

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Sections 15 to 16 – Direct payments

Section 15 – Power to make further provision about direct payments

44. **Section 15(1)** provides for Scottish Ministers to make regulations about direct payments and the provision of support to which they relate.
45. Subsections **(2)(a)** to **(j)** set out specific powers included within the power in subsection **(1)**.
46. Subsection **(2)(a)** provides the power to specify descriptions of persons who will be ineligible for direct payments. This will inform the definition of ineligibility for direct payments throughout the Act. Section **5(7)** states for the purposes of section **5** that a person is ineligible for direct payments if they are of a description prescribed in regulations (under this power) and that definition is applied to the whole Act by section **24**.
47. Subsection **(2)(b)** provides the power to specify circumstances where the local authority will not be required to offer the supported person option **1** (a direct payment) or option **4** so far as it relates to option **1**. This would include, for example, excluding a direct payment from being used to secure a particular service.
48. Subsections **(2)(c)** to **(e)** provide power to prescribe how direct payments are paid, circumstances in which a contribution to the cost of support may be required and how individuals are assessed to ascertain the individual's ability to contribute. They also provide power to describe how the repayment of a direct payment may be made following the assessment or reassessment of an individual's ability to contribute. For example, enabling deduction from direct payments, separate repayment or payment by instalments.
49. Subsection **(2)(f)** provides circumstances that may be specified where a local authority may, must or may not terminate a direct payment.
50. Subsection **(2)(g)** gives power to set out the circumstances when the local authority would be able to make a direct payment to a person other than the supported person. Subsection **(2)(h)** gives power to specify persons to whom such direct payments may not be paid.
51. Subsection **(2)(i)** and **(j)** provide that regulations may set out descriptions of persons who are prohibited from providing support to which a direct payment relates, other than where specified circumstances apply and where specified conditions have been met.

Section 16 – Misuse of direct payment: recovery

52. **Section 16** provides for the local authority to require repayment of all or part of the direct payment from the supported person if they have used all or part of the direct payment on things other than the assessed services or support required or where the person has contravened any regulations made under section 15.