
SCOTTISH STATUTORY INSTRUMENTS

2014 No. 25

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

PART 3

Provision of support by family members

Support to which this Part applies

7.—(1) This Part applies to support to which a direct payment relates under—

- (a) section 5 of the Act; and
- (b) subject to paragraph (2), section 8 of the Act.

(2) This Part does not apply to support to which a direct payment relates under section 8 of the Act where that support is provided in relation to the care which a child provides, or intends to provide, to another person.

Circumstances where family member may provide support

8.—(1) A family member may only provide support to which a direct payment relates in the circumstances specified in paragraph (2).

(2) The circumstances are—

- (a) the family member, direct payment user and local authority agree to the family member providing the support;
- (b) the family member is capable of providing the support; and
- (c) any of the factors in paragraph (3) apply.

(3) The factors are—

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

(4) In this regulation—

“family member” means—

- (a) the spouse or civil partner of the direct payment user;
- (b) a person who lives with the direct payment user as if their spouse or civil partner;
- (c) the direct payment user’s—
 - (i) parent;
 - (ii) child;
 - (iii) brother or sister;
 - (iv) aunt or uncle;
 - (v) nephew or niece;
 - (vi) cousin;
 - (vii) grandparent;
 - (viii) grandchild;
- (d) the spouse or civil partner of any person listed in sub-paragraph (c);
- (e) a person who lives with any person listed in sub-paragraph (c) as if their spouse or civil partner.

Exception to family members rule

9.—(1) Even if regulation 8(2) applies, a family member may not provide support to which a direct payment relates if—

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

(2) In this regulation—

“guardian”—

- (a) means a guardian appointed under the Adults with Incapacity (Scotland) Act 2000(1) (“the 2000 Act”); and
- (b) includes a guardian (however called) appointed under the law of any country to, or entitled under the law of any country to act for, an adult during the adult’s incapacity, if the guardianship is recognised under the law of Scotland;

“continuing attorney”—

- (a) means a continuing attorney within the meaning of section 15 (creation of continuing power of attorney) of the 2000 Act(2); and
- (b) includes a person granted, under a contract, grant or appointment governed by the law of any country, powers (however expressed) relating to the granter’s property or financial affairs and having continuing effect despite the granter’s incapacity; and

“welfare attorney”—

(1) 2000 asp 4.

(2) Section 15 was amended by the Adult Support and Protection (Scotland) Act 2007 (asp 10), section 57(1).

- (a) means a welfare attorney within the meaning of section 16 (creation and exercise of welfare power of attorney) of the 2000 Act⁽³⁾; and
- (b) includes a person granted, under contract, grant or appointment governed by the law of any country, powers (however expressed) relating to the granter's personal welfare and having effect during the granter's incapacity.

(3) Section 16 was amended by the Human Tissue (Scotland) Act 2006 (asp 4), section 57(2)(b) and the Adult Support and Protection (Scotland) Act 2007 (asp 10), section 57(2).