

**DIRECT PAYMENTS POLICY AND PROCEDURAL GUIDANCE FOR
STAFF AND MANAGERS 2014**

1.0 EXECUTIVE SUMMARY

- 1.1 The purpose of this report is to provide Community Services Committee with an update on progress made in relation to managing Option 1 (Direct Payments) of the Social Care (Self-directed Support) (Scotland) Act 2013.
- 1.2 It is recommended that Community Services Committee note the updated Direct Payment Policy and Procedures which reflects new regulations which is being presented to Policy and Resources Committee on 19th March 2015.
- 1.3 The amendments made include information on Self Directed Support and how to apply the four options inclusive of requirements as detailed in the Self-directed Support (Direct Payment) (Scotland) Regulations 2014.
- 1.4 The layout of the proposed document has been broken down into two parts; (A) Policy and (B) Procedure, this is to allow staff to reference the legal requirements and how to apply them according to Argyll and Bute Councils requirements.

DIRECT PAYMENTS POLICY AND PROCEDURAL GUIDANCE FOR STAFF AND MANAGERS 2014

2.0 INTRODUCTION

- 2.1 The purpose of this report is to provide Community Services Committee with an update on progress made in relation to managing Option 1 (Direct Payments) of the Social Care (Self-directed Support) (Scotland) Act 2013.
- 2.2 The Social Care (Self-directed Support) (Scotland) Act 2013 which came into force on 1 April 2014, makes legislative provisions relating to the arrangement of care and support (“community care services” and “children’s services”) in order to provide a range of options to supported persons as to how they are to be provided with their support. For example:
- Option 1 – Direct Payment;
 - Option 2 – The supported person directs their own support;
 - Option 3 – Services arranged for the supported person by the Local Authority;
 - Option 4 – Mixture of the three above.
- 2.3 This report refers to Option 1 – Direct Payment. This is a payment which is made to a supported person which can be used to buy support. The supported person can do this on their own or get help from family, friends and support organisations.
- 2.4 Due to the changes with the introduction of The Self-directed Support (Direct Payments) (Scotland) Regulations 2014, existing guidance has been updated to reflect these, such as;
- Ability to consent with further guidance for staff (Ability to Consent checklist appendix 3 of guidance)
 - Ability to make decisions with further guidance, guidance in legislation with regards to family members being employed as Personal Assistants and the exception to the family rule.
 - Further guidance has been added where the supported person lacks capacity.
- 2.5 To keep in line with guidance from the Scottish Government’s Personal Assistant Handbook, the policy developed requires evidence that the

status of the Personal Assistant is self-employed and they are registered with HMRC to provide Care and Support in the client's home.

3.0 RECOMMENDATIONS

- 3.1 It is recommended that the Community Services Committee note the updated Direct Payment Policy and Procedures which reflects new regulations is being presented to Policy and Resources Committee on 19th March 2015.

4.0 DETAIL

Option 1 (Direct Payments) Update

- 4.1 The Social Care (Self-directed Support) (Scotland) Act 2013 repeals Section 12B of the 1968 Act (the duty to offer and provide direct payments). In its place the 2013 Act provides a new, enhanced duty to offer the direct payment option and to "give effect to" the person's choice of a direct payment.
- 4.2 Alongside the 2013 Act the Self-directed Support (Direct Payments) (Scotland) Regulations 2014 came into force in April 2014. This is applicable to all direct payments arranged after 1st April 2014.
- 4.3 For existing Direct Payments arranged before the 1st April (as long as they were legally competent), they are not affected by the new regulations as Article 5 of The Social Care (Self-directed Support) (Scotland) Act 2013 (Commencement, Transitional and Saving Provisions) Order 2014 makes a saving provision in relation to a direct payment which has already been offered under Section 12B of the 1968 Act before 1st April 2014 and accepted.
- 4.4 Sections 12B and 12C of the 1968 Act (which make provision in relation to direct payments in respect of community care services) continue to apply in respect of that payment despite their repeal in section 25 of the 2013 Act as long as they are legally competent.
- 4.5 Argyll and Bute Council's current Direct Payments Policy & Procedures (Appendix 1 of report) have been revised by Finance, Legal Services and Social Work staff and now require endorsement. The new policy and procedures reflect the new regulations and terminology of the 2013 Act. As part of this process there have been areas for improvement identified which will assist supported people choosing Option 1 (Direct Payment) and staff with understanding and being able to manage a direct payment such as:
- Information Pack for supported people
 - Template Letter of refusal of DP's, in accordance with Part 4 and 5 of the new Regulations
 - Checklist of Capacity; Capacity to Consent

- 4.6 The Scottish Government Self-directed Support Policy Team have advised they are working on further guidance in relation to Section 9 of the Regulations in respect to exception to the family members rule. Further information in this regard will follow. This may require a further amendment to our policy and procedures.
- 4.7 Self-Directed Support Direct Payments Option 1 Policy and Procedure will be reviewed on an annual basis by SDS Officer.

5.0 CONCLUSION

- 5.1 The Policy and Procedures have been updated in partnership with Finance and Legal Services. They will require endorsement prior to circulation to all Social Work staff.
- 5.5 There have been significant changes made to Argyll & Bute Council's Self Directed Support Option 1 Direct Payments Policy and Procedural Guidance for Staff and Managers with regards to Self Employed Personal Assistants. A simple flow chart is being prepared for staff guidance in conjunction with the policy and procedure.

6.0 IMPLICATIONS

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| 6.1 Policy | Updated Self-directed Support Option 1 Direct Payments Policy and Procedures reflecting changes in legislation and regulations. |
| 6.2 Financial | None |
| 6.3 Legal | Complies with all legislation and regulations as detailed within report. |
| 6.4 HR | None. |
| 6.5 Equalities | None. |
| 6.6 Risk | As identified within report. |
| 6.7 Customer Service | None. |

Cleland Sneddon
Executive Director of Community Services

Policy Lead Councillor Douglas Philand
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APPENDICES

Appendix 1

Self-directed Support Option 1 Direct Payments Policy and Procedures