

Statutory Guidance to accompany the Social Care (Self-directed Support) (Scotland) Act 2013

General notes (these will not be part of final guidance document)

This document is a draft working copy of the Statutory Guidance for the Self Directed Support Act 2013, [first published](#) in April 2014, in order to (as set out in first Short Life Group Meeting):

- Incorporate key elements of the pandemic guidance ([updated](#) in March 2022)
- Clarify legislation in place to support SDS in its totality, for example in reference to flexibility of spend and employing family members or friends as Personal Assistants (PAs);
- Remove of out of date references and legislation
- Clarify that SDS is the way social care is delivered in Scotland, rather than it being a separate entity.
- Update roles and responsibilities
- Incorporate Self Directed Support Framework of Standards (2021)
- Clarify expectations on transparency, data and complaints
- Make the guidance shorter and easier to navigate and understand

This document should be considered Official-Sensitive, restricted to members of the Short Life Working Group (and those who members of the group wish to share it with, by agreement) convened to oversee the development of the guidance. It is not a public document.

Notes on version history

This draft – Draft 3.1 – was sent by email to the Short Life Working Group membership on 5 October, and incorporates additional changes made since 23rd September. It also accepts all tracked changes made to Draft 2 and Draft 2.1 as a result of feedback received up to 23rd September. **Changes to 3.1 are indicated in yellow highlight. Comments only retained where relating to decisions about structure or content that may still need work or explanation.**

Draft 2 was sent on 19th August to the Short Life Working Group membership for consideration at their meeting on 14th September, which was cancelled (with request for feedback online). That draft incorporated comments, proposed deletions and additions from the SLWG workshop on 27th July.

Below is a summary additional amendments to Draft 2, which are highlighted in this draft in yellow for ease of reference. These are changes are those made **after** sending out to the short-life working group on 19th August, including edits prompted by written feedback from group members sent in to the SG team, edits prompted by feedback given verbally by CSWOs, and exchanges with SG policy colleagues. These amendments now incorporated into this Draft 3.1 include:

- Draft standalone summary and move of Section 5 (SDS Options) earlier in document
- Additional text (minor) from SWS throughout
- Multiple changes throughout document regarding Children, young people and transitions and dealing with examples of where guidance unhelpfully gives impression that the guidance is for adults only
- Additional text on what LAs do regarding guardianship and managing financial affairs

- Additional text throughout on risk management and enablement
- Further edits to roles and responsibilities
- Further edits to Equality Act 2010 section
- Further edits to PVG scheme
- Further edits to Housing and Equipment
- Further edits to eligibility
- Further edits to employment status
- Addition of short section on mileage
- Further edits throughout on human rights.
- Deletion of much of Section 11 and myths and misconceptions section – to be retained in supporting communications materials.
- More work on diagrams in Annex 1.

Below is a list of significant changes in this version retained from 'draft 1' made as a result of workshop feedback (building on previous SLWG inputs).

- A range of cuts and edits made to reflect consensus on need to make document more accessible and in response to various comments that this is statutory guidance, not a report and not good practice (although agree to embed SWS standards). Also hyperlinks moved into footnotes to improve accessibility.
- Section 3: Some reorganisation of Roles and Responsibilities section
- Section 4: Edits on PVG scheme
- Section 5: Edited Redundancy section. Proposed removal of Myths and misconceptions (on basis that this is useful but prob not for inclusion in stat guidance)
- Section 6: Addition of human rights content regarding assessment
- Section 6: Reduction of eligibility section so as not to duplicate elsewhere, and to reduce potential confusion given it is being currently looked at.
- Section 7: Pooling of budgets section clarified.
- Section 8 Section on Employment status of Pas clarified and addition of new draft text on power of attorney
- Section 10: Addition of new draft text on data
- Section 11: Proposal to move a helpful list of additional links out of the guidance to an external website where those links can be properly curated.

In addition to members of the Short Life Working Group, and other groups that members have shared it with (e.g. including Chief Social Work Officers), this draft incorporates feedback from a range of Scottish Government policy colleagues including teams working on adult social protection, workforce, unpaid carers, PVG and children/families as well as professional social work advisers and colleagues in the Legal Department. The guidance will be published as a series of interlinked web pages as well as in a standalone PDF document.

Future steps

According to agreed timeline, the SLWG will convene in mid-October to consider Draft 3/3.1. Subject to agreement by the SWLG, once the guidance is finalised and approved by Ministers, intended to be before end of October 2022, it will be published (with an accompanying Easy Read version and British Sign Language summary) and issued to local authorities and will replace the statutory guidance issued in 2014. The guidance is organised according to a [structure/table of contents](#) already agreed by the Short Life Working Group meeting of 27th May.

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Commented [JM1]: The table of contents reflects the discussion and agreement of a proposed structure for the guidance at the second meeting of the SLWG on 25th May.

Clickable table of contents has been subject of several suggestions to make document more navigable. Ultimately, the guidance will exist as a series of linked web pages as well as a complete document..

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Summary

The Statutory Guidance has been updated, making it clearer that Self-Directed Support (SDS) is for everyone in Scotland who needs it. This includes children, adults and unpaid carers.

The Guidance explains what authorities should do to make sure that people are able to get the support that is right for them. It is based on the Social Care (Self-directed Support) (Scotland) Act 2013 ('the 2013 Act'), which is a law that requires local authorities to uphold supported people's rights to the same freedom, choice, dignity and control as other citizens at home, at work and in the community.

To uphold these rights, authorities should:

- **Treat supported people with dignity and respect at all times**, including when they first assess someone for support
- **Offer the four SDS options and explain what each of them mean in a balanced and impartial way**, and how they would work for the supported person's unique circumstances
- **Make sure that supported people have a say in planning what their support looks like** and that they have as much involvement as they want in decisions about their support
- **Make sure that supported people have enough information to make the choices which are right for them**, including where to find independent support to help them choose.
- **Make sure that supported people have opportunities to challenge and ask questions** about any aspect of their support, and are given enough time to understand and participate in decisions about their support, particularly when it is being stopped or changed.

Since the 2013 Act became law, a lot has been learned from studying how SDS works, including speaking to people who use support and people who work in social care support. Most people agree that SDS is a really good idea, but that the way authorities deliver SDS means that the way supported people experience SDS varies depending on where they live. Not everyone has received the support that is right for them, or been able to have choice and control over how the support is provided.

The Guidance uses this learning to highlight the flexibility of existing legislation and regulations, and has incorporated the SDS Framework of Standards. This framework helps explain how anyone involved in SDS should help supported people to choose the kind of social care support that will give them dignity and control over their lives.

Authorities have a lot of freedom to make their own decisions about how they provide SDS and how they decide who gets it. The Guidance aims to help them to have a consistent and flexible approach to making sure that social care is provided in a way that delivers as much involvement and choice as the supported person wants.

Commented [JM2]: To be finalised once all other sections of the guidance are agreed. Can form the core of what the easyread version of the guidance will look like. 2-4 pages long and would also be published as a standalone document.

Comms subgroup of SLWG will work to finalise this summary.

Formatting conventions including paragraph and section numbering and endnotes will be overseen by comms subgroup.

All external hyperlinks to be footnoted. Hyperlinks remaining in the document main text are bookmarks to other parts of the document.

How should SDS work for the supported person?

There are four options or choices for SDS. A supported person can choose to have lots of control over their care and support or they can leave most of the decisions and work to the local authority. Or they can have a mix of all of these.

Option 1 – the supported person receives a direct payment. The local authority will decide how much money can be spent on the support. The supported person uses this money and arrange their own support, which can include employing staff and/or buying goods and services. The supported person has full choice and control and also have the most responsibility for arranging things, which may include employer responsibilities.

Option 2 – the supported person decides and the local authority arranges support. The local authority will decide how much money can be spent. The supported person can use the money by choose goods and services, for example from a registered support provider, and then the local authority arranges it. This way the supported person has full choice and control but does not have to manage the money.

Option 3 – after discussion with the supported person, the local authority decides and arranges support. The local authority will decide how much money can be spent. The supported person asks the local authority to choose and arrange the support that it thinks is right for them. With this choice the supported person has the least responsibility for arranging things. But they also have less choice and control over their support.

Option 4 – the supported person uses a mixture of ways to arrange your care and support. Some people will want to control some parts of their care and support but not other parts. Option 4 lets the supported person pick the parts they want to decide about and what parts they want to leave to the local authority.

SDS planning, budgets and systems

After an option is agreed, social care workers and the supported person should work together to make a plan for the person's care and support. They will agree on outcomes for the person – what they want to see happen in the person's life. The plan will help the person work towards this, and should be reviewed regularly.

The local authority should make sure that supported people have enough budget to achieve what has been agreed in the plan. Supported people should be involved in decisions about their SDS budget and have maximum flexibility to use this in the way that achieves what is most important to them.

When a supported person gets a payment or budget for support, they should work with the local authority to decide how the money will be used. Both the person and the local authority should use the money in the best way.

Local authorities should make sure that their systems and rules are SDS-friendly and that they do everything they can to ensure that people get support at the right time, before a crisis or emergency happens. Local authorities should make sure that social care workers are supported to use their professional judgement to help supported people have control and choice.

Local authorities should make sure that the way they make decisions is fair and transparent, and that information about how they decide who is eligible for SDS is available to anyone who wants it.

Local authorities should also make sure that people who need support are not disadvantaged because of their background or where they live.

Section 1: Introduction to purpose and definition of SDS

Who is this Statutory Guidance for?

This guidance is for Local Authority and Health & Social Care Partnership or Integration Joint Board staff (collectively referred to throughout the document as ‘authorities’ or ‘the authority’) who have statutory functions with respect to the provision of social care for adults (including older people) and children.¹ It is particularly relevant for social workers as those with delegated statutory duties in undertaking and overseeing the assessment and review processes which are the embodiment of the principles and duties under the provisions of the Social Care (Self-directed Support) (Scotland) Act 2013² (‘The 2013 Act’).

It is also relevant for social care and health practitioners and Self-Directed Support (SDS) leads, finance officers and senior managers, as well as legal, commissioning, procurement and audit teams in individual local authorities, supported people, unpaid carers, Personal Assistants (PAs), advocacy and independent support organisations, care providers and those who assess, approve or administer social work and social care and support.

This guidance is issued by Scottish Ministers under Section 5 of the Social Work (Scotland) Act 1968, and is an update of the Statutory Guidance³ first published in 2014.

Purpose of the Statutory Guidance

The 2013 Act came into force on 1 April 2014, and is underpinned by the statutory principles of involvement, informed choice, collaboration and the human rights principles of participation, accountability, non-discrimination, empowerment and legality. These are sometimes referred to as the PANEL⁴ principles.

The Scottish Government believes that social care is an investment in people. SDS, alongside many other policies, is intended to support, promote and protect people’s human rights and through access to independent living support people’s participation in Scotland’s social, political and civic life. SDS also has the potential to promote equality of opportunity by removing the barriers which society places in the way of supported people and unpaid carers in all of their diversity. It aims to ensure that care and support is delivered in a way that supports choice and control over one’s own life.

The guidance relates solely to social care support funded by Local Authorities and Health and

Commented [JM3]: All hyperlinks in the text can be moved into endnotes as per workshop feedback regarding accessibility (Alliance/HT). To be considered after send out of Draft 3 as part of accessibility checks. For now, all external hyperlinks are in footnotes. Remaining in-page hyperlinks are only to other parts of the document.

Commented [JM4]: Amended from pandemic guidance update to the Statutory, published in March 2022 [Coronavirus \(COVID-19\) self-directed support: guidance - 11 March 2022 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/statutory-guidance-accompany-social-care-self-directed-support-scotland-act-2013/pages/8/)

¹ Applies to all children assessed as needing a service, not exclusively those with disabilities

² See the full 2013 Act here: <https://www.legislation.gov.uk/asp/2013/1/enacted>

³ See the original 2014 Statutory Guidance here: <https://www.gov.scot/publications/statutory-guidance-accompany-social-care-self-directed-support-scotland-act-2013/pages/8/>

⁴ More information on human rights in Scotland at <https://www.scottishhumanrights.com/projects-and-programmes/human-rights-based-approach/>

Social Care Partnerships and should be read together with the SDS Practitioner Guidance⁵, and the 2013 Act.

The aim of this guidance is to help duty-bearers within the relevant authorities to fulfil their duties under the 2013 Act. In light of recent evidence on the implementation of SDS (including the Independent Review of Adult Social Care⁶ (IRASC) in 2021, the Care Inspectorate thematic report⁷ in 2019 and Audit Scotland⁸ in 2017), the guidance also intends to support improved implementation and practice.

It highlights the flexibility of existing legislation and regulations, incorporates the SDS Framework of Standards⁹ and emphasises the importance of enabling choice, autonomy, good conversations, and a mature and positive approach to risk enablement and management. While the guidance provides links to other sources of guidance and good practice throughout, the guidance is intended to be a starting point for training and good practice rather than a substitute for these.

The update also incorporates policy and legislative changes relevant to the delivery of SDS which have taken place since the 2013 Act came into force. These include:

- The Carers (Scotland) Act 2016, which sets out the duties of local authorities to provide information and support to carers (including rights to an adult carer support plan or young carer statement to identify each carer's personal outcomes and needs for support).
- The Children and Young People (Scotland) Act 2014 which sets out additional duties relating to improving outcomes for all children and young people in Scotland.
- The Public Bodies (Joint Working) (Scotland) Act 2014, concerning the integration of health and social care and to devolve responsibility to Health Boards, Local Authorities and Integration Authorities.
- The guidance on Self-Directed Support during the COVID-19 pandemic, which was published in May 2020 and most recently updated¹⁰ in March 2022.

This update therefore emphasises the importance of rights, that SDS is the way that social care must be delivered in Scotland (for children, adults and those in transition to adulthood), and that authorities must therefore take reasonable steps to uphold the rights of supported people and carers as described in the statutory principles. See [section on human rights](#) for more information.

The update also incorporates the inputs of a Short Life Working Group which was convened in 2022 to bring into the drafting process the expertise and perspectives of local authorities, the third sector and people with lived experience. There has been no formal public consultation process.

⁵ See the existing SDS Practitioner Guidance at <https://www.gov.scot/publications/self-directed-support-practitioners-guidance/pages/6/>

⁶ Read the full IRASC report here: <https://www.gov.scot/publications/independent-review-adult-social-care-scotland/>

⁷ Read the full Care Inspectorate Report here: https://www.careinspectorate.com/images/documents/5139/Thematic_review_of_self_directed_support_in_Scotland.pdf

⁸ Read the full Audit Scotland report here https://www.audit-scotland.gov.uk/uploads/docs/report/2017/nr_170824_self_directed_support.pdf

⁹ To support the consistent implementation of SDS, the Scottish Government, jointly with Social Work Scotland and COSLA, published the [SDS Framework of Standards](#) in March 2021.

¹⁰ Read the SDS pandemic guidance here: <https://www.gov.scot/publications/self-directed-support-guidance-pandemic-published-11-march-2022/>

SDS Definition and Statutory Principles

According to the 2014 'Values and Principles' statement¹¹, SDS is defined as 'the way that care and support is delivered, making the principles of choice and control central to care and support, and giving individuals full opportunity to take control of their support and their lives.' SDS is about how a support plan is put into action so that children, adults and their guardians or carers receive the help they need to meet agreed personal outcomes.

SDS helps people and carers to – based on their unique needs and circumstances – make informed choices on what their support looks like and to have choice and control over how that support is arranged, managed and delivered. SDS applies across all ages and user groups, including unpaid carers and children.

SDS represents a 'deliberate attempt to shift the culture of practice towards co-production of an outcome-focused provision, underpinned by a human rights-based approach'¹². SDS, alongside other policies, is intended to support, promote and protect human rights, and aims to ensure that care and support is delivered in a way that supports choice and control over one's own life and which respects the person's right to participate in society.

Sections 1 and 2 of the 2013 Act provides four statutory principles relating to a person's human rights – participation and dignity, involvement, informed choice and collaboration. The statutory principles are important because they carry legal weight. They set out the underlying aims or 'spirit' of the legislation and complement the detailed duties and powers provided elsewhere in the Act.

This means that duty-bearers in the relevant authorities must follow both the letter and the spirit of the guidance, both as public providers of social work and social care services, and as partners in Integration Joint Boards, where they work with their NHS partners and others to meet local needs and manage health and social care resources. The principles apply to the initial social worker assessments and to the provision of choice to meet people's requirements.

The four principles are described below and should be considered alongside practice statements contained in the SDS Framework of Standards. The Standards were published in 2021 to ensure consistency of outcomes and approaches in SDS practice across Scotland experienced by supported people (children and adults) and unpaid carers:

1. **Participation and dignity** are core aspects of independent living defined by the UN Convention on the Rights of Persons with Disabilities¹³. They describe the approach whereby the supported person has the same freedom, choice, dignity and control as other citizens at home, at work and in the community, and where carers have a life outside caring. In some respects the concept of independent living provides a modern interpretation of the social welfare duties provided in the 1968 Act. Under the statutory principle of participation and dignity the authority must take reasonable steps to facilitate the principle a) that the supported person's right to dignity is to be respected, and; b) that the supported person's right to participate in the life of the community is to be respected. This applies both to the initial assessment of need and to the provision of choice as part of the wider support planning process.

¹¹ See the published statement here: <https://www.gov.scot/publications/self-directed-support-values-principles-statement/documents/>

¹² As explained by an [IRISS review of practice](#)

¹³ See the following website for more information: <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-19-living-independently-and-being-included-in-the-community.html>

Commented [JM5]: This paragraph amended from original guidance 'statement of intent'. Shortened in draft 3 to reduce the duplication creeping in in Draft 2.

Commented [JM6]: These paragraphs below taken from original guidance section 4 and moved here for coherence, and edited to reduce duplication in that section. The table in the original guidance is not included here as it largely duplicates the content.

2. **Involvement** is the principle that the supported person must have as much involvement as the person wishes in both the assessment and in the provision of support associated with that assessment. This recognises the importance of involving the adult, carer or child in determining their needs and developing appropriate solutions in order to meet those needs. It is built into the Act that people must be enabled to participate in their own assessment.¹⁴
3. **Informed choice** is the principle that the supported person must be provided with any assistance that is reasonably required to enable the person to express views about the [options for self-directed support](#) available to them and to make an informed choice. This is a key principle, essential to ensuring that the person can be fully involved in designing and implementing their support. This will require consideration of, for example, advocacy, brokerage, interpretation or other communication support.
4. **Collaboration** is the principle that the practitioner must collaborate with the supported person in relation to the assessment of the person's needs and in the provision of support or services to the person. A collaborative approach helps to stimulate new or alternative solutions, and supports an equal partnership between the practitioner (able to bring their expertise, knowledge and statutory and professional responsibilities) and the adult, child or carer (aware of and expert in their personal outcomes, supported to articulate and develop those outcomes and how they wish to achieve them).

Nothing in this guidance supersedes any legislation or other legal obligations which may regulate any relevant parties to the SDS guidance. Where there is a reference in this SDS guidance to any legislation or statutory guidance, for example in the [section on related legislation](#), given the law can quickly change, users of this SDS guidance should check that those references are up to date and seek independent advice in appropriate circumstances.

[Human rights under the 2013 Act](#)

This section describes the approach to respecting human rights which derive from the 2013 Act. The Act states that local authorities, as set out in the [section on duties](#) under the 2013 Act, must take reasonable steps to facilitate the above statutory principles, for example, in respecting a person's right to dignity, and their right to participate in the life of their community.

Supported people should be able to use SDS budgets to choose from a wide range of goods, services or support from a local authority, private or third sector provider in line with their identified needs and outcomes. The intended goal of the 2013 Act is to shift the balance of power from people who provide services towards those who access them, to ensure a full and collaborative exploration of all SDS options that does not start from the basis of available funding or services. Supported people may have a range of identified needs which can be met in a variety of ways that include attending college, going to work, participating in leisure pursuits or taking short breaks.

Duty-bearers in the relevant authority, and all individuals or organisations responsible for discharging the duties and powers described in this guidance on its behalf, should therefore take a rights-based approach when implementing this guidance and in ensuring that people have as much choice and control as possible¹⁵.

¹⁴ See Carers Act 2016 statutory guidance, Part 4, Chapter 1 on Carer Involvement in Services: [Carers \(Scotland\) Act 2016: statutory guidance - updated July 2021 - gov.scot \(www.gov.scot\)](#)

¹⁵ See also sections on eligibility criteria and on roles and responsibilities

See [section 11](#) which lists further resources on advocacy, brokerage and human rights under the 2013 Act.

The enabling context for SDS

The delivery of SDS is complex and takes place in a dynamic and challenging context that includes financial, workforce and public health issues. This guidance therefore cannot cover all aspects of SDS delivery, and cannot replace effective training and professional judgement. In most cases, this guidance refers to social workers carrying out their duties in their statutory role (although other types of social services workers may also be involved).

What has been learned since the 2013 Act came into force emphasises the importance of culture, creativity and good conversations in upholding the rights of supported people and achieving their outcomes. The SDS Implementation Plan 2010-2021¹⁶ also emphasised the importance of senior decision-makers and systems in creating the culture and conditions for people to have choice and control over their social care support.

For example, while Audit Scotland's 2017 report¹⁷ highlights the broad challenges that authorities face, it also highlights that where SDS is well-implemented, supported people and unpaid carers point to the impact of flexible and creative approaches in making support options available to them. The My Support, My Choice¹⁸ reports also contain further examples.

