to ensure that existing legislation continues to exclude direct payments from being considered as income for means testing purposes. The Order also makes transitional provision for payments which continue to be made under existing legislation after 1 April 2014.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The 2013 Act received Royal Assent on 10th January 2013. It gives people in Scotland a range of options for how their social care is delivered, beyond just direct payments. It allows people to decide how much ongoing control and responsibility they want over their own support arrangements.

4.2 Broadly, the 2013 Act requires local authorities to offer people four choices regarding how they receive their social care. The choices are: direct payment; the person directs the available support; the local authority arranges the support; and, a mix of the previous 3 options.

4.3 The 2013 Act makes provision for direct payments and section 25 of the 2013 Act repeals sections 12B and 12C of the 1968 Act which make provision in relation to direct payments in respect of community care services. This section 104 Order is required to modify provisions relating to direct payments in other legislation which extends to England, Wales and Northern Ireland so that references to sections 12B and 12C of the 1968 Act are replaced with references to the 2013 Act.

5. Territorial Extent and Application

5.1 The modifications specified in this instrument have the same extent as the provisions being modified.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 As noted in section 4 above, the 2013 Act makes legislative provision relating to the arrangement of care and support in order to provide a range of choices to individuals to let them decide how they are to be provided with their support. Those individuals might be in need of support in their own right, or because they are caring for someone else (whether an adult or a child). The 2013 Act provides general principles that local authorities must have regard to in carrying out certain of their functions.

7.2 In addition, the 2013 Act requires local authorities to provide information and assistance to individuals in order that they can make an informed choice about the options available.

Consolidation

7.3 This Order stands alone.

8. Consultation outcome

8.1 This Order has not been the subject of a separate consultation exercise; Orders taken forward under section 104 of the 1998 Act are not usually consulted on as they are made in consequence of Acts which have previously been the subject of separate consultation exercises.

8.2 The Scottish Government ran a consultation outlining its proposals for a Self-Directed Support Bill from 31st March 2010 to 23rd June 2010. 130 written responses were received in answer to this. Following this first consultation, a further consultation on the draft Social Care (Self-Directed Support) (Scotland) Bill was run from 16th December 2010 to 17th March 2011. 113 written responses were received and views were heard from over 200 people during consultation events. Strong support was received for the proposals put forward in this second consultation. The Scottish Government's response to that consultation can be viewed via the following link: <http://www.scotland.gov.uk/Publications/2011/10/10131045/1>

9. Guidance

9.1 No additional guidance is required for this Order, though the Scottish Government will issue guidance in relation to the provision made by the 2013 Act.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The effect of this Order is purely consequential. It does not create new policy or frameworks and therefore no monitoring or review of the effects of this Order are required.

13. Contact

Emma Lopinska at the Scotland Office (Tel: 0131 244 9016 or email: emma.lopinska@scotlandoffice.gsi.gov.uk) can answer any queries regarding the instrument.