

Statutory guidance to accompany the Social Care (Self-directed Support) (Scotland) Act 2013

**Statutory guidance
to accompany the
Social Care (Self-directed
Support) (Scotland) Act 2013**

© Crown copyright 2014

You may re-use this information (excluding logos and images) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/> or e-mail: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

First published by the Scottish Government, March 2014
ISBN: 978-1-78412-348-2

eBook first published by the Scottish Government, March 2014
ISBN: 978-1-78412-365-9 (ePub)

Kindle eBook first published by the Scottish Government, March 2014
ISBN: 978-1-78412-366-6 (Mobi)

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

Produced for the Scottish Government by APS Group Scotland
DPPAS20187 (03/14)

Published by the Scottish Government, March 2014

**Statutory guidance to accompany the
Social Care (Self-directed Support) (Scotland) Act 2013**

This document contains statutory guidance on social care assessment and associated process. It is issued to local authorities in order to update the relevant guidance and to reflect the duties and powers accompanying the Social Care (Self-directed Support) (Scotland) Act 2013. The guidance covers adults, children, young carers and adult carers. It was developed by Scottish Government with contributions from a joint working group of key partner organisations.

CONTENTS

1. INTRODUCTION	Page 4
Background.....	
Statement of intent.....	
Purpose.....	
2. SUMMARY: THE SDS ACT 2013 AND ITS IMPACT ON LOCAL AUTHORITIES' LEGAL DUTIES AND POWERS	Page 7
3. THE 2013 ACT AND IT'S IMPACT ON SERVICES TO CHILDREN AND FAMILIES	Page 12
Introduction.....	
The policy and practice context for children and families.....	
The 2013 Act and its relationship to Getting it Right for Every Child.....	
Safeguarding duties.....	
4. VALUES, STATUTORY PRINCIPLES AND HUMAN RIGHTS	Page 15
Values and statutory principles.....	
The relationship between human rights, social care assessment and self-directed support.....	
GUIDANCE ON EACH KEY STAGE IN THE PERSON'S PATHWAY THROUGH SUPPORT	
5. THE SUPPORTED PERSON'S PATHWAY	Page 20
Introduction.....	
Roles and responsibilities.....	
6. INFORM: THE PROVISION OF INFORMATION, ADDITIONAL SUPPORT AND ADVOCACY	Page 25
The key legal duties in relation to Information, additional support and advocacy.....	
The commissioning of support and information services.....	
The role of independent and peer support.....	
The role of advocacy and advocacy services.....	
7. ASSESS: (PART 1): DETERMINING ELIGIBILITY FOR SUPPORT AND CONDUCTING STATUTORY ASSESSMENT OF NEED	Page 32
Introduction.....	
The general principles that must inform the assessment.....	
Determining a person's eligibility for support	
Further exploration of the person's needs and personal outcomes.....	
Further guidance: Children and Families.....	
Further guidance: Carers Assessments.....	
Further guidance: Assistance and Capacity.....	

	Further guidance: Complaints.....	
8.	ASSESS: (PART 2): THE DUTY TO PROVIDE CHOICE – THE FOUR OPTIONS UNDER THE 2013 ACT	Page 43
	Introduction.....	
	Option 1: Direct payment.....	
	Option 2: Directing the available support.....	
	Option 3: The local authority arranges support for the supported person	
	The application of the 2013 Act & local authority discretion in relation to the 4 Options.....	
	Additional legal restrictions/discretion in relation to direct payments..	
	Further guidance: Children and Families.....	
	Further guidance: Carers.....	
9.	PLAN: SUPPORT PLANNING	Page 62
	General Guidance on Support Planning.....	
10.	CHOOSE: THE SELECTION OF SUPPORT	Page 64
	Commissioning in the context of the 2013 Act.....	
11.	SUPPORT: THE PROVISION OF SUPPORT	Page 69
	Provision of support under Option 1: Direct payment's.....	
	Employment of personal assistants using direct payments.....	
	The Protecting Vulnerable Groups (Scotland) Act 2007.....	
	Employment of close relatives/family members as personal assistants	
	Provision of support under Option 2:	
	Complaints.....	
12.	REVIEW	Page 80
	The general approach to reviews.....	
13.	SOCIAL CARE PROVISION AND SELF-DIRECTED SUPPORT: THE ROLE OF THE NHS	Page 82
	What is meant by NHS or “health” support?.....	
	What is meant by a joint approach?.....	
	Examples of shared healthcare and social care needs.....	
	Joint working and combined budgets: what is “allowed”?.....	
14.	ADDITIONAL GUIDANCE	Page 89
	The relationship between protection duties and social care provision/ Self-directed support duties.....	
	Re-ablement	
	Intermediate care.....	
	Residential care.....	
	Charging.....	
	Charging for support to carers.....	
	Personal and nursing care.....	
	Housing support services.....	
	Equipment and adaptations (including housing adaptations).....	
15.	ANNEXES	Page 97
	Annex A: Relevant Legal duties in relation to social care assessment.	

SECTION 1: INTRODUCTION

Background

1.1 This document contains statutory guidance. It is issued to local authorities by Scottish Ministers under Section 5 of the Social Work (Scotland) Act 1968. The local authority must have regard to this guidance. It must follow both the letter and the spirit of the guidance. It must not depart from the guidance without good reason.

Statement of intent

1.2 The following statement of intent describes the ultimate purpose of the legal duties and powers covered by this statutory guidance. The local authority, and all individuals or organisations responsible for discharging the duties and powers described in this guidance on its behalf, should have regard to this statement of intent when implementing this guidance.

Self-directed Support: Statement of Intent

Independent living means people of all ages having the same freedom, choice, dignity and control as other citizens at home, at work, and in the community. It does not mean living by yourself, or fending for yourself. It means having rights to practical assistance and support to participate in society and live an ordinary life.

This is the definition of independent living adopted in the strategic approach to independent living, by the Scottish Government, COSLA, the NHS and the Disabled People's Independent Living Movement.

Without care and support and the opportunity to direct their support, many people would not be able to participate in society and live an ordinary life. They would not be able to live free from discrimination and harassment as promoted by the Equality Act 2010, to enjoy their human rights nor contribute to a wealthier and fairer, healthier, safer and stronger, smarter and greener Scotland.

Self-directed support, alongside many other policies, is intended to support, promote and protect the human rights and independent living of care and support users in Scotland. It aims to ensure that care and support is delivered in a way that supports choice and control over one's own life and which respects the person's right to participate in society.

Purpose

1.3 There are four main legal reference points for the guidance:

- Section 12A of the Social Work (Scotland) Act 1968 - the duty to assess an adult's need for care and support.
- Sections 22 and 23 of the Children (Scotland) Act 1995 ("the 1995 Act") – the legal basis for support to children.

- The Social Care (Self-directed Support) (Scotland) Act 2013 (“the 2013 Act”) - the legal basis for choice over care and support.
- Section 12AA of the 1968 Act, section 24 of the 1995 Act and the accompanying Section 3 of the 2013 Act – the basis for the assessment of and support to, carers.

1.4 This guidance focuses on the duties and powers contained within the Social Care (Self-directed Support) (Scotland) Act 2013 however it addresses accompanying duties and powers in relation to assessment, support planning and review. This is to reflect the key role played at each and every stage of a person’s “pathway” through support from initial point of assessment to review.

1.5 A Health Board may discharge social care duties on a delegated basis. Where this is the case, the Health Board (and any relevant professionals acting on the Board’s behalf) must have regard to this guidance. In addition the guidance contains a section on the role of healthcare professionals as part of the social care assessment.

Further information and contacts

Self-directed Support Branch
 Care, Support and Rights Team
 Chief Nursing Officer, Patients, Public and Health Professions
 Scottish Government
 Room 2.ER, St. Andrew's House
 Regent Road, Edinburgh EH1 3DG

Telephone: 0131 244 5455

E-mail: selfdirectedsupport@scotland.gsi.gov.uk

Further guidance and hyperlinks:

Separate national guides for people who use support, carers and practitioners will be available on the Self-directed Support in Scotland website from 1st April 2014 along with a guide for employing personal assistants.

A guide for provider organisations will follow later in 2014.

Scottish Government (2010) *Self-directed support: A National Strategy for Scotland*
<http://www.scotland.gov.uk/Publications/2010/11/05120810/0>

Social Care (Self-directed Support) (Scotland) Act 2013
<http://www.legislation.gov.uk/asp/2013/1/contents>

Institute for Research and Innovation in Social Services, *Self-directed support: preparing for delivery*
<http://www.iriss.org.uk/resources/self-directed-support-sds-preparing-delivery>

The Knowledge Network - Implementing Self-directed Support - Personalisation – Human Rights Issues

<http://www.knowledge.scot.nhs.uk/home/portals-and-topics/self-directed-support/implementing-self-directed-support/human-rights-issues.aspx>

Scottish Social Services Council - SSSC – Codes of Practice –

<http://www.sssc.uk.com/Codes-of-Practice/sssc-codes-of-practice-for-social-service-workers-and-employers.html>

Institute for Research and Innovation in Social Services, *Legislation relevant to social services in Scotland*

<http://www.iriss.org.uk/resources/legislation-relevant-social-services-scotland>

Christie Commission (2011) *Commission on the future delivery of public services*

<http://www.scotland.gov.uk/Publications/2011/06/27154527/18>

Scottish Government (2012) *Charter of Patient Rights and Responsibilities*

<http://www.scotland.gov.uk/Publications/2012/04/6273>

Scottish Government, Independent Living in Scotland, COSLA and NHS Scotland (2013) *Our Shared Vision for Independent Living in Scotland*

<http://www.ilis.co.uk/uploads/VISION%20STATEMENT.pdf>

Scottish Government (2010) *National Guidance for Child Protection in Scotland*

<http://www.scotland.gov.uk/Publications/2010/12/09134441/0>

Scottish Government (2011) *Guidance on the Looked After Children (Scotland) Regulations 2009 and the Adoption and Children (Scotland) Act 2007*

<http://www.scotland.gov.uk/Publications/2011/03/10110037/0>

Further information about the roles of the Named Person and Lead Professional can be found at www.scotland.gov.uk/girfec

For further guidance on authorities' duties in relation to Sections 22 and 23 of the 1995 Act, see Scotland's Children – The Children (Scotland) Act 1995 Regulations and Guidance: Volume 1 Support and Protection for Children and their Families

<http://www.scotland.gov.uk/Publications/2004/10/20066/44707>

SECTION 2: SUMMARY: THE SDS ACT 2013 AND ITS IMPACT ON LOCAL AUTHORITIES' DUTIES AND POWERS

This section provides a summary of the main assessment and service duties with respect to children, adults and carers. It explains how those duties are affected by the introduction of the Social Care (Self-directed Support) (Scotland) Act 2013.

“What remains in place?” - The duties and powers that will remain unaffected by the 2013 Act

2.1 The following duties and powers are not affected by the introduction of the 2013 Act:

2.2 Duty to safeguard and promote the welfare of children

- The authority retains its duty to safeguard and promote the welfare of children in their area who are in need. This remains a wide-ranging duty, with flexibility for the authority to take a range of steps to safeguard and promote welfare.
- The authority retains its duty to promote the upbringing of such children by providing a range and level of services appropriate to the child's needs (Section 22 of the Children (Scotland) Act 1995).

2.3 Duties in relation to children affected by disability (Section 23 of the 1995 Act)

- The authority retains its duty to ensure that services provided under Section 22 of the 1995 Act (services to children in need) are designed to minimise the effect of any disability on disabled children and to minimise the effect on any child who is affected by the disability of any other person in his family. (Section 23 of the 1995 Act)
- The authority retains its duty, where requested to do so by the child's parent or guardian, to carry out an assessment of the child or any other person in the child's family to determine the needs of the child. (Section 23 of the 1995 Act)
- The authority retains its duty, when assessing the child's needs under Section 23 of the 1995 Act, to take account of the views of the parent or guardian of the child and the views of the carer. (Section 23 of the 1995 Act)

2.4 Carers assessments (carers of disabled children)

- The authority retains its duty to conduct carers assessments for carers of disabled children where the carer requests such an assessment and where that carer provides a substantial amount of care on a regular basis.

2.5 Duty to prepare plans for community care services (adults)

- The authority retains its duty to prepare and publish a plan for the provision of community care services in their area (Section 5A of the 1968 Act)

2.6 Duty to appoint chief social worker

- The authority retains its duty to appoint a chief social work officer (Section 3 of the 1968 Act). Registered social workers remain accountable for the exercise of specific statutory functions, as set out in The Role of the Registered Social Worker in Statutory Interventions: Guidance for Local Authorities (Scottish Government: December 2009).

2.7 Power to make arrangements with voluntary and other organisations

- The authority retains its power to make arrangements with voluntary organisations or other persons, including other local authorities, where they are able to assist in the performance of the relevant functions (Section 4 of the 1968 Act).

2.8 Duty to promote social welfare (adults):

- The authority retains its duty to promote social welfare by making available advice, guidance and assistance on such a scale as may be appropriate for their area (Section 12 of the 1968 Act). This remains a wide-ranging duty, with flexibility for the authority to take a range of steps to promote social welfare. The full range of options and additional flexibility provided for under the 2013 Act fall within the scope of “promoting social welfare”.

2.9 Duty to assess needs (adults):

- The authority retains its duty to conduct an assessment of the adult’s needs (Section 12A of the 1968 Act).

2.10 Power to provide emergency assistance in cash (adults)

- The authority retains its power to provide assistance in cash as well as “in kind” in the case of an emergency. This remains a different form of assistance to a direct payment (which is now covered under the 2013 Act).

2.11 Carers assessments (carers of adults):

- The authority retains its duty to comply with all requests for carer’s assessments where the carer provides or intends to provide a substantial amount of care on a regular basis (Section 12AA of the 1968 Act).
- The authority retains its duty to have regard to the results of the carer’s assessment in the assessment of the person cared for, and in making decisions relating to the support to the person cared for.

- The authority retains its duty to inform carers who meet the substantial/regular criteria of their right to request a carer’s assessment.

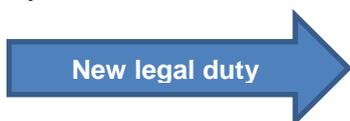
Duties/Powers repealed by the 2013 Act

2.12 Duty to offer and provide direct payments (Sections 12B and 12C of the 1968 Act)

- The 2013 Act repeals Section 12B of the 1968 Act (the duty to offer and provide direct payments). In its place the 2013 Act provides a new, enhanced duty to offer the direct payment option and to “give effect to” the person’s choice of a direct payment. The direct payment is now provided as one of four options for the provision of support to the supported person. The practical effect of this change is to ensure that two service delivery options (the direct payment and arranged services) are replaced by four options, coming under the broad description of options for self-directed support (the direct payment, “directing the available support”, arranged services and a mix of the various options for different aspects of the person’s support).

“What’s new”: the duties, powers and general principles provided by the 2013 Act

2.13 The following provides a summary of the main changes and additions provided by the 2013 Act.



2.14 Duty to have regard to the general principles of collaboration, informed choice and involvement as part of the assessment and the provision of support (this duty applies with respect to adults, children/families, adult carers and young carers).

- The 2013 Act provides general principles to which the authority must have regard to in carrying out all of its functions under Part 2 of the 1968 Act (with some exceptions), all of Section 22 and 24 of the 1995 Act and all of the 2013 Act.

What does this mean?

- The authority should collaborate with the supported person when they undertake the assessment and provide support.
- The authority should take steps to ensure that the person makes informed choices as part of their assessment and in selecting their support options.
- The authority should take steps to involve the supported person in their assessment and in selecting their support options.



New legal duty

2.15 **Duty to take reasonable steps to facilitate the person's dignity and participation in the life of the community**

(this duty applies with respect to adults, children/families, adult carers and young carers)

- The 2013 Act provides a further general principle related to independent living. This principle should guide and inform the assessment of need *and* the provision of support following the assessment. The authority should take reasonable steps to facilitate the principle that the person's right to dignity is respected, and to facilitate the principle that the person's right to participate in the life of the community is to be respected. This means that that the general principles of participation and dignity should guide and inform the authority's approach to assessment (i.e. its assessment practice), the manner in which it provides services *and* the manner in which it provides options to the supported person.



New legal power

2.16 **Power to provide support to carers (of adults) following a carer's assessment**

- The 2013 Act provides the authority with a new power to provide support to the carer – support which helps to address the carer's needs to continue in their caring role.



New legal duty

2.17 **Duty to offer four options to the supported person**

(this applies with respect to adults, children/families, adult carers and young carers)

- The 2013 Act imposes a new duty on the authority to provide 4 options to all adults, children and carers eligible for support or provided with services. The options are intended to support the flexibility and creativity allowed under the social welfare and wellbeing duties relating to both adults and children.
- The four options are:
 - **Option 1**, a direct payment: the definition of the direct payment remains unchanged from its previous incarnation under Section 12B of the 1968 Act
 - **Option 2**, "Directing the available support": this option should provide greater transparency and control for the supported person without the requirement to take this support as a direct payment. There is a degree of discretion for the

local authority in how it can develop and deliver this option. However the authority should take steps to ensure that Option 2 differs in nature from both Option 1 (the direct payment) and Option 3 (arranged services).

- **Option 3**, “Services arranged for the person by the authority” – this is where the authority arranges any services on the person’s behalf.

- **Option 4**, A mix of the first 3 options for different aspects of the person’s support.



New legal duty

2.18 **Duty to explain the nature and effect of the 4 options and to “signpost” to other sources of information and additional support**

(this duty applies with respect to adults, children/families, adult carers and young carers)

- The authority is placed under a new duty to explain the nature and effect of the 4 options provided under the Act. This means that the authority should explain what each of the 4 options will mean for the supported person. This applies both in terms of the *general impact* of the options (the varying degrees of flexibility and control associated with each option, general guidance and advice on what it means to have your support arranged on your behalf or to direct your support) and the *specific impact* for the supported person, i.e. what the different options might mean for the supported person given their own circumstances, assets and circles of support.
- The authority is placed under a duty to provide information about other persons or organisations out-with the authority who can provide assistance or information about the options and how to manage the options.
- The authority is placed under a duty, where it considers it appropriate to do so, to provide information about organisations and individuals who can provide independent advocacy services, i.e. services that can advocate on the person’s behalf in relation to the assessment and the selection of the various options provided under the 2013 Act.

SECTION 3: THE 2013 ACT AND ITS IMPACT ON SERVICES TO CHILDREN AND FAMILIES

This section clarifies the application of duties on self-directed support in relation to services provided to children and families under Section 22 of the Children (Scotland) Act 2013. It relates to children and families only.

Introduction

3.1 This section of the guidance clarifies the impact that the 2013 Act will have on “Section 22 support”, i.e. the support provided to children and families under Section 22 of the Children (Scotland) Act 1995. The subsequent sections of this guidance relate to all ages and should be considered as including the relevant guidance relating to children and families. Where the guidance provides additional advice relating to children and families this is highlighted within the guidance document.

The policy and practice context for children and families

3.2 Local authorities provide social care and support to children and families as part of a wider policy and practice framework for children and young people. This framework – Getting it Right for Every Child - emphasises the importance of:

- promoting the upbringing of children and young people within their families so far as this is consistent with safeguarding and promoting their welfare;
- giving children and young people the opportunity to become more independent in the future;
- working in partnership with families;
- recognising that children and young people are individuals with their own wishes and feelings;
- listening to children and young people and taking into account their views;
- actively involving children, young people and parents in assessments and decision-making; and
- having regard to issues of race, language, religion and culture.

The 2013 Act and its relationship to *Getting it Right for Every Child*

3.3 The 2013 Act affects the way that particular forms of support for children and families are arranged and provided to children and families. In particular, it provides the opportunity for children and families to take greater control over the support provided to them. The Children and Young People (Scotland) Bill will bring about further important changes to the way that children are supported. This will include children who are supported under the legal duties in the 1995 and 2013 Acts.

3.4 Under the framework for children and families’ support every child, from birth to age 18, should have a Named Person. The Named Person will be a professional from health or education (depending on the age of the child) and will act as the first point of contact for children and families. Once a concern for the child's wellbeing has been brought to the attention of the Named Person, it is the Named Person's responsibility

to take action to provide help or arrange for the right help to be provided to promote the child's development and wellbeing. When two or more agencies need to work together to provide help to a child or young person and their family there should be a Lead Professional to co-ordinate that help.

3.5 The authority should take steps to integrate its approach to self-directed support with its implementation of GIRFEC and associated legislation. In particular, the authority should consider the impact that the 2013 Act duties will have on its approach to the Named Person and Single Child's Plan. For example:

- The authority should ensure that its education function, responsible under the GIRFEC approach for working alongside social work, is familiar with local protocols and procedures relating to the provision of social care and support for children and families. This should include recognition of the duties imposed on the authority by the 2013 Act, the potential benefits to children that may arise from the options provided under the 2013 Act and the values, principles and practice associated with self-directed support.
- The authority should ensure that the relevant senior managers and professionals are made aware of the duties and powers under social care legislation, in particular the 2013 Act's duties to offer choices in relation to the child's care and support.
- The authority's policies and procedures in relation to the development of single plans for children should take account of its duties under the 2013 Act.

3.6 Further statutory guidance on the Named Person and other legal provisions within the Children and Young People (Scotland) Bill will be published by the Scottish Government.

Safeguarding duties

3.7 Section 22 of the 1995 Act places a duty on the responsible authority to safeguard and promote the welfare of children in need and, where consistent with that duty, to promote the upbringing of children within their families. Under Section 22 the authority will provide services in relation to a wide set of needs, many of which will not be related to disability alone. The definition of a child in need is a broad definition. It includes children under the age of 18 who have a disability, children affected adversely by the disability of any other person in the family and children whose health or development may be impaired or may fall below a reasonable standard without services from the local authority. In summary, a child is in need if he or she is in need of care and attention because:

- he or she is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development unless the local authority provides services for him under Part II of the 1995 Act;
- his or her health or development is likely significantly to be impaired, unless such services are so provided;
- he or she is disabled; or

- he or she is affected adversely by the disability of any other person in his or her family.

3.8 The 2013 Act imposes a further duty to provide *choice and flexibility* with respect to the relevant support to children or families. It requires the authority to provide a range of options to the child/family. In a great number of circumstances – including all support to children affected by disability but not restricted to such support - the provision of alternatives such as direct payments or individual services funds can provide a creative and positive means by which to meet the child's needs. However in some instances the authority's safeguarding function will affect the form of support which is necessary to safeguard the child's wellbeing, and therefore the extent to which additional choice and control is possible.