This guidance does not prescribe approaches to resource allocation at local or national level for social care, which is a difficult issue acknowledged in the [section on eligibility criteria](#) and in the section on [legal considerations](#). However, it is important to recognise that successful implementation relies on the enabling conditions identified by The Promise report¹⁹ and the IRASC. Some of these enabling conditions are also mentioned elsewhere in the guidance, for example in the [summary of Section 5](#) and in [Section 3 \(on Roles and Responsibilities\)](#).

See [Annex 1: Visualisations](#) for a series of diagrams that illustrate how SDS should work, including roles and responsibilities, what a supported person's pathway should look like. And the differences between the four SDS options.

Towards a National Care Service

Statutory responsibility for the delivery of SDS currently sits with Local Authorities, Health and Social Care Partnerships and individual providers. It is the intention of the Scottish Government that a National Care Service will be established before the end of this Parliamentary term in 2026. **The National Care Service will bring together all adult social care support delivered in Scotland under the accountability and responsibility of Scottish Ministers, working through new local care boards who will plan, design and deliver community health, social work and social care services locally.**

A National Care Service²⁰ (NCS) aims to bring social care into parity of esteem with healthcare, and to transform the provision of this essential service. It will help ensure national standards, improve

Commented [JM7]: Feedback from CSWO on 25 august suggested that there should be more info on this. However, the NCS Bill is not law and is clearly an evolving area of policy and legislation, so better to keep this short and link to more information.

¹⁶ [SDS Implementation Plan 2010-2021](#)

¹⁷ Report(PDF): https://www.audit-scotland.gov.uk/uploads/docs/report/2017/nr_170824_self_directed_support.pdf

¹⁸ My Support My Choice reports: <https://www.sdsscotland.org.uk/mysupportmychoice/>

¹⁹ The Promise report on children's social care emphasises the importance of positive relationships, nurturing and supporting families to stay together, and reducing barriers. [Reports - The Promise](#)

²⁰ <https://www.gov.scot/policies/social-care/national-care-service/>

consistency, raise the quality of services across the country, and address the variation in quality and access to community health and social care that have been raised as a concern by those in receipt of support and care and their families.

Within the NCS, social workers will continue to have a key role in assessment and in agreeing outcomes with supported people. Depending on further discussions, within the NCS, social workers may transfer their employment to local care boards or may continue to work for local authorities, commissioned by care boards.

The establishment of the NCS will see the statutory responsibilities set out under the 2013 Act move from local authorities to the NCS . However, at time of publication of this guidance, it has yet to be decided whether the NCS will include social work and social care services for children and young people and those in the justice system.

Consistent with the approach and statutory principles underpinning the 2013 Act, the NCS intends to incorporate the Getting It Right For Everyone (GIRFE) adult practice model, which is a co-design approach involving people with lived experience. GIRFE is multi-agency approach to support and services, from young adulthood to end-of-life care, and aims to provide a more personalised way to access help and support when it is needed and placing the person at the centred of all decision making that affects them to achieve the best outcomes. This will help ensure that the principles underpinning SDS are integrated into national social care policy-making and implementation.

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Further information about this guidance can be obtained from:

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Section 2: The SDS Act, and Local Authorities' legal duties and powers

From 1st April 2014, the Social Care (Self-directed Support) (Scotland) Act 2013 places a duty on local authorities to offer people who are eligible for social care a range of choices over how they receive their support.

This section provides a summary of those duties and powers. There are four main legal reference points for the guidance:

- The legal basis for choice over care and support: The Social Care (Self-directed Support) (Scotland) Act 2013
- The duty to assess an adult's need for care and support: Section 12A of the Social Work (Scotland) Act 1968.
- The legal basis for support to children: Sections 22 and 23 of the Children (Scotland) Act 1995
- The legal basis for identifying carers' needs and providing support: Parts 2 and 3 of the Carers (Scotland) Act 2016.

The duties of local authorities and their delegates derive from the [four statutory principles](#) (participation and dignity, involvement, informed choice and collaboration) mentioned in the previous section.

Duties required by the 2013 Act

Duty to have regard to the general principles of collaboration, informed choice and involvement as part of the assessment and the provision of support

- This duty applies with respect to adults, children/families, adult carers and young carers.
- The 2013 Act provides general principles to which the authority must have regard to in carrying out all of its functions under Part 2 of the 1968 Act (with some exceptions), all of Section 22 and 23 of the 1995 Act, Sections 1 and 2 of the 2013 Act and parts 2 and 3 of the 2016 Act.

What does this [mean](#)?

- The authority, principally through its social workers, must collaborate with the supported person (including unpaid carers where they are to be supported) when they undertake the assessment and provide support. **It should take steps to understand what outcomes matter most to that person, and to establish the amount of choice and control the person wants to have in meeting their outcomes.**
- The authority should take steps to ensure that the person makes informed choices as part of their social worker-led assessment (or adult carer support plan or young carer statement) and in selecting their support options.
- There should be no assumption that the Scottish Government, local authorities or social workers consider any option as a preferred or default option, only that the supported person can choose the option that works best for them, in accordance with the level of choice and control they want to have.
- Supported persons are entitled to, and may benefit from, discussing their support with others. Authorities should therefore allow supported persons or their representatives to discuss any aspect of their support with others if they wish to do so.

Commented [JM8]: This section brings together content into one section that is spread quite widely across multiple sections in the original guidance (sections 2, 3, 6, 10). Sets out duties and powers of the Act, and key other existing, related duties. Draws attention to existing power to delay assessment.

Commented [JM9]: Taken from original guidance, text in italics are addition to reflect concerns raised about 'default' options, and about gagging orders.

Commented [JM10]: Addition following exchange with SWS

See further [guidance on assessment for the supported person and carers](#)

Duty to take reasonable steps to facilitate the person's dignity and participation in the life of the community

- This duty applies with respect to adults, children and families, adult carers and young carers and forms part of the responsibilities taken forward by social workers at assessment and review.
- The 2013 Act provides a further general principle related to independent living. This principle should guide and inform the identification of need and the provision of support following the assessment. The authority should take reasonable steps to facilitate the principle that the person's right to dignity is respected, and to facilitate the principle that the person's right to participate in the life of the community is to be respected.

This means that that the general principles of participation and dignity should guide and inform the authority's approach throughout the process.

Duty to offer four options to the supported person

- This applies with respect to adults, children and their family members, adult carers and young carers.
- Under the 2013 Act the authority has a duty to offer four options to all adults, children and carers eligible for support or provided with services. The options are intended to support the flexibility and creativity allowed under the social welfare and wellbeing duties so that both adults and children can exercise choice and control at the level at which they want to exercise it.

See [Section 5](#) for more detailed information on the four options as described by the 2013 Act. See definition of 'supported person' and other definitions in [Annex 2](#).

Duty to explain the nature and effect of the four options and to signpost to other sources of information and additional support (applies to adults, children/families, adult carers and young carers)

- The authority is placed under a duty to explain the nature and effect of the four options provided under the Act as part of the assessment process. This means that the authority's social work function should explain what each of the four options mean, taking account of the amount of choice and control that the supported person wants.
- This means that the social worker should discuss with the supported person the varying degrees of flexibility and control associated with each option, and what the different options might look like in practice for the supported person given their circumstances, assets and circles of support.
- The authority is placed under a duty to provide information about other persons or organisations outwith the authority who can provide assistance²¹ or information about the options and how to manage the options. Section 9 of the 2013 Act ascribes a range of

Commented [JM11]: Addition following exchange with SWS.

Commented [JM12]: These sections are brought in from the 'Inform' section of Section 6 so that duties are all in one place

²¹ This includes community brokerage, independent support and advocacy.

duties in relation to the social worker's provision of information and support to any adult, child or carer who needs it. Section 19 of the 2013 Act also states that authorities must, 'in so far as is reasonably practicable' promote 'a variety of providers of support, and the variety of support provided by it and other providers'.

- The authority is placed under a duty, where it considers it appropriate to do so, to provide information about organisations and individuals who can provide independent advocacy services.

Commented [JM13]: This clause 'where it considers it appropriate to do so' is in the Act

The support and information provided to the person, directly by the authority or through others on its behalf, must be impartial, balanced and well-informed. The emphasis should be on supporting the person to make an informed choice.

The authority should ensure that social workers and other staff are provided with appropriate training, guidance and support in order to ensure that they can discharge their duties and in order that they can explain the options in a clear and accessible way.

Commented [JM14]: The original guidance contains a table of duties which is largely a replication of the duties described in the text – removed to keep length of document down.

See also [SDS Standards](#), including Standard 1: Independent Support and Advocacy)

Duties relating to other legislation

Duty to assess needs:

- The authority carries a duty to conduct an assessment of a person's needs (Section 12A of the Social Work (Scotland) Act 1968).
- Authorities must also take carers' views into account in assessing the needs of the cared-for person and in deciding whether and how to provide services to the cared-for person

Duty to safeguard, support and promote the wellbeing of children

- The authority retains its duty to safeguard and promote the wellbeing of children in their area who are in need²². This remains a wide ranging duty, with flexibility for the authority to take a range of steps to safeguard and promote wellbeing.
- The authority carries a duty to promote the upbringing of such children by providing a range and level of services appropriate to the child's needs (Section 22 of the Children (Scotland) Act 1995)²³.
- The authority carries a duty to ensure that services provided under Section 23 of the 1995 Act are designed to minimise the effect of any disability on disabled children and to minimise the effect on any child who is affected by the disability of any other person in his family.²⁴
- The authority carries a duty, where requested to do so by the child's parent or guardian to

Commented [JM15]: Suggestion from Hannah Tweed/Alliance that this is a medical framing of disability – this language comes directly from the language in the 1995 act. See draft footnote as a suggestion of how to acknowledge this (rather than changing what is in the original language regarding duties)

²² See also Section 4 for information about Getting it right for every child, and see also guidance on Children and Young People (Scotland) Act 2014 Part 12: Services in Relation to children risk of Becoming Looked After:

<https://www.gov.scot/publications/children-young-people-scotland-act-2014-national-guidance-part-12/documents/>

²³ See also the 2014 Act itself: <https://www.legislation.gov.uk/asp/2014/8/contents/enacted>, which made some amendments to the 1995 Act (<https://www.legislation.gov.uk/ukpga/1995/36>)

²⁴ The language of the 1995 Act can be understood as an excessively medicalised characterisation of disability, and authorities may wish to interpret the language of the 1995 Act as a duty to mitigate societal barriers placed that disabled children and their families may face with respect to their access to services, and to give those children the opportunities to live lives which are as normal as possible.

carry out an assessment of the child or any other person in the child's family to determine the needs of the child. (Section 23).

- The authority carries a duty to work in partnership to plan and deliver services and support as a Children's Services Planning Partnership (CSPP). This is organised and equipped to deliver high quality, joined-up, trauma informed, responsive and preventative support to children, young people and families through each area's Children's Service Plan (Part 3, Children and Young People (Scotland) Act (2014)).
- The authority carries a duty, when assessing the child's needs²⁵ under Section 23 of the 1995 Act, to take account of the views of the parent or guardian of the child and the views of the carer.

Commented [JM16]: Additional duty proposed by SG childrens policy team

Duty to identify carers' needs and support carers

- The authority has a duty to offer an adult carer support plan or young carer statement to all carers and provide such a plan or statement for any carer who wants one or to those identified as a carer by the authority.
- The authority has a duty to provide support to any carer whose needs for support (identified as part of the plan or statement) meet the local eligibility criteria. The authority also has a power to provide support for carers' needs which do not meet those criteria, for example signposting to wider community support.²⁶

Duty to prepare plans for community care services

- The authority carries a duty to prepare and publish a plan for the provision of community care services in their area (Section 5A of the 1968 Act)

Duty to promote social welfare

- The authority carries a duty to promote social welfare by making available advice, guidance and assistance on such a scale as may be appropriate for their area (Section 12 of the 1968 Act). This remains a wide-ranging duty, with flexibility for the authority to take a range of steps to promote social welfare. The full range of options and additional flexibility provided for under the 2013 Act fall within the scope of promoting social welfare.

Duty to make inquiries

- The authority has a duty to make inquiries about a person's well-being, property or financial affairs if it knows or believes that the person is at risk of harm and that it might need to intervene in order to protect the person's well-being, property or financial affairs, as per the Adult Support and Protection (Scotland) Act 2007.

²⁵ Irrespective of whether the child has a disability

²⁶ See section 4 for more about rights and duties under the Carers 2016 Act

Powers already mandated by other legislation

Power to provide support without an assessment

- Existing powers in section 12A(5) of the Social Work (Scotland) Act 1968 allow a local authority to provide or arrange for the provision of support without the need for a full assessment where the local authority considers that the need for services is a matter of urgency (an initial emergency assessment of need would still be required in line with Getting It Right principles). The power in section 12A(5) does not remove the need to carry out an assessment altogether, but delays it, requiring a local authority to assess the person's needs as soon as practicable thereafter.
- The legislation does not set out a specific timeframe in which the assessment must be carried out, but notes that this should be as soon as possible. In particular, the use of these powers might be considered where a person needs to wait longer than normal for an assessment to be carried out and their circumstances mean that the need for services is considered urgent. This might include circumstances when an individual's discharge from hospital would be delayed as a result of having to wait for an assessment and the person's condition is such that they require assistance as a matter of urgency.
- Where a local authority chooses to provide support in this way, it should, pending a full assessment, be prepared to discuss with the person any of the four options in order to find what will work best for the supported person to receive support until a full assessment can be carried out. The supported person's choices and preferences should be respected within short term care and support plans.
- The approach described in this section of the guidance must be carried out in the context of both the 2013 Act and the accompanying Self-directed Support (Direct Payments) (Scotland) Regulations 2014 (the '2014 Regulations')²⁷.

Commented [JM17]: Amended from pandemic guidance

Commented [JM18]: This clause added to reflect reality that there has to be some level of assessment to inform decision to provide an urgent service.

See section on [eligibility and assessment](#)

Power to provide emergency assistance in cash

- The authority has the power (through Section 12 of the Social Work (Scotland) Act 1968) to provide assistance in cash as well as in kind in the case of an emergency. This remains a different form of assistance to a direct payment (which is now covered under the 2013 Act).

Commented [JM19]: Addition following exchange with SWS

Power to make arrangements with voluntary and other organisations

- The authority has the power (through Section 12 of the Social Work (Scotland) Act 1968) to make arrangements with voluntary organisations or other persons, including other local authorities, where they are able to assist in the performance of the relevant functions (Section 4 of the 1968 Act)

Commented [JM20]: Addition following exchange with SWS

²⁷ See the full text of the 2014 Regulations here: <https://www.legislation.gov.uk/ssi/2014/25/made>

Legal considerations concerning the implementation of duties

At the time of writing, social work and social care in Scotland - as in other parts of the UK and Europe - has been severely impacted by the long-term impact of COVID, by the cost of living crisis, the impact of Brexit and other workforce issues, some of which are particularly pronounced in different parts of the country.

This presents a variety of challenges, including [the use of eligibility criteria](#) for the delivery of social care and potential for the reduction of quality of choice and control experienced by supported people and carers.

However it is important to note that the 2013 Act says that local authorities 'must take reasonable steps to facilitate' the statutory principles. This suggests that while duties must be carried out and the statutory principles implemented in a way that delivers as much involvement and choice as possible, the 2013 Act cannot compel authorities to, for example, guarantee that all SDS options are available (see also the section on the [discretion of local authorities](#)).

An example of how courts have interpreted this in practice is a European Court of Human Rights judgment which held (see media article on the case in England²⁸) that local authorities must comply with their statutory duties, including carrying out assessments and respecting people's dignity but that local authorities have discretion in how they resource social care. To avoid unnecessary legal action and to focus on how best to enact the spirit as well as the letter of the 2013 Act, authorities who are facing significant delivery challenges should ensure that where a full range of options are not available, social workers and other duty-bearers within the authority should take reasonable steps to find solutions and compromises and to be open and transparent with the supported person, particularly in explaining why preferred options are not available and what alternatives are available

This can help ensure a focus on what matters to the person in the form of agreed personal outcomes, and that trust-based relationships and good conversations between practitioners and people are at the heart of decisions.

For more information, see also SDS Standard 9: Transparency and the [section on complaints](#)

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Commented [JM21]: This section was proposed in earlier meetings so that the guidance can address tension between duties and implementation gap that may bring in the question of legal redress. This section has been vetted by SG legal colleagues (who will review entire document once we are at Draft 3)

SGLD check due for completion at 10 Oct 2022

²⁸ <https://www.theguardian.com/law/2014/may/20/european-court-disabled-woman-night-care>

Section 3: The Self-Directed Support Options

Summary

The Act 2013 requires local authorities to offer people who are eligible for social care four choices concerning how they receive support, taking account of the amount of choice and control the supported person wants over their social care arrangements.

Commented [JM22]: Content in this section amended from original guidance.

Commented [JM23]: This section moved up so can be before roles and responsibilities

Commented [JM24]: Addition following exchange with SWS

Option 1: The making of a direct payment by the local authority to the supported person for the provision of support.

Option 2: The selection of support by the supported person, the making of arrangements for the provision of it by the local authority on behalf of the supported person and, where it is provided by someone other than the authority, the payment by the local authority of the relevant amount in respect of the cost of that provision.²⁹

Option 3: The selection of support for the supported person by the local authority, the making of arrangements for the provision of it by the authority and, where it is provided by someone other than the authority, the payment by the authority of the relevant amount in respect of the cost of that provision.

Option 4: The selection by the supported person of combinations of Options 1, 2 and 3 and, where it is provided by someone other than the authority, the payment by the local authority of the relevant amount in respect of the cost of the support.

There should be no assumption that the Scottish Government, local authorities or social workers consider any option as a preferred or default option, only that the supported person is empowered to choose the option that works best for them, in accordance with their preferred level of choice and control.

Commented [JM25]: This statement also on page 12.

Assessment, the provision of information and the identification of resources are all part of the same co-produced process, which starts with a good conversation and ends in a budgeted (if budget is required) support plan and the offer of the four SDS options.

The wishes and needs of the person must always take precedence, including taking account of circumstances where a supported person may not have capacity to make decisions – see the [relevant section on incapacity](#) for more information on this, as well as the SDS Practitioner Guidance for a full list of issues that practitioners should consider.

See [Annex 1](#) for illustrations describing the different stages in a supported person's journey towards getting the support they need, as well as the key differences and benefits of the different SDS options.

For guidance on what budgets can be spent on, see [section on funding and flexibility](#)

²⁹ The National model agreement for SDS Option 1 Direct Payment is in development. A [model contract](#) for SDS Option 2 has been developed by Coalition of Care and Support Providers in Scotland (CCPS) to meet all legal requirements and can be either used as it is, or developed further to suit local circumstances.

The SDS options in detail

Option 1: Direct Payment

Option 1 is a direct payment by the local authority to the supported person (including carers) for the provision of support. It requires a higher level of responsibility than other options, and is the only option that allows a supported person to directly employ workers such as Personal Assistants (PAs), which can (with local authority agreement) include the employment of family or friends.³⁰

Authority social workers should ensure that the supported person understands (either directly from the social worker or from a designated support service) what a direct payment is and how it might be used.

The authority should take steps to provide the necessary training and awareness raising to its own social work workforce to ensure that they are aware of and trained in, the nature and effect of a direct payment, the purpose behind a direct payment and the flexibility and responsibilities that come with direct payments. It should take steps to support their workforce to engage with the philosophy behind direct payments and their potential application for a wide range of individuals and circumstances.

The authority is obliged under the 2014 Regulations to take number of steps before making direct payments and should take account of the following when providing the direct payment option, in line with their [duties under the 2013 Act](#):

- The authority should be aware of and be able to explain the key characteristics of a direct payment. For instance, under a direct payment the supported person receives a sum of money into a bank account. The supported person, either on their own or with support, can then purchase the support that they wish in order to meet their personal outcomes.
- The authority should ensure that the relevant local guidance or procedures work to assist the person to use the available financial resource in a variety of ways. In other words, to use it in any way provided that it will secure the provision of support agreed with the practitioner and provided that it meets the outcomes contained in the support plan.
- The decision to become an employer will only be available under the direct payment option. However, the authority should make it clear that the supported person can also use their direct payment to purchase a range of services that might otherwise be available under Options 2 to 4. For example, a direct payment can be used to purchase services from a registered care provider, from the local authority itself or from another local authority. In other words the direct payment can do more than just employ PAs.
- A direct payment is not a benefit and nor is it a gift. It is a means to meet relevant needs. Its ultimate purpose is to meet the identified needs of the supported person. As such, it should relate to the person's support plan. The direct payment should be used in flexible ways which relate to the outcomes set out in the support plan. The direct payment should be adequate to enable the supported person to be able to fulfil their employer responsibilities and therefore should be adjusted in line with changing costs within the market.
- Of the four options available under the 2013 Act the direct payment, if constructed and

Commented [JM26]: Option 1 content derived from existing guidance section 8.

³⁰ Please see Section 8 for further guidance on direct payments and employing family members

developed on a sound basis, requires a level of responsibility that is greater than some of the other options. The authority should make this point clear to the supported person. It should be transparent but it should also be supportive, explaining the additional support and information that can make the direct payment work for the supported person. The authority should ensure the supported person is offered independent advice and support where appropriate.

