

DUNDEE CITY COUNCIL

REPORT TO: SOCIAL WORK AND HEALTH COMMITTEE – 19 MAY 2014

REPORT ON: SOCIAL CARE (SELF-DIRECTED SUPPORT) (SCOTLAND) ACT 2013

REPORT BY: DIRECTOR OF SOCIAL WORK

REPORT NO: 222-2014

1.0 PURPOSE OF REPORT

- 1.1 This report provides elected members with information about the finalised regulations and guidance accompanying the Social Care (Self Directed Support) (Scotland) Act 2013 as well as the Social Work Departments arrangements to support the introduction of the 2013 Act which came in force on 1 April 2014.
- 1.2 Reference is made to Article III of the minute of the meeting of Social Work and Health Committee held on 23 September 2013 where report 334-2013 was submitted in relation to Social Care (Self-Directed Support) (Scotland) Act 2013 – Draft Regulations and Guidance. At that time elected members had been asked to approve the response, submitted by the Social Work Department, on the then draft Regulations and Guidance issued by the Scottish Government to support the the Social Care (Self Directed Support) (Scotland) Act 2013.

2.0 RECOMMENDATIONS

It is recommended that the Committee:

- 2.1 Note the content of the finalised regulations which accompany the Social Care (Self Directed Support) (Scotland) Act 2013 as set out in section 4 of this report.
- 2.2 Note the content of and approve the Social Work Department's implementation arrangements to support the Social Care (Self Directed Support) (Scotland) Act 2013.
- 2.3 Instruct the Director of Social Work to provide information to Committee on any changes in the policy required as a consequence of the experience of implementation of the Act, including the impact on carers.

3.0 FINANCIAL IMPLICATIONS

- 3.1 Provision for any financial implications associated with the Social Care (Self Directed Support) (Scotland) Act 2013 has been previously set out within the associated Financial Memorandum by the Scottish Government. Any direct financial implications resulting from the implementation of the Act will be reported to Committee at a later date.

4.0 MAIN TEXT

4.1 Social Care (Self Directed Support) (Scotland) Act 2013

The 2013 Act came into force on 1 April 2014 and brought together existing social care/support legislation into one coherent Act of the Scottish Parliament. The 2013 Act does not repeal existing Acts of Parliament.

The 2013 Act enshrines in law the undernoted key principles which form one of the new legal duties within the 2013 Act. These key principles inform best practice and are already intrinsically well established in the practice of Dundee City Council Social Work Department.

From 1 April 2014 Social Work have had a duty to have regard to these key principles when engaging with all individuals who are assessed and those who then require support.

Key Principles:

- Involvement
- Informed choice
- Collaboration
- Dignity
- Participation

4.2 Background to Self Directed Support

As previously reported Self Directed Support provides individuals, assessed as having eligible social care needs, with a range of choice options for how their care and support arrangements can be delivered to meet their agreed outcomes.

Self Directed Support involves identifying a budget for the individual's support and it encourages them to consider and decide how much ongoing control and responsibility they want over their own support arrangements. It is an approach which is designed to bring about independence and choice for people with care or support needs.

4.3 Options for support available through the 2013 Act are as follows:

- Option 1 will mean that the person, following an assessment, will receive a direct payment from the local authority. This will enable the person to arrange their own supports/services in order to meet their needs. This option offers people the most choice and control over how their support is delivered.
- Option 2 will mean that the person in need of support, following assessment, will have an identified individual budget for the provision of their support made known to them by the local authority. The person can then choose who they want to deliver their support and the local authority will make the arrangement for the support/services on behalf of the person. This option offers people some choice and control, but less responsibility for arranging how their support is delivered.
- Option 3 will mean that the person in need, following an assessment, will have their support arranged and delivered by the local authority. This might mean that the person will have limited choice and control over how their support is delivered, but with no responsibility for arranging how their support is delivered.
- Option 4 will mean that the person in need, following an assessment, can have a mixture of the above options in order to meet their assessed needs.

4.4 **General changes as a result of the 2013 Act**

- 4.4.1 The Local Authority must now take action to promote all four options for support, as set out in paragraph 4.3 above, and ensure that people are well informed about the choices they make. There is now a requirement for the Local Authority to ensure that the information provided is accessible and that people are directed to sources of advice and information, including independent sources.

The Social Work Department already has in place a service level agreement through the Voluntary Sector to meet this new duty, as well as ensuring that information about Self Directed Support is publically available and that Social Work staff are suitably equipped to respond to this new duty.

