

Social Care (Self-directed Support) (Scotland) Bill

[AS AMENDED AT STAGE 2]

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Amendments to the Bill since the previous version are indicated by sidelining in the right margin. Wherever possible, provisions that were in the Bill as introduced retain the original numbering.

Social Care (Self-directed Support) (Scotland) Bill

[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to enable local authorities to provide support to certain carers; to make provision about the way in which certain social care services are provided by local authorities; and for connected purposes.

General principles

- 5 **1 General principles**
- (1) A local authority must have regard to the principles in subsections (2) to (4) in carrying out its functions under—
- 10 (a) Part 2 of the 1968 Act (other than the provisions mentioned in subsection (5)),
- (b) sections 22 to 24 of the 1995 Act,
- (c) this Act.
- (2) A person must have as much involvement as the person wishes in relation to—
- (a) the assessment of the person’s needs for support or services, and
- (b) the provision of support or services for the person.
- 15 (3) A person must be provided with any assistance that is reasonably required to enable the person—
- (a) to express any views the person may have about the options for self-directed support, and
- (b) to make an informed choice when choosing an option for self-directed support.
- (4) A local authority must collaborate with a person in relation to—
- 20 (a) the assessment of the person’s needs for support or services, and
- (b) the provision of support or services for the person.
- (5) The provisions are—
- (a) sections 27 to 27B (which make provision in relation to the supervision and care of persons put on probation or released from prison etc.),

- (b) section 28 (local authority’s power to arrange burial or cremation in certain circumstances),
- (c) section 29 (local authority’s power to make payments to parents etc. in respect of expenses for visiting certain persons and attending funerals).

5 (6) In this section—

- (a) references to the assessment of a person’s needs are references to assessment under section 12A of the 1968 Act or, as the case may be, section 12AA of that Act or section 23(3) or 24 of the 1995 Act,
- (b) references to the provision of support for a person are references to the provision of support under section 2(4),
- (c) references to the provision of services for a person are references to the provision of community care services under Part 2 of the 1968 Act or, as the case may be, the provision of services under section 22 of the 1995 Act.

1A Further general principles applicable to this Act

15 In carrying out its functions under this Act in relation to a person who is to choose (or has chosen) one of the options for self-directed support, a local authority must have regard to the following general principles—

- (a) that the dignity of the person is to be respected,
- (b) that the person’s desire to participate in the life of the community in which the person lives is to be respected.

Adult carers

2 Support for adult carers

(1) This section applies where—

- (a) a local authority carries out an assessment under section 12AA of the 1968 Act of an adult’s ability to provide, or continue to provide, care for another person, or
- (b) a local authority carries out an assessment under section 24 of the 1995 Act of an adult’s ability to provide, or continue to provide, care for a child.

(2) The authority must—

- (a) consider the assessment, and
- (b) decide whether the adult has needs in relation to the care which the adult provides, or intends to provide, to the person cared for.

(3) If the authority decides that the adult has those needs, the authority must consider whether the needs could be satisfied (wholly or partly) by the provision to the adult of any support.

(4) If the authority decides in pursuance of subsection (3) that an adult has needs which could be satisfied by the provision of any support, it may provide, or secure the provision of, support to the adult.

(5) In this section—

“person cared for” means the person in relation to whom the adult’s ability to provide or continue to provide care is assessed as mentioned in subsection (1),

“support” includes any form of services or assistance which will help the adult to provide, or continue to provide, care for the person cared for.

Options for self-directed support

3 Options for self-directed support

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

Option 1 The making of a direct payment by the local authority to the supported person for the provision of support.

10 *Option 2* 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 the payment by the local authority of the relevant amount in respect of the cost of that provision.

15 *Option 3* 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.

Option 4 The selection by the supported person of Option 1, 2 or 3 for each type of support and the payment by the local authority of the relevant amount in respect of the cost of the support.

20 (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),

25 “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 4 or, as the case may be, section 6 or 7.

4 Choice of options: adults

30 (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”).

35 (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 10 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.
- (3A) 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.
- (4) 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.
- (5) 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.
- (6) 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 13(2)(a).

5 Choice of options under section 4: 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, because of mental disorder or difficulties in communicating due to physical disability, the supported person would benefit from receiving assistance from another person in relation to making decisions about relevant matters, and
 - (c) the conditions in subsection (2) are satisfied.
- (2) 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.
- (3) The authority must take reasonable steps to enable the supported person to make a choice in pursuance of section 4(2) or (3)(b).
- (4) The authority must take reasonable steps—
 - (a) to identify persons having an interest in the care of the supported person, and
 - (b) if the supported person agrees, to involve them in assisting the supported person in making decisions about relevant matters.
- (5) 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 4(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.