3.9 The authority should approach its duties on choice in relation to Section 22 support on a case by case basis. In each case, the authority must provide a range and level of services appropriate to the child's needs. In relation to direct payments – i.e. the provision of a cash payment in place of support that would otherwise be directed by the person as a notional budget or arranged on their behalf – the 2013 Act's accompanying Regulations ("the Direct Payment Regulations 2014") provide the authority with further discretion to refuse to provide the direct payment option, though only where the child's safety will be put at risk by the provision of the direct payment.¹

3.10 See section 8 in this document for further guidance on the application of the four options contained in the 2013 Act in relation to support to children/families.

¹ The Self-directed Support (Direct Payments) (Scotland) Regulations 2014

SECTION 4: VALUES, STATUTORY PRINCIPLES AND HUMAN RIGHTS

This section elaborates on the core values and principles of care and support. It highlights the statutory principles which the authority must consider when they conduct an assessment. It applies to all client groups and all ages including support to adults, children/families and carers.

Values

4.1 The values which underpin this guidance are:

- respect;
- fairness;
- independence;
- freedom, and;
- safety.

4.2 The authority should consider these values as part of its strategy, guidance, procedures and policies in relation to social care services.

Statutory Principles

4.3 The 2013 Act provides four statutory principles. The purpose of the statutory principles is to guide the authority in its implementation of the relevant legal duties on care and support. The statutory principles are important because they carry legal weight. They articulate the underlying aims or "spirit" of the legislation and complement the detailed duties and powers provided elsewhere in the Act. They apply to the initial assessment of need *and* to the provision of choice in order to meet those needs. The four principles are described below.

Participation and dignity

4.4 Participation and dignity are core aspects of independent living. They describe the approach whereby the supported person has the same freedom, choice, dignity and control as other citizens at home, at work and in the community. In some respects the concept of independent living provides a modern interpretation of the social welfare duties provided in the 1968 Act. Under the statutory principle of participation and dignity the authority must take reasonable steps to facilitate the principle a) that the supported person's right to dignity is to be respected, and; b) that the supported person's right to participate in the life of the community is to be respected. This applies both to the initial assessment of need *and* to the provision of choice as part of the wider support planning process.

Involvement

4.5 This is the principle that the supported person must have as much involvement as the person wishes in both the assessment and in the provision of support associated with that assessment. This recognises the importance of involving the adult, carer or child in determining their needs and developing appropriate solutions in order to meet those needs.

Informed choice

4.6 This is the principle that the supported person must be provided with any assistance that is reasonably required to enable the person to express views about the options available to them and to make an informed choice about their options for support. This is a key principle, essential to ensuring that the person can be fully involved in designing and implementing their support.

Collaboration

4.7 This is the principle that the professional must collaborate with the supported person in relation to the assessment of the person's needs and in the provision of support or services to the person. A collaborative approach can help to stimulate new or alternative solutions. It supports an equal partnership between the professional (able to bring their expertise, knowledge and statutory and professional responsibilities) and the adult, child or carer (aware of and expert in their personal outcomes, supported to articulate and develop those outcomes and how they wish to achieve them).

Summary: statutory and good practice principles appropriate to assessment and the provision of support

4.8 Beyond the statutory principles the authority should consider further good practice principles. The following table brings together:

- the statutory principles within the 2013 Act, and;
- additional good practice principles which should help to underpin good practice in assessment and support planning.

Table 1: The legal principles that must underpin assessment

The principle	What it means in practice
Participation - a statutory principle and a key aspect of independent living	The supported person should be provided with the help that they need to participate in and be part of, the life of their community and wider society <i>Underpinned by Section 2 of the 2013 Act</i>
Dignity - a statutory principle and a key aspect of independent living	The professional should facilitate the supported person's right to dignity. <i>Underpinned by Section 2 of the 2013 Act</i>

<p>Involvement – a statutory principle</p>	<p>The professional should involve the supported person in a genuine and active way in deciding their outcomes and in planning and delivering their support. <i>Underpinned by section 1 of the 2013 Act.</i></p> <p>Communities should be assisted to play an active role in the commissioning of services.</p>
<p>Informed Choice - a statutory principle</p>	<p>The supported person should receive the assistance they need to help them to make an informed choice. <i>Underpinned by Section 1 of the 2013 Act</i></p>
<p>Collaboration- a statutory principle</p>	<p>The professional and the supported person should work together in the completion of the assessment, the support plan and in the provision of support. <i>Underpinned by Section 1 of the 2013 Act</i></p>
<p>Responsibility</p>	<p>The supported person should be able to take as much control over their support as they wish. In return, the supported person should exercise that choice and control in a responsible way.</p>
<p>Risk enablement</p>	<p>The supported person should be assisted to feel safe and secure in all aspects of life, to enjoy safety but not to be over-protected and, in so far as possible, to be free from exploitation and abuse.</p>
<p>Innovation</p>	<p>The professional and the supported person should develop creative solutions to meet the outcomes identified in the support plan.</p>

The relationship between human rights, social care assessment and self-directed support

4.9 This section provides guidance on the relevance of human rights to the 2013 Act and to the provision of social care and support. The provision of social care, and the facilitation of choice as part of this, is a means by which to protect human rights. Effective person-centred support, determined and led by the adult, child or carer in partnership with the relevant professional increases the choice for the supported person and provided them with the opportunity to take more control and manage their life. The authority has a further role to play in support, advice and signposting to other services.

A Human Rights Based Approach

4.10 A human rights based approach is a way of empowering people to know and claim their rights. It increases the ability and accountability of individuals and the relevant professionals who are responsible for respecting, protecting and fulfilling rights. This means giving people greater opportunities to participate in shaping the

decisions that impact on their human rights. There are some underlying principles which are important in applying a human rights-based approach in practice, known as the **PANEL** Principles: Table 2 explains what these principles are:

Table 2: PANEL Principles

Participation	Everyone has the right to participate in decisions which affect their human rights. Participation must be active, free, and meaningful and give attention to issues of accessibility, including access to information in a form and a language which can be understood.
Accountability	Accountability requires effective monitoring of human rights standards. For accountability to be effective there must be appropriate laws, policies, administrative procedures and mechanisms of redress in order to secure human rights.
Non-discrimination	A human rights based approach means that all forms of discrimination must be prohibited, prevented and eliminated. It also requires the prioritisation of those in the most vulnerable situations who face the biggest barriers to realising their rights.
Empowerment	People should understand their rights, and be fully supported to participate in the development of policy and practices which affect their lives. People should be able to claim their rights where necessary.
Legality	A human rights based approach requires the recognition of rights as legally enforceable entitlements, and is linked in to national and international human rights law.

FAIR – Rights based decision making

- **Facts-** What is the experience of the individual? Are they being heard? What are the important facts to understand?
- **Analysis of rights at stake-** What are the human rights at stake? Can the rights be restricted? What is justification for restricting the right? Is the restriction proportionate?
- **Identify shared responsibilities-** What changes are necessary? Who has responsibilities for making changes?
- **Review actions-** Have the actions taken been appropriately recorded and reviewed and has the individual been involved.

Human Rights and SDS

4.11 Social care, and the provision of choice as part of the assessment and support planning process, is a way of protecting human rights. By providing options to the supported person the authority can facilitate greater choice and independence in managing the supported person's life. Human rights are core to independent living and core to the values of social work. They provide a legal and value base for setting priorities in policy and practice, as well as the delivery of services. They provide both a means of doing things, driven by human rights standards and principles. A wider

human rights culture throughout the supported person's pathway will improve outcomes, person and outcome centred service delivery and decision making processes.

Human Rights and the assessment

4.12 The human rights approach needs to be at the forefront of assessments for social care provision and the further provision of support following that assessment. The authority, when carrying out an assessment, should consider the whole experience of the supported person . It should consider the needs and the outcomes of the person, balancing risks against decision making. In addition, it should consider human rights as part of its development of the relevant strategies, protocols, procedures and guidance associated with social care provision.

Further guidance and hyperlinks

See section 7 of this document for further guidance on assessment and eligibility.

Scottish Human Rights Commission
<http://www.scottishhumanrights.com/>

Being Human: A human rights based approach to Health and Social Care in Scotland
<http://www.alliance-scotland.org.uk/viewpoint/2013/05/a-human-rights-based-approach-to-health-and-social-care-in-scotland/>

Equality Advisory and Support Service
<http://www.equalityadvisoryservice.com/>

SECTION 5: THE SUPPORTED PERSON'S PATHWAY

This section describes the supported person's pathway through support. It applies to adults, children and carers of all ages.

Introduction

5.1 The following diagram indicates the key stages in the person's pathway. It covers each key step from initial contact through to the provision of support and review. It is the person's route through their support from initial information through to review. The authority should consider the concept of a pathway, journey or route through support in developing its strategy, guidance and general approach to social care provision. The authority should take steps to provide the relevant training, support and processes in order to support this pathway. There may be appropriate variations to the pathway depending on the specific circumstances of the person. However the authority should use this as a starting point for its approach to determining the appropriate services, providing choice to the supported person and monitoring and reviewing the person's support.

Diagram 1: Supported person's pathway

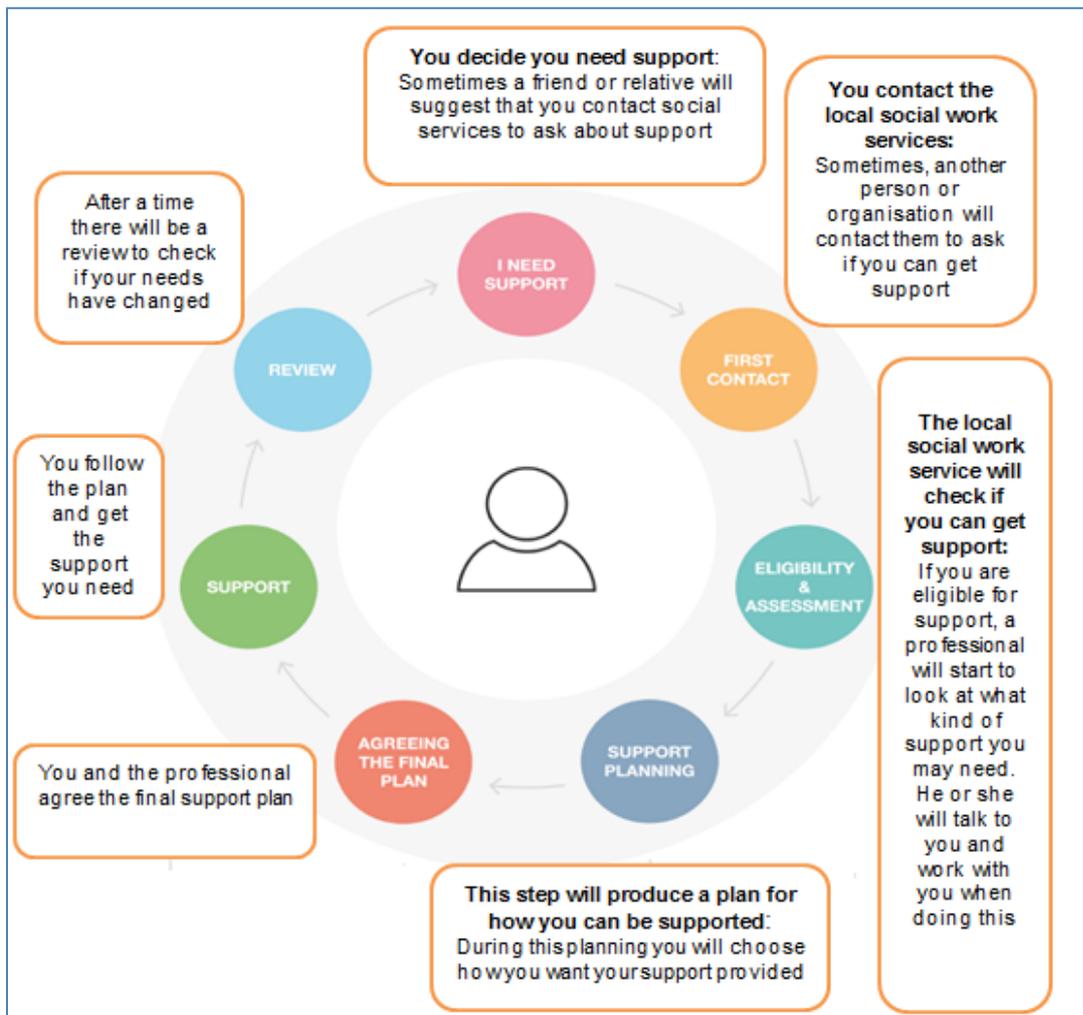


Table 3: Supported Person's Pathway: further descriptions

Step 1: Inform

The supported person decides that they need additional support. Alternatively, a relative, friend or professional recommends that the supported person contacts social services.

Step 1a: First Contact

The supported person makes contact with social care services or community health services. They can arrive at this point direct or referred on by school, housing association, family or friends, hospital, carers centre, local voluntary organisation, etc. There is an initial screening to determine if the person should progress to a formal decision on their eligibility for support. At this stage the supported person should be provided with the relevant information and advice in relation to eligibility, assessment and support options. See section 6 in this document for further guidance on information and additional support services.

Step 2: Assess

This is the point where the initial decisions are made about the person's eligibility for support under the various legal obligations:

- * Section 12A of the 1968 Act (the assessment duty relating to adults);
- * Section 22 of the 1995 Act (the duty relating to children in need);
- * Section 12AA of the 1968 Act (the assessment duty relating to carer's of adults), and;
- * Section 24 of the 1995 Act (the assessment duty relating to carers of children).

Step 2a- Eligibility

This is the point where the initial decisions are made about the person's eligibility for support under the various legal obligations:

Step 2b: Detailed assessment/further exploration of the person's needs

Following the initial determination of the person's eligibility the person's needs will be explored in much greater detail. As part of this detailed assessment the two parties (the professional and the supported person) will begin to translate the initial needs into a more detailed exploration of the individual's personal outcomes.

See section 7 (Part 1) of this document for further guidance on assessment and eligibility.

Step 3: Plan

Support planning covers a wide range of issues but will tend to include a discussion of:

- the choices available to the supported person;
- the main risks and how the supported person and others can manage those risks; and
- the resources that will help to deliver the person's support plan.

If the supported person is a child then the process should be part of a single plan for the child. It should capture the contribution that any support assessed or

provided under Section 22 of the 1995 Act will make as part of the overall plan for the child.

See section 9 in this document for further guidance on support planning.

Step 4: Choose

This describes the stage where the supported person and the professional agree the support plan.

Step 5: Support/Speak Out

This describes the provision of support to the person and the day-to-day decisions that will be made. See section 11 in this document for further guidance on the provision of support under the general principles of the 2013 Act.

Step 6: Review

The update of the original assessment, review of the person's needs and consideration of any adjustments to reflect the changing needs or any changes in circumstances etc...

See section 12 in this document for further guidance on monitoring and review.

The Supported Person's Pathway: Roles and responsibilities

5.2 A wide number of people and organisations may be involved in the assessment of needs or the provision of support for a person, family or carers. Table 4 provides a summary of the main roles and responsibilities for those who will be involved in the person's pathway.

Table 4: The Supported Person's Pathway: Roles and Responsibilities

Role	Responsibilities
The professional	The social work or health professional should take steps to ensure that the assessment is conducted in line with social care law. They should consider any wider legal duties beyond the duties provided in social care legislation for instance, in a crisis situation or where the adult's safety is at risk. They should ensure that the person's support plan is comprehensive. They should ensure that the support plan meets the assessed needs of the supported person. They may arrange for some additional assistance so that the supported person can play a full part in the assessment or support planning process. They may give voice to the person's wishes. The professional or local area team should be provided with the appropriate support and guidance from their organisation to ensure that they can apply appropriate discretion.
The supported person	The supported person, as the person in receipt of support, should be assisted to play an active part at the centre of the assessment and support planning process. They should be supported to take as active a role as they wish to take in all of

Role	Responsibilities
	<p>the key decisions relevant to their support. This will include any decisions about initial eligibility or access to support, together with the planning and provision of that support.</p> <p>The local authority and/or Health Board should ensure that their staff are made aware of their duties and powers in relation to assessment functions. The authority should take steps to commission a good range of support, information and advocacy services to ensure that people receive the right information at the right time.</p>
The unpaid carer	<p>The primary role of the unpaid carer is to provide care and support to a family member or friend. However, in addition to this they may provide a wealth of information, expertise and guidance. Carers may be guardians or attorneys for the individuals they support. Carers are also entitled to request an assessment of their own needs. The local authority should ensure that carers are aware of their right to request a carer's assessment.</p>
The provider	<p>The provider may be the local authority, the NHS, an organisation from the third or independent sector or a personal assistant employed by the supported person or the unpaid carer. The provider can play an important role in the assessment and support planning process however the legal duty to meet assessed needs remains with the local authority or Health Board (if duties are delegated to the Health Board).</p>
Senior managers within the relevant organisations	<p>Senior managers help to shape the culture and approach right across their organisations. They can take important decisions about a supported person's care and support. In light of this, they should take steps to ensure that guidance, training and general culture of the organisation is predicated on the values and principles within this guidance. They should support front line professionals/providers to work with individuals in a flexible and innovative way.</p> <p>Local authority Chief Social Work Officers (CSWOs) have a key role in delivering high quality social work services. CSWOs should ensure implementation of this guidance within their local authority, in line with the specific functions of the CSWO role, as set out in The Scottish Government's Guidance on The Role of the Chief Social Work Officer (February 2009). CSWOs should also promote this guidance with relevant partner services and agencies.</p>
The finance function within authorities/Health Boards	<p>Finance managers/officials play an important role in determining and administering the level of spend assigned to services. They should ensure that the right processes and systems are in place, and they should support the collective objectives for care and</p>

Role	Responsibilities
	support in their local area. Finance functions should provide the necessary support to the social work function, ensuring effective systems to support social care provision and encouraging choice, control and flexibility for social care users.
The legal function within authorities/Health Boards	Legal advisers will provide support to social services, advising on their legal responsibilities and powers. The legal function within the authority should be familiar with the relevant duties on assessment and support and how these relate to wider legal duties for instance in relation to equalities, human rights, safeguarding and adult support and protection. The legal function should support the social work function, working together to deliver an innovative approach to the provision of care and support.
The commissioning function within authorities/Health Boards and wider Health and Social Care partnership	Strategic commissioning describes the activities involved in assessing and forecasting needs, the linking of investment to agreed outcomes and consideration of the options available. It also describes the activities to plan the nature, range and quality of future services and the steps that are taken by the local authority and health board to work in partnership to put their plans in place. Joint commissioning is where these actions are undertaken by two or more agencies working together, typically health and local government and often from a pooled or aligned budget. The organisations and individuals who commission services play a key role in ensuring that a good range of support is made available in order to meet the needs and desires of a diverse population. As part of its approach to the development of effective commissioning strategies the authority should consider the implications of self-directed support, the role of personal outcomes and the importance of encouraging and supporting a suitable variety of supports for adults, children/families and carers.

Further guidance and hyperlinks:

See section 8 of this document for further guidance on facilitating a good range of choices.

Further guidance on joint commissioning is available at:
<http://www.jitscotland.org.uk/action-areas/commissioning/>

SECTION 6: INFORM THE PROVISION OF INFORMATION, ADDITIONAL SUPPORT AND ADVOCACY

This section describes the legal duties in relation to support and information services that are imposed on the authority by the 2013 Act. It applies to adults, children and carers of all ages. It is provided at this early point within the guidance in order to reflect the place of information and support within the person’s pathway – i.e. to emphasise that support information should be provided at an early point in the process as well as throughout the process of assessment, support planning and the provision of support. It should be considered alongside all other sections of this guidance in particular Section 7 and Section 8.

The legal duties in relation to information, additional support and advocacy

6.1 Section 9 of the 2013 Act imposes a range of duties in relation to the provision of information and support to any adult, child or carer assessed as requiring support. This provides an important addition to the collection of duties imposed on authorities in relation to assessment and the provision of care and support. The main duties are described in Table 5 below:

Table 5: Information and support duties imposed by the 2013 Act

Duty	Purpose behind the duty and what it should mean in practice
<p>“Informed choice”: the duty to assist the person to express their views and to make an informed choice about the support options available to them</p> <p>Under the 2013 Act the authority must provide the supported person with any assistance that is reasonably required in order a) that the person can express their views about the options available and b) make an informed choice about those options.</p>	<p>This duty is to ensure that the supported person can express what they want from their support and how they wish to arrange their support. It plays a key role in ensuring that the authority can deliver its assessment functions in line with the statutory principles of collaboration and informed choice. The assistance can be provided by the authority itself (i.e. by the social worker), “circles of support” (i.e. people who can assist the supported person to choose what they want), support and information organisations, advocacy organisations or any other person or organisation including peer support organisations, third sector organisations or others.</p>
<p>“Nature and effect”: the duty to explain the implications of the support options available to the person</p>	<p>This duty is to ensure that all four options are described in full to the supported person and in a format appropriate to the person. Each option</p>

Duty	Purpose behind the duty and what it should mean in practice
<p>The authority must explain to the person the nature and effect of each of the options.</p> <p>The authority must give the information in writing and, if necessary, in such other form as is appropriate to the needs of the supported person.</p>	<p>should be explained in appropriate detail and each option should be given appropriate weight as a feasible option for all or some of the person’s support needs. The responsibility for discharging this duty rests on the social work professional as part of the assessment process, though in addition it can also be discharged via independent organisations and further sources of information. The authority should seek to explain the basic characteristics of the options available to the supported person. In particular, it should seek to describe the distinctions between the different options. The authority should use terms that the supported person can engage with and relate to, and it should make the options clear. Again, there is a clear link to the statutory principles provided elsewhere in the 2013 Act, in particular the principles of involvement and informed choice.</p> <p>The requirement to give the information in writing reflects the importance of written information in the form of pamphlets and other relevant materials. However the authority should also consider the specific communication needs of the person. It should tailor its communication to suit the requirements of the person. This is to ensure that the person can make informed choices about their support.</p>
<p>“Additional information to manage your support”</p> <p>The duty to provide the person with information about how to <i>manage</i> their support.</p>	<p>This duty is particularly relevant to Options 1 and 2 in the 2013 Act, i.e. the two options which involve greater responsibility and day-to-day management. This is important because it ensures that the person is made aware of the additional support available to the person to assist them to manage their support after their initial choices are made. It can help to address any concerns that the person may have</p>

Duty	Purpose behind the duty and what it should mean in practice
	about the burdens involved in directing their support. It can help the person to make an active and informed choice about the Option that is appropriate to them.
<p>Independent and peer led support</p> <p>The duty to provide the person with 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.</p>	This imposes a duty on the authority to direct the person to all relevant sources of independent information and support available in the local area or via the relevant national organisations. This encompasses peer led support organisations along with any other organisations independent of the authority.
<p>Advocacy services</p> <p>In any case where the authority considers it appropriate to do so, the duty to provide information about independent advocacy services (within the meaning of section 259(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003).</p>	Where the person has a right to advocacy services, this duty requires the authority to direct the supported person towards the relevant services.