- 4.4.2 The 2013 Act articulates that there should be equal access for all groups of supported people, but also recognises that not all individuals will be able to direct their own support.

People who have difficulty with decision making should be given assistance to make an informed choice in line with the principles of The Adults With Incapacity Act, 2000 (AWI). The role of independent advocacy in such situations is crucial to people being provided with as much support as possible to make informed decisions and choices.

The Social Care (Self Directed Support) (Scotland) Act 2013 makes no change to existing AWI legislation and where a person lacks capacity the decision about the four options reverts to their guardian or attorney.

- 4.4.3 The 2013 Act requires the local authority to inform each individual as to what the relevant amount would be, to meet their agreed support plan and personal outcomes in relation to their choice of option/s they elect, as set out in paragraph 4.3 of this report, as well as clarifying the period of time to which the amount relates. This duty has been laid down to help the individual to make an informed decision as to their preferred support option/s. The Social Work Finance Section is developing a fair and transparent model to reflect this.

4.5 **Carers**

The 2013 Act contains two main elements for carers; a carer's right to ask for an assessment of their ability to care, and a Local Authority duty to take into account the results of this assessment when looking at what support to provide to the person cared for (the service user).

The 2013 Act covers three groups of carers:

- Adults (people aged 18 or over) who care for other adults;
- Adults who care for ill or disabled children (under the age of 18);
- Young carers under the age of 18 who care for a relative.

The Act makes provision for offering the choice and management of the four options to all carers including young adults (age 16-18) and for offering those with parental responsibility these options for children under the age of 16. Where the parent makes the decision about the four options this must take the views of the child (according to their maturity, not their age) into account as far as possible and this is reflective of the principles within GIRFEC.

In addition to the above there were further amendments introduced at the final stages of the progression of the legislation which affect unpaid adult carers and young carers. These are:

- Regulations about the waiving of charges for support; and
- Directions on the carers' assessment

Account will be taken of these provisions in the process of implementing the legislation.

4.6 **Changes which specifically relate to option 1 (direct payment) as a result of the finalised regulations, now incorporated within the 2013 Act**

The employment of family members through a direct payment arrangement

4.6.1 Prior to the 2013 Act the Local Authority had discretionary powers, qualified through exceptional circumstances, to agree to family members being employed through a direct payment (provision of support delivered by family members).

4.6.2 The 2013 Act has relaxed this previous restriction, but in doing so has also set out clearly defined parameters as to when such an arrangement would be appropriate. Circumstances where a family member may provide support, within a direct payment context, specifies that:

- the family member, direct payment user and local authority must agree to the family member providing the support - crucially the direct payment user must have the ability to freely consent to this arrangement;
- the family member is capable of providing the support; and
- any of the following factors apply.

4.6.3 The factors are:

- there is a limited choice of service providers who could provide the support;
- the direct payment user has specific communication needs which mean it will be difficult for another provider to provide the support;
- the support is required at times at which the family member will be available to provide it and where other providers would not reasonably be so available;
- the intimate nature of the support required by the direct payment user makes it preferable to the direct payment user that support is provided by a family member;
- the direct payment user has religious or cultural beliefs which make the provision of support by a family member preferable to the direct payment user;
- the direct payment user requires palliative care;
- the direct payment user has an emergency or short-term necessity for care; or
- there are other factors in place which make it appropriate, in the opinion of the local authority, for that family member to provide the support.

4.6.4 **Exceptions to employing family members through a direct payment arrangement**

The Self Directed Support (Direct Payments) (Scotland) Regulations 2014 stipulates that even if regulation 8(2) applies, a family member may not provide support to which a direct payment relates if:

- the local authority determines that either the family member or the direct payment user is under undue pressure to agree to the family member providing support; or
- the family member is a guardian, continuing attorney or welfare attorney with power to make decisions as regards the support to be provided through the direct payment.

4.6.5 **Individuals eligible to request a direct payment**

Prior to the 2013 Act some individuals were not eligible to receive a direct payment. This primarily encompassed individuals who were fleeing domestic abuse, were homeless or were subject to either a compulsory treatment order under either the Mental Health (Care and Treatment) (Scotland) Act 2003 or the Criminal Procedure (Scotland) Act 1995. The 2013 Act has relaxed this previous restriction, but provides through regulations discretionary powers for the local authority to make decisions to refuse the making of a direct payment if it is assessed that to do so is likely to put the safety of the person to whom the support is to be provided at risk.