Payment net or gross

The authority can arrange for the direct payment to be paid in instalments or in a lump sum payment. Where a person is eligible for a charge towards their support the direct payment can be made on a net or a gross basis, in other words, the charge can be removed prior to the provision of the monthly direct payment or following the provision of the monthly payment. The supported person may request the payment be made gross. In this circumstance, the local authority should give this request full consideration, taking into account the direct payment user's reasons and circumstances behind this request prior to a decision being made. If the authority decides to pay the direct payment gross it will pay the relevant amount to the direct payment user and the direct payment user will pay the local authority any contribution required. If the authority refuses to pay direct payments on a gross basis they should inform the supported person as to the reasons why.

Third party direct payments

The supported person can ask for their direct payment to be paid to a third party and administered on the supported person's behalf. Under a third party payment the authority should take reasonable steps to ensure that the supported person remains in control of the payment and the supported person remains responsible for the direct payment. It is important that the role of both the supported person and the third party are made clear to the supported person and that there is evidence that all parties understand their responsibilities, for example a signed letter. This can help in the event of problems occurring at a later stage.

The authority should satisfy itself that the relationship between the supported person and the third party has been discussed and agreed before support begins. The authority must also be satisfied that the supported person is aware that they can receive the payments direct if they wish.

The authority should ensure that the third party direct payment allows choice and control for the supported person. Third party direct payments are a flexible alternative where the supported person does not wish to take on the additional money management responsibilities. But the supported person should be firmly in control. A third party arrangement should not lead to a switch from dependence on the local authority to dependence on a third party.

Responsibilities that come with a direct payment

As part of their duty of care, the authority social worker should explain direct payment responsibilities to the supported person, relatives and relevant circles of support where applicable. They should also explain the additional support and information that the person can receive in order to manage their payment. There is no specific requirement to do so, but it is good practice to explain the following responsibilities:

- to use the payment to meet the outcomes within the support plan;
- to report back in a proportionate and reasonable way on how the funding is being spent; and

- where the supported person chooses to employ a PA³¹, the responsibility to be a good employer and the responsibilities to discharge the range of additional responsibilities that come with being an employer.
- The authority should make the supported person aware of further sources of information which can help them to understand their responsibilities.

Flexible use of direct payments: the choices available to a supported person under a direct payment

As set out in the [section on funding and flexibility](#), the authority should take steps to ensure that the supported person can use their direct payment in any way, provided that the support purchased via the payment is in line with the assessment and support plan, meets the supported person's needs and is within the criminal and civil law.

Typically, direct payments have been understood as a route to employing a personal assistant. However, a direct payment can also be used to purchase a wide range of things. For instance:

- a service from the local authority or from another local authority;
- a service from a provider organisation in either the voluntary or private sector;
- a product which can help to meet the supported person's needs;
- a short break; and
- anything else which will help to meet the supported person's needs and the outcomes in the support plan.

The 2014 SDS Regulations provide additional safeguards in relation to the direct payments – both for the authority and for the supported person. This is to recognise the unique nature of a direct payment and to support practitioners and individuals when choosing the direct payment option.

Option 2: Directing the Support

Under this option, the supported person directs the local authority - or a provider acting under the person's direction - to make payments on their behalf for services or for the purchase of key items that will meet their outcomes, or a combination of both.

The purpose of Option 2 is to facilitate greater freedom of choice and control, making it easier for people to choose the provider of their choice, with the authority (or subsequently the provider) of the supported person, making arrangements on their behalf. The authority should use Option 2 to widen the flexibility offered to supported persons to the maximum possible extent. It should make use of Option 2 to provide a route to greater freedom of choice and control for those who want to take greater control over their day-to-day support but prefer not to choose the direct payment option.

The authority should develop a flexible range of options under Option 2 in line with the policy intentions described in Sections 1 and 4 in the 2013 Act. As with the direct payment option, the provision of support under Option 2 should be flexible and can include services, goods and activities, as supported by the provisions in the legislation.

Commented [JM27]: Amended from Section 8 of the original guidance.

³¹ See [Section 8](#) for more on employment including links to PA Handbook and PA Employer's Handbook

The authority should consider all commissioning models to put in place service provisions, and where a public contract is the preferred arrangement for securing service provision, they should seek to apply the flexibilities permitted by the procurement regulations, which do not require a tendering process where the value of the contract is below the relevant contract threshold value for social and other specific services³².

The key limitation is that while a person can use Option 2 to obtain a personal care service (and express preferences about which care workers will support them within a specific provider), a person cannot use Option 2 in order to employ their own PA. Unlike the direct payment there is no requirement for the funding to be provided directly to the supported person as a cash payment. The budget provided to the person should be operated as a virtual budget. The resource can remain with the local authority or it can be delegated to a provider to hold and distribute under the supported person's direction.

The arrangements should be flexible and inclusive. Flexible - in that authorities should not seek to create or re-impose barriers to choice and control. Inclusive - in that authorities should not seek to exclude particular types of service provision or particular providers from the full range of supports available to the person. For example, the arrangements should allow for flexibility in budgeting, allowing sufficient over-and under-spends. The authority – and providers acting as custodians of the person's budget under the person's direction – should not seek to impose restrictions or limitations over and above any that are reasonably defined in the person's assessment or support plan.

Option 2 may also be provided as an Individual Service Fund, which is an example of a budget managed by a service provider on behalf of an individual. As with a direct payment, Option 2 funding should be used to meet the needs identified at assessment and the personal outcomes outlined in the support plan.

Commented [JM28]: Text taken from the case study on Individual Service Fund in original guidance

Option 3: The local authority arranges support for the supported person

Under Option 3, the authority – with the involvement and agreement of the supported person – selects the appropriate support and then makes arrangements on the supported person's behalf.

It differs from Option 2 in that the local authority provides or arranges services on the supported person's behalf and the supported person does not have direct, on-going or day-to-day responsibility for planning and controlling how the available resource is used.

Nevertheless, under Option 3 the principles of choice and control, collaboration and involvement should continue to apply. The authority, through its approach to commissioning and procurement of services, should seek to ensure that the services provided are as flexible as possible, are appropriately personalised and are ready to adapt to the wishes of the individuals who use them.

This should involve the necessary workforce education and development, ensuring that those who provide care and support do so in line with the general principles in the 2013 Act.

Option 4: Bespoke combination of one or more options

This option recognises that some people will be content to take on some but not all of the control

Commented [JM29]: Amended from Section 8 of original guidance.

Commented [JM30]: Largely taken from section 8 in the original guidance

³² This should be checked at <https://www.gov.scot/publications/updated-procurement-threshold-values-from-1-january-2022/> but at time of writing the threshold value under the 'light touch regime for services' is £663,540. See also the [Procurement section](#).

associated with one or other of the SDS options. This is a bespoke approach to ensure maximum flexibility in the options available. This option may be attractive to people who would like to try using the direct payment or individual service fund for some aspects of their support.

Here, the supported person may choose combinations of Option 1, 2 and 3 for different types of support and, where it is provided by someone other than the authority, the payment is made by the local authority of the relevant amount in respect of the cost of the support.

Further guidance related to SDS Options

This section contains guidance on a range of related issues and policies related to SDS Options.

Housing support, adaptations and equipment

Housing support is support other than care or housing management services to enable a person to establish or maintain occupancy of a dwelling. Housing support services are provided to help people live as independently as possible in their own homes.

If the authority concludes that a particular form of housing service falls within the definition of community care services then the 2013 Act applies and the supported person should be provided with the full range of choices under the 2013 Act.

Housing adaptations

Housing adaptations are changes to a property that are fixed or become part of the structure and support a person to live as independently as possible.

The authority should have regard to the following key principles which represent good practice in housing adaptations:

- the supported person and their carer(s) should be placed at the centre of service provision and be in control;
- access to assessment and the adaptations should take account of need and be fair, consistent, reliable and reasonable, with a focus on prevention;
- assessment and access to financial and other non-financial support for the adaptation should be equitable and fair; and
- the supported person should be able to understand the systems and rules, which should be uncomplicated and maximise the ability of the supported person to make informed choices.

Options 1 and 2 in the 2013 Act - the direct payment or the opportunity to direct the available support – may provide an opportunity to explore new or alternative ways to meet the person's outcomes. However any additional costs or responsibilities that may be incurred by arranging the adaptation via a direct payment or individual service fund should be fully explained to the supported person. Consideration should be given as to how any recurring costs such as maintenance will be met, and who will be responsible for these costs - for example the provision of additional top ups to the direct payment to cover them.

Commented [JM31]: From Section 13 of the original guidance

Equipment

Before using a direct payment to provide equipment, consideration should always be given to loaning equipment from local Equipment Store Services³³. This should also be the same for the provision of standard non-housing adaptations, for example many local equipment services provided items such as Stairlifts (which are then provided and maintained by the service, and then returned when no longer required, to ensure others can benefit from this provision).

On direct payments and equipment/adaptations

Direct payments can be used to purchase anything provided that it meets the assessed needs of the supported person and is not illegal. This includes equipment and all types of adaptations, including housing adaptations. However, as with any other form of support the equipment or adaptation must meet the assessed needs of the person.

A direct payment arrangement means that control and responsibility passes to the supported person. This means that ownership and responsibility for arranging the maintenance of the equipment or adaptation can pass to the supported person. In some instances it may make sense for responsibility for maintenance to rest with the authority. The key priority should be to make use of the user/supported person agreement to discuss and clarify questions of maintenance, ownership and issues such as the donation of any equipment to the authority, NHS, provider or fellow citizens after it is no longer required.

While there is no specific restriction on the use of direct payments to fund larger scale adaptations it is a matter for the authority to determine if the relevant support relates to community care support. A direct payment is an alternative means by which to meet assessed social care needs. It is not a substitute for housing improvement grants.

When considering the funding of large scale or particularly complex alterations the authority and the supported person should consider how additional responsibilities such as insurance, health and safety requirements and specialist support and expertise, will be fulfilled.

Discretion of local authorities relating to direct payments

The authority must take reasonable steps to comply with the 2013 Act. There are, however, circumstances where the authority has the discretion to refuse a direct payment, for example where in the authority's considered judgement it is simply impossible for the direct payment option to meet the needs of the supported person and, at the same time, be assured that the person's safety is not being jeopardised by the direct payment.

The Direct Payment Regulations 2014 specify that an authority is not required to offer the option of a direct payment where it is likely that the making of a direct payment will put the safety of the supported person at risk. Appropriate examples whereby the authority can use this duty of care discretion are provided below:

- where a person's safety will be put at risk by having a direct payment because it is clear that the money will not be used to purchase the support the child needs;

³³ Services such as Care and Repair can help with the organization and delivery of housing adaptations: <http://www.careandrepairsotland.co.uk/>

Commented [JM32]: This content adapted and edited from what is in the original guidance – section 8

- where the assessment is conducted at an acute point of crisis to the extent that the person's safety would be further jeopardised by the provision of a direct payment, and;
- where the adult is defined as an adult at risk under the Adult Support and Protection (Scotland) Act 2007 and there is a protection order in place and there are concerns about the person's safety.

When considering whether financial harm is occurring – or may potentially occur - it is helpful to consider a person's past behaviour and views as these may offer insight to their current behaviours. Not all people subject to financial harm will be regarded as adults at risk, but the [Adult Support and Protection \(Scotland\) Act 2007](#) can be used to protect those people who are regarded as being at risk.

The test in relation to duty of care considerations and circumstances where it is appropriate to refuse the option due to these considerations, is a significant one. The authority should not depart from the [provisions and duties of the 2013 Act](#) without good reason.

For example:

- it would not be appropriate for the authority to refuse a direct payment simply because the person's disability means that it is a challenge (even a significant challenge) for them to manage the direct payment option;
- it would not be appropriate for the authority to refuse to provide a direct payment simply because the person has dementia or learning disability or any other disability which may require them to need extra support to make the direct payment option work, and;
- it would not be appropriate for the authority to develop internal policy guidance documents which define access to direct payments on the basis of client group or disability alone.

In all instances where the authority concludes that it cannot provide a direct payment it should explain in writing - and if necessary, in such other form as is appropriate to the needs of the person - to the supported person why it is not appropriate at that point in time. It should also explain that the person can request a review at a later date in order to return to the options.

Commented [JM33]: The SDS Act section 5 contains this language.

Where the circumstances that gave rise to the initial decision subsequently change, the authority should reconsider. Section 13 of the 2013 Act specifically requires a local authority to offer the person another opportunity to choose one of the SDS options whenever it becomes aware of a material change in that person's circumstances.

However there are certain instances where the form of support may be relevant to deciding whether the 2013 Act duties apply. This section provides additional guidance to authorities in order to help them to decide which forms of support are relevant to the 2013 Act and which are not.

- Authorities are not obliged to provide social care for adults in prison - see the [section on prisons and criminal justice](#)
- Under the Direct Payment Regulations 2014 the only circumstance where the authority is not permitted to offer a direct payment is in relation to the provision of long-term residential or nursing care to persons of any age. This means that the authority cannot provide a direct payment to any person of any age where the support required by the person is long-term residential care.
- The Direct Payment Regulations 2014 specify that a local authority is not required to offer the option of a direct payment where it is likely that the making of a direct payment will put the safety of the supported person at risk.

Local authority powers to terminate a direct payment

Commented [JM34]: From personal assistants section of original guidance in section 11, moving into this section for ease

Direct payments may be discontinued because:

- the supported person would prefer to revert to arranged services or an arrangement under Option 2 or Option 3 in the 2013 Act (individual service funds or similar arrangements);
- the supported person is no longer able to manage their direct payment with the available support;
- the local authority is not satisfied that the person's needs are being met,
- or;the local authority has concerns over misspent funds.

Where the authority is considering terminating a direct payment or other budget changes it should discuss this with the person and seek to locate any discussion in the person's assessed needs and the personal outcomes contained within the person's care and support plan. The key consideration should be whether the support plan is capable of meeting the personal outcomes and identified needs of the supported person.

The authority should be transparent with the person. Any change to a person's budget should have a sound rationale which is clearly communicated to them according to their preferences, and with sufficient notice to allow them to make alternative arrangements. Where an authority concludes that a particular form of support will not meet the person's needs and outcomes, the authority should seek to explain why this is the case and it should seek to collaborate with the supported person to develop alternative plans.

When terminating a direct payment the authority should keep the supported person informed throughout. Any decision to terminate a direct payment should follow a thorough discussion with the supported person, carer(s) and circle(s) of support.

It is recommended that the authority set a minimum period of notice which will normally be given before the payments are discontinued, and include it in the information to be provided to people who are considering their options at the outset. The authority should bear in mind any contracts into which the supported person has entered.

The authority should not automatically assume when problems arise that the solution is to discontinue the direct payment. If the authority decides that it has the necessary powers to terminate the direct payment then it should discuss the alternative options under the 2013 Act.

Short-term changes in the person's support arrangement

Where it is necessary for the person to enter hospital for a period of time the authority should take a proportionate approach. The authority should continue the direct payment where the person enters hospital for a short period in order to allow PA contracts to remain in place. This is to ensure invaluable continuity of care once the person is able to return home, avoid repeating the costly and time consuming recruitment process and the need for interim care and support arrangements. This can also ensure that support can continue to be delivered in the temporary hospital setting.

In some instances it may be necessary for the authority social worker to consider pausing the direct payment temporarily, for example:

- when a supported person enters hospital for a longer period, or because their condition improves, or;
- when a supported person is temporarily unable to manage the direct payment even with support, perhaps again due to fluctuation in their condition or the support available.

If so the authority should discuss with the supported person how best to manage any adjustment. The authority should inform the person as soon as possible if it is considering pausing a direct payment arrangement. It should avoid taking immediate steps without consulting the supported person and it should always be mindful of the impact of any decision to terminate a direct payment on the support needs of the person. It should set a minimum period of notice and it should include this in the information provided to the person within any supported person's agreement.

Termination of a direct payment at short notice

It may be necessary in exceptional circumstances to discontinue a direct payment without giving notice. In considering this course of action the authority should first take account of the supported person's contractual responsibilities with a service provider or an employee. It will also have to take into consideration any outstanding financial liabilities the supported person may have. Before the direct payment arrangement begins the authority should make clear to the supported person the circumstances in which the payment might be discontinued with no notice.

The authority can take over the management of the supported person's arrangements in the interim. In considering whether it is practical, desirable and cost-effective to maintain the person's arrangements, the authority should bear in mind any contracts into which the person has entered. An example is that the local authority will not be able to take over a contract with a service provider which is not registered with the Care Inspectorate.

[See section on underspent funds and the seeking of repayment](#)

Redundancy

Depending on their direct payment arrangement, the supported person or their attorney may find themselves with on-going contractual responsibilities or having to terminate contracts for services. These responsibilities include making employees redundant, for example where the supported person moves to another Local Authority area or moves from using Option 1 (direct employment) to another Option (a regulated provider).

Because redundancy is typically an employer's responsibility, the authority should discuss the possibility that this may happen with the supported person before they begin the direct payment arrangement and agree how funding this outcome this would be handled.

The authority has the power to allow SDS budgets to be used to meet redundancy costs where this is as a legitimate employment cost and where proper notice is given.

For more information and resources on this subject please see the PA Employer handbook³⁴.

³⁴ PA Employer's Handbook: <https://handbook.scot/the-pa-employer-handbook/>

Contingency Planning

Contingency planning for support and use of budgets should be in place for all Direct Payment social care support. Consideration of the individual and their support network's general welfare, health and wellbeing should also be taken into account in contingency planning.

The individual and their carers' views are paramount in developing this plan to ensure that risks are jointly identified and mitigated, and that the supported person is provided with the appropriate additional support to ensure that they do not feel abandoned if things do not go to plan.

Where appropriate the authority should take steps to support the person to plan ahead and make arrangements whereby a designated person or group of people – for example, a circle of support or trustees – can be given permission by the supported person to take over during a period when the supported person is unable to manage.

A statement in advance is one method to ensure that contingency plans are put in place in a way that respects the will and preferences of supported people. For example a person could write down what a support worker should do if they have a crisis, write guidelines for how to assess risk or provide a list of useful telephone numbers that the support worker could phone for advice or information if necessary. This can ensure that if the supported person becomes ill they retain as much control and choice as possible of the arrangements and are able to regain full control if they become well again. This may help prevent the supported person reverting to local authority provision unless they wish this to happen.

The authority should ensure that it has the necessary systems and processes in place to ensure continuity of funding during times of crisis. For example where the person chooses to use their payment to employ their own staff the authority should take steps to fund PA employer support during short stays in hospital, where appropriate. This will enable the supported person to continue to pay employees for the initial four weeks of any hospital stay.

The authority should encourage PA employers, including through independent support organisations to include arrangements for hospital admission within the employment contract and terms and conditions. In all circumstances the statutory requirements governed by employment legislation must be applied.

The authority should discuss what arrangements the supported person wishes to make for emergencies. If the authority becomes aware that the person is unable to secure support to meet their needs the authority's responsibility to arrange emergency support for that person is the same as if the supported person chooses Option 2 or 3 under the 2013 Act.

The authority may decide to step in temporarily to arrange the necessary services but it should first consider providing assistance to enable the person to continue to manage their own support. Examples might include making arrangements with independent agencies for emergency cover.

Where difficulties arise that were not anticipated it is helpful if the supported person knows they can contact a named individual in the local authority or a local support service whom they can ask for help. Such contingencies should form part of the supported person's support plan.

An authority can promote the role of PAs by collaborating with other authorities nationally or regionally to support this workforce for example by providing training for PAs, setting up PA

Commented [JM35]: Merged from pandemic guidance and original guidance – section 8

vacancy pages or relief PA banks so that more PAs are available who are prepared to work additional shifts at short notice when necessary.

See information on short-term arrangements within [section on Local Authority powers to terminate a direct payment](#)

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Section 4: Roles and Responsibilities

There are a wide range of people, organisations and authority functions with responsibilities concerning the assessment of needs or the provision of SDS.

The supported person's voice and wishes must be at the centre of all conversations and decision-making about their support, taking into account relevant factors such as their disability, age and the potential for another person to assist them, for example to help meet communication and accessibility needs.

Authorities should therefore consider how their functions relating to social care provision work together to facilitate the key stages in a supported person's pathway from initial contact through to the provision and review of support.

Authorities should take steps to provide the relevant training, support and processes each function needs to be able to take a person-centred and human rights-based approach to fulfilling the duties described in the 2013 Act.

Below is a summary of the main roles and responsibilities for those who may be involved in decisions related to the supported person's journey toward achieving their outcomes, bearing in mind that there may be local differences in the way that authorities define their own functions and responsibilities.

See also the diagram in [Annex 1](#) which provides a more accessible summary of these key functions and their relationship to the supported person.

Finally, see also the SDS Framework of Standards³⁵ which contain practice statements concerning roles and responsibilities.

Commented [JM36]: This section was originally part of Section 5 in the original guidance (The Supported Person's Pathway), now moved into its own section according to the draft structure for the guidance agreed by the SLWG at its second meeting in May.