6.2 The authority should base its approach on the statutory principles of collaboration, informed choice and involvement. The support and information provided to the person must be impartial, balanced and well informed. The emphasis should be on supporting the person to make an informed choice. The authority should ensure that the relevant professional and support staff are provided with appropriate training, guidance and support in order to ensure that they can discharge their duties and in order that they can explain the options in a clear and accessible way.

Case Study example: Alex’s story

My name is Alex and I live in a small village. I have multiple sclerosis and I have been managing my own direct payment (DP) for almost 2 years now. I previously received a service from an agency, however, they were going through some changes and unfortunately they had to make some of their workers redundant and this included my regular carer. I was told about direct payments by my social worker, and I decided I would go for it, so I could employ my old carer from the agency who I had a good working relationship with. It all seemed a little daunting to begin with, but I had a meeting with my social worker and an Independent Living Officer from my local peer support organisation who explained how the direct

payment could be used and what my responsibilities would be if I decided to become an employer of my own Personal Assistants (PAs).

The local peer support organisation supported me to get everything in place before I started to employ my own PA. They helped me get set up with payroll, organise contracts of employment and decide on a suitable rate of pay for my PA. They advised me to make sure I reserved enough funding to cover my costs such as holiday and sick pay, things I never knew I had to consider. Once I got set up, and I used the payroll service a couple of times, I was in full swing of managing my own direct payment. I found a second PA who could work for me as relief. This meant that I had the security knowing that I had back up if my first PA was ever off sick or needed a holiday. I could also use an agency at the same time to cover any gaps. Over the last two years I have had to recruit PA's on a couple of occasions.

Whenever I need to advertise, I contact my support organisation who organise everything for me. We look at the job description and advert to make sure it covers everything I need. Because I now have a mobility car, I look for people who have a driving license so I can use my PA to go to the shops or visit friends. My Independent Living Officer (ILO) takes away all the hassle from recruiting. They keep me right by making sure I keep in line with employment law guidelines. Whenever I have a problem, I know I can just call Sylvia (the ILO) and she will be able to advise me on what to do. Even when it's something I've dealt with before it's always good to know I can just call and reassure myself that what I'm doing is right. I send my timesheets into payroll every month and they do all the calculations for tax, holiday pay, sick pay... everything really. I don't think I would still be managing my direct payment as well as I am if I didn't have this help from my local support organisation.

Last year, I received additional funding into my direct payment to use for respite. I had tried traditional respite before, but it just wasn't for me. I used to book in for a week but ended up going back home early so I wasn't getting the full use of it. I was lucky to have an understanding social worker who suggested we apply for my respite as a DP. With getting the respite funding paid into my DP account, it meant I could choose to go somewhere completely different for a break. I decided to rent self-catering accommodation just south of the border. The accommodation was completely accessible and really affordable. My PA came with me for the weekend and I had a lovely break and I really felt like I completely got away from it all.

To me this means I can arrange my support to suit my own needs. If I'm not feeling well one day and I need more support I can call my PA and ask them to work a longer shift to give me an extra hand. I also feel in more control of my life – I arrange rotas around my personal life so I can get out socialising and doing the things I want to do when I want to do them.

It's important for me to have staff that I trust and can build a good relationship with and my direct payment has allowed me to achieve this. I couldn't have done it without all the support I have had from my support organisation. You never feel alone knowing you have an experienced advice service behind you. Having a DP has been fantastic for me. I really believe it has given me my independence back.

The commissioning of support and information services

6.3 In order to ensure that it can deliver on its obligations under section 9 of the 2013 Act the authority should consider the appropriate mix of information and support options available in their local area. Table 6 and Diagram 2 indicate some of the key forms of information and support.

Diagram 2: key forms of information and support

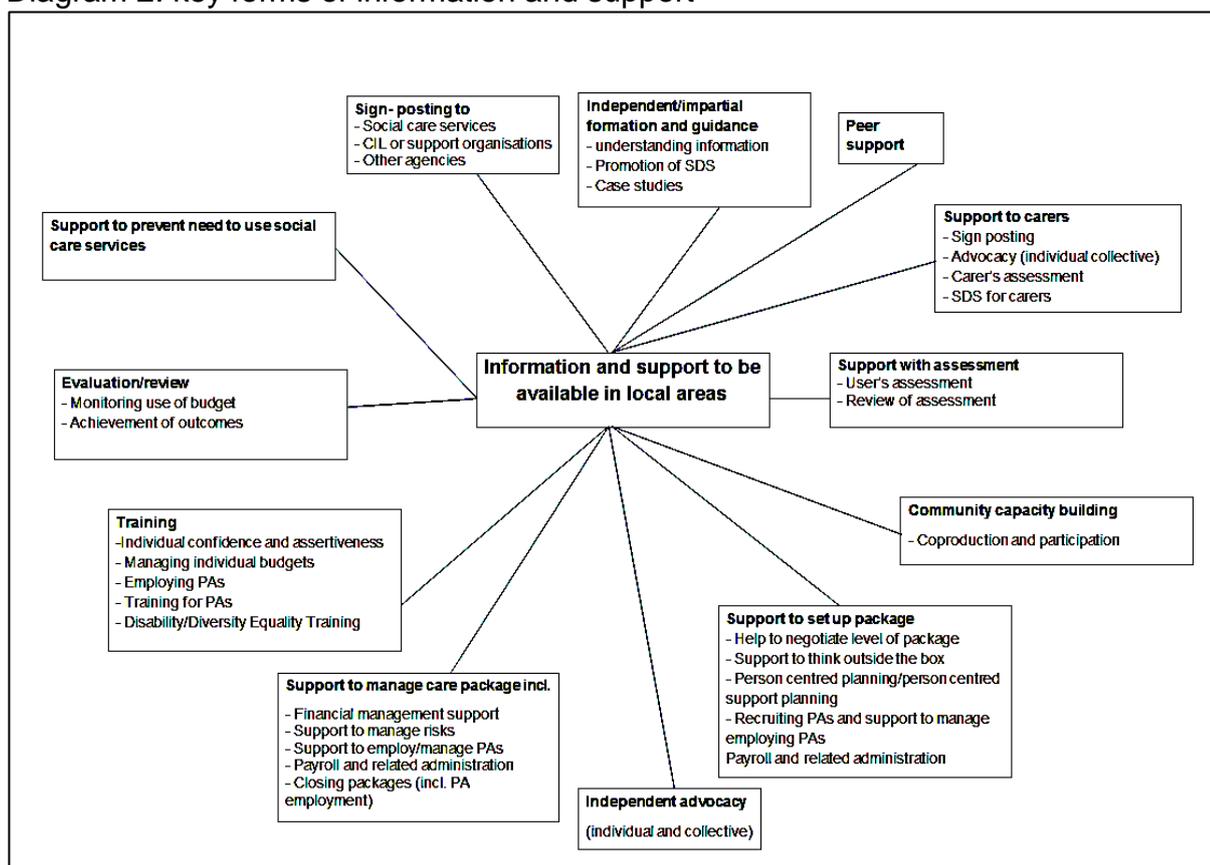


Table 6: Examples of information and support

<p>Basic information and advice</p>	<p>Information direct from the professional about:</p> <ul style="list-style-type: none"> -the choices available to a person and the opportunities and responsibilities that come with each option; -how to understand and navigate the processes that surround assessment, support planning and review; and -where to go for further detailed or technical advice and support. <p>Leaflets and information in accessible formats</p> <p>Case study examples showing how the various options work</p> <p>Accessible information in a variety of formats</p>
<p>Mentoring and peer</p>	<p>Information and support from people with personal</p>

support	<p>experience of care and support or directing their own support</p> <p>Mentoring for support planning</p> <p>Contact details for mentoring networks</p>
Support and information services	Organisations that are independent or semi-independent from the authority. This may include “in house” support and information services or it may include user-led or peer support organisations.
Brokerage	Specialist support to people to plan, procure and manage their own support arrangements under the direct payment option.
Independent advocacy	Advocacy services to make sure that people’s voices are heard (individually or collectively) during all stages of the care and support pathway
Training	<p>Training on topics such as:</p> <ul style="list-style-type: none"> - care and support pathways and key stages such as assessment, support planning, managing your support and review - disability, diversity and equality - confidence and assertiveness

The role of independent and peer support

6.4 The authority should consider the role of independent or user-led organisations such as centres for independent living, specialist support organisations with an expertise in the person’s support needs, organisations with expertise in supporting specific service user groups or organisations with a general role to advise citizens. This will require strategic vision, planning and commissioning of a strategy within the local authority. A sustainable plan will ensure a range of support services.

6.5 User-led support and information organisations operate on a peer support model. They offer a unique contribution, helping disabled people to understand their options to relate to the needs of others in the same situation. Their staff and volunteers may have personal experience of care and support services. It is this experience which helps to inform the design and delivery of support services, leading to high quality, relevant and appropriate information and support.

The role of advocacy and advocacy services

6.6 As stated in table 6 the authority, where it considers it appropriate to do so, must provide the supported person with information about independent advocacy

services. Advocacy and advocacy services provide a unique role. The authority should seek to use their discretion to maximum positive effect and should signpost the person to advocacy services in all instances where they consider this appropriate.

Further guidance and hyperlinks:

Further information is available from the Self Directed Support Scotland (SDSS) website www.sdsscotland.org.uk

SDSS Information and Support Site
<http://www.sdsinfo.org.uk/>

Scottish Government (2005) *The New Mental Health Act: A guide to independent advocacy: Information for Service Users and their Carers*
<http://www.scotland.gov.uk/Publications/2005/12/02144347/43475>

Scottish Independent Advocacy Alliance
<http://www.siaa.org.uk/>

Scottish Government (2012) *A Right to Speak: Supporting Individuals who use Alternative and Augmentative Communication*
<http://www.scotland.gov.uk/Publications/2012/06/8416/0>

SECTION 7: ASSESS (PART 1) DETERMINING ELIGIBILITY FOR SUPPORT AND CONDUCTING STATUTORY ASSESSMENT OF NEED

This section deals with all aspects of assessment and eligibility. It provides general guidance covering all age groups and circumstances and further detailed guidance for adults, children and families and carers.

The legal basis for assessment is as follows:

- For adults: Section 12A of the Social Work (Scotland) Act 1968
- For children: Section 23 of the 1995 Act
- For carers of adults: Section 12AA of the 1968 Act
- For carers of children: Section 24 of the 1995 Act

This section provides guidance on the following aspects of assessment:

- the general principles that must inform the assessment;
- determining a person's eligibility for support
- the further exploration of the person's needs and personal outcomes
- further guidance: capacity
- further guidance: children and families
- further guidance: carers
- further guidance: complaints

The general principles that must inform the assessment

7.1 In developing its guidance, policies and procedures on assessment the authority should consider the changing context in Scotland. A key change has been a shift in emphasis towards personal outcomes. This recognises that policy and practice needs to move away from services and what they do (service led assessment and support) and towards an approach whereby the person takes control, prioritising the difference to be made to people's lives (outcomes focused assessment). This involves more control being retained by the person who is viewed as a partner in identifying and achieving their outcomes rather than a passive service recipient. It involves a shift in the systems and processes surrounding assessment, moving away from a focus on deficits and towards strengths and capacities. This is a significant system and culture change. It requires development opportunities and on-going support for practitioners. This change, alongside the emphasis on choice, control and flexibility, should inform the authority's approach to assessment across adults, children and carers.

7.2 The general principles provided in Section 1 and 2 of the 2013 Act recognise this changing context. They provide a legislative context for the authority's approach

to assessment of needs for adults, children and carers and the authority must have regard to these principles in conducting the assessment.

Table 7: The general principles of assessment (Section 1 of the 2013 Act)

Collaboration
The authority must collaborate with a supported person in relation to the assessment. It should work with the person and towards a shared goal, in this case the identification, development and subsequent delivery of the supported person's outcomes. It should facilitate the active contribution of the person as a partner in working towards a shared goal.
Involvement
The supported person (adult, child or carer) must have as much involvement as they wish to have in the assessment.
Informed Choice
The supported person must be provided with any assistance that is reasonably required to enable them to express their views about the assessment.

Determining a person's eligibility for support

7.3 The initial purpose of the assessment is to identify the person's needs with a view to determining whether the authority has an obligation to meet those needs. In other words, it is to determine the person's *eligibility* for support. In relation to adults, in order to qualify as a person in need the person must be in need of support arising out of infirmity, youth or age or require support arising from illness, mental disorder or disability.

7.4 In relation to adults the authority may choose to apply local eligibility criteria in order to determine whether the person's needs call for the provision of services (i.e. to determine if the person's needs are eligible needs) however it is a matter for the authority to determine the detail of its approach. Where the adult is over 65 and eligible for personal care or where the person is eligible for nursing care the local authority must take account of the relevant joint Scottish Government and COSLA guidance on eligibility criteria.

Example: eligibility framework for adults

* **Critical Risk:** Indicates that there are major risks to the person's independent living or health and wellbeing likely to require immediate or imminent provision of social care services (high priority).

* **Substantial Risk:** Indicates that there are significant risks to the person's independence or health and wellbeing likely to require immediate or imminent provision of social care services (high priority).

* **Moderate Risk:** Indicates that there are some risks to the person's independence or health and wellbeing. These may require provision of some social care services managed and prioritised on an on-going basis or they may simply be manageable over the foreseeable future without service provision, with appropriate

arrangements for review.

* **Low Risk:** Indicates that there may be some quality of life issues, but a low risk to the person's independence or health and wellbeing with very limited, if any, requirement for the provision of social care services. There may be some need for alternative support or advice and appropriate arrangements for review over the foreseeable future or longer term.

7.5 The authority's approach to making decisions about a person's access to support - whether it applies formal eligibility criteria or not - plays a key role in the subsequent assessment, the provision of choice under the 2013 Act and the provision of support following that choice. The authority should have regard to the following key points when developing its approach to eligibility, wider assessment processes and in developing the relevant training and guidance to practitioners:

- The authority should take full account of how the person's needs and risks might change over time. It should support the relevant professionals to consider the impact of failure to intervene and whether this would lead to escalation of need in future. It should take a well-rounded approach, recognising that risks to participation in society (living an ordinary life, engaging with others) are valid alongside risks to dignity (personal care, "life and limb" support). It should recognise the potential hidden needs which may not be obvious or highlighted in generic guidance documents. The relevant parties involved in assessment - the professional and the adult, child or carer - should be able to access information and advice about alternative sources of support out with formal or funded social services.
- The authority can take into account its overall resources when determining eligibility criteria. However once it has decided that the person's needs are such that they require provision of services (i.e. are 'eligible needs') the authority cannot then refuse to meet those needs because of budgetary constraints.
- The authority should take a strategic approach to the application of eligibility criteria. It should do this in partnership with wider partners including the health board, providers, user groups and carer groups. The authority should develop its criteria within the context of its wider commissioning strategy and a broader framework of prevention, early intervention, support to carers and universal services. If a person does not meet a particular eligibility threshold the authority should take steps to ensure that the appropriate arrangements are in place, providing an environment where the professional can direct that person to suitable alternative sources of support. The authority should consider their strategy for investing in preventative and universal services - interventions which prevent or delay the need for formal social care and support.
- The authority should develop its policy in line with the statutory principles provided by the 2013 Act and articulated within this guidance. In particular, it should consider the principles of involvement (of service users/carers), informed choice and collaboration. The authority should take steps to involve people who use support, carers and partner organisations in the

development of its policies and it should do so from the outset. It should publish the eligibility criteria/framework and it should do so in a clear and transparent way.

- The authority's response to need should be informed by the continuing review of the person's needs. This should include consideration of how urgently service provision is called for and what interim measures may be appropriate pending any long-term support. Thorough professional judgement is needed in order to discharge this task.

Further guidance and hyperlinks:

Institute for Research and Innovation in Social Services, *Leading for Outcomes: A guide*

<http://www.iriss.org.uk/resources/leading-outcomes-guide>

Institute for Research and Innovation in Social Services, *Understanding and measuring outcomes*

<http://www.iriss.org.uk/resources/understanding-and-measuring-outcomes>

Institute for Research and Innovation in Social Services, *Reshaping care and support planning for outcomes*

<http://content.iriss.org.uk/careandsupport/assets/html/intro.html>

Joint Improvement Team – Talking Points: Personal Outcomes Approach (includes Talking Points: A Practical Guide)

<http://www.jitscotland.org.uk/action-areas/talking-points-user-and-carer-involvement/>

Scottish Community Development Centre – Co-production: useful resources

<http://www.scdc.org.uk/what/co-production-scotland/co-production-useful-resources/>

For further guidance on the application of eligibility criteria see the Scottish Government and COSLA's National Standard Criteria and Waiting Times for the Personal and Nursing Care of Older People:

<http://www.scotland.gov.uk/Topics/Health/Support-Social-Care/Support/Older-People/Free-Personal-Nursing-Care/Guidance>

Further exploration of the person's needs and personal outcomes

Resources

7.6 As part of the detailed consideration of the person's needs and outcomes the authority will wish to explore the appropriate resources which can help to meet the person's needs. The authority should ensure that the assessment considers all of the possible resources available (non-financial as well as financial), though additional assets should be complementary to the provision of funded support and not a replacement for funded support. The main resources that the professional and user will wish to explore are:

- the person’s attributes and assets (their skills, knowledge, awareness, background, decision-making skills and contacts);
- the person’s well-being and inner strength;
- the person’s extended family, close friends, work colleagues and community;
- the budget or local authority funding which the person can access to meet their eligible needs;
- the professional’s knowledge, expertise, background and contacts;
- the local resources, shops, health and education services, community facilities (libraries, sports centres, community “hubs” etc.); and
- any other sources of information, advice and support available to the supported person.

Resource allocation

7.7 Where the person is deemed to be eligible for support the authority will wish to consider a fair and transparent means by which to determine the appropriate level of funding. Section 4 of the 2013 Act refers to a *relevant amount* and defines this as the “amount that the local authority considers is a reasonable estimate of the cost of securing the provision of support for the supported person.”

7.8 There is no single approach to resource allocation prescribed on the face of the 2013 Act, nor any single method recommended by Scottish Government. The authority may wish to adopt an equivalence model where they determine the cost of the service to be arranged and then provide the equivalent amount as a budget for the supported person to control. Alternatively, it may wish to adopt a resource allocation system whereby the authority gathers information about the person’s outcomes, allocates points to those outcomes and, on the back of this process, allocates a level of funding. In addition, decisions about budgets may be made on a case-by-case basis.

7.9 While systems and tools can be useful aids on their own they are no substitute for the skilled judgement of a social work or health professional in collaboration with the person. The authority must ensure that the approach taken to the allocation of resources is both fair and transparent. It should take steps to involve user and carer groups in the development of any methodology used to define or determine budgets. Regardless of the specific approach to allocating resources, the authority should take steps to inform the person of the amount of support available under each of the options.

7.10 The authority and the relevant professionals acting on its behalf should ensure that the nature and level of support meets the person’s eligible needs. The authority should ensure that professional expertise is brought to bear. The approach to defining the budget should be robust, rational and transparent. The level of resource identified in the final support plan should be sufficient to meet the needs identified as eligible in the assessment.

Case Study example: Mr A's story (Resource allocation)

Mr A discussed his incredibly difficult experience of accessing self-directed support for his mother. He highlighted the lack of knowledge and awareness of key social work professionals at this time on SDS and talked about the social worker needing to continually seek clarification from the service manager on a wide variety of issues. He raised concerns regarding resource allocation system (RAS) processes and the experience of the social worker repeatedly needing to return to the committee to argue the case and secure a budget. Mr A raised the need for SDS training and resources for staff as "the troops on the ground don't know about it". The entire process was combative requiring input from lawyers to fight for his mother's rights and took almost one and a half years to secure SDS, describing the experience as a "massive fight to get it". He highlighted the need to know the right person to make the right things happen during the process.

Despite the significant barriers to accessing SDS Mr A was incredibly positive about the impact of SDS upon his mother's quality of life due to the choice and control it offered. Indeed he clearly articulated that, "Because of SDS my Mum is still alive" and that "SDS had allowed his family to have some freedom".

Assessment in challenging or "crisis" situations

7.11 In some instances the assessment will be completed in a challenging environment such as a hospital or where a young person or adult is viewed as at immediate risk. Crisis situations are rarely conducive to an effective assessment however the authority should ensure that the initial support to address any crisis situation does not become the long-term arrangement for the person. Professional judgement is a necessary ingredient in such circumstances. It is important to document how decisions are reached. After the initial crisis has stabilised, and as soon as the supported person is ready to do so, the authority should seek to develop a comprehensive assessment. This should involve the provision of the four options as required under the 2013 Act. Independent advocacy should be considered where there are conflicting views, where the person is unable to express their views, or where there is nobody available to make decisions free from self-interest

Further guidance: children and families

The relationship between the 1995 Act assessment and the wider Child's Plan

7.12 Under the Getting it Right approach each child who requires support, whether from a single universal service or from several services or agencies, should have this support co-ordinated and recorded within a single plan. The social care assessment and support planning process - i.e. the process described in this guidance - should feed into a single plan for the child. The authority should seek to ensure the assessment process is fully co-ordinated between adult and children's services, including any other relevant departments such as education.