6 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 2(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 10 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.
- (3A) 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.
- (4) 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.
- (5) 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 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 10 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.
- (3A) 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.

(4) Subsection (5) applies where the supported person is an appropriate person in relation to the child.

(5) 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,

5 (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.

8 Provision of information about self-directed support

(1) This section applies where under section 4, 6 or 7 a local authority gives a person an opportunity to choose one of the options for self-directed support.

10 (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, and

15 (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, and

(ii) information about how to manage support.

20 (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.

9 Local authority functions

(1) This section applies where under section 4, 6 or 7 a local authority gives a person an opportunity to choose one of the options for self-directed support.

25 (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.

30 (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,

35 (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.

10 Eligibility for direct payment: review

(1) Subsection (2) applies where—

(a) a person receives notice under section 4(3)(a), 6(3)(a) or 7(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.

5 (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 4(2) or, as the case may be, section 6(2) or 7(2).

11 Further choice of options on material change of circumstances

10 (1) Subsection (2) applies where—

(a) under section 4, 6 or 7 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

15 (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.

20 12 Power to modify section 3

The Scottish Ministers may by regulations—

(a) modify section 3,

(b) so far as necessary in consequence of any modification made under paragraph (a), modify sections 4, 6, 7, 13(2)(b) and 21(1A).

25 *Direct payments*

13 Power to make further provision about direct payments

(1) The Scottish Ministers may by regulations make further provision about direct payments.

30 (2) Regulations under subsection (1) may in particular make provision for or in connection with—

(a) specifying descriptions of person who are ineligible to receive direct payments,

(b) specifying circumstances in which a local authority is not to be required under section 4, 6 or 7 to give a person the opportunity to choose—

(i) Option 1 of the options for self-directed support, and

35 (ii) so far as relating to that option, Option 4,

(c) specifying the circumstances in which a local authority may require a person to contribute to a direct payment,

(d) enabling a local authority to assess or reassess a person's ability to contribute to the cost of securing the support to which a direct payment relates,

- (e) specifying the ways in which direct payments may be paid or repaid,
- (f) specifying circumstances in which a local authority may, must or may not terminate the making of a direct payment,
- 5 (g) specifying circumstances in which a local authority may pay all or part of a direct payment to a person other than the person to whom the direct payment relates,
- (h) specifying descriptions of person to whom direct payments may not be made under paragraph (g),
- (i) specifying descriptions of person who are prohibited from providing support to which a direct payment relates other than in such circumstances as are specified,
- 10 (j) specifying conditions which must be satisfied by persons before they may provide support to which a direct payment relates.

14 Misuse of direct payment: recovery

- (1) Subsection (2) applies where—
 - (a) a local authority makes a direct payment to a person, and
 - 15 (b) the authority considers—
 - (i) that the direct payment has been used (wholly or partly) for some purpose other than to secure the provision of the support to which it relates, or
 - (ii) that there has been a contravention of provision made by regulations under section 13 in relation to the direct payment.
- 20 (2) The authority may require the person to repay a sum equal to—
 - (a) the direct payment, or
 - (b) such part of the direct payment as the authority considers appropriate.

Local authority functions

15 Assessments under section 12A of 1968 Act: assistance

25 After section 12A of the 1968 Act, insert—

“12AZA Assessments under section 12A: assistance

- (1) Subsection (3) applies where—
 - (a) a local authority is required by section 12A(1)(a) to carry out an assessment of the needs of a person (the “supported person”) for
 - 30 community care services,
 - (b) it appears to the authority that, because of mental disorder or difficulties in communicating due to physical disability, the supported person would benefit from receiving assistance from another person in relation to the carrying out of the assessment, and
 - 35 (c) the conditions in subsection (2) are satisfied.
- (2) The conditions are—
 - (a) there is no guardian, continuing attorney or welfare attorney with powers | as respects the provision of assistance in relation to the carrying out of the assessment, and

- (b) an intervention order has not been granted as respects the provision of assistance in relation to the carrying out of the assessment.
- (3) The authority must take reasonable steps—
- (a) to identify persons having an interest in the care of the supported person, and
- (b) if the supported person agrees, to involve them in assisting the supported person in relation to the carrying out of the assessment.
- (4) 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),
- “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.”.

16 Power to charge for services provided under section 2

In section 87 of the 1968 Act (power of local authority to charge for services and accommodation provided under certain enactments), in each of subsections (1) and (1A)(a)—

- (a) the word “or”, where it first occurs, is repealed, and
- (b) after “(asp 13)” insert “or section 2(4) of the Social Care (Self-directed Support) (Scotland) Act 2012 (asp 00)”.