Highlighting expectation that social workers and the supported person are the ones that make decisions on what budgets can be spent on, not finance officers, and the taking of a positive approach to risk management

³⁵ See the Framework of Standards here: <https://www.gov.scot/publications/self-directed-support-framework-standards-including-practice-statements-core-components/pages/2/>

Role	Responsibilities
The supported person	The supported person should be assisted – if assistance is needed – to play an active part at the centre of the assessment and support planning process. They should be supported to take as active a role as they wish to take in all of the key decisions about their support. This will include any decisions about initial eligibility or access to support, together with the planning, costing and provision of that support. The supported person may also be an unpaid carer receiving carer support.
The unpaid carer	<p>The unpaid carer provides care and support to a family member or friend, and may be an adult or a child. They may provide a wealth of information, expertise and guidance. Carers may be guardians or attorneys for the individuals they support, or friends helping them to access the statutory support they need. Carers are entitled to an adult carer support plan or young carer statement in order to identify their own needs for support. Carers are also entitled to have their views taken into account when authorities assess the needs of the cared-for person, including when and how to provide services to the cared-for person.</p> <p>The relevant authority should ensure that carers are aware of these rights. See also the Carers' charter³⁶.</p>
Social worker or health practitioner	<p>The social worker should take steps to ensure that the assessment is conducted in line with social care law. They should consider any wider legal duties beyond the duties provided in social care legislation for instance, in a crisis situation or where the person's safety is at risk.</p> <p>Practitioners should ensure that the person's support plan is comprehensive and that the support plan meets the identified needs of the supported person. They may arrange for some additional assistance so that the supported person can play a full part in the assessment or support planning process. They must ensure the supported person is involved as far as is possible, and their voice and wishes respected.</p> <p>The practitioner or local area team should be provided with the appropriate support and guidance from their organisation to ensure that they are empowered to use their professional judgement to apply appropriate discretion in line with Standard 8 (Worker Autonomy).</p> <p>Social workers are accountable for the exercise of specific statutory functions, as set out in The Role of the Registered Social Worker in Statutory Interventions: Guidance for Local Authorities.³⁷ See also the Code of Practice covering all those considered to be social services workers in Scotland, including social workers³⁸.</p>
Independent support and advocacy worker	Support and advocacy workers can assist the supported person to understand and realise their rights, and can help ensure that support plans are co-produced effort with people whom the supported person wishes to involve, including families and carers.

Commented [JM37]: This table rewritten with inputs from the roles and responsibilities subgroup.

Statutory Guidance shouldn't go too far in prescribing exactly what relations these different roles have to each other (though important to mention statutory role of some e.g. CSWO).

It is intended to be a quick guide rather than a manual

Commented [JM38]: Removal of 'or health practitioner to reflect that involvement of this type of role would be unusual

³⁶ See the Carers Charter here: <https://www.gov.scot/publications/carers-charter/pages/1/>

³⁷ See role of the registered social worker guidance here: <https://www.gov.scot/publications/role-registered-social-worker-statutory-interventions-guidance-local-authorities/>

³⁸ Code of Practice is here: <https://www.sssc.uk.com/the-scottish-social-services-council/sssc-codes-of-practice/>

Chief Social Work Officers (CSWOs)	Local authority CSWOs have a central and statutory role in delivering high quality social work services and in ensuring implementation of all their statutory duties including those mentioned in this guidance, in line with the specific functions of the CSWO role as set out in The Scottish Government's Guidance on role of the Chief Social Work Officer ³⁹ (2016).
Senior leaders within the relevant authority, Health and Social Care Partnership and other relevant organisations	<p>Senior decision makers shape the culture and conditions in which important decisions are made about a supported person's care and support, including positive approaches to risk enablement and management. They should therefore take steps to ensure that guidance, training and culture of the organisation is consistent with the spirit and statutory principles of the 2013 Act. They should support front line professionals and providers to work closely with individuals in a flexible, autonomous and innovative way.</p> <p>The relevant authority and/or Health Board should ensure that their staff are made aware of their duties and powers in relation to assessment functions. They should take steps to commission a good range of support, information and advocacy services to ensure that people receive accessible information at the right time.</p>
The legal function within authorities and/or Health Boards	Legal advisers will provide support to social services, advising on their legal responsibilities and powers. The legal function within the authority should be familiar with the relevant duties concerning assessment and support and how these relate to wider legal duties, for example, in relation to equalities, human rights, safeguarding, mental health and incapacity legislation, and adult support and protection. The legal function should support the social work function, working together to deliver an innovative approach to the provision of care and support.
The finance function within authorities or Health Boards	Finance managers and officials play an important role in determining and administering the level of spend assigned to services, and monitoring legal contractual obligations as set out in the 2003 Local Government Act ⁴⁰ . Finance functions should provide the necessary support to the social work function to support collective objectives, ensuring effective systems to support social care provision and encouraging choice, control and flexibility for supported people, including supporting the pooling of budgets where appropriate. Finance managers and officers should respect the assessment of social workers and should support a positive approach to risk management (see SDS Framework of Standards: Standard 6 Risk Enablement).
The commissioning function within authorities, Integration Joint Boards, Health Boards	<p><u>Commissioning</u> describes the activities involved in assessing and forecasting needs, the linking of investment to agreed outcomes and consideration of the options available. It also describes the activities to plan the nature, range and quality of future services and the steps that are taken by the relevant authorities and health boards to work in partnership to put their plans in place.</p> <p>Joint commissioning is where these actions are undertaken by two or more agencies</p>

Commented [JM39]: Some CSWO colleagues thought that the role of the CSWO was not sufficiently explored, given its statutory significance in terms of accountability..

Commented [JM40]: All mentions of 'social care users' replaced by 'supported people' throughout the document

³⁹ Guidance on the Role of the Chief Social Work Officer (revised 2016): <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2016/07/role-chief-social-work-officer/documents/00503219-pdf/00503219-pdf/govscot%3Adocument/00503219.pdf>

⁴⁰ Local Government Act details here: <https://www.legislation.gov.uk/asp/2003/1>

<p>and wider Health and Social Care Partnerships</p>	<p>working together. The organisations and individuals who commission services play a statutory role in ensuring that a good range of support is made available in order to meet the needs and desires of a diverse population.</p> <p>As part of its approach to the development of effective commissioning strategies, the authority should consider the implications of SDS and the importance of encouraging and supporting a suitable variety of supports for adults, children/families and carers that are focused on outcomes.⁴¹</p>
<p>The provider</p>	<p>The provider may be a local authority, the NHS, an organisation from the third or independent sector or a Personal Assistant employed by the supported person (or their unpaid carer) under Option 1, a care worker. The provider has a key role in the design of services and can play an important role in the assessment and support planning process. However the legal duty to meet assessed needs remains with the relevant authority, Health and Social Care Partnership or Integration Joint Board (where duties are delegated).</p>
<p>NHS</p>	<p>The legal duties in relation to the provision of healthcare support were broadly framed the NHS (Scotland) Act 1978. There is no definitive list of social care and healthcare interventions in this legislation. This provides a high degree of discretion to health and social care practitioners and organisations and therefore while the NHS is not obliged to provide personalised funds to a supported person, it may do so.</p> <p>Delegation of certain aspects of health care to a non-NHS practitioner is already established in community health as part of the shift towards delivering health interventions previously limited to being delivered in an acute setting to being delivered at home, for example through Community Links practitioners.</p>
<p>Elected members</p>	<p>Local authorities vary considerably in size and population, but all have responsibility for providing a range of public services to the communities in their area. Each council is made up of councillors who are elected by the residents of the area they represent. Councillors and other elected duty-bearers set and agree local priorities based on the unique needs of their local area. They may advocate on behalf of their constituents but do not make decisions regarding assessments or a supported person's care. See also the Councillors' code of conduct Scotland⁴².</p>

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⁴¹ More information about the role of IJBs here: <https://www.gov.scot/publications/roles-responsibilities-membership-integration-joint-board/pages/2/>

⁴² Councillors' Code of Conduct here: <https://www.gov.scot/publications/councillors-code-conduct-2021/>

Section 5: The 2013 Act and its relationship to other legislation and policies

Since the SDS Act 2013 came into force in 2014, there have been a number of statutory changes, including the Public Bodies (Joint Working) (Scotland) Act 2014, the Carers (Scotland) Act 2016, Children & Young People (Scotland) Act 2014 and the Health and Care (Staffing) Act 2019. These have been aimed at refocusing the system to better meets the needs of people, to respect the rights of people using and working in care, and to encourage better joint working across health and social care services for people using both.

However, the resulting complexity of the legislative landscape has been a barrier to the provision of a joined-up and consistent approach to SDS across Scotland, and professional judgement is required in deciding which legislation interventions should derive from.

While this guidance cannot exhaustively describe all interactions between the SDS Act 2013 and all other relevant legislation, this section aims to provide an overview of the most important pieces of legislation that relate to, and in some cases may modify (for example, the [Adults With Incapacity Act 2000](#)), the implementation of the SDS Act 2013, and to provide links to sources of further guidance.

Legislation relating to children and their families

Children (Scotland) Act 1995

Section 22 of the 1995 Act⁴³, which remains a major part of the legal framework for child welfare, support and protection in Scotland, places a duty on the local authority to safeguard and promote the welfare of children in need and, where consistent with that duty, to promote the upbringing of children within their families.

In summary, a child is in 'need of care and attention' because:

- they are unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development unless the local authority provides services for him under Part II of the 1995 Act;
- their health or development is likely significantly to be impaired, unless such services are so provided;
- they are disabled; or are affected adversely by the disability of any other person in his or her family.

The services provided under section 22 of the Children (Scotland) Act 1995 as read with section 23 of that Act includes: children who are looked after, services for disabled children under the age of 18, children affected adversely by the disability of any other person in the family, and children whose health or development may be affected or may fall below a reasonable standard without services from the relevant authority.

⁴³ Full text of the 1995 Act here: <https://www.legislation.gov.uk/ukpga/1995/36>

Commented [JM41]: Original guidance has this content spread widely throughout the document including Sections 3, 7 and section 14. I've made the decision to keep this content here rather than to annex.

Commented [JM42]: This section now incorporates significant changes from SWS, Scottish Transitions Forum, SG policy colleagues and others.

Commented [JM43]: This phrase directly from the Act.

Children and Young People (Scotland) Act 2014

Part 3 of the Children and Young People (Scotland) Act 2014⁴⁴ (Children's Services Planning) seeks to improve outcomes for all children, young people and families in Scotland by ensuring that local planning and delivery of services and support is integrated, focused on securing quality and value through preventative approaches, and dedicated to safeguarding, supporting and promoting child wellbeing. Statutory guidance sets out expectations of close partnership working as a Children's Services Planning Partnership (CSPP) involving the workforce, other service providers, and children, young people and families in decision-making to promote a sense of shared ownership of the plan⁴⁵.

This aims to ensure that any action to meet need is taken at the earliest appropriate time and that, where appropriate, this is taken to prevent need arising. To this end, Part 3 sets out a legal framework for children's services planning, including its scope and aims. Section 8(1) of the Act requires every local authority and the relevant health board to jointly prepare a Children's Services Plan for the area of the local authority, in respect of each three-year period. The Act also requires annual reporting on how and what progress has been made to improve outcomes for children, young people and families living in that area. Children's Services Plans can help evidence the extent of impact of local delivery of SDS on children, young people and families.

Section 96 of the 2014 Act provides the framework for assessing a child's wellbeing for the purposes of the Act. It lists the key indicators of wellbeing that should be considered when assessing wellbeing in the context of the Act.

See sections on further guidance relating the 1995 and 2014 Acts to policy below.

[Further guidance concerning policy and legislation on children, young people and families](#)

SDS and how it applies to children

The SDS 2013 Act applies to children, young people (including those in transition to adulthood) as well as adults. It therefore affects the way that particular forms of support for children and families are arranged. In particular, it provides the opportunity for children and families to take greater control over the support provided to them. By giving families greater choice and control over their support, the self-directed approach is designed to ensure that what matters to the child is central to every decision made.

This covers statutory functions and care for children in need, and also builds on other legislation by formalising the right of the child to have their views taken in to account and requiring local authorities to plan and report on children's rights on a

⁴⁴ Full text of the Children and Young People (Scotland) Act 2014 here: <https://www.legislation.gov.uk/asp/2014/8/contents/enactedv.uk>

⁴⁵ See relevant statutory guidance: <https://www.gov.scot/publications/children-young-people-scotland-act-2014-statutory-guidance-part-3-childrens-services-planning-second-edition-2020/>

Commented [JM44]: Additions to this para and next para from Children's Policy Team SG

Commented [JM45]: This section moved up from further on in the document so it can be more logically placed next to further guidance on children.

Commented [JM46]: Deletion here on broader legal context which wasn't correct.

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'Children's social work and services operate in a different legal context to that of adults. The GIRFEC policy and framework, placed in statute in the Children and Young People (Scotland) Act 2014, outlines the process of assessment of a child's need undertaken on a multi-agency basis and alongside the child and family, resultant preparation of the child's plan and the process for then meeting those identified needs.'

multi-agency basis. As such, the principles and approach inherent to SDS is embedded in children's core legislation and approach alongside the protective role and function of the local authority.

The 2013 Act should therefore be seen as strengthening engagement with children (up to age 18) young people (up to age 26) and their families, including those subject to compulsory measures of care.

A further aspect in relation to children is that parents (and in some situation others with parental responsibilities such as certain carers or the local authority), are the ones able in law to make decisions on behalf of the child. Although the child must be consulted and has the right to give their view and have this taken into account, the child is not the ultimate decision-maker in relation to their own care. This is also the case where corporate parenting duties apply (for example when compulsory measures of care are in place via the Children's Hearing).

The duty of care remains the paramount factor in all work and it is a priority to fulfil statutory responsibilities in relation to children in need of care and protection.

Within this complex landscape, authorities should take steps to:

- Ensure that all relevant functions are familiar with local protocols and procedures relating to the provision of social work, care and support for children and families. This should include recognition of the duties imposed on the authority by the 2013 Act, how those interface and apply in the children's legal context. The potential benefits to children that arise from GIRFEC and the 2013 Act and the values, principles and practice associated with SDS should be embedded.
- Ensure that the relevant senior managers and practitioners are made aware of the duties and powers under social work legislation, in particular the 2013 Act's duties to offer choices wherever this is not in conflict with other statutory duties in relation to a child or young person's care and support .

Applying the SDS Options

The 2013 Act imposes a further duty to provide choice and flexibility through a range of options to the child and their family. In many cases, the provision of alternatives such as choice of service, direct payments or individual services funds can provide a creative and positive means by which to meet the child's needs.

Under the 2013 Act, if the child is 16 or older then the child will have the right to make decisions about their own support and to choose how they wish to arrange this support.

If the child is under 16 then the person with parental responsibility - called the appropriate person in the 2013 Act - should make decisions about the child's support, unless there are statutory measures in place which limit the extent that these duties can be carried out (for example compulsory measures of care, corporate parenting duties, or shared parental rights). The authority should inform the appropriate person that they must, in so far as practicable and taking account of the maturity of the child, take into account the views of the child.

The child should be given appropriate help to express their views and wishes and should have access to independent advocacy. Even where the child does not wish to express a view, their views should be considered, alongside considerations of advocacy of others close to the child.

However, there are some circumstances relating to provision for children in need where the offer of the four SDS options may not be appropriate, for example in cases where a child requires alternative care, or is subject to certain protective duties. In such cases, the authority's safeguarding and wellbeing function will affect the form of support which is necessary to safeguard the child's wellbeing, and therefore the extent to which additional choice and control is possible.

The authority should therefore approach its duties on choice in relation to Section 22 support on a case by case basis. In each case, the authority must provide a range and level of services appropriate to the child's needs.

In relation to direct payments – in other words, the provision of a cash payment in place of support – the 2014 Regulations provide the authority with further discretion to refuse to provide the direct payment option, though only where the child's safety will be put at risk by the provision of the direct payment.

See [section 5 \(SDS Options\)](#) for further guidance on the application of the four options contained in the 2013 Act in relation to support to children/families.

Getting it right for every child

All support and planning for children and young people should be underpinned by 'Getting it right for every child'⁴⁶ (GIRFEC) which is the national approach in Scotland to promoting, supporting and safeguarding the wellbeing of children and young people in Scotland.

Under the 1995 Act, children receiving social care and social work support refer to people under 18. For some young people who have been looked after by a local authority, a social work or social worker-led service may continue up to the age of 26. The reasons why social work involvement may be necessary differ widely, but usually the parents, children and/or whole family will be experiencing a combination of practical, emotional, and relationship difficulties. Children and families with a wide range of disabilities, emotional and relationship needs may be assessed as in need of a social work service.

With the United Nations Convention on the Rights of the Child as its foundation⁴⁷, GIRFEC is based on values and principles which support children's and parents' rights, and promotes actively involving children, young people and parents in assessments, planning and decision-making.

Under this approach, a personalised child's plan is developed when those working with the child or young person and family identify that a child or young person needs a range of extra support planned, delivered and co-ordinated. The child's plan should

Commented [JM47]: Additions from SG policy team

⁴⁶ More information about GIRFEC here <https://www.gov.scot/policies/girfec/>

⁴⁷ The Scottish Government is committed to the incorporation of the United Nations Convention on the Rights of the Child into Scottish law as soon as possible

reflect the child or young person's voice and explain what should be improved for the child or young person, the actions to be taken and why the plan has been created.⁴⁸. This will explain what should improve for the child, the actions to be taken and why the plan has been created. The National Practice Model⁴⁹ and National Child Protection Guidance⁵⁰ are tools for practitioners to help them to meet the Getting it right for every child core values and principles in an appropriate, proportionate and timely way.

The Promise

In 2017, the Scottish Government established an independent root and branch review of the care system for children and young people in Scotland, to help identify how to change the future of the care system for the better, and improve both the quality of life and outcomes of young people in care. The review concluded with The Promise in February 2020, setting out over 80 recommendations, including the importance of early, preventative and holistic whole family support⁵¹.

Transition from childhood to adulthood

The transition period in which young people develop from adolescents to young adults involves them taking more control or responsibility and significant changes to their experiences, expectations, places and routines. Transitions also impact on the family or those who care for the young person, and is an important part of the Getting it right for every child approach (GIRFEC.)⁵²

Transitions have been identified as key points where services and support for individuals can be at risk of inadequate coordination between children's and adult services, leading to a negative impact on wellbeing. Children's Services Planning guidance identifies the importance of ensuring a joined-up local approach is in place which considers transitions. Under Scottish law, a young person becomes an adult on their 16th birthday, meaning families no longer have the legal right to make decisions on their behalf. The authority should ensure that effective co-ordination of transition planning and support at a local level is considered early (from age 14) and that there is consistency of practice between children's and adult services in relation to the social care assessment and support planning process..

In line with GIRFEC principles, throughout the process the young person and their parent or guardian should receive the practical support they need in order to help them to make the relevant decisions and manage their support. This may include

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⁴⁸ More information specifically on GIRFEC planning <https://www.gov.scot/policies/girfec/childs-plan/>

⁴⁹ More information about the GIRFEC practice model here <https://www.gov.scot/publications/girfec-national-practice-model/>

⁵⁰ See national child protection guidance here at <https://www.gov.scot/publications/national-guidance-child-protection-scotland-2021/>

⁵¹ For general information and resources concerning The Promise, see <https://thepromise.scot/> and for the Implementation Plan see <https://www.gov.scot/publications/keeping-promise-implementation-plan/documents/>

⁵² Use of the GIRFEC Wellbeing Indicators should be used in the transition planning process across services. For more on transitions, see <https://www.gov.scot/publications/supporting-disabled-children-young-people-and-their-families/pages/transitions/#What%20are%20Transitions>

assistance from parents and carers, independent advice and support or, advocacy services.⁵³

Information must be available to young people in a form they can understand and process, and which takes into account their needs and right to be involved in decisions affecting them. This could require, for example, recording information (video or audio); the use of sign languages such as British Sign Language or Makaton; the use of simpler language; information that is visually expressed, or through translation into other languages.

Where the young person lacks capacity to make specific decisions the authority should make the young person and their family aware of the Adults with Incapacity (Scotland) 2000 Act ("the AWI Act"). The authority should inform the young person and their family about the opportunity to apply for Power of Attorney or Guardianship to enable someone to be appointed to act on the young person's behalf and help them to make and communicate decisions.

It is possible to make a Guardianship order 3 months before the young person's 16th birthday to enable the guardianship to be in place as soon as possible after they become an adult under the 2000 Act. If a young person lacks capacity then a Guardianship will need to be in place in order to receive direct payments under the provisions of the 2013 Act.

Standard 10 of the SDS Framework of Standards sets out the core components of early planning for transitions so that people are given the help and support they need to plan for, and adjust to, new phases of their lives. Whilst recognising that transitions occur throughout a person's life this has particular importance for young people with additional support needs who are making the transition to young adult lives.

The Association of Real Change (ARC) Scotland have set out 7 principles⁵⁴ which provide a framework for the continual improvement of support for young people with additional needs between the ages of 14 and 25 which are as follows:

1. Planning and decision making should be carried out in a person-centred way
2. Support should be co-ordinated across all services
3. Planning should start early and continue up to age 25
4. All young people should get the support they need
5. Young people, parents and carers must have access to the information they need
6. Families and carers need support
7. A continued focus on transitions across Scotland

⁵³ See also section on Support Planning.

⁵⁴ More information about the good transitions principles here: <https://scottishtransitions.org.uk/7-principles-of-good-transitions/>

The Carers (Scotland) Act 2016

The 2016 Act aims to ensure carers have choice and control and can access preventative support to protect their wellbeing and keep caring situations manageable. It puts in place a system of carers' rights designed to listen to carers, expand and transform carer support, prevent problems and help sustain caring relationships.