7.13 Where an assessment takes place an approach based on personal outcomes will help to draw out the child and their family's views on the things they want to achieve, the things they would like to do and how they would like to do them. It will also help to ensure that the social care assessment can easily contribute to the Single Plan for the child. In undertaking the assessment, the local authority and professionals within the authority should consider the SHANARI framework (Safe, Healthy, Achieving, Nurtured, Active, Respected & responsible, Included)

The involvement of the child

7.14 Under the 2013 Act if the child is 16 or older then the child will have the right to make decisions about their own support and to choose how they wish to arrange this support. If the child is under 16 then the person with responsibility for the child - called the *appropriate person* in the 2013 Act - should make decisions about the child's support. The authority should inform the appropriate person that they must, in so far as practicable and taking account of the maturity of the child, give the child an opportunity to indicate whether they want to express a view about their own support. If the child wishes to express a view then the appropriate person should give the child an opportunity to express their view. The appropriate person should also have regard to the views of the child in making the key decisions about that child's support. The child's opinions should be actively sought and their behaviour observed with the adults who will be supporting them. A few trial or observation visits may be needed to get their views. The child should be given appropriate help to express their views and wishes and should have access to independent advocacy when appropriate. The relevant professional will need to handle such issues sensitively in terms of the family situation where there may be parental conflict with the views of the child. The authority will wish to reflect this in the relevant local guidance and support to professionals. It is important to recognise the views of parents who have been managing the delivery of support for their child in setting in place any new arrangements once the young supported person reaches age 16.

7.15 The authority should ensure that the child and family, particularly where the child is approaching the transition to adult service, are fully informed of the legal routes available to them in order to ensure that the child's family have the opportunity to apply for the necessary powers to ensure that they continue to determine their support. Where the child or young person lacks capacity or may lack capacity in future the authority should make the child and their family aware of the Adults with Incapacity (Scotland) 2000 Act ("the AWI Act"). The authority should inform the child and their family about the opportunity to apply for power of attorney and guardianship.

Further guidance: carers assessments

7.16 A carer who provides a substantial amount of care on a regular basis has the right to request an assessment of their own needs. Under Section 12AA of the 1968 Act (relating to carers of adults) and Section 24 of the 1995 Act (relating to carers of children) the authority must comply with any such request. In addition the authority

has an obligation to inform the carer of their right to request an assessment under section 12AB of the 1968 Act and section 24A of the 1995 Act.

7.17 An effective carer's assessment rests on an open and honest conversation between the professional and the carer, with a strong focus on personal outcomes. Sections 4 and 5 of this document provide general guidance on how to conduct assessments – and much of this is equally relevant to carers' assessments.

7.18 The characteristics of the carer are relevant when deciding whether they are providing a substantial amount of care on a regular basis. For example they might be in poor health themselves or they may have other responsibilities such as school-age children. A carer's choice to provide care should also be taken into consideration.

7.19 Preventative support is more cost effective than support provided in a crisis or emergency, as well as being more suitable for the carer and the person they care for. Carers who do not meet the threshold for a carer's assessment can still benefit from low-level preventative support and carers who feel confident enough to access low-level support are more likely to take up further support should their caring role increase in the future. In some cases the carer may not wish to undertake a full assessment. Carers need not, therefore, undertake a formal assessment in order to receive some kind of support from the authority. It is still important that the local authority provides the carer with information on local support, even if an assessment does not identify statutory needs, or if an assessment is not required to be carried out at all.

Further guidance and hyperlinks:

For further guidance on the legal basis and policy aims for carer's assessments see the Scottish Executive's Community Care and Health (Scotland) Act 2002: New Statutory Rights for Carers: Guidance

http://www.sehd.scot.nhs.uk/publications/cc2003_02full.pdf

Scottish Government (2010) Caring Together: The Carers Strategy for Scotland 2010 – 2015

<http://www.scotland.gov.uk/Publications/2010/07/23153304>

Further guidance: assistance and capacity

7.20 Under Sections 6 and 17 of the 2013 Act the authority must take reasonable steps to facilitate assistance which will help the supported person to play a full part in their assessment, to understand the various choices available to them and to decide how and what ways they would like to arrange their support. This is to support reasonable, practicable steps to maximise the choice and control available to the supported person. The relevant provisions within the 2013 Act are not intended to *impose* assistance on the supported person. Neither are they intended to create the opportunity to develop alternative proxy decision-making powers.

Assistance with understanding and/or making decisions

7.21 The supported person may find it difficult to make a decision on their own however with some additional support they may be able to make the necessary decisions associated with the assessment, support planning process or the provision of support. Where the authority believes the supported person would benefit from further assistance they should first consider the full range decisions that will have to be made during the course of the supported person's pathway. Though every assessment will be unique, the main decisions are likely to cover:

- decisions about the outcomes that the supported person wants to achieve;
- decisions about the steps that the supported person wants to take to achieve those outcomes;
- decisions about the means by which the supported person will receive their support;
- the range of reactive or management decisions that come with the on-going day to day provision of support; and
- any further decisions about needs, outcomes and plans associated with the review of a supported person's needs.

7.22 The authority must then take reasonable steps to enable the supported person to make the relevant decisions. The authority should exercise judgement in deciding whether the supported person requires such assistance. Where the authority decides that additional assistance *is* required they must take reasonable steps to identify a person or persons who can provide some extra assistance to the supported person. After this step (but only with the supported person's agreement) the authority should then involve the relevant individuals.

7.23 Where a supported decision-making arrangement or a "circle of support" is being considered the agreement of the supported person to the arrangement is paramount. The supported person must be invited to agree to any arrangement whereby another individual or group of individuals is/are being invited to provide them with assistance.

7.24 It is important that the person who is providing any assistance is *able* to provide that assistance. While there is no requirement for the person to have professional qualifications in supported decision-making they should have an understanding of the type of assistance required and the limits and boundaries of what is meant by assistance. In other words, they should be aware:

- of their role and the limits of their role; and
- the fact that their role is to help the supported person to make decisions and not to make decisions on the supported person's behalf.

7.25 Only guardians or attorneys appointed under the relevant legislation have the power to make decisions on another supported person's behalf. On certain occasions it may be reasonable to predict that the supported person's condition will deteriorate over time such that they will lack capacity to make decisions. The authority should take steps to make the supported person and their family aware of the option to apply for power of attorney.

Assistance with communicating decisions

7.26 Assistance to make decisions and assistance to communicate decisions are two distinct forms of assistance, and they are treated as such by the 2013 Act. Where the person requires assistance to communicate decisions the supported person may require some additional support from, for example, an interpreter or a speech and language therapist, or from a family member or friend. If so, the authority must take all reasonable steps to identify other people who can help the supported person to communicate their decisions. The authority should take steps to obtain the supported person's agreement before they arrange any assistance for the supported person.

Guidance where the supported person lacks capacity

7.27 Where the supported person has a guardian or attorney and where that proxy has the necessary powers the guardian or attorney should be supported to make the relevant decisions in relation to the person's assessment, the support plan, the provision of choice in relation to the person's support and the support itself. The authority should ensure that the proxy is:

- fully involved in the assessment;
- supported to collaborate with the professional; and
- supported to make informed choices about the supported person's support.

7.28 The authority may have doubts or questions about a supported person's capacity. If so the relevant professional should seek assistance from a Mental Health Officer. Where the authority concludes that an application for guardianship would be appropriate they should discuss this with the supported person's family or others who may have an interest in the supported person's care and support. The authority can also apply to the court for a guardianship order.

Further guidance: complaints

7.29 The authority should inform the supported person that if they experience difficulties with any aspect of their assessment they should in the first instance try to resolve matters with their social work and/or health professional. Local support organisations may have a role to play in supporting users and providing additional support and information. Again this should be made clear to the supported person. The authority may also need to consider whether the person has a right to independent advocacy.

7.30 In the event that informal discussions cannot resolve an issue the authority should make the person aware that they can make use of the local authority's complaints procedure. The person should be advised that in relation to complaints about any action, decision or apparent failing of the local authority they also have recourse through the Scottish Public Services Ombudsman once all other avenues have been exhausted.

Further guidance and hyperlinks:

Chapter 4 of the AWI Act Code of Practice for Local Authorities contains further guidance on the relevant AWI powers and duties and how these relate to the assessment and support planning process.

<http://www.scotland.gov.uk/Publications/2008/03/20114619/17>

Institute for Research and Innovation in Social Services, *Leading for Outcomes: Dementia*

<http://www.iriss.org.uk/resources/leading-outcomes-dementia>

Communication and Assessing Capacity- A Guide for social work and health care staff

<http://www.scotland.gov.uk/Resource/Doc/210958/0055759.pdf>

Powers of Attorney and Guardianship-Office of the Public Guardian (Scotland)

<http://www.publicguardian-scotland.gov.uk/>

Mental Welfare Commission for Scotland – Good Practice Guides

<http://www.mwcscot.org.uk/publications/good-practice-guides/>

The New Mental Health Act – A Guide to Advance Statements

<http://www.scotland.gov.uk/Resource/Doc/26350/0012826.pdf>

SECTION 8: ASSESS (PART 2)

THE DUTY TO PROVIDE CHOICE AND THE FOUR OPTIONS UNDER THE 2013 ACT

Introduction

8.1 After it has identified the person's needs in collaboration with the adult, child/family or carer the authority is required to offer four options in relation to the relevant support identified at the assessment stage. The four options provided under the 2013 Act are:

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

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, 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.

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, 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.

8.2 All of the choices must be described to the supported person. A key challenge for the authority is how to relate the options to the supported person and how to make them "come alive" to the supported person. Information and support services and the relevant legal duties on information, support and advocacy play a vital role at this state. See section 6 for further guidance on information and support.

Option 1: Direct payment

8.3 Option 1 is a direct payment. The authority should ensure that the supported person understands what a direct payment is and how it might be used. It should take steps to provide the necessary training and awareness raising to its own social work workforce to ensure that they are aware of and trained in, the nature and effect of a direct payment, the purpose behind a direct payment and the flexibility and responsibilities that come with direct payments. It should take steps to support their workforce to engage with the philosophy behind direct payments and their potential application for a wide range of individuals and circumstances.

8.4 There are certain key points that the authority should take account of when providing the direct payment option:

- The authority should be aware of and be able to explain the key characteristics of a direct payment. For instance, under a direct payment the supported person - or an organisation or person identified by the authority (under a “third party” direct payment) - receives a sum of money into a bank account. The supported person, either on their own or with support, can then purchase the support that they wish in order to meet their personal outcomes.
- The authority should ensure that the relevant local guidance or procedures work to assist the person to use the available financial resource in a variety of ways. In other words, to use it in any way provided that it will secure the provision of support agreed with the professional and provided that it meets the outcomes contained in the support plan.
- The decision to become an employer will only be available under the direct payment option. However, the authority should make it clear that the supported person can also use their direct payment to purchase a range of services that might otherwise be available under Options 2 to 4. For example, a direct payment can be used to purchase services from a registered care provider, from the local authority itself or from another local authority. In other words the direct payment is not only a route to employing personal assistants.
- A direct payment is not a benefit and nor is it a gift. It is a means to meet eligible needs. Its ultimate purpose is to meet the eligible needs of the supported person. As such, it should relate to the person’s support plan. The direct payment should be used in flexible ways which relate to the outcomes set out in the support plan.
- Of the four options available under the 2013 Act the direct payment, if constructed and developed on a sound basis, carries the greatest level of flexibility and responsibility. The authority should make this point clear to the supported person. It should be transparent but it should also be supportive, explaining the additional support and information that can “make the DP work” for the supported person.

Means testing for direct payments

8.5 The authority may assess a direct payment user’s ability to contribute to the cost of securing their support. If the authority decides to carry out such a means test they must do so before the direct payment is made or as soon as possible and no later than one year after the direct payment has been made. If the authority determines the direct payment user’s requirement to contribute to the direct payment and the means test has happened after the direct payment has been made, the local authority may make arrangements to recover some or part of the direct payment from the direct payment user.

Payment net or gross

8.6 The authority can arrange for the direct payment to be paid in instalments or in a lump sum payment. Where a person is eligible for a charge towards their support the direct payment can be made on a “net” or a “gross” basis, i.e. the charge can be removed prior to the provision of the monthly direct payment or following the provision of the monthly payment. The supported person may request the payment be made gross. In this circumstance, the local authority should give this request full consideration, taking into account the direct payment user’s reasons and circumstances behind this request prior to a decision being made. If the authority decides to pay the direct payment gross it will pay the relevant amount to the direct payment user and the direct payment user will pay the local authority any contribution required. If the authority refuses to pay direct payments on a gross basis they should inform the supported person as to the reasons why.

Third party direct payments

8.7 The supported person can ask for their direct payment to be paid to a third party and administered on the supported person’s behalf. Under a third party payment the authority should take reasonable steps to ensure that the supported person remains in control of the payment and the supported person remains responsible for the direct payment. It is important that the role of both the supported person and the third party are made clear to the supported person and that there is evidence that all parties understand their responsibilities e.g. signed mandate or user agreement. This can help in the event of problems occurring at a later stage.

8.8 The authority should satisfy itself that the relationship between the supported person and the third party has been discussed and agreed before the package begins. The authority must also be satisfied that the supported person is aware that they can receive the payments direct if they wish.

8.9 The authority should ensure that the third party direct payment facilitates choice and control for the supported person. Third party direct payments are a flexible alternative where the supported person does not wish to take on the additional money management responsibilities. But the supported person should be firmly in control. A third party arrangement should not lead to a switch from dependence on the local authority to dependence on a third party.

Responsibilities that come with a direct payment

8.10 There are certain additional responsibilities that come with a direct payment. The local authority should explain those responsibilities to the supported person, relatives and relevant circles of support where applicable, but they should also explain the additional support and information that the person can receive in order to manage their payment. There is no specific requirement to do so, but it would represent good practice to explain the following responsibilities:

- to use the payment to meet the outcomes within the support plan;

- to report back in a proportionate and reasonable way on how the funding is being spent; and
- where the supported person chooses to employ a Personal Assistant, the responsibility to be a good employer and the responsibilities to discharge the range of additional responsibilities that come with being an employer.

8.11 The authority should make the supported person aware of further sources of information which can help them to understand their responsibilities.

Flexible use of direct payments: the choices available to a supported person under a direct payment

8.12 The authority should take steps to ensure that the supported person can use their direct payment in *any way* provided that the support purchased via the payment is in line with the assessment and support plan, meets the supported person’s “eligible need” and is within the criminal and civil law.

8.13 Typically, direct payments have been understood as a route to employing a personal assistant. However, a direct payment can also be used to purchase a very wide range of things. For instance:

- a service from the local authority or from another local authority;
- a service from a provider organisation in either the voluntary or private sector;
- a product which can help to meet the supported person’s needs;
- a short break or respite of one sort or another; and
- anything else which will help to meet the supported person’s needs and the outcomes in the support plan.

8.14 This flexibility is supported by the legal meaning of the term “services” as provided in the core assessment and service duties. **The 1968 Act uses the language of community care service and the 1995 Act refers to a range and level of services. This can encompass any form of support which will meet the person’s needs. It need not be restricted to the provision of a service in the form of a home care service or a day care service (though those are perfectly acceptable examples of a community care service). It can and should extend to any intervention or purchase which meets the needs and outcomes of the supported person.**

Direct payments: key information that should be provided to the supported person

8.15 Table 8 outlines the main steps that the authority should take in order to ensure that the person is provided with the key information in relation to the direct payment option.

Table 8: Key information in relation to the direct payment

Key information that should be provided to the supported person	Why is it important to inform the person
Responsibilities associated with the direct	The 2013 Act includes a

<p>payment</p> <p>The authority should ensure that the person is made aware of the general responsibilities that come with a direct payment arrangement. This includes the importance of using the funding provided via the direct payment to meet the supported person’s assessed needs and agreed outcomes.</p>	<p>general principle on informed choice. As part of this, it is important that the supported person is aware of the responsibilities and flexible opportunities that might stem from a direct payment.</p>
<p>Support and information</p> <p>The authority should ensure that the person is made aware of all relevant support and information services. This should include services that provide additional advice about the relevant direct payment responsibilities along with specific support and advice on employing personal assistants.</p> <p>For further guidance on support and information services in relation to all 4 options see section 6.</p>	<p>It is important that people have access to sources of information and support beyond their local authority social worker, including peer support options. This is because studies have shown that direct payment arrangements are more likely to work when the person has the right support and assistance from others.</p>
<p>Supported person agreements</p> <p>Supported person or user agreements provide a proportionate and effective means by which to develop a “contract” between the two parties. The authority should set up arrangements for such agreements as part of their direct payment schemes. The formal nature of supported person agreements provides a realistic and factual contract between the two parties as to how the arrangement will be taken forward. In addition, it ensures that both parties are aware of their respective responsibilities. The Supported Person agreement should cover all of the key items referred to in this table. It should include commitments relating to both parties and not simply the supported person.</p> <p>Example responsibilities that can be outlined in the Supported Person agreement are:</p> <p>For the authority:</p> <ul style="list-style-type: none"> • Responsibility to direct the supported person towards information and support services available in the local area • Responsibility to act in a proportionate and reasonable way if/when considering terminating a direct payment 	<p>A direct payment brings with it a range of additional responsibilities for both parties. It can help to ensure good planning, including contingency planning. It can help to improve the quality of information provided to the supported person at the outset.</p>

<ul style="list-style-type: none"> • Responsibility to provide sufficient notice of any changes to general direct payment arrangements. <p>For the supported person:</p> <ul style="list-style-type: none"> • Responsibility to take forward safe and effective recruitment • Responsibility to provide appropriate reports on use of the direct payment • Responsibility to inform the authority when things go wrong 	
<p>Safe and effective recruitment</p> <p>The authority should inform the person of the importance of safe and effective recruitment. It should ensure that the person has access to the necessary additional support and information services to help them to discharge this role.</p> <p>The type of information that should be imparted to the supported in relation to safe and effective recruitment includes the importance of:</p> <ul style="list-style-type: none"> • taking up references • advertising and interviewing • ensuring that the relevant processes are undertaken with respect to the Protecting Vulnerable Groups (Scotland) Act 2007 • safe induction and training • probationary periods • staff management • staff appraisal • disciplinary procedures • obtaining employer’s liability insurance • obtaining employer’s indemnity cover 	<p>Safe and effective recruitment is vital to ensuring that the person recruits the right person with the right mix of skills. It also helps to ensure that personal assistants are employed by well informed and effective employers.</p>
<p>Contingency plans</p> <p>Where the person’s needs are likely to fluctuate the authority should discuss the appropriate contingency plans and the importance of effective arrangements to ensure the continuity of support.</p> <p>For further guidance see Section 9 in this guidance.</p>	<p>Things can go wrong across all of the four options under the 2013 Act. However, due to the nature of the direct payment option it is vital that the supported person is provided with the appropriate additional support to ensure that they do not feel “cut loose” when things do not go to plan.</p>
<p>Employment of close relatives</p> <p>Where the person wishes to consider employing a close relative, the authority should explain the</p>	<p>While it is possible for the supported person to employ a close relative in appropriate circumstances, the local</p>

<p>considerations involved and the discretion that the local authority holds to either agree or disagree to any such arrangement. The authority should make it clear that it retains a decision-making role in relation to allowing close relatives to be employed using state funded direct payments, and that such arrangements should occur only where appropriate. Further guidance on employing relatives see paragraphs 11.18 to 11.26.</p>	<p>authority retains to the discretion to agree or disagree to any such arrangement as it involves an important change in the relationship between the two individuals.</p>
<p>Monitoring and review arrangements</p> <p>The authority should ensure that all monitoring arrangements are explained to the supported person. The authority should discuss with the supported person the information they will be expected to provide and the way in which monitoring will be carried out. The direct payment arrangement should not begin until the supported person has agreed to any conditions which are necessary for monitoring purposes.</p> <p>For further guidance on monitoring of direct payments see Section 11 “provision of support”.</p>	<p>Monitoring arrangements should be effective but they should also be proportionate.</p>
<p>Terminating Direct Payments</p> <p>Under the Direct Payment Regulations 2014 the authority can terminate the direct payment under certain circumstances. The authority should make this clear to the supported person at the outset.</p>	<p>Direct payments remain public funding and are to meet assessed needs and so authorities retain powers to end direct payment arrangements. However, such powers should be used with great care and direct payments should only be terminated where there is a clear justification.</p>

Further guidance: contingency plans

8.16 Where appropriate the authority should take steps to support the person to plan ahead and make arrangements whereby a designated person or group of people - circle of support, trustees - can be given permission by the supported person to take over during a period when the supported person is unable to manage.

8.17 A statement in advance is one method to ensure that contingency plans are put in place. For example a person could write down what a support worker should do if they have a crisis, write guidelines for how to assess risk or provide a list of useful telephone numbers that the support worker could phone for advice or information if necessary. This can ensure that if the supported person becomes ill they retain as much control and choice as possible of the arrangements and are

able to regain full control if they become well again. This may help prevent the supported person reverting to local authority provision unless they wish this to happen.

8.18 The authority should ensure that it has the necessary systems and processes in place to ensure continuity of funding during times of crisis. For example where the person chooses to use their payment to employ their own staff the authority should take steps to fund Personal Assistant (PA) employer packages during short stays in hospital, where appropriate. This will enable the supported person to continue to pay employees for the initial four weeks of any hospital stay. The authority should encourage PA employers to include arrangements for hospital admission within the employment contract and terms and conditions. In all circumstances the statutory requirements governed by employment legislation must be applied.

8.19 The authority should discuss what arrangements the supported person wishes to make for emergencies. If the authority becomes aware that the person is unable to secure support to meet their needs the authority's responsibility to arrange emergency support for that person is the same as if the supported person chooses Option 2 or 3 under the 2013 Act. The authority may decide to step in, albeit temporarily, and arrange the necessary services but it should first consider providing assistance to enable the person to continue to manage their own support. Examples might include making arrangements with independent agencies for emergency cover or recruiting personal assistants who are prepared to work additional shifts at short notice when necessary. Where difficulties arise that were not anticipated it is helpful if the supported person knows they can contact a named individual in the local authority or a local support service whom they can ask for help. Such contingencies should form part of the user/supported person agreement.

Further guidance and hyperlinks:

For further guidance on direct payments and the Protecting Vulnerable Groups scheme, consult the Scottish Government's "Guidance on the interaction between Self-Directed Support and Protecting Vulnerable Groups Scheme":

<http://www.scotland.gov.uk/Publications/2011/08/04111811/0>

National Chartered Institute of Public Finance and Accountancy (CIPFA) good practice guidance

<http://www.cipfa.org/policy-and-guidance>

Scottish Personal Assistant Employers Network

<http://www.spaen.co.uk>

Self-directed Support Scotland

<http://www.sdsscotland.org.uk/>

Option 2: “Directing the available support”

8.20 Option 2 is an important addition to the options available to supported people. It describes an arrangement where the supported person selects the support that they wish and the authority, or subsequently a provider acting under the person’s direction, makes the relevant administrative arrangements on the supported person’s behalf.