17 Promotion of options for self-directed support

A local authority must take steps to promote the availability of the options for self-directed support.

18 Delegation

In section 15(4) of the Community Care and Health (Scotland) Act 2002 (asp 5) (power to delegate certain local authority and NHS functions etc.)—

- (a) the word “or” immediately after paragraph (f) is repealed, and
- (b) after paragraph (g) add—

“(h) prohibiting the entering into of arrangements by virtue of subsection (1) for the delegation of such functions prescribed under subsection (2)(a) as may be specified unless the arrangements are also for the delegation of such functions under the Social Care (Self-directed Support) (Scotland) Act 2012 prescribed under subsection (2)(a) as may be specified.”.

*General***19 Guidance and directions**

In section 5 of the 1968 Act (guidance and directions under 1968 Act and certain other enactments)—

- (a) in subsection (1), for the words from “and” to “1995” substitute “, Part 2 of the Children (Scotland) Act 1995 and the Social Care (Self-directed Support) (Scotland) Act 2012 (asp 00)”, and
- (b) in subsection (1B), after paragraph (q) add—

“(r) the Social Care (Self-directed Support) (Scotland) Act 2012 (asp 00).”.

20 Regulations: general

(1) Regulations under this Act may—

- (a) make different provision for different cases,
- (b) include such supplementary, incidental, consequential, transitory and transitional provision and savings as the Scottish Ministers consider appropriate.

(2) Regulations under sections 12 and 21 are subject to the affirmative procedure.

(3) Otherwise, regulations under this Act are subject to the negative procedure.

(4) Before laying a draft of a Scottish statutory instrument containing regulations under section 12 or 21 before the Scottish Parliament, the Scottish Ministers must consult such persons as they consider appropriate.

21 Power to modify application of Act

(1) The Scottish Ministers may by regulations make provision for or in connection with disapplying section 4(2) or 7(2) in such circumstances as the regulations may specify.

(1A) Regulations under subsection (1) which disapply section 4(2) or 7(2) must include provision deeming a person to have chosen Option 3 of the options for self-directed support.

- (2) Regulations under subsection (1) may include provision for or in connection with disapplying or modifying any other section.

22 Interpretation

- (1) In this Act, unless the context otherwise requires—

“the 1968 Act” means the Social Work (Scotland) Act 1968 (c.49),

“the 1995 Act” means the Children (Scotland) Act 1995 (c.36),

“adult” means a person who is 18 years of age or over,

“child” means a person who is under 18 years of age,

“community care services” has the meaning given by section 5A of the 1968 Act (except that it does not include a reference to services which a local authority provides, or secures the provision of, under any of the provisions of that Act mentioned in section 1(5)),

“direct payment” has the meaning given by section 3(2),

“options for self-directed support” is to be construed in accordance with section 3(1),

“relevant amount” has the meaning given by section 3(2),

“support” has the meaning given by section 3(2).

- (2) In this Act, references to a person’s being ineligible to receive direct payments are to be construed in accordance with section 4(6).

23 Consequential repeals

Sections 12B and 12C of the 1968 Act (which make provision in relation to direct payments in respect of community care services) are repealed.

24 Ancillary provision

- (1) The Scottish Ministers may by order make such supplementary, incidental or consequential provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.

- (2) An order under subsection (1) may modify any enactment.

- (3) An order under subsection (1) containing provisions which add to, replace or omit any part of the text of an Act is subject to the affirmative procedure.

- (4) Otherwise, an order under subsection (1) is subject to the negative procedure.

25 Transitional provision etc.

- (1) The Scottish Ministers may by order make such provision as they consider necessary or expedient for transitory, transitional or saving purposes in connection with the coming into force of any provision of this Act.

- (2) An order under subsection (1) may modify any enactment.

- (3) An order under subsection (1) is subject to the negative procedure.

26 Commencement

- (1) This section and sections 13, 20, 22, 24, 25 and 27 come into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.
- (3) An order under subsection (2) may contain transitory or transitional provision or savings.

27 Short title

The short title of this Act is the Social Care (Self-directed Support) (Scotland) Act 2012.

Social Care (Self-directed Support) (Scotland) Bill

[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to enable local authorities to provide support to certain carers; to make provision about the way in which certain social care services are provided by local authorities; and for connected purposes.

Introduced by: Nicola Sturgeon
On: 29 February 2012
Bill type: Executive Bill

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