The 2016 Act gives all carers rights to a personalised adult carer support plan or young carer statement to identify what is important to them, for example, returning to work or undertaking studies or training. This plan must be offered regardless of the level of unpaid caring. It should also identify the carer's needs for support.

The authority has a duty to provide support to the carer where their needs meet local eligibility criteria and a power to provide support for carers' needs which do not meet those criteria (both under section 24 of the Act). The supported person does not need to have an assessment or a support plan in place before SDS support for a carer can be considered.

Where the authority exercises its duty to provide support to the carer to meet the carer's eligible needs or its power to meet the carer's other identified needs, the carer must be given the opportunity to choose one of the options for SDS (unless the authorities consider that the carer is ineligible to receive direct payments).

The 2016 Act also requires an information and advice service for carers in every local authority area, to help carers understand their rights and how to access support. In many areas, this is delivered by the local carer centre or equivalent third sector organisation.

For further guidance on carers' rights local authority duties and powers with respect to carers (including young carers) and SDS, see the Statutory Guidance for the 2016 Act⁵⁵ (particularly Part 2: Adult carer support plans and young carer statements and Part 3: Provision of support to carers) and also the Carers' charter⁵⁶, which summarises carers' rights under the Act.

Mental Health (Care and Treatment) (Scotland) Act 2003

Under the Mental Health (Care and Treatment) (Scotland) Act 2003, the principles of the Act stress the importance of determining the wishes and feelings of the person, their carer and that those views must be taken into account by any person discharging a function under the 2003 Act (for example, carrying out assessments and making decisions about the person's care and wellbeing). A person-centred approach will include how best to communicate with the supported person.

The 2003 Act emphasises the importance of the person participating as fully as possible in any decisions being made and the importance of providing information to

⁵⁵ Statutory Guidance accompanying the Carers 2016 Act is here: <https://www.gov.scot/publications/carers-scotland-act-2016-statutory-guidance-updated-july-2021/pages/1/>

⁵⁶ Access the Carers Charter here: <https://www.gov.scot/publications/carers-charter/pages/1/>

help that participation. Part of the planning with someone who has mental health support needs is to address how their SDS will be managed should their mental health needs deteriorate, for example through an 'extension to assessment and support plan' which can clearly specify the wishes of the person. Independent advocacy support may be needed.

The principles of the Act also require that the needs and circumstances of the carers must also be taken into account, and balanced with safeguards which protect rights to privacy and autonomy.

See also the 2003 Act's Code of Practice⁵⁷.

Adults with Incapacity (Scotland) Act 2000

The Adults with Incapacity (Scotland) Act 2000⁵⁸ ('the 2000 Act') protects adults (people aged 16 or over) who lack capacity to take some or all decisions for themselves because of a mental disorder or an inability to communicate. It allows a person - such as a relative, friend or partner - to make decisions on someone's behalf.

The Act sets out arrangements for appointing legal proxies to make some or all decisions regarding welfare and/or finance and property matters on behalf of an incapacitated adult. Any intervention that takes place under the Act must give effect to the principles of the Act.

Where it has been assessed that a person does not have capacity or the ability to manage their own finances or the ability to make decisions about their own social care support, and they do not have a Power of Attorney or financial guardian, the flexibility allowed under SDS may not be appropriate in some circumstances (in accordance with the Regulation 8(1) of the 2014 Regulations⁵⁹.

In this case, Local Authority Social Work should refer to the Adults with Incapacity (Scotland) Act 2000 and to sources of advocacy to support any decision making on behalf of the person.

The United Nations Conventions on the Rights of Persons with Disabilities (UNCRPD) requires a disabled person (including intellectual, cognitive or volitional disability) to be supported to exercise their legal capacity. The choice of an option under SDS is an exercise of legal capacity.

Thus, if necessary, a person with a mental incapacity must be supported to exercise their legal capacity in respect of this choice. The person themselves may not be able to arrive at a decision without support, but allowing a person of their choosing to support them with the process is permissible. However, the role of the supporter should be one of passive assistance not as active proxy decision-maker.⁶⁰

⁵⁷ The 2003 Act Code of Practice here: <https://www.gov.scot/publications/mental-health-care-treatment-scotland-act-2003-code-practice-volume-1/pages/2/>

⁵⁸ Access the full text of the Act here: <https://www.legislation.gov.uk/asp/2000/4/contents>

⁵⁹ Access the accompanying Regulations here: <http://www.legislation.gov.uk/ssi/2014/25/regulation/8/made>

⁶⁰ See also Mental Welfare Commission guidance: [https://www.mwscot.org.uk/sites/default/files/2021-02/Supported Decision Making 2021.pdf](https://www.mwscot.org.uk/sites/default/files/2021-02/Supported%20Decision%20Making%202021.pdf)

Commented [JM50]: Merged from pandemic guidance

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The UNCPRD requires the incapable person's (human) rights to be respected, as well as their will and expressed preference(s) on a matter, including the arranging of their support. Both will and preference can be expressed by behaviour and attitudes, they do not have to be verbal expressions. This complements the AWI requirement to give effect to the principles of the Act and the past and present wishes and feelings of the person.

Authorities should be aware that lack of capacity is not a reason to exclude people from SDS. Careful consideration is obviously required to be given as to which of the options will apply most helpfully in such circumstances. The professional judgement of social workers, and input from the supported person and (where relevant) their guardian or unpaid carers, should ensure all decisions made on behalf of the individual are shared and discussed with the individual's support network. See the principles of the 2000 Act⁶¹.

See also [Power of Attorney in relation to Option 1](#) (Direct Payments) and [Self-directed support and powers of attorney: FAQ](#)

There is also additional information⁶² on managing SDS for adults with incapacity.

[Adult Support and Protection \(Scotland\) Act 2007](#)

The Adult Support and Protection (Scotland) Act 2007 ('the 2007 Act' ⁶³) provides the legal framework for the protection of adults who are unable to safeguard their own interests. It is based on the fundamental principles that the intervention must provide benefit to the adult and is the least restrictive option to the adult's freedom. These principles should be at the heart of all risk planning and enablement.

The 2007 Act refers throughout to an 'adult'. In terms of Section 53 of the Act, 'adult' means a person aged 16 years or over. See guidance on child protection for those aged under 18. ⁶⁴ and to section on transitions below.

Section 3(1) defines an 'adult at risk' as someone who meets all of the following three criteria:

- that they are unable to safeguard their own well-being, property, rights or other interests;
- that they are at risk of harm; and
- that because they are affected by disability, mental disorder, illness or physical or mental infirmity they are more vulnerable to being harmed than adults who are not so affected.

⁶¹ See Guidance on principles that must be applied when making decisions about the needs of adults who lack capacity: <https://www.gov.scot/publications/adults-with-incapacity-act-principles/>

⁶² See Guidance on managing self-directed support for adults with incapacity: guidance: <https://www.gov.scot/publications/managing-self-directed-support-for-adults-with-incapacity-guidance/>

⁶³ See the full text of the legislation here: <https://www.legislation.gov.uk/asp/2007/10>

⁶⁴ Guidance on child protection here: <https://www.gov.scot/publications/national-guidance-child-protection-scotland-2021/>

It should be noted and strongly emphasised that the three criteria above make no reference to capacity. For the purposes of the Act, capacity should be considered on a contextual basis around a specific decision.. Note also that if someone knows or believes that an adult may be at risk of harm they should make a referral without delay to the authority for the area in which the adult at risk is ⁶⁵. The Act sets out a defined system and protective measures for the support and protection of adults at risk of harm.

There will be situations where consideration of the Adult Support and Protection (ASP) principles produces potential conflicts, such as occasions when the adult at risk expresses a preference not to engage with any form of intervention, but the professionals involved believe that adult protection interventions would provide a benefit to them.

In such circumstances, the expectation is that decision-making should take place on a multi-agency basis to enable full and complete discussion of potential protective actions and the application of the principles. The principles include participation of the adult; finding out their views and those of the adult's nearest relative, any primary carer, guardian or attorney of the adult, and any other person who has an interest in the adult's well-being.

The authority should ensure that there is an effective link established between their ASP duties, child protection duties and their wider duties relating to service user wellbeing, social care assessment and social welfare.

Greater care is required in assessment of need and the appropriateness of provision via the four options where there are elements of risk involved. As part of an assessment – which may require significant time to undertake – it is crucial to understand the person's decision-making processes.

Consideration should be given to any factors that may impact on an adult's ability to make free and informed decisions to safeguard themselves. Account must be taken of any possibility of 'undue pressure', or increasing of risk if the views of others are sought. An adult at risk may be considered to have been 'unduly pressurised' if it appears that harm which intervention is intended to prevent is being, or is likely to be, inflicted by a person in whom the adult at risk has confidence and trust. It is important that the adult has the option to maintain existing family and social contacts, should they wish to do so.

The SDS Framework of Standards (Standard 6: Risk enablement) sets out a collaborative and enabling approach to sharing the responsibility of finding an appropriate balance between innovation, choice and risks. Additional information about the 2007 Act⁶⁶ and the Adult Support and Protection Code of Practice⁶⁷ may be helpful resources for practitioners.

⁶⁵ Contact details can be found here: [Find your local contact - Act Against Harm](#).

⁶⁶ Additional ASP policy information is here: <https://www.gov.scot/policies/social-care/adult-support-and-protection/#:-:text=The%20Adult%20Support%20and%20Protection,illness>

⁶⁷ See Code of Practice, updated July 2022: <https://www.gov.scot/publications/adult-support-protection-scotland-act-2007-code-practice-3/>

See also the [section on legislation relating to children](#) for details of duties relating to child wellbeing, support and protection in Scotland.

Protection of those in transition from childhood to adulthood

Authorities should pay attention to the needs and risks experienced by young people in transition from youth to adulthood, who are more vulnerable to harm than others and who are more likely to experience change to the support they access.

As other legislation and provisions exist which include persons up to 18 years (and sometimes up to age 26 years or even beyond), support under these other provisions may be more appropriate for some young persons. The responsibilities of the authority and other agencies for persons aged 16 -18 years will extend beyond adult protection legislation, and professional judgement will be needed in deciding which legislation interventions should derive from.

See the Adult Support and Protection Code of Practice⁶⁸ for more information and guidance on this, as well as the more detailed [Transitions section](#).

Public Contracts (Scotland) Regulations 2015

The Public Contracts (Scotland) Regulations 2015 apply a Light Touch Regime (LTR) to social and other specific service contracts at certain threshold value, currently £663,540 (as of July 2022). This regime provides greater flexibilities than for the tendering of other service types and specifically allows quality, continuity, accessibility, affordability, specific user needs and the involvement/ empowerment of users to be taken into account when awarding contracts.

Procurement Reform (Scotland) Act 2014

Below the LTR threshold value, no procurement procedural rules apply and section 12 of the 2014 Act specifically allows a contract for health and social care services to be awarded without the need to seek offers through advertising the contract opportunity. Statutory Guidance for the Procurement Reform (Scotland) Act 2014⁶⁹, states in Chapter 7, that buying many health or social care services 'requires special consideration by a contracting authority...the quality or availability of these services can have a significant impact on the quality of life, health and wellbeing of people accessing the service and their carers'.

The authority should seek to use the flexibility within the procurement regulatory regime to meet the legal duties of the 2013 SDS Act (for example, some procurement rules do not apply to Option 1 as the service user is the purchaser).

⁶⁸ As for footnote 60

⁶⁹ 2014 Act Statutory Guidance: <https://www.gov.scot/publications/procurement-reform-scotland-act-2014-statutory-guidance/>

See [section on procurement](#) and on [SDS Options for more detail](#). See also Social Work Scotland's SDS and procurement best practice guide⁷⁰.

[Public Bodies \(Joint Working\) \(Scotland\) Act 2014](#)

The 2014 Act provides the legislative framework for the integration of health and social care services in Scotland. Statutory guidance and advice around health and social care integration produced to support the Public Bodies.

The Statutory Guidance on the 2014 Act⁷¹ covers a range of topics, including guidance on strategic commissioning planning, Health and Social Care Integration Partnership reporting guidance and the roles and responsibilities of Integration Joint Boards.

As SDS is a key pathway for social care outcomes to be achieved, the 2014 Act provides important operational context.

[Health, \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act 2016](#)

Since 2018, Health Boards have a duty to 'meet all reasonable requirements' to provide or secure communication equipment and support to people who have lost their voice or have difficulty speaking⁷².

This duty applies to all children and adults who have lost their voice or have difficulty speaking and is principally delivered through Speech and Language Therapists.

Guidance relating to this duty⁷³ contains information on how to get the necessary equipment and support, and is intended to support full inclusion and participation in society, consistent with the statutory principles set out within the SDS Act 2013.

[Equality Act 2010](#)

The Equality Act 2010 provides people with legal redress if they experience direct or indirect discrimination in the workplace and in wider society. The Equality and Human Rights Commission has produced guidance⁷⁴ on the requirements of the 2010 Act. The Equality Act applies to employment, the provision of goods, facilities, and services and contains important provisions concerning authority decision-making and how these should aim to 'reduce the inequalities of outcome which result from socio-economic disadvantage'.

Commented [JM52]: Moved down to be alongside other acts that are most closely related and to allow AWI and ASP to be co-located.

⁷⁰ Procurement best practice guide: <https://hub.careinspectorate.com/media/2591/sws-self-directed-support-and-procurement-best-practice.pdf>

⁷¹ Statutory Guidance on the 2014 Act here: <https://www.gov.scot/collections/public-bodies-joint-working-scotland-act-2014-statutory-guidance-and-advice/>

⁷² See Part 4 of the relevant Act: <https://www.legislation.gov.uk/asp/2016/14>

⁷³ See Guidance on Provision of communication equipment and support : <https://www.gov.scot/publications/guidance-provision-communication-equipment-support-using-equipment/>. An [easy read version](#) of the guidance is also available. Also see <https://www.gov.scot/publications/national-augmentative-alternative-communication-aac-core-pathway/>

⁷⁴ See the legislation at <https://www.legislation.gov.uk/ukpga/2010/15> and further guidance at <https://www.equalityhumanrights.com/en/advice-and-guidance/guidance-scottish-public-authorities>

An Equality Impact Assessment of the Self Directed Support Bill was carried out in 2012⁷⁵ before SDS legislation came into force in 2014. This considered evidence of the needs and experiences of people concerning the following protected characteristics, age, disability, gender (including pregnancy and maternity), race, religion and belief, and sexual orientation. It did not cover marriage and civil partnership, gender reassignment, or sex.

Since then, further evidence suggests that there are additional groups of people with characteristics not specifically mentioned by the 2010 Act (for example people who are homeless and those who live in isolated locations) who do not get equal access to SDS, or who have not received sufficient information, choice or support. Similarly, some people within protected characteristics groups do not have equal access to SDS as the rest of the population (for example, Gypsy/Travellers)

This evidence is discussed in several reports including *My Support My Choice: People's Experiences of Self-directed Support and Social Care in Scotland*, (SDSS/Alliance, 2020⁷⁶), *Gypsy Travellers: Human rights and social work's role*. (IRISS, 2017⁷⁷), and the Care Inspectorate's *Thematic review of self-directed support* (2019⁷⁸).

It is important that social workers and duty bearers consider all the impact of decisions on people across all protected characteristics (including those not covered by the 2012 Equality Impact Assessment). There are a number of resources on how authorities can ensure that people accessing SDS have access to assessments and support which are adequate and tailored to their requirements, way of life (including geographical location) and identities.

For more information, see the SDS Framework of Standards (Standard 7: Flexible and outcome-focused commissioning and Standard 11: Consistency of Practice), the impact assessments already completed as part of the development of the National Care Service⁷⁹, and the SDS toolkit⁸⁰ produced by Minority Ethnic Carers of People Project (MECOPP).

⁷⁵ Initial impact assessment is available [here](#)

⁷⁶ My Support My Choice report here: <https://www.sdsscotland.org.uk/wp-content/uploads/2020/10/MSMC-Scotland-Report-2020.pdf>

⁷⁷ IRISS ten year review here: <https://www.iriss.org.uk/sites/default/files/2017-02/insight-35.pdf>

⁷⁸ Care Inspectorate thematic review here: [https://www.careinspectorate.com/images/documents/5139/Thematic review of self directed support in Scotland.pdf](https://www.careinspectorate.com/images/documents/5139/Thematic%20review%20of%20self%20directed%20support%20in%20Scotland.pdf)

⁷⁹ NCS impact assessments here <https://www.gov.scot/collections/national-care-service/#impactassessments>

⁸⁰ Find the SDS toolkit here: <https://www.mecopp.org.uk/sds-toolkit>

Islands (Scotland) Act 2018

The Islands (Scotland) Act was passed by the Scottish Parliament in 2018. It outlines measures designed to meaningfully improve outcomes for island communities, including the introduction of Island Communities Impact Assessments (ICIAs). These provisions in Sections 7 to 14 of the Act come into force on 23rd December 2020.

For more information on health and social care in the islands, see the National Plan for Scotland's Islands pages published in 2019⁸¹, which includes details on actions to be taken to improve fair, accessible health and social care for those on islands.

Prisons and social care

According to Understanding the Social Care Support Needs of Scotland's Prison Population (2021⁸²) 'self-directed support and the integration of health and social care available to people in the community have so far not been extended to people in prison. Criminal justice-related social services provided under section 27 of the 1968 Act are not 'community care services' within the meaning of section 5 of the 2013 Act to which the duty to offer the four options apply. This means that authorities have the power to offer these to prisoners in relation to the wider community care needs that they may have, but are not obliged to do so.

The Scottish Government's intends to consult on the transfer of justice services into the [National Care Service](#).

The Protecting Vulnerable Groups Scheme

The Protecting Vulnerable Groups (PVG) scheme⁸³ is managed and delivered by Disclosure Scotland. It helps ensure people whose behaviour makes them unsuitable to work with children and protected adults cannot do 'regulated work' with these vulnerable groups.

With respect to the Scheme, the authority should, either directly or through a support organisation:

- Ensure the supported person, where they are directly employing a personal assistant (PA) under Option 1, is made aware of the PVG scheme so that they can decide whether or not to request a PVG disclosure from a prospective personal assistant (PA).
- Inform the supported person (or their guardian) in receipt of a direct payment that employing a PA to provide personal care will be regulated work under the PVG Act and therefore a PVG check should normally be carried out on the prospective PA – please see section below on exceptions to using the PVG scheme.⁸⁴
- Make the supported person (or their guardian) aware that guidance is available on the Disclosure Scotland website on: 1) how a supported person

Commented [JM53]: Significant edits to this section, including new sub sections, following extensive input from Disclosure Scotland and SLWG colleagues with an interest in PVG. Initial concerns raised by CSWOs on Aug 25

⁸¹ National Islands Plan here: <https://www.gov.scot/publications/national-plan-scotlands-islands/pages/10/>

⁸² PDF report [here](#)

⁸³ More information about the PVG scheme here: <https://www.mygov.scot/pvg-scheme>

⁸⁴ See also the section further below: The PVG Scheme and Family Members

can use the PVG scheme as a 'personal employer' and 2) how a prospective PA can apply for PVG⁸⁵. Supported persons or authorities can also contact Disclosure Scotland via response@disclosurescotland.gov.scot or phone: 0300 020 0040 Monday to Thursday 9am to 4pm; Friday 9am to 3:30pm).

- Develop effective arrangements to ensure that all prospective personal employers are aware of and are encouraged to make use of the PVG scheme.
- Take steps to support their staff to discharge those duties and powers alongside their duty to provide choice, control and flexibility to adult supported people and children and families.
- Identify and implement an effective process that informs local protocols and complies with PVG and other relevant statutes.

Disclosure Scotland have also issued guidance⁸⁶ on what roles are deemed regulated work under PVG legislation⁸⁷.

If a supported person has concerns regarding the behaviour of a PA or feels they are being placed at risk of harm, then they should raise this urgently with the relevant authority where the supported person lives. The authority has a duty to make inquiries into the claims and may inform the police, other law enforcement agencies, and/or colleagues in health services⁸⁸. The authority should make the supported person aware of this at the outset.

Exceptions to the PVG Scheme

The exceptions to the supported person, or someone acting on their behalf, being able to use the PVG Scheme are where the person providing care is:

- a family member who lives with the supported person, or who lives with the supported person as if they were a member of the same family
- someone with a personal relationship with the supported person and where there is no commercial consideration involved

In those exceptional cases, an application for PVG cannot be made. This is in accordance with the decision of the Scottish Parliament in enacting both the Protection of Vulnerable Groups (Scotland) Act 2007⁸⁹, and Disclosure (Scotland) Act 2020⁹⁰, where Parliament agreed on both occasions that such relationships should not be subject to PVG Scheme membership.

Commented [JM54]: Need a footnote here that directs readers to a bit of PVG guidance that contains this provision so that reassured it is an actual policy. This section reflects current PVG policy and has been checked.

⁸⁵ More information about PA applications for PVG here: <https://www.mygov.scot/apply-for-pvg/self-employed-or-work-for-a-personal-employer>

⁸⁶ <https://www.mygov.scot/pvg-scheme/types-of-work-covered-by-pvg>

⁸⁷ Current legislation – Protection of Vulnerable Groups (Scotland) Act 2007, section 95 (2)-(5) - <https://www.legislation.gov.uk/asp/2007/14/section/95>

⁸⁸ See the section in this guidance on adult support and protection.