8.21 The purpose of Option 2 is to facilitate greater choice and control, making it easier for people to choose the provider of their choice, with the authority (or subsequently the provider) the servant of the support person, making arrangements on their behalf. The authority should use Option 2 to widen the flexibility offered to supported persons to the maximum possible extent. It should make use of Option 2 to provide a route to greater choice and control for those who want to take greater control over their day-to-day support but are not willing or do not feel ready or able, to choose the direct payment option. The authority should take as flexible an approach as possible to Option 2, ensuring that it is delivered in line with the policy aims which underpin Section 1 and 4 within the 2013 Act.

8.22 The authority should develop a flexible range of options under Option 2 in line with the policy intentions described in Section 4 in the 2013 Act, the accompanying Policy Memorandum and this guidance. As with the direct payment option, the provision of support under Option 2 should be flexible, as supported by the provisions in the legislation. **Again, a “service” should be interpreted as meaning any intervention which helps to make a positive difference to the person’s assessed needs, delivered under the broad concept of social welfare.**

8.23 The authority should not seek to limit flexibility beyond what is allowed under procurement law. The key limitation is that a person cannot use Option 2 in order to employ their own staff. Unlike the direct payment there is no requirement for the funding to be provided directly to the supported person as a cash payment. The budget provided to the person should be operated as a virtual budget. The resource can remain with the local authority or it can be delegated to a provider to hold and distribute under the supported person’s direction.

Case study example: Individual Service Fund

Option 2 may be provided as an “Individual Service Fund”. An Individual Service Fund is a sum of money managed by a service provider on behalf of an individual. As with a direct payment, the funding should be used to meet the needs identified at assessment and the personal outcomes outlined in the support plan. It can include services purchased from other providers.

8.24 The authority’s arrangements may be operated as a formal framework agreement or other similar arrangements, though there is no requirement to do so within the 2013 Act, nor detailed restrictions imposed on the local authority as to how flexible and creative it wishes to be in relation to Option 2. The arrangements should be flexible and inclusive. Flexible - in that they should not seek to create or re-impose barriers to choice and control. Inclusive - in that they should not seek to exclude particular types of service provision or particular providers from the full

range of supports available to the person. For example, the arrangements should allow for flexibility in budgeting, allowing sufficient over-and under-spends within the individual's package of support. The authority – and providers acting as custodians of the person's budget under the person's direction - should not seek to impose restrictions or limitations over and above any that are reasonably defined in the person's assessment or support plan.

8.25 For further guidance on the subsequent provision of support under Option 2 arrangements please see section 11 of this guidance.

Option 3: the local authority arranges support for the supported person

8.26 Under Option 3 the authority in collaboration with the supported person selects the appropriate support and then makes arrangements on the supported person's behalf. In contrast to Option 2, the supported person steps back somewhat. The person actively chooses to leave many of the detailed decisions to the authority. This may be described as "arranged service provision" or "direct services". It differs from Option 2 in that the local authority provides or arranges services on the supported person's behalf. The supported person does not have direct, on-going or day-to-day responsibility for planning and controlling how the available resource is used.

8.27 Nevertheless under Option 3 the principles of choice and control, collaboration and involvement should continue to apply. The authority, through its approach to commissioning and procurement of services, should seek to ensure that the services provided are as flexible as possible, are sufficiently personalised and are ready to adapt to the desires of the individuals who use them. This should involve the necessary workforce education and development, ensuring that those who provide care and support do so in line with the general principles in the 2013 Act.

Option 4: "mix and match"

8.28 Option 4 - a combination of two or more of the options - recognises that some people will be content to take on some but not all of the control associated with one or other of the self-directed options. This is a "mix and match" approach to ensure maximum flexibility in the options available. This option may be attractive to people who would like to experiment with the direct payment or individual service fund for a small aspect of their support or for a small portion of their outcomes.

The application of the 2013 Act & local authority discretion in relation to the 4 Options

The form of support and its relevance to the 4 Options in the 2013 Act

8.29 The *form of support* is important in considering whether or not the 2013 Act's duties apply. The 2013 Act applies to support which a local authority decides to provide following an assessment under section 12A or 12AA of the 1968 Act and

Section 22 of the 1995 Act. However there are certain instances where the form of support may be relevant to deciding whether the 2013 Act duties apply. This section provides additional guidance to authorities in order to help them to decide which forms of support are relevant to the 2013 Act and which are not.

Social welfare services provided to adults in connection with criminal justice orders

8.30 In relation to adults the 2013 Act duties apply to community care services which a local authority decides are called for as a result of an assessment completed under Section 12A of the 1968 Act. Community care services means all services which a local authority provides under Part 2 of the 1968 Act (promotion of social welfare) or sections 25 to 27 of the 2003 Act. This covers the majority of forms of support provided by social work departments however the definition specifically excludes services or forms of support which local authorities provide in connection with criminal justice orders, services connected with visiting people who are receiving assistance and services connected with burials and funerals. An example is a drug treatment and resting order (DTTO). Under a DTTO, the offender is required to submit to treatment by or under the direction of a suitably qualified person with a view to the reduction or elimination of the offender's dependency or propensity to misuse drugs. The order also requires the local authority in whose area the offender must reside to appoint a supervising officer to supervise the offender and report back to the court.

8.31 The authority in such cases is acting as a result of a requirement in the drug treatment and testing order, but is also exercising functions under section 27 of the 1968 Act (supervision and care of persons put on probation or released from prisons etc.). However, the definition of 'community care services' in section 24(1) of the 2013 Act excludes services provided under sections 27-27B, 28 and 29 of the 1968 Act. That means that criminal justice-related social services provided under section 27 of the 1968 Act are not 'community care services' within the meaning of section 5 of the 2013 Act to which the duty to offer the four options apply.

8.32 This means that the authority is not placed under an obligation to offer the four SDS options where the form of service is tied to a specific criminal justice order. This reflects the fact that the form of service will be by its very nature prescriptive and controlled. This is not to say that individuals in such situation cannot be provided with the four options in relation to wider community care needs that they may have.

Instances where the form of support cannot be delivered via any of the four options in the 2013 Act

8.33 A further consideration for the authority is whether the particular form of support which has been decided is necessary is incapable of being delivered through the 2013 Act's four options. For example, instances where the nature of the support means that it cannot be delivered through an alternative self-directed option such as a direct payment or individual service fund. In relation to support to children and families, if removal of a child to foster care is capable of being 'support' under section 22, then clearly the foster care itself is something which cannot be purchased by means of a direct payment or converted into a single budget.

Similarly, if the authority's support to a family in crisis is the social worker's intervention with the child/family to deal with complex safeguarding situation then clearly that is a form of support which cannot be converted into a direct payment or individual service fund and so those options are simply not available.

8.34 The authority should be aware that all other forms of support are relevant to the SDS Act 2013. The 2013 Act and Direct Payment Regulations 2014 have been developed so as not to exclude entire groups of individuals. This is to ensure that the authority retains maximum positive discretion to offer the choices and to take advantage of the flexibility offered by self-directed support. For example the authority may encounter situations where one particular aspect of the person's support may not be relevant to the four options but other aspects may be relevant. If so, the authority should discuss the alternative SDS options in relation to the forms of support which *are* relevant to the provision of choice.

Additional legal restrictions/discretion in relation to direct payments

Restrictions on the authority's ability to offer the direct payment: long-term residential care

8.35 Under the Direct Payment Regulations 2014 the only circumstance where the authority is not permitted to offer a direct payment is in relation to the provision of long-term residential or nursing care to persons of any age. This means that the authority cannot provide a direct payment to any person of any age where the support required by the person is long-term residential care.

Circumstances where the authority has the discretion to refuse a direct payment

8.36 The direct payment option (Option 1 in the 2013 Act) involves some important responsibilities for the supported person. The person takes on direct control of the social care resource. The person assumes day-to-day responsibility for arranging and overseeing their care and support.

8.37 Social care assessments will be completed in a wide variety of circumstances. This means that there may be specific circumstances where in the authority's considered judgement it is simply impossible for the direct payment option to meet the needs of the supported person and, at the same time, be assured that the person's safety is not being further jeopardised by the direct payment. The Direct Payment Regulations 2014 specify that a local authority is not required to offer the option of a direct payment where it is likely that the making of a direct payment will put the safety of the supported person at risk. Appropriate examples whereby the authority can use this "duty of care" discretion are provided below:

- where the child's safety will be put at risk by having a direct payment because it is clear that the money will not be used to purchase the support the child needs;

- where the assessment is conducted at an acute point of “crisis” to the extent that the person’s safety would be further jeopardised by the provision of a direct payment, and;
- where the adult is defined as an adult at risk under the Adult Support and Protection (Scotland) Act 2007 there is a protection order in place and there are specific circumstances that give rise to concerns about the person’s safety.

8.38 The test in relation to duty of care considerations and circumstances where it is appropriate to refuse the option due to these considerations, is a significant one. The authority should not depart from the policy intention and spirit of the 2013 Act without good reason. For example:

- it would not be appropriate for the authority to refuse a direct payment simply because the person’s disability means that it is a challenge (even a significant challenge) for them to manage the direct payment option;
- it would not be appropriate for the authority to refuse to provide a direct payment simply because the person has dementia or learning disability or any other disability which may require them to need extra support to make the direct payment option work, and;
- it would not be appropriate for the authority to develop internal policy guidance documents which define access to direct payments on the basis of general client group or disability alone.

8.39 In all instances where the authority concludes that it cannot provide a direct payment it should explain to the supported person why it is not appropriate at that point in time. It should explain that the person can request a review at a later date in order to return to the options. Where the circumstances that gave rise to the initial decision subsequently change the authority should return to consider the direct payment option alongside the other Options provided under the 2013 Act. Section 13 of the 2013 Act specifically requires a local authority to offer the person another opportunity to choose one of the SDS options whenever it becomes aware of a material change in that person’s circumstances.

Further guidance: children and families

Transition from children’s to adult’s support

8.40 For any young person the process of growing up involves the gradual taking on of responsibility for themselves. Parents can face challenges in supporting and preparing young people for an independent adult life. The transition to greater independence is rarely a single event, nor does it happen quickly. Families with disabled children often face additional challenges that may delay or limit the young person’s transition towards independence. The flexibility offered by self-directed options may offer advantages to the young person and their family. A direct payment or the opportunity to take control of their support may help the child/young person to take on greater responsibility right across their life, to be more

independent and to have greater control over their future. Alternatively, the "mix and match" approach (where the young supported person takes direct control over a portion of their package or to meet a small collection of outcomes) may offer an opportunity to build the young supported person's confidence in managing their own support. It may make sense to facilitate transitional arrangements whereby initially the young person manages only a small proportion of their support but takes on greater responsibility over time.

8.41 Throughout the assessment and support planning process the young person should receive the practical support that they need in order to help them to make the relevant decisions and manage their support. This may include assistance from parents and carers, independent advice and support or, in some cases, advocacy services. The young person's ability to manage may change as they gain experience. Where the young person or family decides to take *greater* control - for instance, to take a direct payment and employ their own staff, then additional local support services - the authority should ensure that they direct the young person and their family to agencies that assist with employment advice and payroll support.

Case Study example: John's story

Support for transition from child support into adult support

John is 20 and from birth was diagnosed with a complex learning disability and epilepsy. From the age of nine John received a short break and outreach service from Action for Children which was financed by Social Services.

This package of support was successful for several years. The three day a month short break service gave John the opportunity to have time away from home and continue to have his communication, development and wellbeing supported. This also gave John's family a break.

The outreach service was delivered as a four hour period one day a week. This outreach service increased John's opportunities to participate in community activities and supported John and his other family members participating in events within their own community.

As the transition stage to adult services approached, John's mother was faced with many challenges, so often faced by families with disabled children, which caused delay in securing an appropriate Adult Service tailored to John's specific needs.

During this period of transition John no longer accessed the services of Action for Children through Children's Services. Instead, John's mother took the opportunity to agree a Direct Payment arrangement with Social Services and with this purchased the same outreach support from Action for Children.

This provision of support provided John with much needed continuity with the opportunity to continue participating in activities within his local community. It also allowed Action for Children to assist in John's transition plan. The Direct Payment option allowed John's mother the opportunity to have time to continue sourcing an appropriate adult resource as her improved parental wellbeing, knowing John's

needs were continuing to be met, led to better involvement and co-operation with adult services.

The Direct Payment option employed by John's mother allowed her maximum flexibility in purchasing services that still met the outcomes set for John while the main outcome in securing a suitable Adult Service for John were explored.

Further guidance: carers

8.42 The 2013 Act imposes a duty on the authority to consider the conclusions from the carer's assessment. In considering this aspect the authority must consider whether the carer would benefit from some form of support to enable them to continue in their caring role. Section 3 of the 2013 Act then provides the legal basis for the authority to work with an adult carer in order to arrange some support for the carer. For young carers the basis is section 22 of the Children (Scotland) Act 1995, which will be replaced by the GIRFEC regulations outlined in the forthcoming Children and Young People (Scotland) Act 2014.

8.43 Support to a carer can mean a wide variety of things. It can mean access to universal services available in the community, referral to a known source of information and advice (for example, to a condition-specific organisation or to a carers centre) or the provision of further information in the form of booklets, websites, advice and guidance on coping with their caring role. Support in the form of information, advice, signposting, and other universal services is available to all carers whether or not a carer's assessment has taken place and is available to all carers regardless of whether their caring role is regular or substantial.

Support to carers out with the formal carer's assessment

8.44 Early preventative support helps to lessen any negative impact of a caring role. Working together, the carer and the professional can ensure better emotional and physical wellbeing for the carer by putting preventative support in place. The aim is to support the carer in circumstances such as the early stages of a caring role knowing that the caring will become more intensive in due course (for example, caring for a supported person just diagnosed with dementia) or whilst caring for someone whose condition is known to remain stable and low-level, but where the impact of the caring role on the carer means they require some support.

8.45 Preventative support can also mean arranging some form of funded services or support. Funded support to the carer can be of significant benefit to the carer and to the supported person, as when a carer is adequately supported in their caring role they may find it easier to continue to care. It can also lead to significant benefits to the statutory agencies responsible for care and support.

8.46 In deciding whether to provide funded services or support, the authority should consider carefully the impact of their decision. Without the contribution of the carer the authority or other statutory agencies would have to step in with higher levels of support, which would be considerably more costly. Senior managers should encourage professionals to exercise their own judgment when considering

the outcomes carers wish to achieve and a preventative approach to supporting carers.

Statutory support: the choices that must be made available to the carer

8.47 If as a result of the assessment the authority decides to provide funded support it must offer the carer choices as to how the carer wishes to receive that support. The authority must provide the carer with the various options within the 2013 Act and it must give effect to the carer’s choice. As with support to the disabled or older person, the authority must inform the carer of the amount of support available under each of the options. If the carer does not wish to make their own decision about how they will receive any support (and assuming that they still wish to receive support) then the authority should continue to arrange support on their behalf.

Information and additional advice and support to carers

8.48 The authority must collaborate with the carer in relation to their assessment. They must take steps to ensure the carer can exercise informed choice, involve the carer in the assessment and in the decisions around any support to them in their own right and take steps to ensure that the carer makes an informed choice. This means that they must provide the following:

- an explanation of the nature and effect of the various options under which they may arrange their carer support;
- information about how to manage that support;
- information about people or organisations, including independent organisations, who can provide assistance or information to the carer to help them to make decisions about the options (this might include general advice and information support services or it might mean more specialist advice from a carer’s organisation);
- information about how to manage their carer’s support; and
- in any case where the authority considers it appropriate to do so, information about independent advocacy services to help the carer to take part in their assessment, to navigate their choices and to arrange their carer support.

8.49 The authority will want to make the options meaningful and relevant to the carer. Table 9 provides some examples of what the various choices may mean in practice in terms of carer’s support:

Table 9: Examples of carer’s support under the 2013 Act

2013 Act option	Example
Direct payment	<ul style="list-style-type: none"> • A carer who lives in a remote rural area is feeling increasingly isolated and depressed. She has no friends or family living nearby and her nearest carers’ centre is miles away. The carer uses a direct payment

	<p>to pay for the installation of broadband and for a tablet computer. This means she can keep in touch with her family and friends through Skype and email, particularly her grandchildren who live overseas. She has also made friends with other carers on an online forum and now feels more connected and supported.</p> <ul style="list-style-type: none"> • A young carer who cares for his mother expresses that he has not been able to have the same opportunities as his peers. Whilst all his friends are learning to drive, he cannot because his mother cannot afford the cost and because of his caring role he cannot take on a part time job in order to earn extra money. He thinks that having a driving licence would be useful as the family could get a Motability car, which would help with a lot of the tasks around his caring role such as shopping and taking his mum to places. He also thinks that being able to drive would open up more job opportunities. The young carer uses his direct payment to pay for several driving lessons and the cost of the driving tests.
Directing the available support	<ul style="list-style-type: none"> • A carer has never had a break from caring. He would like to have a break of an afternoon each week to have a rest where he doesn't have to worry about the safety of the person he cares for. The carer receives a carer's short break voucher as a form of "virtual budget" and he uses this to purchase a short break. The authority arranges for an individual service fund to be set up to support the carer. This carer has always been very house-proud, but her husband has had a stroke and the level of care that she has to provide means that she is falling behind with housework and laundry, which is making her feel increasingly tired and depressed. The carer uses the individual service fund to purchase domestic help from an agency so that someone can come in and help with cleaning, ironing and other domestic tasks. The carer also uses the ISF to pay for a fortnightly visit from a care worker so that she can meet her daughter for lunch and have a break from caring
Arranged services	<ul style="list-style-type: none"> • After the death of his father, a carer is finding caring for his mother, who has dementia, emotionally draining and he is becoming very depressed. He is on a waiting list for NHS counselling services but has been told it may take a long time and his local carers centre does not offer this service. The authority arranges for the carer to attend a private counsellor to help him manage issues of bereavement and caring.

- A carer talks about missing out on making new friends as she never has time because of her caring role. She expresses an interest in attending an art class in a local authority community centre. The authority arranges for the carer to attend the class and arranges replacement care for the person she cares for once a week.

Case Study example: Isobel and John's story

Isobel cares for her husband who needs a lot of help with personal care. John does not want anyone other than his wife to help but she is exhausted trying to care for her husband and run the house. It is difficult to get time to do laundry, shopping etc. Following a carer's assessment the local authority provides Isobel with a budget of £40 per week to help with tasks that will enable her to concentrate on providing support to John, which is what she wants to do. The couple also receive support to have short breaks together of up to two weeks per year in accessible accommodation.² This has helped relieve the stress felt by Isobel and has improved their relationship.

Case Study example: Mr D's Story

Mr D described the positive impact for him as a carer and for his wife when they accessed SDS in relation to her support needs, articulating that SDS had "given him back his life" and "saved his life". He utilised SDS to employ a PA with the administration of employer responsibilities undertaken by an agency. The PA was an individual who was known and trusted by the family and with the right knowledge and skills to support his wife. Mr D described the first evening he left his wife in the company of the PA. He was able to pursue his own social interests for five hours, which had been an impossibility for a number of years. He returned home to find his wife relaxed and content with her PA. His wife was generally very agitated but with the right support from the right person she became very relaxed. This had been achieved through the use of SDS. Mr D identified the flexibility of SDS as the reason it was such a positive measure in his family's circumstances. He had no interest in becoming an employer but could still utilise a direct payment to employ as PA as the paperwork responsibility was undertaken by a company. With time the direct payment increased to reflect his wife's increased support needs.

Additional guidance and hyperlinks

Care Inspectorate Practice Guide: Involving Children and Young People in Improving Services

http://www.scswis.com/index.php?option=com_docman&task=cat_view&gid=533&Itemid=378#

² The short break funding is made partly under section 3(4) of the 2013 Act (as regards Isobel's break) and partly under section 12 of the 1968 Act (as regards John's).

Institute for Research and Innovation in Social Services, *Leading for Outcomes: Children and Young People*

<http://www.iriss.org.uk/resources/leading-outcomes-children-and-young-people>

Self-directed Support in Scotland website – Professionals

<http://www.selfdirectedsupportscotland.org.uk/professionals/>

Scottish Government (2010) *Self-directed support: A National Strategy for Scotland*

<http://www.scotland.gov.uk/Publications/2010/11/05120810/0>

SECTION 9: PLAN SUPPORT PLANNING

This section deals with support planning. It identifies the key requirements for a good support plan. It clarifies the choices that should be made available to a person as part of the support planning process along with the additional information and support that should be provided as part of this process.

General guidance on support planning

9.1 The support plan should be developed in line with the statutory principles in Section 1 of the 2013 Act and in line with this guidance. The plan should cover certain key aspects such as the personal outcomes which help to shape the plan, the resources (both financial and non-financial) which will help to meet those outcomes, the choices available to the supported person to arrange their support and all associated information. Table 10 provides some key ingredients, developed from the point of view of the supported person.

Table 10: - Support Plans: key ingredients

The people and things that are important to me	The main <i>risks</i> and how we will manage them	The <i>people</i> who can help me to achieve my outcomes
Where I can go for <i>information and support</i>	My personal outcomes	The <i>things</i> (knowledge, funding etc.) that will help me to achieve my outcomes
The things that I can do	How I will arrange my support	

9.2 The support planning process - the act of considering the outcomes and pulling together a plan - can make a significant difference to the person's life. In light of this the support plan should be developed in a collaborative way. A good support plan will demonstrate a link between the supported person's eligible needs, their wider outcomes and the support required to meet those needs and outcomes. It will be written in language that is meaningful and helpful to the supported person. It will be presented in a way that is engaging and helpful to the supported person as they embark on their pathway through support. It may include pictures alongside text.

9.3 The support plan may be developed in any type of format but it should be framed in such a way that it can be used as a living document. It should focus on what the person wants to achieve with the right help, rather than simply putting

arrangements in place to stop things from getting any worse. It should be capable of acting as a reference point for the supported person, the authority, the provider and, subject to the person's wishes, other important individuals in the person's life. The parties involved should be able to return to the plan, review the plan, add to the plan or make changes over time.

Further guidance and hyperlinks:

Institute for Research and Innovation in Social Services, *Reshaping care and support planning for outcomes*

<http://content.iriss.org.uk/careandsupport/assets/html/intro.html>

SECTION 10: CHOOSE THE SELECTION OF SUPPORT

This section deals with the provision of support across the four options contained in the 2013 Act. It provides guidance on “SDS-ready” approaches to commissioning. It provides guidance on some of the issues that may arise when the person chooses a direct payment and then chooses to employ a personal assistant.