The local authority can also decline a request for a direct payment if the following circumstances apply:

- a direct payment user becomes ineligible to receive direct payments;
- 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;
- the local authority considers on reasonable grounds that the direct payment user has breached the criminal law or a civil law obligation in relation to the support to which the direct payment relates; or
- the direct payment has been used (wholly or partly) to secure the provision of support by a family member other than in circumstances where the family member is permitted to provide support as set out in section 4.6.1 through to 4.6.3 of this report.

4.6.6 **Individuals ineligible to receive a direct payment**

The Self Directed Support (Direct Payments) (Scotland) Regulations 2014, stipulate in regulation 10, that the only individuals who are ineligible to receive a direct payment are those whom the local authority has decided to provide or arrange for the provision of:

- residential accommodation; or
- residential nursing accommodation

In such circumstances the local authority cannot offer the option of a direct payment.

4.7 **Significant practical implementation arrangements**

Dundee City Council Social Work Department has responded to the new requirements contained within the new legislation as highlighted in this report. In addition to the information already noted, through working in partnership with the Voluntary Sector the Social Work Department have developed general awareness training for provider organisations, carers and staff which was delivered through the Dundee Carer's Centre. The Department has commissioned bespoke training for staff who have an assessment function as an integral part of their social work role and have updated their learning materials, specifically for direct payments, as this is where the new regulations are sited.

The Social Work Department has also established a web page which stores publically available information on Self Directed Support and is refining an early self reflection and discussion document for service users and carers to use if they desire. Lastly to support a personal outcome approach the Community Care Service has developed a new outcomes focussed assessment.

5.0 POLICY IMPLICATIONS

- 5.1 This Report has been screened for any policy implications in respect of Sustainability, Strategic Environmental Assessment, Anti-Poverty, Equality Impact Assessment and Risk Management. No major concerns were found.
- 5.2 An Equality Impact Assessment is attached to this report.

6.0 CONSULTATIONS

- 6.1 The Chief Executive, Director of Corporate Services and Head of Democratic and Legal Services have been consulted in preparation of this report.

7.0 BACKGROUND PAPERS

- 7.1 None.

**JENNIFER G TOCHER
DIRECTOR OF SOCIAL WORK**

DATE: 28 April 2014

EQUALITY IMPACT ASSESSMENT TOOL

Part 1: Description/Consultation

Is this a Rapid Equality Impact Assessment (RIAT)?		Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Is this a Full Equality Impact Assessment (EQIA)?		Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Date of Assessment:	21/4/14	Committee Report Number:	222-2014
Title of document being assessed:		Report on SOCIAL CARE (SELF-DIRECTED SUPPORT) (SCOTLAND) ACT 2013	
1. This is a new policy, procedure, strategy or practice being assessed (If yes please check box) <input type="checkbox"/>		This is an existing policy, procedure, strategy or practice being assessed? (If yes please check box) <input checked="" type="checkbox"/>	
2. Please give a brief description of the policy, procedure, strategy or practice being assessed.		This report provides elected members with information about the finalised regulations and guidance accompanying the Social Care (Self Directed Support) (Scotland) Act 2013 as well as the Social Work Departments arrangements to support the introduction of the 2013 Act which came in force on 1 April 2014.	
3. What is the intended outcome of this policy, procedure, strategy or practice?		To encourage individuals, assessed as having eligible social care needs, with a range of choice options for how their care and support arrangements can be delivered to meet their agreed outcomes. Self Directed Support encourages individuals to consider and decide how much ongoing control and responsibility they want over their own support arrangements. It is an approach which is designed to bring about independence and choice for people with care or support needs.	
4. Please list any existing documents which have been used to inform this Equality and Diversity Impact Assessment.		Social Care (Self Directed Support) (Scotland) Act 2013. The Self Directed Support (Direct Payments) (Scotland) Regulations 2014.	
5. Has any consultation, involvement or research with protected characteristic communities informed this assessment? If yes please give details.		With respect to this particular assessment there has not been any new consultation, involvement or research with protected characteristic communities as the report being considered is an update report. Prior to the Act and regulations as noted above being passes extensive consultations were carried out with a range of focus groups.	