⁸⁹ See the full text of the legislation at <https://www.legislation.gov.uk/asp/2007/14/contents>

⁹⁰ See the full text of the legislation at <https://www.legislation.gov.uk/asp/2020/13/contents>

The only circumstance where a family member acting as a PA can use the PVG Scheme is where they don't live in the same household and are being paid for the PA role.

Additional guidance on using the PVG scheme (including Direct Payments)

The PVG check should be used as an aid to sensible and safe recruitment practice but it is not the only aspect of this.

The authority should ensure that the supported person, along with anyone who may provide additional support to the supported person, is made aware that the PVG Scheme allows personal employers to satisfy themselves that an individual to whom they are offering regulated work is not either already barred from doing that type of regulated work or under consideration for barring. A PA will be provided with a Scheme Membership Statement that confirms this.

However, authorities should also ensure that the supported person is made aware that scheme membership on its own does not mean that the individual is suitable to provide support. That decision must always be taken by the employer, informed by the content of their Scheme Membership Statement as well as other good recruitment and employment practice such as taking up references, developing job adverts which specify any specific support requirements, interviewing and conducting probationary periods.

By law, the authority cannot seek access to PVG scheme membership records for PAs, where it is not the employer. It should ensure that the personal employer understands the importance of scheme membership, the rules on seeking and sharing information and the risks of employing an unsuitable person as a personal assistant. Where a local authority is making the recruitment decision (for example because they are providing care directly from their own services or through a contractor), the authority can apply for a PVG and have sight of the results.

Direct payments should not be refused on the grounds that the authority does not have access to scheme membership statements. The support plan agreed between the supported person and the authority as part of the assessment process should set out how the key outcomes are to be met.

Where the authority does not consider that a direct payment, or the way in which it will be used to purchase support, will deliver the agreed outcomes the supported person should be advised of the reasons. Under the Direct Payment Regulations 2014, the authority can refuse to allow a direct payment where the person's safety is at risk however the authority must have good reason to use this power and it should be specific to the person's individual circumstances.

The Disclosure (Scotland) Act 2020

The Disclosure (Scotland) Act 2020 ('the 2020 Act') will be fully implemented by

Commented [JM55]: This section moved back from Section 5 for ease of reference.
Commented [JM56]: These paragraphs largely drawn from 11.12 and 11.13 of original guidance.

2024⁹¹, at which time it will become mandatory PAs to join the PVG Scheme, other than where the applicant is a family member who lives with the supported person (or lives with them as if they were a family member).

That means it will be an offence for individuals who are not part of the PVG scheme and are not family members living with the supported person (or living with them as if members of the same family) to work as PAs to provide care under SDS arrangements without a PVG check being in place.

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Section 6: Eligibility, assessment and review

Eligibility criteria are used by local authorities to deploy resources in a transparent way that ensures that those resources are targeted to adults in greatest need. There is no national eligibility framework in place for children's services, which therefore assess need and provide support in a different way, with threshold criteria set by individual authorities.

A national framework for eligibility criteria for social care for older people was agreed by the Scottish Government and COSLA in 2009⁹². This framework is used by local authorities to determine whether an adult assessed as needing social care support requires resources to be provided in order to meet those needs. The criteria are not required by statute, but most local authorities have used them as a method of allocating resources. Some local authorities have chosen to apply them to a wider range of adults with social care support needs.

As part of the Joint Statement of Intent, Scottish Government and COSLA both recognised the need to ensure that the use of eligibility criteria adequately enables an early intervention and preventative approach to social care, and subsequently agreed to overhauling the current mechanism of eligibility criteria. This work continues to develop.

Please note that different rules apply to eligibility criteria for unpaid carers.⁹³

Current approaches to eligibility criteria:

The current guidance on national standard eligibility criteria applying to adults places risks into four bands, **or levels of intensity:** critical, substantial, medium and low.

⁹¹ This legislation will include a power for "umbrella bodies" to countersign PVG certificates on behalf of personal employers (such as supported persons receiving personal care). For details of this future legislation, please see Disclosure (Scotland) Act 2020, Sch 3 para 2 <https://www.legislation.gov.uk/asp/2020/13/schedule/3> and Schedule 4, para 2 <https://www.legislation.gov.uk/asp/2020/13/schedule/4>

⁹² [National Eligibility Criteria and Waiting Times for the Personal and Nursing Care of Older People](#) (Scottish Government/COSLA 2009),

⁹³ See [Part 3, Chapter 1 of the Carers \(Scotland\) Act 2016 Statutory Guidance](#).

Commented [JM57]: What we said we would include:

This section will describe the current approach to eligibility as set out in guidance via *National Eligibility Criteria and Waiting Times for the Personal and Nursing Care of Older People* (Scottish Government/COSLA 2009), pending an overhaul of existing arrangements as agreed by the Scottish Government and COSLA in the Joint Statement of Intent issued in March 2021.

Have taken out equality from this section and moved into a new section on Equality Act under legislation section as seemed to fit better there.

In relation to adults the authority may choose to apply local eligibility criteria in order to determine whether the person's needs call for the provision of services (i.e. to determine if the person's needs are eligible needs). However it is currently a matter for the authority to determine the detail of its approach, and the above risk bands should therefore not be understood as being mandatory.

Authorities should note that, the eligibility guidance states as a key principle, that 'the prioritisation process should target resources towards responding to adults at critical or substantial risk as regards independent living or wellbeing, whilst not excluding consideration of the benefits of preventative support and less intensive care services for people at less risk'.

The authority's approach to making decisions about a person's access to support - whether it applies formal eligibility criteria or not - plays a key role in the subsequent assessment, the provision of choice under the 2013 Act and the provision of support following that choice.

The authority should therefore develop its policy in line with the statutory principles provided by the 2013 Act and articulated within this guidance.

In particular, it should consider the principles of involvement (of supported people and carers), informed choice and collaboration. It should take an enabling and human rights-based approach to enabling and managing risks, recognising that either ignoring or avoiding all risk can be harmful, for example to dignity and participation in society (living an ordinary life, engaging with others in the community).

The authority should also take steps to involve people who use support, carers and partner organisations in the development of its policies and it should do so from the outset. It should publish the eligibility criteria/framework in accessible formats and it should do so in a clear and transparent way.

See also the Framework of SDS Standards (Standard 2: Early Help and Support; 6: Risk Enablement and Standard 11: Consistency of Practice), which emphasises the importance of a positive and preventative approach that shifts focus from crisis intervention towards what matters to the person and their quality of life.⁹⁴

⁹⁴ This guidance does not cover situations where individuals such as those seeking asylum or others from overseas who have no recourse to public funds. Sources of guidance and support can be found via <https://www.gov.scot/publications/ending-destitution-together/pages/9/> and the Scottish Refugee Council website: <https://www.scottishrefugeecouncil.org.uk/>

Guidance on assessment for the supported person

As set out in [the section on duties](#), Section 1 and 2 of the 2013 Act provide a legislative context for the authority's approach to assessment of needs for adults, children⁹⁵ and carers and the authority's social work function must have regard to these principles in conducting the assessment. These assessments are typically carried out by social workers and, in some circumstances, for example, social care workers.

Commented [JM58]: These taken from original Section 7: Eligibility section – these paragraphs have been re ordered to make them flow more logically.

Human rights approach to assessment

Social care, and the provision of choice as part of the assessment and support planning process, is a way of supporting the realisation of human rights. SDS can enable and empower the supported person to have choice and control over their own life.

The Scottish Government supports the use of the PANEL and FAIR models⁹⁶ in ensuring that decision-making processes are at the forefront of assessments for social care provision and the further provision of support following that assessment. Social workers, when carrying out an assessment, should consider the whole experience of the supported person. The assessment should consider the needs and the outcomes of the person, approaching decision-making in a way that manages risks in an enabling and positive way. In addition, it should consider human rights as part of its development of the relevant strategies, protocols, procedures and guidance associated with social care provision

Under Sections 6 and 17 of the 2013 Act the authority must take reasonable steps to help the supported person to play a full part in their assessment, to understand the various choices available to them and to decide how and what ways they would like to arrange their support. The relevant provisions within the 2013 Act are not intended to impose assistance on the supported person. Neither are they intended to create the opportunity to develop alternative proxy decision-making powers.

Commented [JM59]: Taken from existing guidance 7.20

The initial purpose of the assessment is to identify the person's needs with a view to determining how the person can best be supported and whether the authority has an obligation to meet those needs.

The authority should view re-ablement as a part of the assessment process – an early intervention which may or may not lead to more stable forms of on-going support. However, where it is decided that the supported person will be provided with that stable on-going support, the authority must offer the person the various choices set out in the 2013 Act.

Commented [JM60]: From section 14 of the original guidance

In developing its guidance, policies and procedures on assessment the authority should recognise that policy and practice needs to move away from services and what they do (service-led assessment and support) and towards an approach where by the person takes control, prioritising the difference to be made to people's lives

⁹⁵ Assessments of children's needs should take account of the assessment approach set out by GIRFEC – see Section 4.

⁹⁶ <https://www.gov.scot/publications/national-health-wellbeing-outcomes-framework/pages/9/>

(outcomes-focused assessment) as part of a continuum of early help and support (see SDS Framework of Standards: Standard 2 Early Help and Support).

This involves more control and freedom being retained by the person who is viewed as a partner in identifying and achieving their outcomes rather than a passive service recipient.

Assessment, support, planning and review systems and processes should be personalised, recognising people's strengths, assets and existing community supports, and result in agreed personal outcomes. See SDS Framework of Standards 3: Strength and asset-based approach.

Supported people have the right to query and challenge decisions throughout their assessment, support planning and review processes, including their budget allocations.

See the SDS Framework of Standards: Standard 5 - Accountability and the [section on support planning](#))

Guidance on identification of carers' needs

All carers have the right to have their own personal outcomes and support needs identified via an adult carer support plan or young carer statement under the [Carers \(Scotland\) Act 2016](#).

An effective plan or statement rests on an open and honest conversation between the practitioner and the carer, with a strong focus on personal outcomes. Sections 4 and 5 of this document provide general guidance on how social workers should conduct assessments – and much of this is equally relevant to adult carer support plans and young carer statements.

Preventative support is generally more cost-effective than support provided in a crisis or emergency, as well as being more coherent with a rights-based approach to supporting people and their carers. In some cases, the carer may not wish to have a support plan. It is still important that the authority provides the carer with information on local support.

Guidance on Support planning

The support plan is a key document which is a personalised record of what matters to the supported person, including their personal outcomes and how these will be met. The person's strengths, assets, human rights, existing community supports and funded social care supports are recognised and included in their support plan.

The social worker's assessment and the identification of resources are all part of the same process, which starts with the good conversation and ends in a budgeted support plan and the offer of the four SDS options.

A supported person may choose to have an unpaid carer, family member, friend or advocate attend the assessment with them, even if they are not directly involved in

providing care. Local authorities have a legal duty to take into account the views of the carer when assessing the needs of the person being cared for, as far as that is reasonable and practical. Unpaid carers should also have their needs acknowledged within their own personal assessment and support plan or young carer statement.

Commented [JM61]: These paragraphs amended from original guidance section 9

The support plan should be developed in line with the [statutory principles](#) in Section 1 of the 2013 Act and in line with this guidance. The plan should cover certain key aspects such as the personal outcomes which help to shape the plan, the resources (both financial and non-financial) which will help to meet those outcomes, the choices available to the supported person to arrange their support and all associated information.

There are different requirements for an adult carer support plan or young carer statement, but the principles are the same: there should remain a requirement to demonstrate a clear link between items and services purchased and the personal outcomes identified and agreed in an individual's support plan, adult carer support plan, or young carer statement.

The support plan may be developed in any type of format that the supported person understands, but it should be framed in such a way that it can be used as a living document. It should focus on what the person wants to achieve with the right help, rather than simply putting arrangements in place to stop things from getting any worse. It should be capable of acting as a reference point for the supported person, the authority, the provider and, subject to the person's wishes, other important individuals in the person's life including advocacy workers. The parties involved should be able to return to the plan, review the plan, add to the plan or make changes over time⁹⁷.

See Standard 3: An Assets Based Approach and Standard 4: Meaningful and Measurable Recording Practices in the SDS Framework of Standards.

Guidance on Review

A significant change to a supported person's needs or a request for a further assessment should prompt a review of the person's needs. In addition, the supported person and/or the authority can also request a review of the choice of options under the 2013 Act. There is separate guidance on the statutory period for review of care plans for looked-after children⁹⁸.

The approach taken at review should be similar to the approach taken at initial assessment. In other words, it should be conducted in line with the principles of collaboration, informed choice and involvement.

As with the initial assessment carried out by the social worker, the review should focus on personal outcomes with a view to meeting assessed needs. It should involve a period of reflection on whether the choices made and the support provided is helping to meet the outcomes and needs of the supported person. The review

⁹⁷ See also a discussion of key issues in the SDS Practitioner Guidance [section on support planning](#)

⁹⁸ Further information on Looked After Children: <https://www.gov.scot/publications/guidance-looked-children-scotland-regulations-2009-adoption-children-scotland-act-2007/pages/15/>

should also consider whether the needs and outcomes have changed in the intervening period. This may require some adjustments to the support plan.

The authority should aim to conduct reviews within a maximum period of 12 months. It should consider the review as a means by which to prevent crisis or to respond and adapt to the supported person's life.

If the supported person requires additional support, the relevant authority should ensure that the person is given the option of having support from an independent supporter or advocate. The authority may also wish to speak to family members and carers to satisfy itself that the person is not experiencing any difficulties with arrangements. Where an attorney, guardian or parent is in place the authority will also wish to discuss arrangements with them.

Review of the supported person's options under the 2013 Act

Commented [JM62]: Amended from section 12 of the original guidance.

The 2013 Act imposes additional and distinct review duties in relation to the narrower question of how the supported person's support is arranged. In practice the two types of review - a review of the person's 2013 Act options and a review of the person's wider needs and outcomes – will tend to go hand in hand.

It is difficult to foresee a review of a supported person's needs failing to incorporate some consideration of the means by which they arrange their support. However, a review of a person's choice under the 2013 Act can take place without a detailed review of needs. The person may decide that they do not wish to continue with the option that they have chosen.

Alternatively, the person may decide that arranged services are not working out the way that they had thought and would like to reconsider the other options. The authority should view this as part of the on-going nature of assessment, and it should support the relevant practitioners to work with the supported person to consider what adjustments they would like to make.

The authority should ensure that an initial review date is set when the supported person and the social worker first agree the assessment and support plan. The supported person should be made aware that they can request a review sooner if their circumstances change.

Trust-based relationships and good conversations between practitioners and people are at the heart of assessment, support planning and review practice and processes.

See also SDS Framework of Standards 3: Strength- and asset-based approach for more information.

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Section 7: Budgeting, Charging, Commissioning and Procurement

This section brings together guidance on several issues related to the allocation and management of resources.

The 2013 Act requires authorities to make available four options, and to appropriately match need to available resources. Commissioning, procurement and finance processes should therefore enable practitioners to support individuals with the underpinning principles of choice, collaboration and flexibility.

As set out in the [roles and responsibilities section](#), authorities must ensure that the right processes, capacities and systems are in place to support control, choice and flexibility, and that resource allocation is demonstrably fair, equitable and transparent (including the publishing of local eligibility criteria) and not disadvantaged by rural, remote or island living.

This includes ensuring social workers have the authority and are enabled to exercise practitioner autonomy to plan support and set personal budgets within agreed delegated parameters.

See also SDS Framework of Standards (Standard 3: Assets-based approach and Standard 8: Worker Autonomy).

Funding, budgeting and flexibility: a new standard

The 2013 Act does not prescribe how authorities should organise their financial systems and processes in meeting their duties under the 2013 Act. However, a new addition to the SDS Framework of Standards (Standard 12: Access to Budgets and Flexibility of Spend) has been developed by Social Work Scotland, COSLA and other sector stakeholders in 2022, and contains useful principles for authorities to follow.

The new standard is that people are involved in the development of their budget and have maximum flexibility to use this in the way that they choose to achieve agreed outcomes. The available funding should be allocated in a way that is transparent, fair, equitable and sufficient, across all communities and for all individuals.

In practice, local authorities and partnerships should have clear and equitable systems and processes in place to involve people in the development of their budget; and to calculate and provide people with sufficient levels of budget to enable them to meet agreed personal outcomes and lead full and meaningful lives.

Social workers should have the authority and be enabled to exercise professional autonomy to plan support and set personal budgets within agreed delegated parameters

Meeting this standard means that authorities must not impose blanket bans on funding certain kinds of goods (for example, holidays) and services (unless

Commented [JM63]: The existing guidance covers this ground across many different sections. This section aims to bring finance-related content under one roof. Topics include budgeting, pooling, monitoring, underspend budgets, charging, discontinued payments, procurement and commissioning

Commented [JM64]: This section now reflects the agreement of Standard 12 (Funding Availability, Budget Calculation and Flexibility of Spend)

prohibited by the 2014 regulations), nor seek to stop supported people from discussing their support with others⁹⁹.

Note that children's services social work operates under Getting it right for every child principles and works in a different way,¹⁰⁰ Children's Services assess need, develop the child's support plan and then consider how those needs are met, and on that basis consider whether, and to what extent, those needs can be met through SDS.

Financial monitoring

The authority should consider the relevant Chartered Institute of Public Finance and Accountancy (CIPFA) guidance on financial monitoring of direct payments. The CIPFA guidance provides advice on efficient, effective and proportionate monitoring arrangements, focused on outcomes and, crucially, with as light a touch as possible.

The authority should not pursue the supported person for receipts covering minimal transactions. The authority should allow a fair degree of flexibility to cope with the realities of life and there should always be adequate contingency funds. The monitoring arrangement should not be an end in itself. Its primary purpose should be to ensure that the overall resource is being used broadly in line with the personal outcomes within the support plan and the assessed needs as determined in the assessment.

The authority should be transparent with the supported person in relation to the monitoring arrangements for direct payments. For example it should discuss the information the person will be expected to provide and the way in which monitoring will be carried out. [See welfare monitoring](#)

Pooling of budgets

A person-centred approach to assessment, support planning and review should recognise opportunities to pool expertise, share common approaches and combine resources at every stage in the supported person's pathway. The pooling of budgets should be the choice of, and controlled by, supported person and carers.

This requires a solution-focused approach and a determination on the part of senior leaders in health and social care to support the practitioners they manage to adopt joint assessment, planning and review processes and take full advantage of the broad powers afforded them in legislation.

Duty-bearers should work together to enable the pooling of budgets at the level of the individual (for example where families or groups may be able to increase their purchasing power) as well as at the strategic level of the Health and Social Care Partnership.

Efforts should be made to ensure these arrangements do not create disproportionately burdensome contractual burdens on people accessing SDS. For example, where a Personal Assistant or another service is being shared by more

Commented [JM65]: From Section 11 of original guidance

Commented [JM66]: Including some content from section 8 of existing guidance and combined with inputs from SLWG and policy colleagues

Commented [JM67]: From section 13 of existing guidance

⁹⁹ The SDS Framework of Standards has been [updated in August 2022](#) to include Standard 12

¹⁰⁰ See Section 4 for more information on GIRFEC.

than one supported person, authorities should be as flexible as possible in respecting the wishes of the supported person

Once a decision has been taken to pool budgets, this should be recorded appropriately and consideration must be given to who will take responsibility for jointly funded agreements.

Pooled strategic budgets also provide opportunities for the development of joint commissioning strategies and joint assessment and support planning arrangements. In this respect, the development of integrated arrangements at the level of the Health and Social Care Partnership create an ideal environment for the development of choice and control for all individuals with joint health and social care needs.

Underspent Budgets and Seeking Repayment

Where Local Authorities or Health and Social Care Partnerships have concerns about underspend of allocated budgets, these should be reconciled in line with local contractual arrangements **only after efforts have been made to establish – with the supported person, unpaid carer and the social worker – the reasons for the underspend**¹⁰¹. To ensure reconciliation is done accurately and transparently, providers and Direct Payment holders should keep a record of decisions made (for example, deployment of staff, additional costs incurred) with a transparent and clear link to individual care plans (or adult carer support plans or young carer statements).

Commented [JM68]: This section merged from pandemic guidance.

Commented [JM69]: Addition made following exchange with SWS

All unspent funds in Direct Payment accounts should be returned to the Local Authority or Health and Social Care Partnerships in the usual way. It is acknowledged that Local Authorities or Health and Social Care Partnerships may have made local arrangements with providers about reconciling unspent funds, and this SDS guidance is not intended to cut across those arrangements.

Seeking repayment of direct payment funds

Depending on the circumstances surrounding any decision to terminate a direct payment the authority may need to decide if it is appropriate and proportionate to seek recovery of unspent funds. Any such effort should include the social worker and should not be undertaken without clear communication and discussion with the supported person and/or their representatives, and potentially a review or reassessment which can consider whether any part of the unspent resource can help achieve their outcomes in a different way.¹⁰²

The authority should also consider how to recover unspent budget if the recipient dies, including the possibility that before their death the supported person might have incurred liabilities or received services which should legitimately be paid for using the budget. There may also be occasions where additional funding is required to settle liabilities in full.

¹⁰¹ See [section on funding and budget for more on standards in this area ,or Core Component 12.16 of Framework of Standards](#).