Commissioning in the context of the 2013 Act

10.1 Access to the Options provided under the 2013 Act is of very little value if there is a lack of variety in the range of providers available or a lack of variety in the type of support on offer. It is a key responsibility of the authority to ensure that there is a sufficient range of choices available to all social care users regardless of whether the supported person selects Option 1, Option 2, Option 3 or Option 4 under the 2013 Act. This section deals with the strategic commissioning and procurement function of local authorities and the role that it can play in ensuring a sufficient range of choices across all four options available under the 2013 Act.

10.2 The authority should be aware of its duty under Section 19 of the 2013 Act to take active steps to promote a variety of types of support and a range of providers of support available to those who are eligible for care and support:

Promotion of options for self-directed support

Social Care (Self-directed Support) (Scotland) Act 2013, section 19

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

(2) For the purpose of making available to supported persons a wide range of support when choosing options for self-directed support, a local authority must, in so far as is reasonably practicable, promote—

- (a) a variety of providers of support, and
- (b) the variety of support provided by it and other providers.

10.3 ‘Providers’ in this context means any organisation providing relevant support to a supported person. This includes, but is not restricted to:

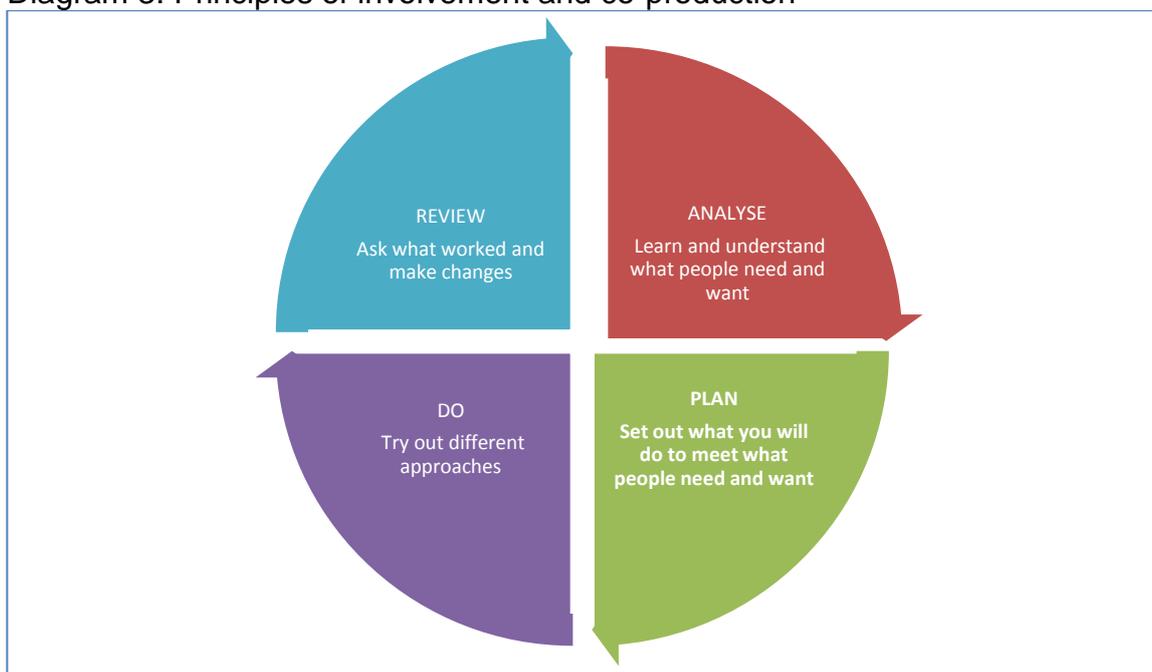
- in house (local authority) providers;
- Local Authority Trading Companies/ Arm’s Length Independent Organisations;
- voluntary sector (not for -profit) providers;
- private sector (for-profit) providers;
- social enterprises;
- small and micro-providers;

- user- led providers;
- employee owned co-operative providers;
- independent support organisations; and
- personal assistants.

10.4 The authority should view its commissioning role as being a facilitator of choice. This involves both providing information about choices and commissioning and procurement processes that allow people to have a real choice of provider and type of support.

10.5 Commissioning in the context of the 2013 Act is not simply about ensuring there is a transaction between a supported person and a provider. It should be set in the wider context of the local authority’s activity including community capacity building, prevention and universal services. Commissioning should shift from approaches based on “time and task” activities and towards the commissioning of support to meet individual outcomes. The authority should adopt an approach based on the principles of involvement and co-production following the model outlined below. It should be transparent and should publish its approach either as a separate document or as part of its commissioning strategy. The remainder of this section provides guidance on the four key steps in the commissioning cycle.

Diagram 3: Principles of involvement and co-production



Stage 1: Analyse

10.6 The supported person, the social work professional, independent support and advocacy organisations and support providers are all rich sources of data for building a picture of need and demand in an area. In stage 1 the authority/partnership should draw on a range of sources of evidence including:

- asking supported people in their area what service provision they need and want, or what is a good and not so good about current provision;
- asking those who have expertise in working with supported people to draw on their experience of what is needed or what is a good and not so good about current provision; this can include operational social workers, service providers; collective advocacy groups and independent support organisations;
- using assessment and review data to understand what choices people are making and what support they are using;
- drawing on learning from other local authority areas about what they found supported people need and want, and;
- drawing on published research or learning about effective support provision for supported people.

Case study example: Involvement and commissioning

‘You don’t know what you need until you know what you have’ Asset based community mapping (IRISS/East Dunbartonshire Council)

Facilitated by The Institute for Research and Innovation in Social Services (IRISS) a group of people who use services, practitioners and others got together to map their local area. They explored the places, people, support and services that helped them to manage their mental health and stay well. People who participated said that as well as helping them understand what was available in their community the process helped them to identify their personal assets, strengths and skills.

Community asset mapping promotes true co-production of data to inform commissioning. The process of asset mapping has additional benefits for the supported person.

Read more: <http://content.iriss.org.uk/community-supports-kirkintilloch/report.html>

Stage 2: Plan

10.7 The authority should use the information from stage 1 in order to plan what the variety of services might look like in future. This will provide information about gaps in support provision and evidence for influencing the development of new support or ways of delivering support.

Case study example: Involvement and commissioning

Co-producing services through public- social partnerships (PSPs)

The PSP process provides a structure to encourage co-produced service design. In this model the authority/partnership, a group of relevant organisations and service users come together to develop models for support and, in some PSPs, consider the best mechanism for this support to be funded. Running an effective PSP is not just about following steps in a process. Attention must be given to communication and developing relationships amongst partners.

Read more about a PSP in practice

<http://www.iriss.org.uk/resources/commissioning-foster-care-services-falkirk-council-public-social-partnership-approach>

Stage 3: Do

10.8 The authority should bring together the results of the analysis and planning stages into what they will actually do to facilitate the choices. The actions taken at this stage will be different depending on the needs of the local area. At a minimum this activity should:

- include clear information about the commissioning or de-commissioning of services;
- include clear information about the local authority's approach to ensuring sustainability of required services;
- make clear links between strategic commissioning and procurement (how the person will choose their support in practice);
- avoid procurement activities that work against choice (such as price controlled framework agreements), and;
- address the barriers to participation - particularly for small or micro-providers.

10.9 It may include allocating additional resources for specialist support service, providing specialist training or wider "community capacity building". The authority may wish to use alternative funding models to encourage innovation or financial incentives to meet gaps in support. In all cases, the authority should ensure clarity about the requirements placed on outsourced and in-house provider services.

Stage 4: Review

10.11 The final stage (review) is an opportunity to assess whether the commissioning process has worked. i.e. if there is indeed a range of providers and types of support available. Reviewing the information provides valuable data for the next commissioning cycle. It also provides an opportunity to assess whether the

process has helped supported people to meet their outcomes and have an improved quality of life.

Further guidance and hyperlinks:

Joint strategic commissioning

<http://www.jitscotland.org.uk/action-areas/commissioning/>

http://www.audit-scotland.gov.uk/docs/health/2012/nr_120301_social_care.pdf

Practical guidance on promoting diversity in support provision

<http://ipc.brookes.ac.uk/services/mac.html>

Public Social Partnerships (guidance and lessons learned)

<http://readyforbusiness.org/programme-offering/public-social-partnerships/>

Developing small and micro-provider markets

http://www.thinklocalactpersonal.org.uk/BCC/About_BCC/What_is_social_capital/Social_capital_topics/Micro_services/?parent=6638&child=5784

<http://www.communitycatalysts.co.uk>

Personalised commissioning

<http://www.ndti.org.uk/what-we-do/strategy-and-commissioning3/market-development/>

Testing commissioning models

<http://www.instituteforgovernment.org.uk/publications/testing-new-commissioning-models>

Procurement guidance Scottish Government (2012), *Guidance on the procurement of care and support services by public bodies in Scotland*

<http://www.scotland.gov.uk/Publications/2010/09/21100130/0>

SECTION 11: SUPPORT

THE PROVISION OF SUPPORT

Provision of support under option 1: Direct payments

This section applies to Option 1 (the direct payment) only. It relates to all client groups and individual circumstances where the person may receive direct payments (i.e. adults, children/families and carers/young carers)

Monitoring of direct payments

11.1 The direct payment will require distinct monitoring arrangements which differ in nature from the monitoring under Options 2 and 3. However, any monitoring arrangements should be proportionate and they should take account of the additional support and assistance required by the person along with the purpose, amount and nature of the direct payment. The arrangements should be sufficient for the authority to satisfy itself that the direct payment is meeting the supported person's needs but they should avoid the risk that the supported person is simply discouraged from the option due to the perception that it involves unnecessary and disproportionate monitoring burdens.

11.2 There are two distinct types of monitoring arrangements:

- welfare monitoring (ensuring that the supported person's needs are being met), and;
- financial monitoring (proportionate steps to satisfy that public funds are spent in line with the assessment, support plan and supported person's agreement).

Welfare monitoring

11.3 A direct payment is not a benefit, nor a simple cash payment. It is an alternative means by which to meet assessed social care needs. This means that financial monitoring on its own is not sufficient and the authority should not approach monitoring as a purely financial process. If the authority concentrates solely on financial monitoring, and if this monitoring is disproportionate and overly bureaucratic, this may discourage people from selecting Option 1 under the 2013 Act.

11.4. The welfare monitoring arrangements should be based around the supported person's individual needs and requirements. It should involve a conversation with the supported person about whether their needs are being met. It should be conducted on a collaborative basis, involving the supported person in determining whether their needs are being met. The social work function within the authority should design and oversee any monitoring in partnership with the finance function. The aims, objectives and approach to financial monitoring arrangements should be influenced by the values and principles in this guidance.

Financial monitoring

11.5 The authority should consider the relevant CIPFA guidance on financial monitoring of direct payments. The CIPFA guidance provides advice on efficient, effective and proportionate monitoring arrangements, focused on outcomes and, crucially, with as light a touch as possible. The authority should not pursue the supported person for receipts covering minimal transactions. The authority should allow a fair degree of flexibility to cope with the realities of life. The monitoring arrangement should not be an end in itself. Its primary purpose should be to ensure that the overall resource is being used broadly in line with the personal outcomes within the support plan and the assessed needs as determined in the assessment.

11.6 The authority should be transparent with the supported person in relation to the monitoring arrangements for direct payments. For example it should discuss the information the person will be expected to provide and the way in which monitoring will be carried out.

Integrated monitoring arrangements

11.7 It is essential that the two forms of monitoring – welfare and financial - are co-ordinated. The finance function within the authority should approach the task of monitoring in collaboration with social work and in line with the values and principles set out in this guidance. It is essential that that monitoring information is exchanged internally. It is important that all those involved in monitoring arrangements discharge their role in line with the values and principles and outcome-focused approach associated with self-directed support. Monitoring should be a means to an end - the end being that the person's outcomes are being met and the authority's funding is being used in line with those outcomes. Honest mistakes should not be penalised. So-called "stop payment" warnings should not be automatically issued when an administrative matter goes wrong. The supported person should be able to make reasonable adjustments within the broad scope of their support plan and assessment.

Employment of personal assistants using direct payments

11.8 A personal assistant is one of the providers who may provide support under Option 1 in the 2013 Act. This section provides guidance on some of the issues that may arise where a person chooses a direct payment and decides that they wish to employ a personal assistant.

The Protecting Vulnerable Groups (Scotland) Act 2007

11.9 The authority should develop effective arrangements to ensure that all prospective personal employers are aware of and able to discharge their responsibilities in relation to safe and effective recruitment under the PVG scheme. For detailed guidelines on the relationship between the two frameworks the authority should consult the Scottish Government's best practice guidance on the interaction between PVG and self-directed support (published 2011). This statutory guidance draws out some of the key points from the 2011 best practice guidance. Local authorities have a range of legal duties and powers in relation to child and

adult protection. The authority should take steps to support their staff to discharge those duties and powers alongside their duty to provide choice, control and flexibility to both adult social care users and children and families.

11.10 The authority should make the supported person aware of their responsibility under the PVG scheme to decide whether or not a prospective employee performing a particular role is doing regulated work and should be a member of the PVG scheme. The authority should inform the supported person that a direct payment user employing a personal assistant will always be a protected adult.

11.11 The authority should inform the supported person along with anyone who may provide support and assistance to the supported person about the supported person's responsibilities to ensure safe and effective recruitment. The authority should identify and implement an effective process that informs local protocols and complies with PVG and other relevant statute.

11.12 The PVG (and other Disclosure) checks should be used as an aid to sensible recruitment practice but they are not the only aspect of sensible recruitment practice. The authority should ensure that the supported person, along with anyone who may provide additional support to the supported person, is made aware that the PVG Scheme allows personal employers to satisfy themselves that an individual to whom they are offering regulated work is not barred from doing that type of regulated work. However they should also ensure that the supported person is made aware that scheme membership on its own does not mean that the individual is suitable to provide support. That decision must always be taken by the employer, informed by the content of their Scheme Record as well as other good recruitment and employment practice such as taking up references, developing job adverts which specify any specific support requirements, interviewing and conducting probationary periods.

11.13 Although the authority cannot seek access to PVG scheme membership records for personal assistants it should ensure that the personal employer understands the importance of scheme membership, the rules on seeking and sharing information and the risks of employing an unsuitable person. Direct payments should not be refused on the grounds that the authority does not have access to scheme membership statements. The support plan agreed between the supported person and the authority as part of the assessment process should set out how the key outcomes are to be met. Where the authority does not consider that a direct payment, or the way in which it will be used to purchase support, will deliver the agreed outcomes the supported person should be advised of the reasons. Under the Direct Payment Regulations 2014 the authority can refuse to allow a direct payment where the person's safety is at risk however the authority must have good reason to use this power and it should be specific to the person's individual circumstances.

11.14. The authority should ensure that the supported person is provided with a formal supported person/user agreement when they set up the direct payment. The use of such agreements can provide a safe and proportionate framework. They can demonstrate that a comprehensive explanation of safeguarding responsibilities has been given to the supported person in an appropriate format, and they can confirm

the supported person's understanding and acceptance of this. The authority should ensure that it develops the appropriate detail about PVG and safe and effective recruitment within their supported person/user agreements. As a matter of good practice the agreements should require the supported person to confirm their knowledge of PVG and their acceptance of the responsibility for managing any risk arising from their failure to access the available information.

11.15 Where the supported person employs a PA or several PAs through a direct payment the authority should ensure that the person's support plan is reviewed to assess how well outcomes are being met. If the authority has doubts about the ability of the supported person (or third party such as a guardian) to act as an employer or to manage risk then the authority may consider whether the direct payment is the appropriate mechanism to deliver agreed outcomes and can at any time request a review of the person's support needs.

11.16 A personal employer cannot make a referral directly to Disclosure Scotland. However, it is important that if a supported person has concerns about someone who is working for them, or who has worked for them, then they should raise the issue with the authority. The authority should make the supported person aware of this at the outset, and as part of any supported person/user agreement. The police can also be notified directly.

11.17 The authority should also make the supported person aware of the Disclosure Scotland helpline on 0870 609 6006 and Disclosure Scotland website www.disclosurescotland.co.uk

For further guidance on the interaction between direct payments/employment of personal assistants and PVG the authority should consult the Scottish Government's document *Guidance on the interaction between Self-Directed Support and Protecting Vulnerable Groups Scheme*
<http://www.scotland.gov.uk/Publications/2011/08/04111811/0>

Employment of close relatives/family members as personal assistants

11.18 Under the Direct Payment 2014 Regulations the authority can agree to a supported person employing a close relative or family member where appropriate. This flexibility is important as it provides the opportunity for such arrangements where it is the best or only solution to meeting the personal outcomes and needs for the supported person. This is in line with the general principles of the 2013 Act and the aims and intentions behind self-directed support which are to provide creative and effective solutions for supported people.

11.19 The Direct Payment 2014 Regulations provide a clear framework for such decisions, providing appropriate and inappropriate circumstances for the employment of family members. This framework involves the authority as a party to any decisions. This means that the authority retains the power to either agree or disagree to the employment of a family member, though this should be on the basis of whether the arrangement will or will not meet the assessed needs of the supported person and not on the basis of assumptions or a general policy stance in opposition to employing family members.

11.20 Under the Direct Payment Regulations 2014 *family member* means the spouse or civil partner of the direct payment user, a person who lives with the direct payment user as if their spouse or civil partner, the direct payment user's parent, child, brother or sister, aunt or uncle, nephew or niece, cousin, grandparent, grandchild, the spouse or civil partner of any of the above and a person who lives with any person listed above as if their spouse or civil partner. All other relationships fall out with the scope of the Direct Payment 2014 Regulations.

11.21. **All of the following requirements must apply in order for family members to be employed as personal assistants:**

- the authority, the family member (i.e. the prospective personal assistant) and the supported person must all agree to the family member providing support;
- the family member must be capable of meeting the supported person's needs via the employment arrangement (Note: the authority, with its statutory duty of care ultimately decides if the arrangement will meet the supported person's needs), and;
- any one of the following additional appropriate circumstances must apply:

- **There is a limited choice of providers:** "limited choice" refers to instances where the person's choice is narrowed by specific circumstances such as the person's location. The choice is limited in that while there may be a very small number of providers who meet the minimum requirements to provide care (they are competent to do so and the person's needs will be met) and the range of choices is not sufficiently wide to meet the person's needs and their own preferred form of support. For example, due to a person living in a rural location the choice of provider that can meet the person's specific range of needs is narrowed to one provider with a presence in the person's area. The supported person is not content to choose that provider.

- **The supported person has specific communication needs which make it difficult for another provider to meet their assessed needs**

- **The family member will be available to provide support at times when other providers would not reasonably be available**

- **The intimate nature of the support makes it preferable to the supported person that the support is provided by the family member**

- **The supported person has religious or cultural beliefs that make the arrangement preferable to the supported person**

- **The supported person requires palliative care**

- **The supported person has an emergency or short-term necessity for the support** - this refers to instances where the employment of a family member would

constitute a bridging solution until another care and support solution is found. An example would be where the authority conducts an assessment of a person's needs and the person also has a relative who provides unpaid care to them from time to time. The supported person would prefer to find a third sector provider who will meet their needs. While the relative has been happy to help out up to this point, all parties agree that it would be more appropriate for the relative to do so on a formal basis until the supported person can find a suitable third sector provider who can fit into the person's life.

- There are any other factors which make it appropriate, in the opinion of the authority, that the family member provides the support.

11.22 The creation of an employment relationship results in a formal employer/employee relationship. An important condition underpinning the employment of family members is the requirement for all three parties (the authority, the supported person and the carer) to agree to the employment of a family member in order for the arrangements to be put in place.

11.23 A family member is not permitted to provide support if the authority determines that either the family member of supported person is under undue pressure to agree to the arrangement or the family member is a guardian, continuing attorney or welfare attorney for the supported person. These two inappropriate circumstances can apply – and can thus prevent an employment arrangement – regardless of whether any or all of the appropriate circumstances apply.

11.24 Family members can only be employed to meet the assessed needs for the supported person. In other words, the decision to employ a family member relates to the specific provision of “statutory” or local authority funded support. The paid employment arrangement would relate only to the overall support that would otherwise be arranged by the authority. Alternatively, it could relate to:

- the relevant portion of the assessed needs in terms of support over particular time periods that would otherwise be arranged/provided by the authority.
- particular types of support that would otherwise be arranged/provided by the authority.

11.25 The key factor is that in all cases the local authority can only fund the formal support arrangement up to the level that they would ordinarily support as per the assessed needs for the supported person.

11.26 The authority should approach each request to employ a family member on a case by case basis. If the authority does not agree with the employment of a family member it should explain its reasoning to both the supported person and the prospective personal assistant employee. It should inform both parties of the additional support and information services and, where appropriate, their right to advocacy with respect to the decision. It should give the supported person an opportunity to query their decision with reference to the circumstances set out in the Direct Payment 2014 Regulations.

“When things go wrong”

Local authority powers to terminate a direct payment

11.27 Direct payments may be discontinued because:

- the supported person would prefer to revert to arranged services or an arrangement under Option 2 in the 2013 Act (individual service funds or similar arrangements);
- the supported person is no longer able to manage their direct payment with the available support;
- the local authority is not satisfied that the person’s needs are being met, or;
- the local authority has concerns over misspent funds.

11.28 Where the authority is considering terminating a direct payment it should seek to locate any discussion in the person’s assessed needs and the personal outcomes contained within the person’s care and support plan. The key consideration should be whether the support plan is capable of meeting the personal outcomes and assessed needs of the supported person. The authority should be transparent with the person. Where it concludes that a particular form of support will not meet the person’s needs and outcomes, the authority should seek to explain why this is the case and it should seek to collaborate with the supported person to develop alternative plans.

11.29 When terminating a direct payment the authority should keep the supported person informed throughout. Any decision to terminate a direct payment should follow a thorough discussion with the supported person, carer(s) and circle(s) of support.

11.30 The authority should inform the supported person of any decision or potential decision to terminate a direct payment as soon as possible. It should keep the supported person informed throughout the process. It is recommended that the authority set a minimum period of notice which will normally be given before the payments are discontinued, and include it in the information to be provided to people who are considering their options at the outset. The authority should bear in mind any contracts into which the supported person has entered.

11.31 The authority should not automatically assume when problems arise that the solution is to discontinue the direct payment. If the authority decides that it has the necessary powers to terminate the direct payment then it should discuss the alternative arrangements under Options 2 or 3 in the 2013 Act.