	As we move to implement the new Act themed focus groups will be held and information derived will be used to inform local policy and practice.
6. Please give details of council officer involvement in this assessment. (e.g. names of officers consulted, dates of meetings etc)	Avril Smith-Hope Service Manager Social Work Ailsa McAllister Senior Officer Social Work. Joyce Barclay Senior Officer Social Work.
7. Is there a need to collect further evidence or to involve or consult protected characteristics communities on the impact of the proposed policy? (Example: if the impact on a community is not known what will you do to gather the information needed and when will you do this?)	Yes. As noted above as we implement the Social Care (Self Directed Support) (Scotland) Act 2013 and The Self Directed Support (Direct Payments) (Scotland) Regulations 2014 themed focus groups will be held with a range of stakeholders involving those set out under the protected characteristic in part 2 of this assessment. Information derived from these focus groups will be used to inform local policy and practice.

Part 2: Protected Characteristics

Which protected characteristics communities will be positively or negatively affected by this policy, procedure or strategy?

NB Please place an X in the box which best describes the "overall" impact. It is possible for an assessment to identify that a positive policy can have some negative impacts and visa versa. When this is the case please identify both positive and negative impacts in Part 3 of this form.

If the impact on a protected characteristic communities are not known please state how you will gather evidence of any potential negative impacts in box Part 1 section 7 above.

	Positively	Negatively	No Impact	Not Known
Race Ethnic Minority Communities including Gypsies and Travellers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gender	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gender Reassignment	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Religion or Belief	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
People with a disability	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Age	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lesbian, Gay and Bisexual	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Socio-economic	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Pregnancy & Maternity	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other (please state)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Part 3: Impacts/Monitoring

<p>1. Have any positive impacts been identified?</p> <p>(We must ensure at this stage that we are not achieving equality for one strand of equality at the expense of another)</p>	<p>It is anticipated that increased personalisation of services will result in positive outcomes for service users and for carers. Information will be collected on an ongoing basis to gain an understanding of the sort of requests people are asking for under the four options of SDS now being offered.</p>
<p>2. Have any negative impacts been identified?</p> <p>(Based on direct knowledge, published research, community involvement, customer feedback etc. If unsure seek advice from your departmental Equality Champion.)</p>	<p>n/a</p>
<p>3. What action is proposed to overcome any negative impacts?</p> <p>(e.g. involving community groups in the development or delivery of the policy or practice, providing information in community languages etc. See Good Practice on DCC equalities web page)</p>	<p>n/a</p>
<p>4. Is there a justification for continuing with this policy even if it cannot be amended or changed to end or reduce inequality without compromising its intended outcome?</p> <p>(If the policy that shows actual or potential unlawful discrimination you must stop and seek legal advice)</p>	<p>n/a</p>
<p>5. Has a 'Full' Equality Impact Assessment been recommended?</p> <p>(If the policy is a major one or is likely to have a major impact on protected characteristics communities a Full Equality Impact Assessment may be required. Seek advice from your departmental Equality lead.)</p>	<p>No</p>
<p>6. How will the policy be monitored?</p> <p>(How will you know it is doing what it is intended to do? e.g. data collection, customer survey etc.)</p>	<p>The Personalisation and SDS Project Board will continually monitor progress in this area. The Social Work Department will monitor for individuals who use services and their carers the effects of any changes with respect to personalisation. This will be carried out on a case to case basis by assessing whether relevant outcomes have been achieved. The department also has a robust process of self evaluation which is subject to external scrutiny by the Care Inspectorate.</p>

	This process would be expected to monitor impacts (positive and negative) to people from "protected Characteristics".
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Part 4: Contact Information

Name of Department or Partnership	Social Work
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Type of Document	
Human Resource Policy	<input type="checkbox"/>
General Policy	<input type="checkbox"/>
Strategy/Service	<input type="checkbox"/>
Change Papers/Local Procedure	<input type="checkbox"/>
Guidelines and Protocols	<input type="checkbox"/>
Other	<input type="checkbox"/>

Manager Responsible	Author Responsible
Name: Avril Smith Hope	Name: Avril Smith Hope
Designation: Service Manager	Designation: Service Manager
Base: Social Work Office] Claverhouse	Base: Social Work Office
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Signature of author of the policy: <i>Avril Smith-Hope</i>	Date: 28/4/14
Signature of Director/Head of Service: <i>Jenni Tocher</i>	Date: 28/4/14
Name of Director/Head of Service: JENNI TOCHER	
Date of Next Policy Review:	Click here to enter text.