¹⁰² See Core Component 12.6 of SDS Framework of Standards

In addition, the 2013 Act enables the authority to require some or all of the money they have paid out to be repaid if the authority is not satisfied that it has been used to secure the support to which it relates. The authority may also require repayment if the person has not met any condition which the authority has properly imposed or have been imposed by the regulations. The authority should take into account hardship considerations in deciding whether to seek repayments.

The use of Pre-Paid Cards

Supported persons have a legal right to request a cash payment (Direct Payment) to meet their assessed need under the 2013 Act, and is often referred to as SDS (Option 1).

In recent years, pre-payment or prepaid cards have emerged as a way of managing Direct Payment spend as a way of reducing transaction costs and bureaucracy for supported persons and their carers in managing Direct Payments.

Pre-paid cards are now used by many local authorities for a range of purposes including direct payments, and can be used to buy from shops, online retailers and providers of services.

The potential benefits of prepayment cards include less resource-intensive financial monitoring, and does away with the need for supported people to open special bank accounts for Direct Payments. Authorities should seek to involve supported people in decisions concerning recovery of unspent funds on a pre-paid card in line with the principles set out in the previous section.

However, research in England¹⁰³ and Scotland¹⁰⁴ has shown that the use of pre-paid cards have the potential to allow the placing of inappropriate restrictions on what can be purchased.

While the use of pre-paid cards is not mentioned in the Act, authorities should give supported people and carers a choice about whether they want to use a pre-paid card. Where authorities want to introduce their use, they should consult appropriately with supported people and ensure that the use of pre-paid cards is compliant with the SDS statutory principles of collaboration, informed choice and involvement when providing support, and with SDS Framework of Standards on flexibility of spend.

¹⁰³ Research in England: <https://in-control.org.uk/payment-cards-direct-payments-must-not-undermine-choice-control/>

¹⁰⁴ Research in Scotland: <https://www.alliance-scotland.org.uk/wp-content/uploads/2021/11/ALLIANCE-SDSS-MSMC-Dumfries-and-Galloway-Report-Oct-2021.pdf>

Charging

Free Personal and Nursing Care is available to all who are assessed by their local authority as needing this service and should be provided free of charge. If the supported person has been assessed as requiring this support they should be provided with the full range of choices under the 2013 Act.

Scottish Government Circular CCD3/2018¹⁰⁵ sets out guidance on access to free personal care and/or nursing care to any adult who is found eligible by their local authority as needing both or either of these services.

Personal care services include personal hygiene such as bathing, showering and shaving or help with food preparation.

Parents or guardians of are not charged for any children's social care support (either personal or non-personal) up to the point that they transition from children's social work services to adult social work services, which can be at any point between their 16th and 18th birthdays. For other services where authorities have the power to charge, authorities should consider carefully whether in practice to charge the families of disabled children where this would have a significant impact on the parents or guardians.

The rest of this section addresses different circumstances where the issue of charging may arise.

Charging for support to unpaid carers

The Carers (Waiving of Charges for Support) (Scotland) Regulations 2014 require local authorities to waive charges in relation to support provided to unpaid carers (of any age).

Similarly, the Self-directed Support (Direct Payments) (Scotland) Regulations 2014 prevent local authorities means testing or requiring a contribution from a carer where carer support is being delivered by way of a direct payment. This means that charges cannot be made for support provided to unpaid carers either directly by local authorities or commissioned by the authority through other organisations. For detailed guidance on the waiving of charges for carer support, see the Carers (Scotland) Act 2016 statutory guidance ¹⁰⁶.

Charging for support to the supported person

Under Section 87 of the 1968 Act the authority can require adult supported persons to pay a contribution towards the cost of any services which meet the supported person's assessed needs. Historically charges have tended to be based on service types. Where a supported person's support is predicated on an identified budget it can be difficult to base any charge on the basis of a service. Where a person has been assessed as eligible for social care support and their Individual Budget has

¹⁰⁵ Circular: https://www.sehd.scot.nhs.uk/publications/CC2018_03.pdf

¹⁰⁶ Statutory Guidance for Carers Act: <https://www.gov.scot/publications/carers-scotland-act-2016-statutory-guidance-updated-july-2021/pages/5/>

been calculated, the local authority may apply a charge for some elements of the support.

Local charging policies are a matter for the local authority and should be considered in light of the relevant COSLA guidance. Scottish Government Circular CCD3/2018¹⁰⁷ set out what services or support cannot be charged for.

Residential care charging

The Charging for Residential Accommodation Guidance (“CRAG”)¹⁰⁸ provides the framework for local authorities to charge for the residential care that they provide or arrange. This statutory guidance is updated annually.

Non-residential care charging

COSLA has produced the non-statutory National Strategy & Guidance – Charges Applying to Social Care Support for people at home.¹⁰⁹ This guidance provides a framework that aims to maintain local accountability and discretion of local authorities when charging for non-residential social care services. This guidance is also updated annually and issued to local authorities.

Examples of things that are not classed as personal care and that can be potentially charge for include community meals, lunch clubs, day care, community alarms and help with shopping or housework.

The Scottish Government has committed to removing charges for non-residential social care support by the end of the current Parliament and is working alongside . COSLA to develop options to achieve this.

Towards an outcomes-centred approach to Commissioning

Effective social care commissioning and procurement are important elements of a successful operating context for social care. This section deals with the strategic commissioning and procurement function of Integration Joint Boards and local authorities, and the role that it can play in ensuring a sufficient range of choices across all four options available under the 2013 Act. The authority has a duty under Section 19 of the 2013 Act to ‘in so far as is reasonably practicable’, promote a variety of types of support and a range of providers of support availability to those who are eligible for care and support. The Carers (Scotland) Act clarifies that this duty applies to support enabling a break from caring.

Access to the Options provided under the 2013 Act is of very little value if there is a lack of variety in the type of support on offer or in the range of providers available. It is therefore a key responsibility of the authority to take reasonable steps to ensure that the supported person there is a sufficient range of choices available regardless of whether the supported person selects Option 1, Option 2, Option 3 or Option 4 under the 2013 Act.

¹⁰⁷ Access the circular here: https://www.sehd.scot.nhs.uk/publications/CC2018_03.pdf

¹⁰⁸ CRAG guidance here: https://www.sehd.scot.nhs.uk/publications/CC2022_01.pdf

¹⁰⁹ COSLA charging guidance: https://www.cosla.gov.uk/_data/assets/pdf_file/0011/32033/COSLA-Social-Care-Charging-Guidance-2022-23.pdf

Providers in this context means any organisation providing relevant support to a supported person. This includes, but is not restricted to:

- in house (local authority) providers;
- Local Authority Trading Companies/ Arm's Length Independent organisations;
- voluntary sector (not for -profit) providers;
- private sector (for-profit) providers;
- social enterprises;
- small and micro-providers;
- user- led providers;
- employee owned co-operative providers;
- independent support organisations, disabled people's organisations; and
- personal assistants.

Commissioning in the context of the 2013 Act is not simply about ensuring there is a transaction between a supported person and a provider. It should be set in the wider context of the relevant authority's strategic planning activity including community capacity-building, prevention and universal services. Strategic commissioning will consider the most appropriate way to arrange for the provision of services and support to meet the needs of the local population. This may result in a decision to deliver services, in-house, via a grant, by putting in place a public contracts, or forming an alliance or partnership - or a combination of all or some of these routes.

The Audit Scotland Social Care Briefing¹¹⁰ and the IRASC discuss the need to improve the impact of commissioning and procurement, including the need for ethical commissioning that routinely involves peoples with lived experience, carers, local communities, providers and other professionals in the co-design and redesign, as well as the monitoring of services and supports. This system should form the basis of a collaborative, rights-based and participative approach, which also takes into account factors beyond price, including fair work, terms and conditions and trade union recognition.

The authority should view its commissioning role as being a facilitator of service design and provision, that provides choice. This involves both providing information about choices and commissioning and putting in place a range of sourcing models and (where appropriate) procurement processes that allow people as much choice of type of support and provider as possible.

The authority should adopt a person-centred approach based on the principles of involvement and co-production. It should be transparent and should publish its approach either as a separate document or as part of its commissioning strategy.

See Section 3: [Roles and Responsibilities](#)

¹¹⁰ Social Care Briefing January 2022: https://www.audit-scotland.gov.uk/uploads/docs/report/2022/briefing_220127_social_care.pdf

Relevant legislation and guidance on commissioning

The Public Bodies (Joint Working) (Scotland) Act 2014 puts in place the framework for integrating health and social care and places a duty on Integration Authorities - either Integration Joint Boards, or Health Boards and Local Authorities in a lead agency arrangement - to involve a range of service providers, service users and their carers, representative bodies, and practitioners in the commissioning process.

See also Statutory Guidance on Strategic Commissioning ¹¹¹ under the requirements of the Public Bodies (Joint Working) (Scotland) Act 2014.

Although Part 3 Children and Young People (Scotland Act (2014) the legislation does not prescribe a complete strategic commissioning process, the relevant statutory guidance requires that the children's services planning cycle should be seen as a strategic driver towards the development of local commissioning processes which are based on robust information about needs, costs and quality, and ongoing engagement with service users and the wider community, with associated duties on the local authority, health board and Integration Joint Board.

Commented [JM70]: Addition from SG childrens policy team

Procurement

Procurement is only one funding route to secure social care service provision, strategic commissioning activity could also identify other routes to fund the delivery of social care services and support.

The Statutory Guidance accompanying the Public Bodies¹¹² (Joint Working) (Scotland) Act 2014 sets out guidance for effective commissioning and procurement processes, including the putting in place of procurement plans providing specific detail to direct those responsible for contracting services.

In addition, best practice guidance on the procurement of care and support services¹¹³ provides further guidance on how procurement considerations can support SDS, where a public contract is the chosen form for funding social care provision. The authority should seek to use the flexibility within the procurement regulatory regime to meet the legal duties of the 2013 SDS Act.

Local authorities should consider how best to develop a procurement strategy that ensure that the ability to 'self-direct' is not lost, and that the number of providers is not reduced unnecessarily. See also Self Directed Support Scotland's report on procurement¹¹⁴ for more information on how procurement can support SDS.

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¹¹¹ Strategic Commissioning Guidance: <https://www.gov.scot/publications/strategic-commissioning-plans-guidance/>

¹¹² Public Bodies Act guidance: <https://www.gov.scot/collections/public-bodies-joint-working-scotland-act-2014-statutory-guidance-and-advice/>

¹¹³ Procurement best practice: <https://www.gov.scot/publications/procurement-care-support-services-best-practice-guidance/>

¹¹⁴ SDS Procurement best practice: <https://socialworkscotland.org/wp-content/uploads/2018/09/Self-directed-Support-and-Procurement-Best-Practice.pdf>

Section 8: Employment

There are a number of other areas of this document which touch on employment issues, including sections on SDS Options, the powers of Local Authorities, funding and budgeting, roles and responsibilities and contingency planning. This section contains additional guidance on several topics directly relating to Employment.

Employment of Personal Assistants using direct payments

A **personal assistant** (PA) in social care is an employee of someone typically receiving an Option 1 Direct Payment to pay for their support needs. A PA's role is to provide support as their employer directs to help their employer live their day-to-day life and work towards their 'personal outcomes.'

Personal Assistants and employment status

The **authority** should ensure that the person in receipt of the Direct Payment under SDS Option 1 is made aware of the general responsibilities that come with direct payment options, including those associated with safe and effective employment of a Personal Assistant.

The person who is engaging the Personal Assistant should initially check the employment status of the worker. As matters relating to employment status are reserved to the UK Government, any questions regarding the status of the worker should be resolved by HMRC.

For more information on how to apply HMRC rules to determine the status of the worker, see the Factsheet on Personal Assistant Employment¹¹⁵ from the Low Income Tax Reform Group (updated April 2022) and HMRC's online tool¹¹⁶ to help individuals and organisations decide whether a worker should be treated as employed or self-employed for tax purposes.¹¹⁷

Direct Payments and Power of Attorney

A power of attorney can be granted from an individual who can understand and explain their wishes whereas a guardian is appointed when a person does not have capacity to make decisions on their own behalf.

If a family member holds a power of attorney or is a guardian for a supported person, they are usually not permitted to be employed as a PA for the supported person if, as part of their role as guardian or attorney, they have the power to make decisions about the support to be provided through the direct payment (see regulation 9 of the 2014 Regulations¹¹⁸).

¹¹⁵ The LITRG factsheet: <https://www.litrg.org.uk/sites/default/files/files/LITRG-factsheet-PA-employed-self-employed.pdf>

¹¹⁶ HMRC tool: <https://www.gov.uk/guidance/check-employment-status-for-tax>

¹¹⁷ Changes to IR35 come into effect on 6th April 2023. For more information on rules applying to off-payroll workers providing their services via an intermediary, such as a personal service company, please visit the HMRC website.

¹¹⁸ 2014 SDS Regulations: <https://www.legislation.gov.uk/ssi/2014/25/made>

Commented [JM71]: This text arrived at following many exchanges in September amongst SLWG members with an interest and SG policy colleagues.

From 6th April 2023, workers across the UK, providing their services via an intermediary, such as a personal service company, will once again be responsible for determining their own employment status and accounting to HMRC for any tax and NICs.

Commented [JM72]: The issue of a conflict between SDS regulations and a supported person's right to choose a PA who may also hold power of attorney was brought up at the SDS Practice Network 16/06/22. Text in this section arrived at following discussion and research in September, including with SG legal officials.

The intention of Regulation 9 is to avoid conflicts of interest that may arise if the family member with power of attorney is making decisions about direct payments and is also carrying out the role of PA, as they would in effect be employing themselves. Regulation 9 also allows the Local Authority to prevent a family member being employed as a PA if they believe that either the family member, or the supported person, is being forced to agree to the care being provided in that way.

However, Regulation 9 does not cover situations where an attorney is not *directly* managing a supported person's direct payments including the signing of contracts. While local authority systems of supervision must comply with the Regulations and be sensitive to potential conflicts of interest, these must not have the effect of imposing a blanket ban that forces supported people to choose between the role of Personal Assistant and holder of Power of Attorney in situations where that power is not currently being used to sign contracts or where a contract can be managed by a third party.

Efforts must be made to respect the supported person's wishes and to take a proportionate and positive approach to managing risks, in line with the statutory principles of the 2013 Act, and the principles underpinning the Adults with Incapacity Act¹¹⁹.

In other words, while there may be some circumstances in which being a Personal Assistant while also holding Guardianship or active Power of Attorney might not be appropriate, in all cases the wishes of the supported person, where these can be determined, should prompt local authorities to be creative in finding solutions that can mitigate, manage or reduce risk.

Managing financial affairs where the authority is the welfare guardian

The Adults With Incapacity (Scotland) Act 2000¹²⁰ sets out arrangements for appointing legal proxies to make decisions regarding welfare or finance and property matters on behalf of an incapacitated adult.

The local authority, via the Chief Social Work Officer as welfare guardian, can only exercise welfare powers on behalf of the adult. Managing direct payments requires financial powers and because they are ongoing, a financial guardianship will be needed.

The AWI Act states that the local authority has a duty to apply for guardianship under the 2000 Act where this is necessary to protect the property, financial affairs or personal welfare of the adult and no-one else is applying or likely to apply.

Although the AWI Act does give local authorities the power to nominate themselves as financial interveners, the local authority is not itself allowed to be the financial guardian and, therefore, after working closely with the person's relatives and friends, if no one else is willing or able to act, the local authority must nominate a suitable

Commented [JM73]: This text revised recently following concerns raised initially through the SDS Practice Network. This text focuses on what is allowed rather than prescribing who must do what.

¹¹⁹ AWI Act 2000 – see <https://www.gov.scot/publications/adults-with-incapacity-act-principles/>

¹²⁰ See Section 4 in this document for more about the 2000 Act. See also the [AWI Code of Practice \(Section 6\)](#)

person, usually a solicitor or accountant. The third party can then take on the duties of the employer on behalf of the supported person.¹²¹

Guidance on requirements enabling family members to be employed as PAs

Under the 2014 Regulations, an individual can employ a close relative or family member as a Personal Assistant, with agreement from the local authority. The Regulations provide a clear framework for such decisions, providing appropriate and inappropriate circumstances for the employment of family members..

This is in line with the statutory principles of the SDS Act 2013 and the spirit of the legislation, which includes the provision of creative and effective solutions for those receiving social care support.

This is an important consideration where more formal support may be difficult to access (because of geographical remoteness) or where a person's specific cultural needs require to be met by someone with a comprehensive understanding of those needs, and that person may be a family member. Both the professional judgment of social workers and the wishes of the supported person should inform all decision-making in relation to appropriateness of family members being employed as PAs.

Family members may also be employed as a temporary PA. The individual in receipt of this support should ensure that there is a clear procedure for the original, or a new, PAs to resume or start their role when possible. The family member employed to provide replacement care should understand this arrangement may be temporary, and may have an impact on benefits such as Universal Credit.

The authority retains the power to either agree or disagree to the employment of a family member, though this should be on the basis of whether the arrangement will or will not meet the assessed needs of the supported person in line with the criteria set out within the 2014 Regulations.. There should therefore be no blanket bans imposed by authorities on the employment of family members as PAs.

Under the Regulations, 'family member' means the spouse or civil partner of the supported person, a person who lives with the supported person as their spouse or civil partner, the direct payment user's parent, child, brother or sister, aunt or uncle, nephew or niece, cousin, grandparent, grandchild, the spouse or civil partner of any of the above. All other relationships fall out with the scope of the Regulations.

The authority should approach each request to employ a family member on a case by case basis, taking account of the supported person's preferences and the family member's health, their capacity and willingness to provide the required care support, and other welfare, protection and wellbeing factors.

If the authority does not agree with the employment of a family member it should explain its reasoning in writing - and if necessary, in such other form as is appropriate to the needs of the **person** - to the supported person (who may or may not choose to share this outcome with the prospective PA employee). It should

Commented [JM74]: The SDS Act section 5 contains this language.

¹²¹ See section on [Direct Payments and Power of Attorney](#)

inform the supported person of the additional support and information services and, where appropriate, their right to advocacy with respect to the decision. It should give the supported person an opportunity to query their decision with reference to the circumstances set out in the Regulations.

See Part Three of the 2014 Regulations for a list of circumstances where a family member may provide support.

Fair pay and Personal Assistant Rights

Commented [JM75]: Amended from pandemic guidance

PAs have access to entitlements and support that other social care workers have, including Fair Work practices and access to support. The PA Employer's Handbook¹²² is a tool for the employer that provides details on how to embed quality assurance when employing PAs using Option 1 – Direct Payment. The PA Handbook¹²³ is a separate resource.

Further support and advice for PAs can be found at Personal Assistants Network Scotland¹²⁴ who also offer a photo ID badge as a proof of identity..

Option 1 rates of pay

Adults

Direct Payment budgets must enable PA employers to pay PAs delivering adult social care at least £10.50 per hour from April 2022.

From 1 April 2022, the minimum hourly rate for PAs delivering direct adult social care increased from at least £10.02 per hour to at least £10.50 per hour. The national weightings for the £10.50 per hour uplift have been increased to take into consideration the increase in Employer National Insurance Contributions (ER NICs) - which also came into effect on 1 April 2022 - with funding being provided to cover the increase to ER NICs associated with this 48p increase.

Therefore, funding to deliver this uplift will be provided by applying a 4.79% uplift to 90% of SDS Option 1 Budgets¹²⁵; equating to contract uplifts of 4.31%. This will be applied by the relevant local authority.

This funding will enable pay for these workers to be uplifted from at least £10.02 per hour to at least £10.50 per hour. Where PAs are already paid more than £10.50 per hour, this funding should be used to increase pay above these levels. All funding should be spent on uplifting pay.

Any requests to change other costs within SDS Option 1 Budgets, outwith this policy which focuses only on uplifting pay, would form part of normal processes agreed with

¹²² PA Employer's Handbook <https://paemployer.handbook.scot/>

¹²³ PA Handbook: <https://handbook.scot/the-pa-handbook/>

¹²⁴ PA Network: <https://www.panetworkscotland.org.uk/>

¹²⁵ The uplift is applied to a set percentage (national weighting) of contract values, in line with the average full workforce costs. A separate agreed weighted percentage has been set for Personal Assistants who are paid directly through SDS Option 1 budgets.

local social work teams. The minimum hourly rates for adult social care workers, including PAs, are reviewed annually and any changes to applicable rates will be communicated in due course.

Children

As of September 2022, pay rates for PAs supporting children are linked to the National Living Wage. Decisions on pay rates are informed by discussion with sector representatives.

Payment of mileage costs

Mileage is an area of employment law that is reserved to the UK government, and employers are not legally required to pay mileage costs, although some employers offer mileage payments as an additional benefit. Mileage can be paid for from a supported person's budget as part of meeting their needs – for example where travel to college has been identified within the individual's support plan¹²⁶. See additional sources of advice on mileage ^{127 128}

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Death in service

The COVID19 social care worker death in service payment scheme¹²⁹ was introduced following the high risk workers are exposed to while performing frontline duties and providing care to Coronavirus (COVID-19) patients.

The Scheme recognises the vital contribution of social services workers, including PAs, in tackling the Coronavirus (COVID-19) pandemic. This scheme provides a one-off payment of £60,000 to a named survivor of a social care worker who has died in service as a result of, or the suspected result of, contracting Coronavirus (COVID-19) at work.

The scheme will make payments for eligible claims in respect of coronavirus-related deaths occurring between 17 March 2020 and 30 June 2022. Claims can be submitted until 30 June 2023. Details on eligibility and how to apply are provided in the link above. See also the PA Employer's Handbook.