Short-term changes in the person’s support arrangement

11.32 Where it is necessary for the person to enter hospital for a period of time the authority should take a proportionate approach. The authority should continue the direct payment where the person enters hospital for a short period in order to allow Personal Assistant contracts to remain in place. This is to ensure invaluable continuity of care once the person is able to return home, avoid repeating the costly and time consuming recruitment process and the need for interim care and support

arrangements. This can also ensure that support can continue to be delivered in the temporary hospital setting.

11.33 Nonetheless in some instances it may be necessary for the authority to consider pausing the direct payment temporarily, for example:

- when a supported person enters hospital for a longer period, or because his or her condition improves, or;
- when a supported person is temporarily unable to manage the direct payment even with support, perhaps again due to fluctuation in his or her condition or the support available.

11.34 If so the authority should discuss with the supported person how best to manage any adjustment. The authority should inform the person as soon as possible if it is considering pausing a direct payment arrangement. It should avoid taking immediate steps without consulting the supported person and it should always be mindful of the impact of any decision to terminate a direct payment on the support needs of the person. It should set a minimum period of notice and it should include this in the information provided to the person within any supported person's agreement. Depending on their direct payment arrangement, the person may find themselves with on-going contractual responsibilities or having to terminate contracts for services, including possibly making employees redundant. The authority will wish to discuss the possibility that this may happen with the supported person before they begin the direct payment arrangement and agree how this would be handled.

Termination of a direct payment at short notice

11.35 It may be necessary in exceptional circumstances to discontinue a direct payment without giving notice. In considering this course of action the authority should first take account of the supported person's contractual responsibilities with a service provider or an employee. It will also have to take into consideration any outstanding financial liabilities the supported person may have. Before the direct payment arrangement begins the authority should make clear to the supported person the circumstances in which the payment might be discontinued with no notice.

11.36 The authority can take over the management of the supported person's arrangements in the interim. In considering whether it is practical, desirable and cost-effective to maintain the person's arrangements, the authority should bear in mind any contracts into which the person has entered. An example is that the local authority will not be able to take over a contract with a service provider which is not registered with the Care Inspectorate.

Seeking repayment of direct payment funds

11.37 Depending on the circumstances surrounding any decision to terminate a direct payment the local authority may need to decide if it is appropriate to seek recovery of unspent funds. The legislation enables the authority to require some or all of the money they have paid out to be repaid if the authority is not satisfied that it

has been used to secure the support to which it relates. The authority may also require repayment if the person has not met any condition which the authority has properly imposed or have been imposed by the regulations. The authority should take into account hardship considerations in deciding whether to seek repayments.

11.38 The authority should also consider how to recover unspent budget if the recipient dies. For example, if someone wishes to pay an agency in advance for its services, the authority should bear in mind that it may be difficult to recover money paid for services which were not in fact delivered. The authority should consider that before their death the supported person might have incurred liabilities which should legitimately be paid for using the budget. For example, if they had received services for which payment had not been made at the time of death. There may also be occasions where additional funding is required to settle liabilities in full.

Provision of support under Option 2

The following guidance applies to Option 2 in the SDS Act “directing the available support”. It applies to all circumstances where the supported person is provided with support under an Option 2 arrangement. This may include adults, children/families adult carers and young carers.

11.39 As stated in Section 8 of this guidance arrangements under Option 2 should be constructed in order to maximise the degree of choice, control and flexibility available to the supported person. This is because Option 2 arrangements are intended to provide additional choice and control beyond what would ordinarily be available under Option 3 (“arranged services”).

The general principles that should inform the provision of support under Option 2

11.40 The authority’s approach to Option 2 should be based around the general principles in the 2013 Act i.e. collaboration, informed choice and involvement. The authority should involve users and carers, key user and carers groups, support and information providers and providers in designing and delivering their Option 2 arrangements. It should ensure that the primary objectives for self-directed support – such as independent living and the personal outcomes approach – set the tone for their Option 2 arrangements and determine the way that they develop and deliver their approach to Individual Service Funds and other similar approaches. For example, the supported person should be involved in determining the specific agreement that is reached with the provider and the council, setting out how their support will be delivered and the key personal outcomes that will be supported by the arrangement. The person should be provided with clear, straightforward summaries of any three-way agreements underpinning the on-going management of their Option 2 arrangements. The supported person should be provided with the additional support and information that they need in order to actively manage their budget and support.

Strategic approach to Option 2

11.41 In developing its strategic plans for Option 2 the authority should take active steps to set up arrangements which clearly separate and distinguish Option 2 arrangements from the arrangement and provision of service by the authority either from within their own services or by arranging for bulk contracts with providers (i.e. “Option 3” in the 2013 Act).

The role of “the budget” in Option 2

11.42 Inevitably there will be some limitations on the degree of choice and flexibility available under Option 2. For instance, only a supported person with a direct payment can expect the degree of control associated with employing a support worker directly, i.e. employing a Personal Assistant. However, there are some important steps that the authority should take in order to provide an environment under Option 2 which encourages and supports greater creativity, flexibility and autonomy for the supported person as envisaged under Section 4 of the 2013 Act.

11.43 The arrangement should identify a financial resource alongside other non-financial resources within the person’s support plan. The supported person should be assisted to direct their budget and to choose the support options that will help to meet their support plan. The authority can transfer the financial resource to one or more providers on the supported person’s behalf. The person can then ask for the budget or portions of the budget to be directed to other providers within the overall framework of support.

Information and support

11.44 The authority should take steps to ensure that it is transparent with the person about the level of financial resource allocated to a person’s support. This is particularly important for Option 2 because the provision of the transparent budget itself can play a role in helping to underpin how and in what ways the person directs their support. The budget, clearly identified and transferred to the supported person and the provider, can be a supporting aid to the person. The authority should explain to the person the ways in which the person can use their budget to meet their assessed needs and to achieve the personal outcomes within their support plan. The authority should make the relevant providers aware of these key points and should take steps to ensure that after the funding is transferred to the provider, the person and not the provider continues to control their fund.

Control for the supported person

11.45 The authority should take steps to ensure that the adult, child or guardian/attorney is supported to “take the lead” and to be in control of their support under the Option 2 arrangements. It should be the person and not the provider or authority who should be seen as the commissioner of their own support. The arrangements should be designed and operated in such a way as to give the supported person greater control over their support compared to Option 3 under the 2013 Act and a practical means by which to exercise this control. The arrangements

should make it straightforward for the supported person to exercise control over their support, to secure their preferred support and to make adjustments to their support quickly and efficiently.

11.46 The authority, working in partnership with providers in their area, should take practical steps to ensure that the supported person is provided with the right level of additional support and information as early as possible and throughout the provision of support. This is in order to ensure that the supported person can actively manage their support plan under the Option 2 arrangements. The authority should consider the range of information and support services along with additional training, awareness raising and support that will need to be available in their local area in order to support the Option 2 arrangements and to assist people to manage their support in this way. In addition the authority may wish to consider the appropriate integrated budgeting and planning systems and software to ensure that the person can access their virtual budget and that they can know how and in what ways they are spending that budget.

Complaints

11.47 The authority should inform the supported person that if they experience difficulties with their support they should in the first instance try to resolve matters with their social work and/or health professional. Local support organisations may have a role to play supporting users and providing additional support and information. The authority should also consider whether the person has a right to independent advocacy.

11.48 In the event that informal discussions do not resolve an issue the authority should make the supported person aware that they can make use of the local authority's complaints procedure. They should ensure that they are aware that in relation to complaints about any action, decision or apparent failing of the local authority they also have recourse through the Scottish Public Services Ombudsman once all other avenues have been exhausted.

11.49 Where the person uses a direct payment to employ a personal assistant or to purchase a service from a third or independent sector provider and where they are unhappy with that service, the authority should make it clear to the supported person that they should address any complaints that they may have about the services they purchase to the service providers themselves and take up complaints about their Personal Assistants with the employee/s. Alternatively, a complaint can be made to the Care Inspectorate about any registered service or about the actions of the Care Inspectorate itself.

SECTION 12: REVIEW

Introduction

12.1 A significant change to a supported person's needs or a request for a further assessment should prompt a review of the person's needs. In addition, the supported person and/or the authority can also request a review of the choice of options under the 2013 Act.

The general approach to reviews

Review of the person's needs

12.2 The authority should take steps to ensure that social care reviews are conducted on a reasonable basis in line with the supported person's needs. The approach taken at review should be similar to the approach taken at initial assessment. In other words, it should be conducted in line with the principles of collaboration, informed choice and involvement. The review should be conducted on the basis of personal outcomes with a view to meeting assessed needs. It should involve a period of reflection on whether the choices made and the support provided is helping to meet the outcomes and needs of the supported person. The review should also consider whether the needs and outcomes have changed in the intervening period. This may require some adjustments to be made to the support plan.

12.3 The authority should be prepared to respond to the likely demand for reviews. It should aim to conduct reviews within a maximum period of 12 months. It should consider the review as a means by which to prevent crisis or to respond and adapt to the supported person's life.

12.4. If the supported person requires additional support the local authority should ensure that the person is given the option of having support from an independent supporter or advocate. The authority may also wish to speak to family members and informal carers to satisfy itself that the person is not experiencing any difficulties with arrangements. Where an attorney, guardian or parent is in place the authority will also wish to discuss arrangements with them.

Review of the supported person's options under the 2013 Act

12.5 The 2013 Act imposes additional and distinct review duties in relation to the narrower question of *how* the supported person's support is arranged i.e. the choices available to the supported person under the 2013 Act. In practice the two types of review - a review of the person's 2013 Act options and a review of the person's wider needs and outcomes – will tend to go hand in hand. It is difficult to foresee a review of a supported person's needs failing to incorporate some consideration of the means by which they arrange their support. However, a review of a person's choice under the 2013 Act *can* take place without a detailed review of needs. The person may decide that they do not wish to continue with the option that they have chosen. Alternatively, the person may decide that arranged services are

not working out the way that they had thought and would like to reconsider the other options. The authority should view this as part of the on-going nature of assessment, and it should support the relevant professionals to work with the supported person to consider what adjustments they would like to make.

12.6 The authority should ensure that an initial review date is set when the supported person and authority agree the assessment and support plan. The supported person should be made aware that they can request a review sooner if their circumstances change.

Monitoring and evaluation of the authority's provision of social care services

12.7 The authority should take steps to monitor and evaluate its success in delivering the full range of options as set out in the 2013 Act. This means that it should take steps to monitor and evaluate how its direct payment schemes, individual service fund schemes (or similar Option 2 arrangements) and arranged service provision arrangements are working. The authority's approach to its strategies, plans and processes should be guided by the general principles provided by Section 1 of the 2013 Act (involvement, informed choice and collaboration).

12.8 The authority should actively seek the comments and suggestions of supported people, carers and the wider population as part of the on-going review of processes, systems, guidance and procedures associated with Options 1, 2 and 3. It should seek to co-design all such arrangements with the full involvement of supported people and carers from the beginning and throughout. This should include the evaluation of their scheme arrangements.

SECTION 13: SOCIAL CARE AND SELF-DIRECTED SUPPORT - THE ROLE OF THE NHS

This section considers the role of the NHS and relevant NHS professionals. It clarifies what is possible under the respective legal frameworks and it provides some case study examples of combined packages of support. It encourages the respective professionals and organisations to work together, to conduct assessments based on personal outcomes and to pool budgets at the level of the individual as well as at the strategic level of the Health and Social Care Partnership. It draws on the learning from the NHS Lothian and Fife SDS Test Sites in addition to the examples of Direct Payments which have been jointly funded in the past by health and social care.

13.1 Social care and healthcare, particularly community healthcare, are closely related. It is not uncommon for a supported person to receive on-going healthcare and social care support at the same time. A supported person's needs and outcomes will not always respect traditional boundaries between healthcare services and social care services. In the context of this guidance the authority and the Health Board and the relevant health and social care professionals should consider their respective roles, contributions, expertise and resources.

What is meant by NHS or "health" support?

13.2 This section of the guidance uses the shorthand term "healthcare" or "NHS support". This does not refer to acute healthcare, i.e. hospital based healthcare, treatments or operations, but to community based healthcare. It includes the range of NHS-funded support provided by district nurses and allied health professionals such as occupational therapists. Support funded or arranged by the NHS may be provided to a person *alongside* social care provision. It is important that the health and social care professionals are aware of this and take steps to collaborate to ensure that the interests and outcomes of the supported person are met.

13.3 It should also be emphasised that when health support is mentioned in this section the reference is not specific to those individuals living with a physical disability but includes individuals with a learning disability or living with mental ill health.

13.4 The principles of self-directed support are aligned closely with the wider principles of outcome focused assessment and support planning. The relevant professionals, including health professionals, should work with the supported person and ensure that they person has the information that they require to make an informed decision regarding their support.

What is meant by a joint approach?

13.5 A joint approach is not simply about the pooling or transfer of budgets. It should be a joint person-centred approach to assessment, support planning and review. It should recognise opportunities to pool expertise, share common approaches and combine resources at every stage in the supported person's

pathway. This requires a solution focused approach and a determination on the part of senior managers in health and social care to support the professionals they manage to adopt joint assessment, planning and review processes and take full advantage of the broad powers afforded them in legislation.

13.6 Health and social care staff may require additional training to enable the required collaboration and culture change at all levels.

Case study example: NHS Fife SDS Test Site

Lisa's story: a package of support jointly funded and supported by health and social care delivered as Option 2, an Individual Service Fund

Lisa is 21, she was involved in a road traffic accident 4 years ago resulting in an acquired brain injury, significant physical disability and communication impairment.

In the 3 years following Lisa's discharge from her local rehabilitation unit, Lisa was totally reliant on her parents, including getting out of the house in her manual wheelchair, the physical demands of which limited the scope for family members taking Lisa out. An electric wheelchair had been provided for Lisa but it was not being used.

Lisa's occupational therapist (OT) explained self-directed support to Lisa & her family and the opportunity that it offers individuals to make choices and take control of their care and to direct their support. The OT helped Lisa to identify her outcomes and how those could be achieved and helped her complete the required paperwork.

Lisa and her family, with the support of her OT, identified her need to gain confidence in using her electric wheelchair independently, and part of her Individual Service Fund (Option 2), funded by both health and social care, was used to provide Lisa with the support of a care worker employed by a local care agency to support Lisa using her wheelchair to access her local community.

By using her wheelchair independently Lisa significantly increased her confidence in using it, particularly in crowded places, and developed her social skills. This has resulted in Lisa starting a college course and to begin to participate in activities in her local community i.e. archery.

The impact on Lisa's family has also been very positive, caring for Lisa is now less physically demanding, and they report that life is easier and that they have respite from their caring role when she is out with her care worker. They feel that this experience will enable Lisa to work towards more independent living, through improved communication and more active decision making on her part.

Lisa reports that she feels 'superb' in her ability to go out independently

Examples of shared healthcare and social care needs

13.7 The legal duties in relation to the assessment of social care needs and the provision of healthcare support were broadly framed by the Social Work (Scotland) Act 1968 and the NHS (Scotland) Act 1978. There is no definitive list of social care and healthcare interventions included in either piece of legislation. This provides a high degree of discretion to health and social care professionals and organisations.

13.8 Delegation of certain aspects of health care to a non-NHS professional is already established in the community health and is a continuation of the shift towards delivering health interventions previously limited to being delivered in an acute setting to being delivered at home, with well-established examples including aspects of home ventilation and PEG feeding. Part of this shift has included delegation of certain aspects of these interventions to family members or paid carers. The individuals concerned must demonstrate the same competence in delivering these interventions as health professionals.

13.9 It should be noted that there are some interventions that a family member can deliver which a paid Personal Assistant cannot, for example administering controlled medicines and that this delegation must be agreed locally, as some interventions may be allowed by a health board but not by a local authority.

13.10 In addition the duty of care responsibilities of statutory bodies and individual staff cannot be set aside. This requires the creation of a competency framework, including consideration of risk, through which individual staff can demonstrate their competence and confidence in carrying out an intervention.

Joint working and combined budgets: what is “allowed”?

13.11 What *can* be done under social care and healthcare legislation? The relevant health professionals and/or senior managers can:

- contribute their professional healthcare expertise to a single assessment and support plan, and;
- where the supported person receives both health and social care the NHS professionals and/or senior managers can arrange for the transfer of funding from the NHS Board to the local authority in order to fund the relevant health outcomes within the person’s joint plan³.

13.12 The funding can then be directed by the supported person under the 4 options laid out in the 2013 Act. The jointly funded package can be a) arranged by social workers on the supported person’s behalf (Option 3 in the 2013 Act); b) directed by the supported person in the form of an individual service fund (Option 2 in the Act); c) released direct to the individual in the form of a direct payment (Option 1), or; d) provided as a combination of Options 1-3. There is currently no

³ Both aspects are supported by the Community Care (Joint Working etc.) (Scotland) Regulations 2002 as amended by the Community Care (Joint Working etc.) (Scotland) Amendment Regulations 2014

legal mechanism for a Direct Payment to be paid direct from a Health Board to the supported person where that person has health needs only. However, it *is* possible for the Health Board to pay funding to a local authority in order for the authority to release to the supported person via a direct payment.

Joint assessment and delegated assessment

13.13 Where the social care assessment function is delegated to the NHS all of the legal powers and duties associated with that assessment will transfer to the NHS professional.

13.14 The NHS Board must comply with this duty to assess and to meet the person's assessed needs under Section 12A of the 1968 Act or Section 22 of the 1995 Act. It must offer the various choices to the supported person as defined by the 2013 Act and it must "give effect" to the supported person's choice. In addition, the relevant healthcare professional should discharge the relevant social care duties in line with this guidance.

13.15 Consideration should be given to the potential implications of the delegation of social care duties to health professionals.

13.16 For this delegation to take place effectively and efficiently and with the minimum impact on the supported person the relevant information should be available to all relevant parties in addition to the financial processes being in place and managers being confident and comfortable with those processes.

Joint Funding

13.17 The proposed Public Bodies (Joint Working) (Scotland) Bill will retain and update the powers currently provided by the Community Care (Joint Working etc.) (Scotland) Regulations 2002 (SSI 2002 No.533) ('the 2002 Regulations'). The 2002 regulations enable local authorities and health boards to transfer funding to each other. This flexibility applies to "high level" strategic budgets and at the "micro level" of the individual supported person. The reforms in relation to the closer integration of health and social care provides a unique opportunity for the NHS and local authorities to develop effective joint approaches towards self-directed support and social care provision.

Where budgets are pooled: what happens next?

13.18 Once a decision has been taken to pool budgets consideration must be given to who will take responsibility for this jointly funded agreement. The combined funding pot can be released in a variety of ways. Some example scenarios are provided below:

- **Option 1** - Funding to address health needs is added to funding from the local authority. It is then released to the supported person as a jointly funded direct payment. The payment can be used to employ one or more personal assistants (PAs) to support their employer to achieve their health and social care outcomes. The PA is provided with the necessary training

by health to deliver certain health interventions where they have demonstrated competence; this will be reviewed regularly by the relevant health team to ensure the duty of care placed on them continues to be met.

- **Option 2** - Health funding is added to a virtual budget in the form of an individual service fund; the budget is then released to a provider by the local authority. The budget can be used to purchase support from an agency with staff trained to assist with healthcare tasks that may otherwise have been provided by the NHS. The relevant health professionals must be assured that the staff provided by the agency are sufficiently trained and competent to meet the health needs of the supported person.
- **Option 3** - The relevant health and social care professional's work together to arrange a package of services on behalf of the supported person. The services may be provided by the local authority, a third sector or private sector provider or the NHS.

13.19 Pooled strategic budgets provide opportunities for the development of joint commissioning strategies and joint assessment and support planning arrangements. In this respect, the development of integrated arrangements at the level of the Health and Social Care Partnership create an ideal environment for the development of choice and control for all individuals with joint health and social care needs.

Case study example: Steven's story: a package of support jointly funded and supported by health and social care

Steven is a tetraplegic. Paralysed following a serious accident in 1978, Steven was cared for at home by his mother until 1996. Using the Independent Living Fund and a direct payment he moved into his own adapted accommodation when his mother was 73 years old. This package was successful for several years allowing Steven to continue to work and live independently supported by his team of personal assistants.

During this time Steven was also supported by the District Nursing Service daily who attended to various aspects of his care including bowel management and administration of certain medications.

Unfortunately Steven's physical health began to deteriorate and repeated chest infections led to hospitalisations and the subsequent need for overnight respiratory support. Steven was very keen to ensure that he could return home and continue to enjoy his independence. At the age of 60 he felt that a nursing home placement was not for him.

The Care Manager and District Nurse put together a case for joint funding. The District Nurse provided training to all members of the care team on all healthcare interventions and the respiratory team provided training on ventilation which was required overnight. There was significant debate between social work and health service managers on the share of the funding which required evidence from the care manager and the district nurse. Once agreed, Steven was able to come

home from hospital to be supported by his trained care team.

Steven says: 'Living independently with joint funding has made a huge difference to my life. The advantages have been: being in charge of my life and making my own decisions; organising my household and shopping myself; choosing my menus; inviting my own friends and family to visit; organising social events and going out with my family and friends; privacy in my home; being able to continue to work as a quantity surveyor, until 2011 when I had to retire because of ill health; and choosing and employing my own staff, which allowed continuity in my care.'

Monitoring and review

13.20 The authority and the Health Board responsible for any jointly funded packages of support should put in place the appropriate joint arrangements for the on-going monitoring and review of the supported person's needs.

13.21 Where healthcare interventions are delegated to a non-NHS professional the duty of care remains with the Health Board to ensure these are delivered safely. It is vital that the NHS professional continues to bring their professional expertise to bear to ensure that the supported person's health needs are being met in a safe and appropriate way and by someone who is competent and trained to deliver those interventions.

13.22 At the organisational level the local authority and Health Board should develop effective arrangements around the corporate policies for the assessment and monitoring of all self-directed support packages where there is a health care component.

Case study example: NHS Lothian SDS Test Site

Mary's Story: a package of support funded and supported by health as a Direct Payment – Option 1

Direct payments were enabled in the NHS Lothian Test Site through a third party.

Mary has a heart condition which required surgery to implant an artificial valve; this resulted in a restricted blood flow and Mary had a number of strokes.

Mary's confidence and independence were severely affected by her ill health, resulting in deterioration in her mental health.

"I just felt that life was so, so low. I didn't feel part of the human race "

When she and her husband moved to another area to be near family, she met Tom from the Stroke Nurse Team.

