

# Policy Briefing

Guide to the Social Care (Self-directed Support) (Scotland) Act 2013 and how it applies to different groups and services.

March 2017

## Background

The Social Care (Self-directed Support) (Scotland) Act was passed in 2013 and the duties came into force in April 2014.

With the move to self-directed support (SDS) the way that social care is funded and provided is changing. Support provision is becoming more personalised and more focussed on meeting the outcomes of supported people. As more people access Individual Budgets the way that support is purchased and procured is changing. SDS offers greater choice and control for supported people and brings about a shift in the balance of power between individuals and organisations.

## SDS Values and Principles

The principles in the Act are: involvement, informed choice, and collaboration. The Act also includes principles from the Independent Living Movement of disabled people – the right to be treated with dignity and the right to participate in society.

## The Four Options

The Act states that anyone assessed as being eligible for social care (through a social work assessment) must be offered SDS including the four Options:

- Option 1 – A Direct Payment to the person
- Option 2 – the person chooses their own support and the budget is managed by the local authority or a third party organisation
- Option 3 – The local authority selects, arranges and manages the budget.
- Option 4 – A mixture of the above options

## Who is eligible?

Self-directed support is available to adults including: disabled people (with physical impairments, learning disabilities, mental health issues, long-term conditions, sensory impairment,

etc.) older people, young people, children and other groups who meet the eligibility criteria for social care.

## Duty to meet eligible needs

The local authority has a duty to assess individuals based on their eligible needs under Section 12 of the Social Work Scotland Act 1968 and a duty of care to ensure those needs are met through the support provided. With self-directed support these duties still remain although social work assessments should become more collaborative and outcomes focussed.

## How SDS applies to specific groups:

### 1. Children and Young People

- Young adults (16yrs-18yrs) will have choice and management of any of the four options of SDS.
- Children: the person with parental responsibility will have choice and management of any of the four options- with maximum input from the child according to their maturity.
- Looked After Children – children in need may be eligible for SDS if they are entitled to paid support.

### 2. Adult Support and Protection

With SDS Adult Support and Protection rules will still apply to certain people however the focus should be on risk enablement as well as risk management.

The statutory guidance states that the local authority should 'take a person-centred approach to risk assessment, enablement and management, building and managing the person's control over their own risks'.

### **3. People with convictions or those who are subject to Criminal Justice Orders**

The statutory guidance states that SDS cannot be offered for support provided under a Criminal Justice Order but can be offered for other social care support that the person may be receiving (E.g.: home care, personal care, housing support).

### **4. People with drug and alcohol addictions**

People who are subject to a compulsory Drug Treatment Order cannot be offered choice under SDS for the compulsory part of the order, but may be eligible for SDS for other kinds of social care support.

### **5. People who are at a risk of homelessness**

People who are homeless, or at risk of homelessness, may be able to access SDS if they are assessed as having ongoing social care needs. SDS should not be applicable to homelessness accommodation or hostel accommodation but only applies to social care and support needs.

### **6. Housing support provision**

Housing support may be eligible for SDS depending on how the support is funded. If the housing support is funded through social care SDS may apply.

### **What services are in scope/ out of scope (included and eligible) for SDS?**

**1. Crisis services and short-term intervention are not likely to be eligible for SDS** and should be core funded including:

- Drop-in services
- Crisis support (e.g.: mental health crisis centres, homeless hostels,
- Universal services – libraries, community centres, swimming pools, etc.
- Social enterprises, befriending, therapeutic gardening, advice services and advocacy services.

These services should be block funded or grant funded by the local authority to ensure sustainability.

### **2. Buildings based and residential respite**

Buildings based and residential respite services may be more expensive than community based support services. These services may require additional funding through SDS to be sustainable.

### **3. Residential Care Homes**

Funding for people in residential care will either be via the local authority through the National Care Home contract or by individuals who are self-funding their care home place. Although people living in residential Care Homes are excluded from receiving Option 1 of SDS (a Direct Payment) they should still be able to access the other SDS options. People living in residential care should also still benefit from receiving outcomes based and personalised support with individual person centred plans to ensure greater choice and control.

### **Top Tips for Sustainability of Services for SDS:**

Local authorities should:

- Promote a range and diversity of providers for individuals to choose from.
- Develop a commissioning plan for SDS and identify needs and gaps in provision.
- Ensure that there is a phased transition from block funding to Individual Budgets for support providers.
- Encourage providers to cost support based on individual budgets and outcomes for individuals.
- Promote community and asset based support through sustainable funding models (grants, community development workers, etc.)
- Buildings based and residential services (e.g. day centres, children's residential respite) have additional costs/overheads – ensure this is reflected in cost of Individual Budgets for individuals and families).
- Exclude some essential services from SDS: homelessness hostels, crisis centres, one-off services (but recognise that individuals who are homeless, people with convictions, people with mental health problems may still be eligible for SDS and Individual Budgets.)
- Ensure contracted hourly rate is sustainable for fair work, support provision and cost of service.
- Identify specialist groups who may be eligible for SDS and test out Individual Budgets to demonstrate what works best.

## Duty to promote choice and a range of providers

Section 19 of the SDS Act states: 'For the purpose of making available to supported persons a wide range of support when choosing options for SDS, 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.'

This is to ensure choice for individuals and ensure that bespoke, specialist support providers are available as well as generic support providers. It is the role of the local authority to support market diversity through commissioning strategies.

**Local authority in house services** should be treated on an equal standing to external providers in the way they are promoted and contracted.

## Procurement Reform

The Procurement Reform (Scotland) Act 2014 brings in new duties for procurement of care and support. **Under s.12 of the Act, local authorities are no longer required to advertise for health and social care contracts under the value of €750,000.** This means that competition (competitive tendering) for below threshold contracts is no longer required.

S.6.11 of the statutory guidance for the Procurement Reform Act is clear that there is **no legal requirements that stipulate a contracting authority must follow a**

**procurement process to meet their obligations under Option 2 of SDS** –freeing contracting authorities to place individual choice and control above procurement considerations.

## Resources:

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

Self-directed Support Statutory Guidance 2014  
<http://www.gov.scot/Publications/2014/04/5438/0>

Procurement Reform (Scotland) Act  
<http://www.gov.scot/Topics/Government/Procurement/policy/ProcurementReform/ProcReformAct>

Sustainability guide 'A Lasting Difference' – Wren and Greyhound  
<http://www.wrenandgreyhound.co.uk/wp-content/uploads/2016/10/A-Lasting-Difference-2nd-Edition.pdf>



## About P&P

P&P is a policy and practice change programme supporting providers to prepare for, and showcase good practice in the journey to Self-directed Support. P&P is open to all third sector care and support providers.

More about P&P

<http://www.ccpscotland.org/providers-and-personalisation>

## Legal

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