

POLICY NOTE

THE SOCIAL CARE (SELF-DIRECTED SUPPORT) (SCOTLAND) ACT 2013 (COMMENCEMENT, TRANSITIONAL AND SAVING PROVISIONS) ORDER 2014

SSI 2014/32 (C.2)

1. The above instrument is made in exercise of the powers conferred by section 28(2) and (3) of the Social Care (Self-directed Support) (Scotland) Act 2013. It is laid before the Scottish Parliament by virtue of section 30(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.

Policy Objectives

2. This Order brings provisions of the Social Care (Self-directed Support) (Scotland) Act 2013 (“the 2013 Act”) into force and makes transitional and saving provisions to regulate the way in which the 2013 Act applies to existing users of social work services.

3. The policy objectives relating to the 2013 Act are fully described in the Policy Memorandum which accompanied the Bill. The link below shows the passage of the Bill through Parliament and includes the Policy Memorandum.

[http://www.scottish.parliament.uk/S4_Bills/Social%20Care%20\(Self%20directed%20Support\)%20\(Scotland\)%20Bill/BBV_181_Final.pdf](http://www.scottish.parliament.uk/S4_Bills/Social%20Care%20(Self%20directed%20Support)%20(Scotland)%20Bill/BBV_181_Final.pdf)

Appointed days

4. Article 2 of this Order brings section 18 of the 2013 Act into force on 17th February 2014. Section 18 makes the changes to section 87 of the Social Work (Scotland) Act 1968 (“the 1968 Act”) which allow local authorities to make charges in respect of services which they provide to adult carers under the power in section 3 of the 2013 Act. Section 87(5) of the 1968 Act in turn contains a power which allows the Scottish Ministers, by regulations, to modify or adjust payments made under the section and to waive payments altogether in specified circumstances.

5. As was explained during the course of the Bill Scottish Ministers intend to use this power in order to require local authorities to waive charges in respect of support provided to carers in certain circumstances. The Scottish Ministers intend regulations to come into force on 1st April 2014, to coincide with the date on which local authorities will first have the power to provide support to carers.

6. Section 18 is therefore brought into force on 17th February 2014 to ensure that the power to make the relevant regulations is in place at the point that those regulations are made. Bringing section 18 into force has no practical effect before 1st April 2014 other than allowing those regulations to be made. In particular, it does not allow local authorities to charge carers between 17th February and 31st March 2014. That is because local authorities

are only enabled to charge in respect of support provided under section 3(4) of the 2013 Act, and their power to provide that support will not come into force until 1st April.

7. The remaining provisions of the 2013 Act are brought into force on 1st April 2014.

Transitional provisions

8. The 2013 Act sets out a new framework for offering individuals in receipt of various forms of social work support a choice about how that support is delivered. The new framework will apply to all decisions about the way in which relevant social work support is delivered after 1st April 2014. However, there are large numbers of people who receive social work support (including by way of direct payment) under the current framework at present. It is intended that the existing rules continue to apply to them until their support needs are re-assessed for the first time on or after 1st April 2014. Article 4 of the Order contains transitional provisions to this effect. The local authority's obligation in section 5 or 8 of the 2013 Act to offer the choice between the four self-directed support options will not apply until the first time on or after 1st April 2014 that reviews the person's needs and the services being provided. The duty under section 6 of the 2013 Act to provide assistance to certain adults will also not apply until that point.

Saving provision

9. If an individual has been offered a direct payment before 1st April 2014, it is intended that the existing provisions in section 12B and 12C of the 1968 and related regulations made under section 12B will continue to apply to that payment. If the offer of a direct payment is made after 1st April 2014, the 2013 Act applies. This is regardless of the date that the individual accepts the direct payment.

10. The saving provision in article 5 gives effect to this policy. Sections 12B and 12C continue to apply, despite their repeal, in relation to direct payments made under those sections after 1st April 2014. Such payments will only continue until the supported person's needs are assessed for the first time after 1st April 2014. At that point, the local authority's obligations to offer the four choices under sections 5, 7 or 8 will apply and so any subsequent direct payment will be a payment within the meaning of section 4(2) of the 2013 Act.

Impact Assessments

An equality impact assessment has already been completed on the Social Care (Self-directed Support) Bill—see link below.

<http://www.scotland.gov.uk/Publications/2012/03/9876>

Financial Effects

A Business and Regulatory Impact Assessment has already been completed on the Social Care (Self-directed Support) Bill—see link below.

<http://www.scotland.gov.uk/Publications/2012/03/5525>

Scottish Government
Directorate for Chief Nursing Officer, Patients, Public and Health Professions
Adult Care and Support Division