Tom was one of the health professionals participating in the NHS Lothian Self-directed Support Test Site. He explained SDS to Mary and encouraged her to be one of the participants. Through discussion with Tom, Mary identified her desired health outcomes, Tom supported her with the paperwork and Mary was given a

direct payment to go to the gym. The funding paid for her leisure card and some sessions with a personal trainer.

In talking to Mary, Tom said that the particular intervention, i.e. gym membership, came from “you coming up with the idea of what you wanted achieve. What we found was that with a little guidance and a bit of discussion between the two of us that seemed the best option for you at the time and I think that’s been the same with all the individuals if they wanted something specific to be able to achieve or to do, it was the individual that kind of led that discussion really.

Mary says that she may not have been the strongest or fastest in the gym but she felt that the support enabled her to exercise safely, and moved the focus from her disability to her abilities, “I felt like I was a part of the human race again”.

Tom met regularly with Mary to review the impact that going to the gym was having on her outcomes and her health.

Mary’s growing confidence and independence through SDS has also had a positive impact on her relationship with her husband Brian, who said that “I didn’t really see how something quite basic as that... a relatively small amount of funding could make the phenomenal difference that it has. We’re not talking vast sums of money, but what you received was pretty much worth its weight in gold for your life, my life and probably our marriage as well. It made a phenomenal improvement in not only your quality of life, but mine as well.

Mary says, “I would recommend it to anybody in my shoes, I think it’s one of the best things that the health service has come up with”.

SECTION 14: ADDITIONAL GUIDANCE

This section covers the relationship between the 2013 Act and wider legal duties and strategic responsibilities for local authorities. It covers:

- adult support and protection;
- re-ablement and intermediate care;
- residential care;
- charging;
- personal and nursing care;
- housing support; and
- equipment and adaptations (including housing adaptations)

The relationship between protection duties and social care provision / self-directed support duties

14.1 The Adult Support and Protection (Scotland) Act 2007 (“the 2007 Act”) provides the legal framework for the protection of adults who are unable to safeguard their own interests. It is based on the fundamental principles that the intervention must provide benefit to the adult and is the least restrictive option to the adult’s freedom. These principles should be at the heart of all risk planning and enablement.

14.2 The authority should ensure that there is an effective link established between their adult support and protection duties, child protection duties and their wider wellbeing, social care assessment and social welfare duties under the 1968, 1995 and 2013 Acts.

14.3 The authority should ensure that its adult and child protection duties are incorporated and highlighted in any social care and self-directed support training, and vice versa. It should develop and provide joint training on protection duties and their relationship to social care provision to adult/child protection officers, adult social work and children and families teams. It should involve adults and children/families in the design and delivery of any training.

14.4 The authority should ensure that the relevant professional(s) involved in assessment and support planning for both adults and children/families take a thorough and person-centred approach to risk assessment, enablement and management, building and maximising the adult’s control over their own risks.

14.5 The authority should ensure that the relevant professional(s) fully involve the supported person and their carers/advocates at every stage in the person’s assessment and support planning pathway. The authority should also ensure that the child or adult’s support provider is involved in the person’s assessment and support planning pathway.

14.6 The authority should consider any additional steps that it should take with respect to those at risk from harm when they are in receipt of care and support

services. This should apply to the individual support planning arrangements and the authority's general delivery plans for social care provision.

14.7 The authority should ensure that all relevant organisations involved in adult support and protection assist social work and health professionals, family carers and providers to monitor and improve the way that they identify and manage risk on an individual basis, support people to take risks in a planned and safe way and provide good quality information about what to do 'when things go wrong'.

14.8 The authority should ensure that there are effective and timely communication links between local authority staff dealing with social care provision and Adult Support Protection (ASP) lead officers. For instance:

- are there robust and effective arrangements in place to intervene in the interests of adults who are subject to harm?
- are there robust and effective arrangements in place to empower individuals to take control of their support and their lives?

14.9 The authority should ensure that there are effective arrangements for the review and monitoring of the supported person's care and support arrangements, and that these arrangements involve the relevant ASP lead officer (for adults) or Lead Professional (for children) as appropriate;

14.10 The authority should ensure that there are comprehensive arrangements to monitor and review the provision of social care to adults and children under all of the options under the 2013 Act. Furthermore, it should ensure that any monitoring activities take account of child/adult protection responsibilities and involve the relevant adult and child protection functions and support staff.

Further guidance: child protection

14.11 Child protection means protecting a child from child abuse or neglect. Abuse or neglect need not have taken place. It is sufficient for a risk assessment to have identified a likelihood or risk of significant harm from abuse or neglect. Equally, in instances where a child may have been abused or neglected but the risk of future abuse has not been identified, the child and their family may require support and recovery services but not a Child Protection Plan.

14.12 There are key principles underpinning an effective approach to child protection. These principles are consistent with the values and principles that underpin good social care provision and the options provided under the 2013 Act. In particular the UN Convention principles state that:

- each child has a right to be treated as an individual;
- every child who can form a view on matters affecting them has the right to express those views if they so wish, and those views should be given due weight in accordance with the child's age and maturity;
- parents should normally be responsible for the upbringing of their children and should share that responsibility;

- each child has the right to protection from all forms of abuse, neglect or exploitation;
- insofar as is consistent with safeguarding and promoting the child's welfare, public authorities should promote the upbringing of children by their families; and
- any intervention by a public authority in the life of a child must be properly justified and should be supported by services from all relevant agencies working in collaboration.

14.13 Risk is a crucial consideration in terms of authority's child protection duties (risk being the likelihood or probability of a particular outcome given the presence of factors in a child or young person's life). As stated in Scottish Government *National Guidance for Child Protection in Scotland 2010* ("the 2010 guidance"), risk is part and parcel of everyday life. A toddler learning to walk is likely to be at risk from some stumbles and scrapes but this does not mean the child should not be encouraged to walk.

14.14 Risks may be deemed acceptable. They may also be reduced by parents/carers through the early intervention of universal services or through the provision of alternative options such as those provided under the 2013 Act. The policy and practice underpinned by the 2013 Act is predicated on the principles of informed choice and risk enablement. The provision of support under each and all of the options available via the 2013 Act will carry its own unique risks. Direct payments and notional budgets directed by the supported person, based on informed choice and effective risk enablement can provide significant opportunities to children and families. At the same time, the 2010 guidance states that "where risks cause, or are likely to cause, significant harm to a child would a response under child protection be required". As such, if there is clear evidence that the provision of a direct payment, individual service fund (or indeed the provision of arranged support on the child's behalf) would be likely to cause significant harm to a child the authority's duties and powers under the relevant child protection legislation will apply.

Further guidance: adult support and protection

14.15 The Adult Support and Protection (Scotland) Act 2007 ("the 2007 Act") provides the legal framework for the protection of adults who are unable to safeguard their own interests. The 2007 Act defines "adults at risk" as adults who:

- are unable to safeguard their own well-being, property, rights or other interests;
- are at risk of harm; and because they are affected by disability, mental disorder, illness or physical or mental infirmity, are more vulnerable to being harmed than adults who are not so affected.

14.16 The duties that are relevant if/when care and support services are also being provided:

- duty to make inquiries to establish whether action is required, where it is known or believed that an adult is at risk of harm and that intervention may be necessary to protect the adult (Section 4);
- duty to co-operate with other councils and other listed (or prescribed) bodies and office holders (Section 5);
- duty to have regard to the importance of the provision of appropriate services (including, in particular, independent advocacy services), where the council considers that it needs to intervene in order to protect an adult at risk of harm (Section 6);
- duty to set up an Adult Protection Committee to carry out various functions in relation to adult protection in its area, and to review procedures under the Act (Section 42). The Adult Protection Committee may cover more than one council area.

14.17 The 2007 Act enables the authority to visit any place necessary to assist inquiries under Section 4 of that Act. The authority can also apply to the sheriff for the grant of a protection order. This may be an assessment order, a removal order, a banning order or temporary banning order.

14.18 The 2007 Act is based on the principle that any intervention must provide benefit to the adult and be the least restrictive option to the adult's freedom. It emphasises that support should not be restrictive and the adult has a choice. These principles should be at the heart of all risk planning and enablement associated with social care provision under either the 1995 Act or the 1968 Act, and are consistent with the values and principles that underpin the 2013 Act.

14.19 There may be occasions when the authority's duties under the 2007 Act will become relevant in relation to actions or events which arise under a direct payment, individual service fund or arranged service arrangement. In all cases, it is a clear duty upon a local authority and its partners to ensure that any individual is protected and safeguarded from harm.

14.20 In considering the choices available under the 2013 Act the authority will need to take into account the relevant duties in the 2007 Act. If the granting of a direct payment (or indeed the provision of arranged support on the person's behalf) would lead to an increased risk of harm and such a risk cannot be alleviated by the means of a mutually agreed risk enablement process, then the authority should consider its responsibilities and powers with respect to the safeguarding and protection of the supported person.

Further guidance and hyperlinks:

For further guidance on local authorities' corporate responsibilities and professionals' individual responsibilities under the 2007 Act see the Scottish Government's Adult Support and Protection (Scotland) Act 2007: Code of Practice: <http://www.scotland.gov.uk/Publications/2009/01/30112831/0>

Scottish Government guidance on authorities child protection duties and powers is available at: <http://www.scotland.gov.uk/Publications/2010/12/09134441/0>

Social Care Institute for Excellence (2010), Enabling risk, ensuring safety: Self-directed support and personal budgets

<http://lx.iriss.org.uk/sites/default/files/resources/report36.pdf>

The Knowledge Network – Implementing Self-directed Support – Personalisation – Risk Enablement

<http://www.knowledge.scot.nhs.uk/home/portals-and-topics/self-directed-support/implementing-self-directed-support/risk-enablement.aspx>

Simon Duffy & John Gillespie (2010) Personalisation and Safeguarding Discussion Paper

<http://www.in-control.org.uk/media/52833/personalisation%20safeguarding%20discussion%20paper%20version%201.0.pdf>

Re-ablement

14.21 Re-ablement services involve a short term package of support provided over a 6 week period. It may be provided following a fall or following discharge from hospital though it may be provided in other circumstances. The unique characteristic of re-ablement support is that it is *short-term* intensive support designed to help the supported person regain independence. There will tend to be two possible outcomes when the re-ablement support comes to an end:

- a) the supported person may be eligible for long-term support, or
- b) the re-ablement service will address the initial need and, as such, there will be no further “stable” or long-term support.

14.22 It would be sensible for the authority to view re-ablement as a part of the assessment process – an early intervention which may or may not lead to more stable forms of on-going support. However, where it is decided that the supported person will be provided with that stable on-going support, the authority must offer the person the various choices set out in the 2013 Act.

Intermediate Care

14.23 Intermediate care is an umbrella term describing a collection of services working to common, shared objectives and principles. It provides a set of ‘bridges’ at key points of transition in a person’s life, in particular from hospital to home (and vice versa) and from illness or injury to recovery and independence. The purpose of intermediate care is to provide time-limited interventions at points of crisis in a person’s life where this will restore or avoid a loss of independence and confidence, or reduce the risk of hospital admission (or a longer stay in hospital).

Further guidance and hyperlinks:

Further guidance on Intermediate Care can be found in Maximising Recovery, Promoting Independent: An Intermediate Care Framework for Scotland

<http://www.scotland.gov.uk/Publications/2012/07/1181>

14.24 The person's route into intermediate care will be a multi-disciplinary assessment of one form or another. In light of the short-term intensive nature of the intervention intermediate care can be viewed as an initial step or staging post which can help to determine a supported person's need and inform any subsequent long-term support plan. Where it is decided that the supported person will be provided with stable on-going support the authority must offer the supported person the choices set out in the 2013 Act.

Residential Care

14.25 Residential Care is a social care service. Assessments which result in a decision to receive care and support in a group setting are social care assessments. As such the authority should undertake any assessment which may result in residential care in line with this guidance. For example, the general principles of assessment set out in Section 1 of the 2013 Act apply in exactly the same way as any other context. The authority must collaborate with the supported person, ensure that the person can make informed choices and involve the supported person in their assessment. The provision of alternative options can provide the supported person with an opportunity to choose an option other than residential care support.

14.26 Where the supported person is assessed as requiring residential care all of the 2013 Act's Options, with the exception of Option 1 (direct payment), should be offered to the supported person.

Further guidance and hyperlinks:

Scottish Government guidance on Choice of Accommodation; Discharge from Hospital (2004)

http://www.sehd.scot.nhs.uk/publications/CC2003_08.pdf

ChargingCharging for support to the supported person

14.27 Under Section 87 of the 1968 Act the authority can require the supported person to pay a charge towards the cost of any services which meet the supported person's assessed needs. Historically charges have tended to be based on service types. Where a supported person's package is predicated on an identified budget it can be difficult to base any charge on the basis of a service. This requires the consideration of arrangements based on the proportion of the overall budget as opposed to one form of service or another. Local charging policies are a matter for the local authority and should be considered in light of the relevant COSLA

guidance however where personal and nursing care support is provided to a person aged 65 and over the authority should refer to Executive circular CCD 4/2002: Free personal and Nursing Care 19.

Charging for support to carers

14.28 In 2013 the Scottish Government consulted on draft regulations and guidance in relation to charging for carers support provided under Section 3 of the 2013 Act. The Scottish Government confirmed that it intended to lay Regulations requiring the authority to waive charges where services are provided to adult carers under section 3(4) of the 2013 Act and where services are provided to children in need (ie young carers) under section 22 of the 1995 Act. For detailed guidance on the waiving of charges for carers support please see the relevant Regulations and separate statutory guidance.

Personal and nursing care

14.29 Personal and nursing care is a form of social care and support. As such it falls within the scope of the assessment and support planning processes described in this guidance. If the supported person has personal care needs then the person should be provided with the full range of choices under the 2013 Act. See paragraph 14.27 for further guidance on charging.

Housing support services

14.30 Housing support is support other than care or housing management services to enable a person to establish or maintain occupancy of a dwelling. Housing support services are provided to help people live as independently as possible in their own homes. If the authority concludes that a particular form of housing service falls within the definition of community care services then the 2013 Act applies and the supported person should be provided with the full range of choices under the 2013 Act.

Equipment and adaptations (including housing adaptations)

14.31 The authority should have regard to the following key principles which represent good practice in housing adaptations:

- the supported person and their carer(s) should be placed at the centre of service provision and be in control;
- access to assessment and the adaptation itself should take account of need and be fair, consistent, reliable and reasonable, with a focus on prevention;
- assessment and access to financial and other non-financial supports for the adaptation should be equitable and fair; and
- the supported person should be able to understand the systems and rules, which should be uncomplicated and maximise the ability of the supported person to make informed choices.

14.32 Options 1 and 2 in the 2013 Act - the direct payment or the opportunity to direct the available support – may provide an opportunity to explore new or alternative ways to meet the person’s outcomes. However any additional costs or responsibilities that may be incurred by arranging the adaptation via a direct payment or individual service fund should be fully explained to the supported person. Consideration should to be given as to how any on-going costs will be met, and who will responsible for these costs - for example providing additional top ups to the direct payment to cover these fees.

Additional guidance on direct payments and equipment/adaptations

14.33 A key principle behind direct payments is that they can be used to purchase anything provided that it meets the assessed needs of the supported person and is not illegal. This includes equipment and adaptations. A direct payment can be a useful way to provide additional flexibility and control to the supported person. However as with any other form of support the equipment/ adaptation must meet the assessed needs of the person. In addition it is a matter for the local authority to define the relevant amount of funding that is necessary to meet the assessed needs of the person.

14.34 A direct payment arrangement means that control and responsibility passes to the supported person. This means that ownership and responsibility for arranging the maintenance of the equipment or adaptation can pass to the supported person. In some instances it may make sense for responsibility for maintenance to rest with the authority. The key priority should be to make use of the user/supported person agreement to discuss and clarify questions of maintenance, ownership and issues such as the donation of any equipment to the authority, NHS, provider or fellow citizens after it is no longer required.

14.35 While there is no specific restriction on the use of direct payments to fund larger scale adaptations it is a matter for the authority to determine if the relevant support relates to community care support. A direct payment is an alternative means by which to meet assessed social care needs. It is not a substitute for housing improvement grants. When considering the funding of large scale or particularly complex alterations the authority and the supported person should consider how additional responsibilities such as insurance, health and safety requirements and specialist support and expertise, will be fulfilled.

SECTION 15: ANNEXES

ANNEX A: Relevant legal duties in relation to social care assessment

Assessment duties in relation to adults

Section 12 (1) Social Work (Scotland) Act 1968

General social welfare services of local authorities

(1) It shall be the duty of every local authority to promote social welfare by making available advice, guidance and assistance on such a scale as may be appropriate for their area, and in that behalf to make arrangements and to provide or secure the provision of such facilities (including the provision or arranging for the provision of residential and other establishments) as they may consider suitable and adequate, and such assistance may, subject to subsections (3) to (5) of this section, be given in kind or in cash to, or in respect of, any relevant person.

(2) A person is a relevant person for the purposes of this section if, not being less than eighteen years of age, he is in need requiring assistance in kind or, in exceptional circumstances constituting an emergency, in cash, where the giving of assistance in either form would avoid the local authority being caused greater expense in the giving of assistance in another form, or where probable aggravation of the person's need would cause greater expense to the local authority on a later occasion.

Section 12A, Social Work (Scotland) Act 1968

Duty of local authority to assess needs

(1) Subject to the provisions of this section, where it appears to a local authority that any person for whom they are under a duty or have a power to provide, or to secure the provision of, community care services may be in need of any such services, the authority—

(a) shall make an assessment of the needs of that person for those services; and

(b) shall then decide, having regard to the results of that assessment, and taking account—

(i) where it appears to them that a person (“the carer”) provides a substantial amount of care on a regular basis for that person, of such care as is being so provided; and

(ii) in so far as it is reasonable and practicable to do so, both of the views of the person whose needs are being assessed and of the views of the carer (provided that, in either case, there is a wish, or as the case may be a capacity, to express a view) whether the needs of the person being assessed call for the provision of any such services.

Assessment duties in relation to children

Section 22, Children (Scotland) Act 1995

Promotion of welfare of children in need

- (1) A local authority shall—
- (a) safeguard and promote the welfare of children in their area who are in need; and
 - (b) so far as is consistent with that duty, promote the upbringing of such children by their families by providing a range and level of services appropriate to the children's needs.

Section 23, Children (Scotland) Act 1995:

Children affected by disability

- (1) Without prejudice to the generality of subsection (1) of section 22 of this Act, services provided by a local authority under that subsection shall be designed—
- (a) to minimise the effect on any—
 - (i) disabled child who is within the authority's area, of his disability; and
 - (ii) child who is within that area and is affected adversely by the disability of any other person in his family, of that other person's disability; and
 - (b) to give those children the opportunity to lead lives which are as normal as possible.
- (2) For the purposes of this Chapter of this Part a person is disabled if he is chronically sick or disabled or suffers from mental disorder (as defined in section 328(1) of the Mental Health (Care and Treatment)(Scotland) Act 2003).
- (3) Where requested to do so by—
- (a) a child's parent or guardian; or
 - (b) a mental health officer (as defined in section 329 of the Mental Health (Care and Treatment)(Scotland) Act 2003) who –
 - (i) has responsibility under that Act or the Criminal Procedure (Scotland) Act 1995 for a child's case; and
 - (ii) makes a request for the purposes of either of those Acts,
- a local authority shall, for the purpose of facilitating the discharge of such duties as the authority may have under section 22(1) of this Act (whether or not by virtue of subsection (1) above) as respects the child, carry out an assessment of the child, or of any other person in the child's family, to determine the needs of the child in so far as attributable to his disability or to that of the other person.
- (4) In determining the needs of a child under subsection (3) above, the local authority shall take account—

(a) where it appears to them that a person (“the carer”) provides a substantial amount of care on a regular basis for the child, or for another person in the child’s family who is being assessed under that subsection, of such care as is being so provided; and

(b) in so far as it is reasonable and practicable to do so, of—

(i) the views of the parent or guardian of the child, and the child; and

(ii) the views of the carer,

provided that the parent, guardian, child or carer in question has a wish, or as the case may be, a capacity, to express a view.

Assessment duties in relation to carers

Carers of adults

Section 12AA, Social Work (Scotland) Act 1968

Assessment of ability to provide care

(1) A person (“the carer”) who provides, or intends to provide, a substantial amount of care on a regular basis for another person aged eighteen or over (“the person cared for”) may, whether or not the carer is a child, request a local authority to make an assessment (“the carer’s assessment”) of the carer’s ability to provide or to continue to provide such care for that person.

(2) The local authority to whom the request is made shall—

(a) comply with the request where it appears to them that the person cared for is a person for whom they must or may provide, or secure the provision of, community care services; and

(b) if they then or subsequently make an assessment under subsection (1)(a) of section 12A of this Act of the needs of the person cared for, have regard to the results of the carer’s assessment—

(i) in the assessment of the person cared for; and.

(ii) in making their decision under subsection (1)(b) of that section as respects that person.

(3) Subsection (1) above does not apply as respects a carer who provides, or will provide, the care in question—

(a) by virtue of a contract of employment or other contract; or

(b) as a volunteer for a voluntary organisation.

Section 24, Children (Scotland) Act 1995:

Assessment of ability of carers to provide care for disabled children

(1) Subject to subsection (2) below, a person (“the carer”) who provides, or intends to provide, a substantial amount of care on a regular basis for a disabled child may, whether or not the carer is a child, request a local authority to make an assessment (“the carer’s assessment”) of the carer’s ability to provide or to continue to provide such care for the child.

(1A) The local authority to whom the request is made shall—

(a) comply with the request where it appears to them that the child, or another person in the child’s family, is a person for whom they must or may provide services under section 22(1) of this Act; and

(b) if they then or subsequently make an assessment under section 23(3) of this Act to determine the needs of the child, have regard to the results of the carer’s assessment—

(i) in the assessment of the child; and

(ii) in making a decision as to the discharge by them of any duty they may have as respects the child under section 2(1) of the Chronically Sick and Disabled Persons Act 1970 or under section 22(1) of this Act.

(2) No request may be made under subsection (1) above by a person who provides or will provide the care in question—

(a) under or by virtue of a contract of employment or other contract; or

(b) as a volunteer for a voluntary organisation.



© Crown copyright 2014

ISBN: 978-1-78412-348-2

ISBN: 978-1-78412-365-9 (ePub)

ISBN: 978-1-78412-366-6 (Mobi)

This document is also available on the Scottish Government website:
www.scotland.gov.uk

APS Group Scotland
DPPAS20187 (03/14)

w w w . s c o t l a n d . g o v . u k