

SOCIAL CARE (SELF-DIRECTED SUPPORT)(SCOTLAND) ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Sections 4 to 14 – Options for self-directed support

Section 8 – Choice of options: children and family members

28. **Section 8** provides that the four options must be available to children, and/or their family, where a local authority decides to provide services under section 22 of the Children (Scotland) Act 1995. Provision of services under section 22 can involve a range of types of support and various categories of supported children including children who are carers, disabled children and any other child deemed to be “in need” within the definition of section 93(4) of the 1995 Act. Services under section 22 can also be provided to a member of the child’s family.
29. **Section 8(2)** requires the authority to offer the four options to the “supported person” unless they consider the supported person ineligible to receive direct payments (as may be defined in regulations under section 15). If the authority consider that the supported person is ineligible to receive direct payments subsection (3)(a) requires the authority to inform the supported person of the reason for that decision and to inform them that they can request a review of the decision. As with services for adults, where this is the case the authority is required to give the person a choice of the other options for self-directed support (subsection (3)(b)).
30. Subsection (4) places a duty on the local authority to inform the supported person of the amount of funding available under the options and the period to which the funding relates.
31. Subsection (9) provides definitions of “appropriate person” and “supported person” which are important to the wider operation of this section. In general terms an “appropriate person” is a person with parental rights and responsibilities, or their equivalent under the laws of England, Wales and Northern Ireland. The definition under subsection (9) sets out the relevant enactments which provide for those rights.
32. It is the “supported person” who has the ability to make the choice under subsection (2). The supported person is first of all identified on the basis of whether they receive any support under section 22 of the 1995 Act (which may be whole or partial). If the supported person is a child (i.e. under 18) who is either 16 or 17 they will make the choice. If the supported person is a child who is under 16 it is an “appropriate person” who makes the choice. Under subsection (6) the appropriate person must, so far as practicable and taking account of the maturity of the child, give the child an opportunity to indicate if they wish to express any views about the choices available, and if the child so wishes, provide that opportunity and have regard to their views. If the supported person is an adult, then that person makes the choice.

*These notes relate to the Social Care (Self-directed Support)(Scotland)
Act 2013 (asp 1) which received Royal Assent on 10 January 2013*

33. As with the provisions on adults, subsection (7) provides that when the supported person does not make a choice they are deemed to have chosen option 3 whereby the local authority selects and makes arrangement for the provision of services.