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¹²⁶ The contribution from a local authority for mileage may be affected by individual policies regarding receipt of mobility benefits

¹²⁷ The Low Incomes Tax Reform Group factsheet on PA employment status contains guidance on travel expenses: <https://www.litr.org.uk/sites/default/files/files/LITRG-factsheet-PA-employed-self-employed.pdf>

¹²⁸ See the PA Employer's Handbook for further advice on mileage: <https://handbook.scot/>. There is also HMRC guidance on business mileage: <https://www.gov.uk/expenses-and-benefits-business-travel-mileage/rules-for-tax>

¹²⁹ <https://www.gov.scot/publications/coronavirus-covid-19-social-care-worker-death-in-service-payment/>

Section 9: Concerns, complaints and what to do if things go wrong

The authority, through the social work function, should inform the supported person that if they experience difficulties with any aspect of their assessment they should in the first instance try to resolve matters with their social worker.

People should be supported to query and challenge decisions throughout their assessment, support planning and review processes, including their agreed personal outcomes. Section 13 of the 2013 Act specifically requires a local authority to offer the person another opportunity to choose one of the SDS options whenever it becomes aware of a material change in that person's circumstances.

At each stage, supported people have the right to the provision of accessible information, independent advocacy and mediation, the right to challenge a decision and to make a complaint.

See [section on reviewing the needs of a supported person](#).

See SDS Framework of Standards and Standard 5: Accountability and section on authorities' [duty to provide information](#) about organisations and individuals who can provide independent advocacy services.

Making a complaint

Many problems or difficulties can be resolved through informal discussion. However, if a supported person remains dissatisfied the authority should make the person aware that they can make use of the local authority's complaints procedure.

Supported people, their families and carers have the right to access a simple, timely and accessible formal complaints procedure if they feel they have been unfairly or unreasonably treated, or if they wish to challenge a decision that the local authority has made about their support. Local authority complaints processes therefore must be compliant with the 2013 Act,

The person should be advised that in relation to complaints about any action, decision or apparent failing of the local authority they also have recourse through the Scottish Public Services Ombudsman (SPSO)¹³⁰ once all other avenues have been exhausted.

Local support and independent advocacy organisations may have a role to play in supporting users and providing additional support and information. The authority, through its social work function, is under a [duty to provide information](#) about organisations and individuals who can provide independent advocacy services.

Complaints about service quality

Where the person uses a direct payment to employ a personal assistant or to purchase a service from a third or independent sector provider and where they are unhappy with that service, the authority should make it clear to the supported person

¹³⁰ SPSO website: <https://www.spsso.org.uk/>

that they should address any complaints that they may have about the services they purchase to the service providers or PA themselves.

Alternatively, a complaint can be made to the Care Inspectorate about any registered service or about the actions of the Care Inspectorate itself.¹³¹

Human rights and equalities [legislation](#)

The Equality and Human Rights Commission website¹³² contains important information on this, including additional routes to resolving the problem without taking legal action, and details of a helpline offering help and advice on issues relating to equality and human rights across England, Scotland (see also Scottish Human Rights Commission¹³³) and Wales.

In Control Scotland has also published analysis in 2021¹³⁴ to help understand complaints processes within local authorities, routes to potential legal challenge, and barriers to complaints: which includes research.

While legal action should always be an avenue of last resort, supported people or their representatives are entitled to consider further action through a Judicial Review¹³⁵ (in limited circumstances), under the auspices of the Human Rights Act 1998¹³⁶ or the Equality Act 2010.

It is the intention of the Scottish Government to incorporate a number of UN human rights treaties into Scottish law, where subsequent legislation has the potential to provide specific rights relating to health and social care, social security and protection, and housing. For more information on this, see the National Task Force for Human Rights report (2021¹³⁷).

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Commented [JM76]: There are human rights sections elsewhere, in section 1 and in section 6.

In terms of logic for including human rights subsection in complaints: According to 2019 report linked to in the text, 'there is a lack of detailed knowledge of human rights amongst a range of stakeholders, and the relevant legislation that promotes and protects them, although there was some suggestion that framing complaints around human rights appeared to improve outcomes'.

¹³¹ Since April 2017, the Care Inspectorate and Healthcare Improvement Scotland have had joint statutory responsibility to inspect and support improvement in the strategic planning and commissioning of integrated approaches to health and social care.

¹³² EHRC website: <https://equalityhumanrights.com/en/advice-and-guidance/getting-help-and-advice>

¹³³ More information on human rights in Scotland: <https://www.scottishhumanrights.com/your-rights/human-rights-in-scotland/>

¹³⁴ In Control report on human rights: <https://www.sdsscotland.org.uk/accountability-and-the-implementation-of-sds-complaints-redress-and-human-rights-report/>

¹³⁵ More information about judicial review <https://digitalpublications.parliament.scot/ResearchBriefings/Report/2022/6/27/0ea1f532-8a16-11ea-a4bf-000d3a23af40>

¹³⁶ Full text of the Human Rights Act <https://www.legislation.gov.uk/ukpga/1998/42/contents>

¹³⁷ National Taskforce reports: <https://www.gov.scot/publications/national-taskforce-human-rights-leadership-report/documents/>

Section 10: Transparency and Monitoring

Transparency

Authorities are expected to abide by the SDS Standard 9 (Transparency), which states that 'Practice, systems and processes are clearly understood and are explained in ways that make sense to the person. All decisions that affect a person's choices, support, and personal budget are recorded and shared with them'.

There is no single approach to resource allocation prescribed on the face of the 2013 Act, nor any single method recommended by Scottish Government. However, the Self-Directed Support Act 2013 requires transparency in decisions on allocation of resources and that the authority's approach taken to the allocation of resources is both fair, transparent and clear to everyone. It should take steps to involve user and carer groups in the development of any methodology used to define or determine budgets, which will reflect the uniqueness of each person's support plan. Experience from legal judgments in England reinforce the explicit need for those systems to be fair, equitable and transparent.

See also Standard 4 on recording practices within the SDS Framework of Standards.

Monitoring and data

Welfare monitoring of Direct Payments (Option 1)

For financial monitoring, see the [Finance section](#)

A direct payment is not a benefit, nor a simple cash payment. It is an alternative means by which to meet assessed social care needs. This means that financial monitoring on its own is not sufficient and the authority should not approach monitoring as a purely financial process. If the authority concentrates solely on financial monitoring, and if this monitoring is disproportionate and overly bureaucratic, this may discourage people from selecting Option 1 under the 2013 Act.

The welfare monitoring arrangements should be based around the supported person's individual needs and requirements. It should involve a conversation with the supported person about whether their needs are being met. It should be conducted on a collaborative basis, involving the supported person in determining whether their needs are being met. The social work function within the authority should design and oversee any monitoring in partnership with the finance function. The aims, objectives and approach to financial monitoring arrangements should be influenced by the values and principles in this guidance.

See also [Contingency Planning in Section 5](#).

Commented [JM77]: Taken from section 8 of existing guidance, and combined with a range of additional sources,

Commented [JM78]: Slightly amended from original guidance section 11

Integrated monitoring arrangements

It is essential that the two forms of monitoring – welfare and financial - are co-ordinated. The finance function within the authority should approach the task of monitoring in collaboration with social work and in line with the values and principles set out in this guidance. It is important that all those involved in monitoring arrangements discharge their role in line with the values and principles and outcome-focused approach associated with SDS. Monitoring should be a means to an end - the end being that the person's outcomes are being met and the authority's funding is being used in line with those outcomes. Honest mistakes should not be penalised. So-called stop payment warnings should not be automatically issued when an administrative matter goes wrong. The supported person should be able to make reasonable adjustments within the broad scope of their support plan and assessment.

What does this mean?

- Authorities should develop effective arrangements around the corporate policies for the assessment and monitoring of all self- directed support.
- The authority should ensure that all monitoring arrangements are explained to the supported person. The authority should discuss with the supported person the information they will be expected to provide and the way in which monitoring will be carried out. The direct payment arrangement should not begin until the supported person has agreed to any conditions which are necessary for monitoring purposes
- The authority should actively seek the comments and suggestions of supported people, carers and the wider population as part of any review of processes, systems, guidance and procedures and should seek to co-design all such arrangements with the full involvement of supported people and carers from the beginning and throughout. This should include the evaluation of their scheme arrangements. Authorities should not discourage supported people from sharing information about their budgets and support with others.
- The supported person, the social work practitioner, independent support, advocacy and community brokerage organisations, and support providers are all rich and important sources of data for building a picture of need and demand in an area. The authority should use assessment and review data to understand what choices people are making and what support they are using. The authority should therefore consider regularly publish data they routinely collect about the experiences and outcomes of supported persons and estimated unmet need, consistent with accessibility and data protection requirements.

Commented [JM79]: Adapted from section 7 of existing guidance

Collection and Publication of SDS Data

There is no specific requirement in the 2013 Act concerning the collection or publication of data, and therefore the issue of what social care data to collect or publish is for individual local authorities to consider as part of their statutory duties to publish information about their policies and services.¹³⁸

However, the SDS Framework of Standards agreed in 2021 (including standards on transparency and recording systems) suggests that authorities should take steps to ensure systems are capable of generating sufficient data to monitor and evaluate its own work to deliver the full range of options as set out in the 2013 Act.

The SDS Framework of Standards sets out clear expectations on data systems, namely that they are capable of being used for improvement and planning.”

Strategic direction on the improvement of data collection and use for the health and social care sector will be set out by the forthcoming Data Strategy for Health and Social Care is due to be published in early 2023.¹³⁹

This data strategy will align with the relevant provisions in the Framework of Standards to ensure a consistent approach to the collection of this data in order to support a more integrated approach to health and care and improve the experience for people accessing services.

This work will help address the identified gaps in social work and social care data, including on unmet need in social care, on the workforce and on what choices supported people are making, and on what outcomes are being achieved.

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Commented [JM80]: New paragraphs in yellow highlight created in collaboration with COSLA.

Commented [JM81]: Edits here on 30 September by Ryan Anderson, digital health lead.

¹³⁸ Authorities already contribute to several national data collections on health and social care, for example [Insights in Social Care](#) published by Public Health Scotland.

¹³⁹ See the consultation page on the strategy, which links to further information about 'Scotland's Digital Health and Care Strategy' (Scottish Government and COSLA): <https://consult.gov.scot/digital-health/data-strategy-for-health-and-social-care/>

Section 11: Sources of further advice, information and support

Below is a range of websites containing resources and good practice, many of them written or maintained by third sector organisations who are leaders in curating resources of wider interest to the SDS community.

- SDS Library (Care Inspectorate): <https://hub.careinspectorate.com/resources/self-directed-support-library/>
- Self Directed Support Scotland: <https://www.sdsscotland.org.uk/resources/>
- Inspiring Scotland: Support in the Right Direction Case Studies: <https://www.inspiringscotland.org.uk/case-studies/>
- The SDS Collective: <https://thesdscollective.wordpress.com/resources/>
- Children's resources: CELCIS: <https://www.celcis.org/knowledge-bank/protecting-children/legislation-and-policy/current-legislation-and-policy>
- Myths and misconceptions about SDS (to follow)

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Commented [JM82]: Suggest this page directs readers to websites which are regularly updated with the best content and resources.

Comms subgroup to ensure these websites can receive due attention.

Annex 1: Visualising Self Directed Support

Diagram 1: SDS in Practice: Roles and Responsibilities with respect to the Supported Person (including Carers)¹⁴⁰

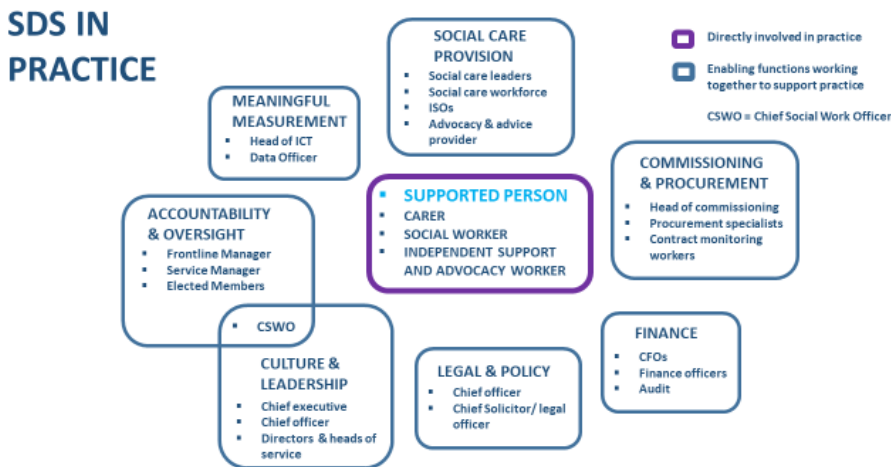


Diagram 1 note

The above diagram is a visualisation of how SDS is supported and enabled by statutory and other functions related to the implementation of the SDS Act 2013, as set out by the Roles and Responsibilities section of this guidance.

The cell at the centre of the diagram contains the supported person, the carer, social worker, and independent advocacy and advice workers – the supported person is at the centre, alongside those who work in close proximity to them.

The outer cells the different external enabling functions which exist inside local authority institutions to support and oversee SDS practice, some of which (like the Chief Social Work Officer) have roles defined by statute.

Commented [JM83]: This section reflects appetite for more accessible ways of visualizing complex processes and journeys taken by supported people.

However, accessibility requirements encourage simple diagrams – complex flowcharts can present accessibility issues and may also quickly become obsolete.

Finally, a dynamic click through visual diagram isn't something SG website supports because of the accessibility challenges.

Commented [JM84]: Proposed revised diagram from SWS/Jane Kellock as an action from workshop subgroup on roles and responsibilities.

Diagrams would be redone by professionals.

¹⁴⁰ See also the Statutory Guidance on the Carers Act 2016, as this contains diagrams and information (in particular Figure 1 and Table 1) on functions similar to those for the supported person as illustrated in Diagram 1 and Diagram 2 of this guidance. <https://www.gov.scot/publications/carers-scotland-act-2016-statutory-guidance-updated-july-2021/documents/>

Diagram 2: Mapping a supported person's pathway

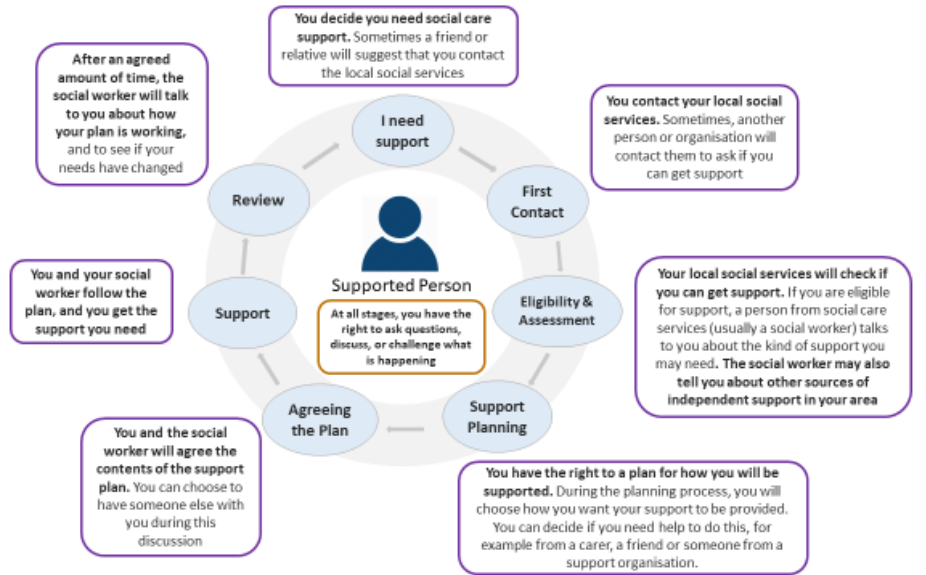


Diagram note

The above diagram indicates the key stages in the person's pathway. It covers each main step from initial contact through to the provision of support and review. It is the person's route through their support from initial information through to review.

There may be appropriate variations to the pathway depending on the specific circumstances of the person. However, users of this guidance may find it a useful starting point for its approach to determining the appropriate services, providing choice to the supported person and monitoring and reviewing the person's support.

Commented [JM85]: Consider need for an updated version of this diagram from the original guidance that is capable of identifying where barriers have the potential to come in.

Text taken from Section 5 (Supported Person's Pathway) and moved here on basis that diagrams and visualisations could usefully be located in a separate annex (assumption made in the draft guidance structure agreed by SLWG Meeting 2 in may)

The notes for the diagram may want to consider the text from previous guidance for the diagram – see page 20 onwards in the original guidance.

Commented [JM86]: This version developed with subgroup on roles and responsibilities (Jane K, Lynda Wright, Becs Barker) and input from Rachael Grauwelman-Smith (Access and Support Team)

Diagram 3: Explaining the four SDS options (highlighting control, flexibility and responsibility)

This diagram would illustrate the varying degrees of control offered by each of the four options. (work in progress)

SDS Options: Making it Easy

It may be helpful to explain the features of each option, in an unbiased way.

Options	Flexibility	Responsibility
Option 1	Most flexibility. You select and employ your own staff and choose your own services to meet your outcomes.	Most responsibility You are the employer. Responsible for making payments, holiday pay, organising rotas etc. You will need to open a new bank account into which your support budget is paid.
Option 2	You direct the authority to make payments on their behalf for services or goods that meet your outcomes.	Less responsibility – you will direct the support but the budget will be paid into a bank account which may not necessarily be in your name. Don't have to manage the money yourself.
Option 3		Least responsibility

Commented [JM87]: This diagram would also help suggestions include need to counter the prevailing view that option 3 is not SDS, and help surface differing levels of responsibility but showing how supported person can be in control across each option.

To be done for Draft 3 in collaboration with comms subgroup. Beccs Barker has suggested using CANVA.

Diagram opposite is a **placeholder only** – I have amended a slide sent to me by Donna Murray of SWS

Diagram note: To follow

Annex 2: Definition of key words and phrases

Authority: Includes local authorities and Health and Social Care Partnerships or Integration Joint Boards.

Carer: Section 1 of the 2016 Carers (Scotland) Act 2016 defines a carer as an adult or child who provides or intends to provide care for another individual (but not if that is care for a child just because of their age or if that care is part of a contract or volunteering).

Integration Joint Board / IJB

Legislation in Scotland requires local authorities and NHS Boards to jointly plan and lead health and social care services. Two ways of doing this were provided – the 'body corporate' model (IJB) and the 'lead agency' model. 30 areas have adopted the IJB model (Clackmannanshire and Stirling formed a joint IJB, and Highland adopted the 'lead agency' model).

Health and Social Care Partnership / HSCP

There are 31 health and social care partnerships in Scotland. They work towards a set of national health and wellbeing outcomes and are responsible for adult social care, adult primary health care and unscheduled adult hospital care. Some are also responsible for children's services, homelessness and criminal justice social work

Guardian An Attorney or Guardian Person can consent on behalf of someone, if they lack decision-making capacity. The local authority would have to conclude, in its assessment, that the person with assessed need has, after every attempt to support them, no capacity to decide to receive SDS.

Independent Living

Independent Living means means people of all ages having the same freedom, choice, dignity, and control, and having rights to practical assistance and support to participate in society and live a full life. It does not mean living by yourself or fending for yourself.

Independent Support Organisation

An organisation that provides independent, impartial information and support for people, for example on social care choices, e.g. a centre for independent living.

Social Care

Social care includes all forms of personal and practical support for people who need extra support. It describes services and other types of help, including residential care homes, care at home, and community alarms/telecare systems, and support for carers in their caring role/s.

Support planning

The complex process whereby information is gathered through assessment, and involving individuals, using their personal outcomes and choices to help define what

Commented [JM88]: To be finalized – will not be exhaustive but focus on most commonly used or misused terms.

Glossary of key terms, especially those that may be most commonly misunderstood.

This is an action from roles and responsibilities subgroup, with additional suggestion to reuse definitions in MSMC Alliance/SDSS publication.

As for links of additional information, it may be more useful to point readers to a single online 'source of truth' about definition of key terms.

To be finalized by comms and engagement subgroup

is going to be most helpful. It will define how goals will be agreed and how people and agencies can work together to achieve them. A support plan says how people will spend their budget to get the life they want, agreed between the individuals involved and the local authority.

Supported person

'Supported people' refers to people who are receiving social care services or support as well as unpaid carers who are to receive carer support to meet their own needs. Sometimes referred to as 'service users'.

Supported persons is often taken to mean adults, but should always be understood as also including children and young people. If a supported person is aged 16-18, then they can pick any of the four SDS options they prefer. If a supported person is a child under 16, then their parent or guardian can choose from the 4 options. But the child must be involved in deciding what happens as much as possible, and must be given information about the options for SDS that they will find easy to understand.

Providers

Organisations that employ and manage staff in the provision of advice, care and support. These organisations can be from the statutory, third or independent sector

Personal Assistant

In the context of SDS legislation, Personal Assistants are care workers who are directly paid for by the supported person under Option 1.

Workers employed by the local authority, by a provider or is self-employed but sourced through an agency, are care workers.¹⁴¹

¹⁴¹ For more information on rules applying to 'off-payroll' workers providing their services via an intermediary, such as a personal service company, please visit the HMRC website

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